



UNITED NATIONS
Office on Drugs and Crime

**GUIDE FOR THE
LEGISLATIVE INCORPORATION AND
IMPLEMENTATION OF THE UNIVERSAL
ANTI-TERRORISM INSTRUMENTS**

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

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UNITED NATIONS
New York, 2006

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FOREWORD

I. Purpose of the *Legislative Guide*

1. The main *purpose* of the present *Legislative Guide* is to facilitate the task of the competent authorities of States in ratifying, incorporating in law and implementing the universal anti-terrorism instruments. The *Guide* has been drafted principally for the benefit of political decision makers and legislators of countries that are preparing themselves for this process of implementation. It is also designed to assist the establishment of bilateral or multi-lateral treaties or agreements concerning international cooperation in criminal matters related to countering terrorism. It therefore presents the basic requirements set forth by the United Nations conventions, protocols and resolutions and explores the issues that all Member States will have to address. It sets out, in addition, a wide array of options and examples for consideration by national legislators when incorporating the counter-terrorism instruments.

2. The *Guide* essentially follows the legal tradition of French-speaking States, while also referring to model laws and explanatory documents prepared by the Commonwealth Secretariat.

3. After ratifying the universal anti-terrorism instruments, it is imperative for States to proceed with their legislative incorporation. This is vital not only to ensure effective implementation of counter-terrorism measures, but also to create a legal basis for use by practitioners. While the universal anti-terrorism instruments may serve as a useful legal basis for the criminalization of terrorist offences, the texts do not of course establish actual penalties for terrorist acts. This area, which falls within State sovereignty, should not be left as a lacuna to the benefit of offenders. Moreover, States cannot condone having their territory used as a safe haven for terrorists.¹ A legislative void is therefore tantamount to precluding all possibility of extradition because of the dual criminality rule. In particular, it allows a person to commit an act of terrorism or even to prepare or direct its commission without the authorities having any possibility of bringing the offender to justice.

4. Passing such legislation is therefore vital and would unquestionably contribute to the political stability of States. This is especially true for developing and transitional-economy States, where there is indeed an increasing threat of political destabilization; criminal and terrorist groups cannot be allowed to take control of these States merely because of a gap in the law.

5. The universal anti-terrorism instruments establish a *binding legal framework for Member States* (1). Nevertheless, although the terms of the provisions themselves may be authoritative, it is up to each Member State to determine the *legal framework that it considers most appropriate* (2). It is therefore recommended that drafters of legislation should integrate or transcribe the provisions of the universal instruments in such a way as to ensure complete consistency with the other offences and definitions set out in the national legislation in force.

1. A binding legal framework

6. In *resolution 1373* (2001),² of 28 September 2001, the United Nations Security Council decided³ that “acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations”. In paragraph 2 of this resolution, the Security Council decided that in order to counter these practices States must cooperate in criminal matters. In paragraph 3(d), the Security Council calls upon all States to “become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999”.

7. In that resolution the Security Council determined that all acts of international terrorism “constitute a threat to international peace and security”. It was accordingly decided that Member States must “take the necessary steps to prevent the commission of terrorist acts”.

8. This being the case, the provisions of this resolution based on Chapter VII of the Charter of the United Nations⁴

²The text of this resolution is available on the United Nations website at <http://www.un.org> and in annex 1 of the present *Guide*.

³The precise nature of the obligations imposed by resolutions depends on the formulations used. It is usually accepted that Security Council decisions are mandatory (when the Council “decides”), whereas its recommendations (when the Council “requests” Member States) do not have the same legal force. Of the three paragraphs of the resolution directed at States, the first two are expressed as binding decisions, whereas the third is expressed as a recommendation. However, in practice and in this case, this distinction is not important for the elaboration of the implementing legislation as the Security Council has declared itself resolved to take all necessary measures to ensure the “full application” of the resolution. Thus, the provisions of the third paragraph of the resolution are considered to be necessary developments of the first two paragraphs.

⁴The text of the Charter of the United Nations is available on the United Nations website at <http://www.un.org/aboutun/charter/chapter7.htm> and in annex 3 of the present *Guide*.

¹Concerning this point, see below, Part III, I, “No safe haven for terrorists”.

are *legally binding*⁵. For States this entails *becoming a party* to the universal anti-terrorism instruments established by the international community and *implementing* them in their entirety. These counter-terrorism instruments form an *international body of law* made up of 12 universal instruments, namely 10 conventions and 2 protocols.⁶

2. An appropriate legal framework for each Member State

9. Each State must opt for what it feels is *the most appropriate approach to implementing the universal instruments*, taking their provisions as a basis and respecting their requirements, particularly with regard to the criminalization of acts. There is no single correct approach and it is up to each Member State, therefore, to determine which method best meets its needs and is most compatible with its legal system.⁷ If ratification of the pertinent universal instruments is an absolute obligation, the necessary legal framework may be established:

—Either by amending a special section of the national Criminal Code (an option particularly recommended for States that intend to reform their Criminal Code or have

already embarked on such a reform. This will necessarily entail coordination between the special section of the Code and its general section and will also entail amending other texts such as the Code of Criminal Procedure);

—Or by adopting an autonomous law containing all the elements required by the conventions (technically, the quickest and simplest solution).

10. Thus, depending on legal policy in the country concerned, some States will only ratify a treaty once legislation allowing them to fulfil all their legal obligations has been passed. This may be true with respect to domestic ratification, i.e. the constitutional process by which a State commits itself to accept the obligations of the agreement. It may also be the case for international ratification, where the ratification has been notified to the designated treaty depositary.⁸ While in some countries a ratified treaty may have the same status as domestic law, it may be necessary in others to pass legislation to provide the necessary elements that are not contained in the treaty. For example, if financing a terrorist act to take place in another country were not otherwise penalized in domestic law, ratification of the International Convention for the Suppression of the Financing of Terrorism would not permit such an act to be punished until domestic legislation had established the offence and a penalty.

II. Goal of the universal anti-terrorism instruments

11. In the preface to the document entitled *International Instruments related to the Prevention and Suppression of International Terrorism*,⁹ United Nations Secretary-General Kofi Annan described the increasing danger faced by the world community: “Terrorism strikes at the very heart of everything the United Nations stands for. It presents a global threat to democracy, the rule of law, human rights and stability. Globalization brings home to us the importance of a truly concerted international effort to combat terrorism in all its forms and manifestations.”

12. Terrorism presents a challenge to the democracies it seeks to destabilize. This is why, in fighting it, they have to adopt a strategy that is consistent with their own exigencies and standards. They must defend themselves by standing fair and square on their own territory, which is

the rule of law, and must refuse to be drawn by terrorism into the wilderness of arbitrary action, which represents a negation of the law.

13. The universal anti-terrorism instruments are the international community’s response to this threat. Thus, in accordance with resolution 1373, any policy for the legislative adoption of the 12 universal anti-terrorism instruments is mainly aimed at ensuring that each Member State is equipped with the necessary mechanisms to prevent and punish acts of terrorism. The measures adopted and applied must take into account the fundamental values and principles essential to all democracies. In particular, measures to prevent and suppress terrorism must be crafted to maintain full respect for the rule of law and, most specifically, human rights.

⁵According to the terms of Chapter V, article 25 of the Charter of the United Nations, Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the Charter.

⁶The texts of the 10 conventions and 2 protocols are available on the United Nations website at <http://untreaty.un.org/English/Terrorism.asp> and in annex 2 of the present *Guide*.

⁷UNODC can furnish advice and suggest options in this regard. Based in Vienna, UNODC can be contacted by mail (Department for the Prevention of Terrorism, P.O. Box 500, A-1400 Vienna, Austria. Telephone: 00 43 1 26060 56 04, fax: 00 43 1 260 60 59 68 or e-mail: unodc.tpb@unodc.org). The text of the conventions and other relevant information are available on the UNODC website at <http://www.unodc.org/unodc/en/terrorism.html>.

⁸For effective accession by States to the universal anti-terrorism conventions and protocols, the original instruments of accession have to be transmitted to the depositaries, contact information for which is indicated in annex 10 of the present *Guide*, complete with the signature of the competent national authority.

⁹*International Instruments Related to the Prevention and Suppression of International Terrorism*, United Nations Publication, Sales No. E.01.V.3.

III. Information note

14. The purpose of the *Legislative Guide* is to facilitate the process whereby States achieve full application of the universal anti-terrorism instruments. This process requires not only ratification of the relevant international conventions and establishment of the corresponding legislative framework but also real will on the part of the State to implement the new legislative provisions. This calls for a strengthening of capacities to fight terrorism and, notably, budgetary, administrative and personnel resources, as well as partnerships between developed countries, developing countries and countries in economic transition.

15. UNODC provides model laws to those responsible for drafting and implementing laws to give effect to the universal anti-terrorism instruments, as well as reference documents to States requesting them. It also provides technical

advice on line, by telephone or through specific technical assistance programmes.¹⁰ This partnership contributes to ensuring international cooperation and full implementation of the instruments, as requested by the Security Council in paragraph 3(e) of resolution 1373 (2001).

16. For this purpose there is already a legislative guide available for the benefit of drafters of legislative texts and other interested persons. It contains information drawn from laws already promulgated or bills under study, as well as model texts prepared by the Commonwealth Secretariat and by UNODC. It is posted on the Office of Drugs and Crime website¹¹ and is periodically updated. This document should be used as a supplement to the present *Legislative Guide* for the ratification, legislative incorporation and implementation of the universal instruments.

¹⁰See the contact information for the Terrorism Prevention Branch, in footnote 7, and, in annex 6, the provisions relating to the safety of United Nations and associated personnel, Convention on the Safety of United Nations and Associated Personnel, New York, 9 December 1994, available at <http://www.un.org/millennium/law/xviii-15.htm>.

¹¹The present *Legislative Guide* is available at <http://www.unodc.org/odccp/terrorism.html?id=11702> and can be obtained in hard copy by request to UNODC.

INTRODUCTION

1. Structure of the *Legislative Guide*

17. As mentioned, the present *Legislative Guide* is intended for the purpose of achieving the application of resolution 1373¹² and of the 12 universal anti-terrorism instruments:¹³ the Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963,¹⁴ the Convention for the Suppression of Unlawful Seizure of Aircraft, 1970,¹⁵ the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971,¹⁶ the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973,¹⁷ the International Convention against the Taking of Hostages, 1979,¹⁸ the Convention on the Physical Protection of Nuclear Material, 1980,¹⁹ the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 1988,²⁰ the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988,²¹ the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988,²² the Convention on the Marking of Plastic Explosives for the Purpose of Identification, 1991,²³ the International Convention for the Suppression of Terrorist Bombings, 1997²⁴ and the International Convention for the Suppression of the Financing of Terrorism, 1999.²⁵ It is divided into four main sections, which deal consecutively with the substantive questions linked to the criminalization

of the different terrorist offences (I), the necessary measures to ensure effective criminalization (II), provisions of criminal procedure (III) and legislative and administrative measures for improving international cooperation with regard to extradition, mutual legal assistance in criminal matters and other forms of cooperation (IV).

18. The *Guide* does not deal with each convention and protocol separately,²⁶ but follows a thematic logic to assist drafters. This method seemed to accord more closely with the judicial spirit that prevails in the “written law” countries.

19. Each section of the *Guide* begins with the relevant article or articles (texts) and is organized as follows:

1. Introduction
2. Requirements (mandatory or optional)
3. Commentary
4. Information sources and illustrations
5. Recommendations.

20. At the end of the *Guide*, all the recommendations are presented again in consolidated form and an annex of useful documents is given, together with an index which refers to paragraph numbers in the text of the *Guide*.

¹²The text of the resolution is available at <http://www.un.org/Docs/scres/2001/sc2001.htm> and in annex 1 of the present *Guide*. In annex 2, the 12 universal counter-terrorism instruments are also reproduced.

¹³The English-language versions of these conventions and protocols or links to them are available at www.un.org/terrorism/. The French-language versions are available at www.un.org/french/terrorism/ and the Russian-language versions at www.un.org/russian/terrorism/.

¹⁴United Nations, *Treaty Series*, vol. 704, p. 218, available at <http://untreaty.un.org/English/Terrorism/Conv1.pdf>.

¹⁵The Convention for the Suppression of Unlawful Seizure of Aircraft was signed at The Hague on 16 December 1970 and entered into force on 14 October 1971. Available at www.unodc.org/unodc/terrorism_convention_aircraft_seizure.html.

¹⁶United Nations, *Treaty Series*, vol. 974, No. 14118. Available at <http://untreaty.un.org/English/Terrorism/Conv3.pdf>.

¹⁷*Ibid.*, vol. 1035, No. 15410. Available at <http://untreaty.un.org/English/Terrorism/Conv3.pdf>.

¹⁸*Ibid.*, vol. 1316, No. 21931. Available at <http://untreaty.un.org/English/Terrorism/Conv5.pdf>.

¹⁹*Ibid.*, vol. 1456, No. 24631. Available at <http://untreaty.un.org/English/Terrorism/Conv6.pdf>.

²⁰The 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation was signed at Montreal on 24 February 1988 and entered into force on 6 August 1989. Available at <http://untreaty.un.org/English/Terrorism/Conv7.pdf>.

²¹The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation was adopted on 10 March 1988 and entered into force on 1 March 1992. Available at <http://untreaty.un.org/English/Terrorism/Conv8.pdf>.

²²The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, was done at Rome on 10 March 1988 and entered into force on 1 March 1992. Available at www.unodc.org/unodc/terrorism--convention_platforms.html.

²³The Convention of the International Civil Aviation Organization on the Marking of Plastic Explosives for the purpose of Identification was signed at Montreal on 1 March 1991 and entered into force on 21 June 1998. Available at <http://untreaty.un.org/English/Terrorism/Conv10.pdf>.

²⁴General Assembly resolution 52/164, annex. Available at www.unodc.org/unodc/terrorism_convention_terrorist_bombing.html.

²⁵General Assembly resolution 54/109, annex. Available at www.un.org/law/cod/finterr.htm.

²⁶For an approach to the Conventions and Protocols based on this method, see the Commonwealth Secretariat guide. The Commonwealth Secretariat has prepared model laws and explanatory documents concerning the 12 Conventions and Protocols (*Implementation Kits for the International Counter-Terrorism Conventions*), as well as detailed laws and explanatory guides for applying all the provisions of resolution 1373 (*Model Legislative Provisions on Measures to Combat Terrorism*). All these documents are available at <http://www.thecommonwealth.org/law/model.html>.

2. Structure of the universal anti-terrorism instruments

21. Taken together, resolution 1373, the conventions and the protocols make up a complete legal framework against terrorism.

22. As previously indicated, resolution 1373 includes a number of mandatory standards.²⁷ It establishes that every act of terrorism is a serious act as it constitutes a “threat to international peace and security” and that the “acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations”.²⁸ Its provisions are binding on all Member States.²⁹ Although the resolution was adopted in response to the 11 September 2001 terrorist attacks in the United States, the measures it sets forth are expressed in a much broader way and are not limited to identifying and punishing the offenders of those particular attacks.³⁰ The measures are general in character and aim at the prevention, prosecution and punishment of all acts of financing of terrorism as well as, to a great extent, cooperation in criminal matters.

23. Of the 12 anti-terrorism instruments, 8 conventions and 2 protocols require parties to penalize offences defined in each instrument (the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and its 1988 Montreal Protocol, the 1988 Safety of Maritime Navigation Convention, the 1988 Fixed Platforms Protocol, the 1980 Nuclear Material Convention, the 1997 Terrorist Bombings Convention and the 1999 Financing of Terrorism Convention).

24. Two of the 12 instruments do not themselves give definitions of offences. Although clearly aimed at unlawful aircraft seizures or hijackings, the 1963 Tokyo Convention simply obligates parties to establish their jurisdiction over offences defined according to their domestic law, commit-

ted on aircraft registered in their territory. Many provisions from this convention have been considerably improved in later instruments relating to civil aviation. The 1991 Plastic Explosives Convention requires parties to adopt measures that may be penal in character, but not necessarily so, in order to prevent the movement of unmarked explosives.

25. Finally, the *complete legal framework against terrorism* is as follows:

MANDATORY REQUIREMENTS ARISING FROM RESOLUTION 1373

Criminalization:

- Criminalization of terrorist acts
- Penalization of acts of support for or in preparation of terrorist offences
- Criminalization of the financing of terrorism
- Depoliticization of terrorist offences

Measures to ensure effective criminalization:

- Refusal of asylum rights for terrorists
- Border controls and prevention of the forgery of travel documents and identity papers
- Freezing of funds of persons who commit or attempt to commit terrorist acts
- Prohibition on placing funds or financial services at the disposal of terrorists

International cooperation in criminal matters:

- Mutual assistance between States
- Intensification of exchanges of operational information
- Use of bilateral and multilateral agreements to prevent and eradicate terrorism
- Prevention of abuse of refugee status

²⁷It should be noted that no body has coercive power in the event of failure to comply with resolution 1373. However, the Counter-Terrorism Committee created under the aforementioned resolution in its paragraph 6, which is a body of the Security Council, can direct the latter's attention to such situations. It is the Security Council that can then take measures based on Chapter VI (*Pacific settlements of disputes*) and Chapter VII of the Charter of the United Nations (*Action with respect to threats to the peace, breaches of the peace, and acts of aggression*).

In addition, failure to incorporate the ratified texts in law could complicate diplomatic relations between States. Thus, States that have incorporated the universal instruments may legitimately consider that the same applies to States that have ratified the texts. This could apply in particular to the dual criminality rule in matters of extradition.

²⁸Paragraph 5 of resolution 1373.

The resolution does not define the act of terrorism. This point has been under negotiation at the United Nations since 1996, the year a Special Committee was set up. However, a general definition is not needed for application of the provisions of resolution 1373 and is not required by the Conventions. If national legislators are permitted to include a definition of terrorism in their domestic law, it is recommended, however, to take particular account of the need for clarity and precision arising from the principle of strict compliance with the law. Stress is laid on the difficulty of drafting a definition that embraces political, legal and criminological aspects.

The terms of resolution 1373 are perfectly clear and precise. They contain the obligations that States must fulfil. Thus, all that is required is criminalization of acts set forth in the ten universal instruments. The definition of the elements of the offences set forth is especially clear.

It should also be noted that neither the United Nations Convention against Transnational Organized Crime and the Protocols thereto (see the website for reference documents on this subject: http://www.unodc.org/unodc/en/crime_prevention.html or request a hard copy from UNODC), nor the United Nations Convention against Corruption (see the website for reference documents on this subject: http://www.unodc.org/unodc/en/crime_convention_corruption.html or request a hard copy from UNODC) gives a general definition of organized crime or corruption. This is in no way an insurmountable obstacle to the application of the texts and efforts to counter such offences.

In addition, Security Council resolution 1566 (8 October 2004), adopted under Chapter VII of the Charter following the events of Beslan, condemns all acts of terrorism, proposes a definition of terrorism, calls upon States to prevent and punish acts of terrorism as criminal acts, urges States to become parties to the conventions and protocols against terrorism, requests the development of a set of best practices to counter terrorism and establishes a working group on practical measures for combating terrorist activities. See the text of this resolution in annex 1 of the present *Guide* and at <http://daccessdds.un.org/doc/UNDOC/GEN/N04/542/83/PDF/N0454283.pdf?OpenElement>.

²⁹See footnote 3 regarding the precise nature of the obligations stated in resolution 1373.

³⁰In the historical context of post-September 11, the international community must react swiftly. The fact of basing resolution 1373 on Chapter VII of the Charter of the United Nations marks a departure from the preceding instruments.

— Rejection of all politically motivated grounds to justify refusal of an extradition request

Ratification and implementation of the 12 universal anti-terrorism instruments

COMMON ASPECTS OF THE 12 UNIVERSAL
ANTI-TERRORISM INSTRUMENTS

Criminalization of specific offences:

- Offences linked to the financing of terrorism
- Offences linked to civil aviation
- Offences concerning ships and fixed platforms

- Offences based on the victim's status
- Offences linked to dangerous materials

Assertion of jurisdiction in regard to offences set forth in the universal instruments

Establishment of the aut dedere, aut judicare principle

Use of international cooperation mechanisms in criminal matters:

- The instruments can be used as a legal basis for extradition
- The offences are fully incorporated in the existing extradition treaties

Part I

CRIMINALIZED ACTS

26. The universal anti-terrorism instruments require the criminalization of a number of acts in the areas they regulate. Accordingly, of the 12 United Nations conventions ten contain obligations to criminalize conduct that they define³¹ (II). Each text specifies, when necessary, provisions relating to liability (III). Some preliminary remarks regarding elements of offences are also offered (I).

³¹Of the 12 anti-terrorism instruments, 8 conventions and 2 protocols obligate parties to penalize offences defined in each instrument (the 1970 Convention on the Unlawful Seizure of Aircraft, the 1971 Convention on the Safety of Civil Aviation and its 1988 Protocol on the Safety of Airports, the 1988 Convention on the Safety of Maritime Navigation, the 1980 Convention on the Physical Protection of Nuclear Material, the 1997 Convention on Terrorist Bombings and the 1999 Convention on the Financing of Terrorism). Two of the 12 counter-terrorism instruments do not include definitions of offences. These are the 1963 Tokyo Convention, which simply requires parties to establish their jurisdiction over the offences, defined according to their domestic legislation, committed on board aircraft registered in their territory and the 1991 Convention on the Marking of Plastic Explosives, which stipulates that parties must adopt measures, which may, but do not need to be, of a criminal character, to prevent the movement of unmarked explosives. See footnote 28.

I. PRELIMINARY REMARKS ON THE ELEMENTS OF THE OFFENCES

1. Objective element

27. Each text presents a complete characterization of the physical deed involved in the commission of an offence, this being the objective element (*actus reus*) (see II).

28. Under the universal instruments, attempted crimes and complicity are punishable in all cases. Drafters of national texts on terrorism should therefore provide a clear and precise definition of these concepts in their domestic legislation. Regarding attempted crime in particular, attempts should be criminalized not only in the case of serious offences but also in the case of misdemeanours (less serious offences) where provided for by law, i.e. when the terrorist act attempted is of a less serious nature. Participation as an accomplice to the attempted crime should also be criminalized.

2. Subjective element

29. Regarding the subjective element (*mens rea*), only references to the intent and to the illicit nature of the act are found in all the instruments. In other words, the universal texts require criminalization of those acts that are characterized as acts of terrorism.

30. The *mens rea* is thus reduced to the will of the offender to violate the law by knowingly committing the offence.

This element of intention has no material existence, but *proof* of its presence can be deduced readily from the nature of the physical element.

31. However, three of the universal anti-terrorism instruments require *specific* intent: the Conventions on the Suppression of the Financing of Terrorism, against Hostage-Taking and for the Suppression of Bombings. Specific intent is characterized by the intention of obtaining a certain result prohibited by the texts, namely the pursued goal.³² The concept of specific intent is close to that of motive, but the two should not be confused. The motive, i.e. the reason why the agent committed the offence, is not taken into account in establishing the offence, especially as the universal anti-terrorism instruments stipulate that terrorist offences should not be regarded as political offences, as will be discussed below.³³

32. One of the practical considerations to be borne in mind when determining whether it is advisable to require specific intent for terrorist acts is that, in the absence of a confession by the suspect, proving such a subjective element is for the most part virtually impossible. Another consideration is that, generally speaking, extradition is granted only if the act is punishable in both the requesting and the requested State. However, adding a specific subjective element may, in the event of a request for extradition³⁴ or mutual legal assistance,³⁵ lead to the claim that dual criminality is lacking.

³²In Part I, "Interpretation", of the previously mentioned *Model Legislative Provisions on Measures to Combat Terrorism*, developed by the Commonwealth Secretariat to define terrorist acts, the model law presents different ways of defining a terrorist act. Option 1 defines the offence without requiring a political, ideological or religious motivation, independently of the intent to intimidate through the use of acts intended to kill or destroy or threat thereof. Option 2 requires these motivations.

It should be noted that certain States, and not just common-law States, have opted to condemn the specific intent element in terrorist matters.

Such is the case in France, which in article 421-1 of the Penal Code criminalizes as terrorism certain specified and listed acts when they are "committed intentionally in connection with an individual or collective undertaking whose purpose is to seriously disturb the public order through intimidation or terror".

The 2002 Anti-Terrorism Act of Barbados classes any offence set forth by 9 of the conventions and protocols examined in the present *Guide* as an act of terrorism (that is, all the instruments with the exception of the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft, the 1991 Plastic Explosives Convention and the 1999 Financing of Terrorism Convention, the last being dealt with by the creation of the separate crime of financing of terrorism in the Barbados statute). Independently of the offences defined by reference to the conventions, the definition includes:

"(b) any other act

- i. which, by its nature or context, is intended to intimidate the public, or to compel a government or an international organization to do, or refrain from doing, any act; and
- ii. which is intended to cause."

The 2000 British law relating to terrorism is another example of a law that requires both the intent to influence or intimidate and an ideological motivation.

³³See Section III, "Forms of liability".

³⁴Concerning extradition, see Part IV of the present *Legislative Guide*. It should be noted that all the conventions of a penal character signed since 1970 (except the 1991 Plastic Explosives Convention) contain a provision whereby the offences defined are deemed as a matter of law to be included as extraditable offences in any extradition treaty between the parties, who undertake to include them as such in any future extradition treaty concluded between them. If the existence of a treaty is required, the parties may consider the relevant convention to constitute a legal basis for extradition. If the existence of a treaty is not required, the offence shall be recognized as extraditable.

³⁵Concerning mutual legal assistance in criminal matters, see Part IV of the present *Legislative Guide*.

II. OFFENCES COVERED BY THE UNIVERSAL INSTRUMENTS

33. The basic elements of the offences covered by the universal instruments are outlined in this paragraph. The offences can be grouped into five categories: offences linked to the financing of terrorism (1), offences based on the victim's status (2), offences linked to civil aviation (3), offences linked to ships and fixed platforms (4) and offences linked to dangerous materials (5).

34. Drafters of legislation will need to be particularly attentive to this point. Differing national definitions of offences can give rise to problems of dual criminality³⁶ and other procedural issues. It is therefore desirable to reproduce the terminology of the instruments in national implementing laws or to adopt the definitions used in the conventions by reference.

1. Offences linked to the financing of terrorism

35. *Preliminary note* Only questions relating to the criminalization of acts of terrorism are covered in this Part. The reader is requested to refer to Parts II, III and IV of the

Guide for information on measures for identifying and reporting suspected cases of financing of terrorist acts, procedural issues and cooperation measures.

International Convention on the Suppression of the Financing of Terrorism (New York, 1999)

Article 2 (The offences)

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

2. (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;

(b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraph (a) or (b).

4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

5. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;

(c) Contributes to the commission of one or more offences as set forth in paragraph 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

i. Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

ii. Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

³⁶See the developments relating to extradition in Part IV of the present *Legislative Guide* which have a bearing on the question of dual criminality.

Resolution 1373, paragraph 1

1. “Decides that all States shall:
 - (a) Prevent and suppress the financing of terrorist acts;
 - (b) Criminalize the wilful provision [...] by their nationals or in their territories [...] of funds [...] in order to carry out terrorist acts;
 - (c) Freeze [...] funds and assets of persons who commit or attempt to commit terrorist acts [...]
 - (d) Prohibit their nationals or any persons [...] within their territories from making any funds [...] available for the benefit [...] of such persons”.

1. INTRODUCTION

36. Financial measures to prevent and punish terrorist acts are gaining increasing importance in the fight against this scourge. In order to perpetrate such acts, funds have to be mobilized to maintain clandestine networks, train units, mount complex operations, purchase weapons or buy accomplices. Before the signing of the 1999 Convention, the international community endeavoured to draft specific conventions designed to better target specific types of terrorist acts. However, the conventions available at that time provided no legal mutual assistance mechanism to fight financing of terrorism.

37. Resolution 1373 and the 1999 Convention constitute innovative and practical responses to this problem.

38. Resolution 1373, particularly paragraph 1, is at the centre of the new framework for fighting the financing of terrorism. It constitutes a new legal instrument, supplementing those used before the 11 September attacks, for preventing and punishing terrorism through financial and economic means. These were mainly of two types: first, conventional instruments, in particular the 1999 Financing of Terrorism Convention; and second, economic and financial measures (or “sanctions”) adopted by the Security Council against specific entities or persons.³⁷ The resolution emphasizes the will of the Security Council to strengthen the arsenal of legal means available to fight terrorism by means of the application of Chapter VII of the Charter. Its legal status is distinguished by its universality, since the provisions of the resolution apply universally without the specific consent of the States, being linked to the States’ accession to the Charter of the United Nations, and by its immediate effect, since the direct effect of this text in domestic legal systems makes it possible to ensure immediate and effective application.

39. The 1999 Financing of Terrorism Convention is part of a global condemnation of terrorism.³⁸ In particular, it strengthens the body of international law against terrorism. On the one hand, it concerns what happens ahead of an actual terrorist act by generally targeting the financing of “any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed con-

flict”. Its scope is therefore much broader than that of the other existing universal instruments dealing with terrorism, all of which seek to punish specific acts. Moreover, it makes it possible to directly charge persons who finance acts of terrorism and to combat, indirectly, certain types of terrorist attacks that were not previously covered by any text, such as attacks carried out without the use of explosives. In addition, the Convention puts in place a comprehensive set of new and coherent provisions for matters relating to both suppression and prevention.

2. REQUIREMENTS

40. States should:

- Establish the following acts as criminal offences:
 - directly or indirectly, unlawfully and wilfully, providing or collecting funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, whether or not it is known that the funds were actually used, in order to carry out the following acts:
 - an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex;
 - any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act;
 - attempting to commit such an offence;
 - participating as an accomplice, or organizing or directing others to commit any such offence;
 - wilfully contributing to the commission of such an offence by a group of persons acting with a common purpose;
- Adopt such measures as may be necessary to ensure that the above offences:
 - are punishable by appropriate penalties which take into account their grave nature;
 - are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

3. COMMENTARY

41. Firstly, resolution 1373 contains two distinct obligations with regard to the criminalization of the financing of terrorism. The first relates to the financing of terrorist

³⁷The Security Council decided in its resolutions 1267 (1999), 1333 (2000) and 1390 (2002) that United Nations Member States could confiscate the assets of the terrorists and terrorist organizations identified by the Council.

³⁸It was the result of a French initiative supported by the Group of Eight (G8).

acts, the second to the financing of terrorists. The first obligation is stated in paragraphs 1(a) and 1(b). The resolution states, in paragraph 1(a), that States shall “prevent and suppress the financing of terrorist acts”. Paragraph 1(b) then states that they shall “criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts”. This wording is very close to that of the 1999 Convention. In paragraph 3(d) of the resolution, the Security Council “calls upon all States” to become parties to the Convention. States must, in addition, ensure that these acts of terrorism are established as serious offences in their domestic law and that the punishment duly reflects the grave nature of such offences. The Convention contains similar provisions. Paragraphs 1(a) and (b) of the resolution therefore appear to refer to the Convention. The second obligation is contained in paragraph 1(d) of the resolution, which specifies that States shall “prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons”. This section of the resolution creates an autonomous obligation not contained in the Convention, which does not deal with the issue of financial assistance to terrorists or to terrorist entities.

42. It should be noted, however, that paragraph 1(a) of the resolution is not limited to punishing the financing of international terrorism but extends to all terrorist acts, irrespective of any transnational element. Whereas essentially, and especially as regards criminalization, the 1999 Convention applies only where there is such an element,³⁹ the measures in resolution 1373 are not subject to this requirement.

43. Secondly, the 1999 Convention is a convention concerned with criminalization in which the definition of a terrorist act goes beyond all former conventions. Consequently, the Convention does more than simply allow the punishment of the financing of terrorist acts but also authorizes the prosecution of any terrorist act whatsoever and of its financial sponsors in the spirit of global condemnation of the phenomenon. Its principal aim remains, nevertheless, to define the offence of financing of terrorism.

³⁹Article 3 of the 1999 Convention: “This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1 or 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases”. Article 7 refers to those cases in which a State shall (paragraph 1) or may (paragraph 2) establish its jurisdiction over the offences set forth in article 2 of the Convention. Articles 12 and 18 are concerned with mutual legal assistance, extradition, the rights of the accused as well as preventive measures. Concerning these points, see Parts III and IV of the present *Legislative Guide*.

44. The Convention requires parties to adopt measures in their national law for (a) criminalization of acts related to the financing of terrorism set forth by the Convention and (b) punishment of those offences with a penalty that takes into account their grave nature.

1. Elements of the offences

45. It is worth noting here that the complicity articles of penal codes are often insufficient to establish financing of terrorism as an offence since the offence of “financing” has to be punishable independently from the actual act of terrorism. In most national legislations, however, the accomplice is punished only if the offender carried out the principal crime and/or is also punished.

Objective elements

46. The definition of the offence comprises two main elements: “financing” and the “acts of terrorism” for which financing is intended.

The definition and meaning given to “financing” (article 2)

47. The offence, set forth in article 2, is particularly broad. The definition of financing is formulated to allow a broad interpretation and is defined as the act “of providing or collecting funds”. For an act to constitute an offence the funds need not be actually used. The fact that funds were collected with the intention of carrying out a terrorist act is sufficient (art. 2, para. 3). “Funds” (art. 1) means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets, including but not limited to bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.

48. Likewise, the attempted offence also constitutes an offence (art. 2, para. 4), an attempt being established as an offence in the same degree as the offence itself.

49. The physical element of “financing” is established if a person “by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds...” (art. 2, para. 1). Thus, all means of financing, whether “illegal” (racketeering) or “legal” (private, public or semi-public, or funding of associations), are included in the scope of this Convention.

50. For financing to be punishable the terrorist act need not have been completed.

“Acts of terrorism” for which the financing is intended (article 2)

51. The definition of the offence has two aims. Firstly, article 2, paragraph 1(a) is expressly concerned with the financing of those acts provided for in existing conventions (the nine other universal counter-terrorism instruments). Evidently, since States are not all parties to all the anti-terrorist conventions, the Convention applies for a State party only in respect of the offences set forth in the con-

ventions which it has ratified. Exclusion ceases to have effect when the State becomes a party to the treaty. Second, article 2, paragraph 1(b) is concerned with the financing of any act intended to cause death or serious bodily injury to civilians, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act. Although such acts are not provided for in existing conventions (except acts committed by explosives covered by the recent Terrorist Bombings Convention), they represent a considerable proportion of acts of international terrorism.

Subjective element

52. According to the Convention's definition, the mens rea or element of intention behind the financing of terrorism has two aspects: the act must be committed wilfully and the offender must intend to use the funds to finance acts of terrorism or know that they will be used for that purpose. Intention and knowledge are thus two sides of the coin. In the absence of other information concerning these two aspects of the subjective element, it is advisable for each State to refer to its general criminal law.

2. Persons covered by this Convention (articles 1, 2, 3, 5 and 7)

53. The Convention makes it possible to prosecute all persons who take part in any way in financing terrorism as soon as they have knowledge of the use of the funds. It applies to the individuals giving the orders who are aware of the use of the funds and to the sponsors who are aware of the terrorist goals of all or part of the association that they are supporting in cash or kind, and not ordinary individuals. Moreover, the element of mens rea or culpable intent makes it possible to exclude from the scope of the Convention persons who provide funding in good faith by, say, contributing to public collections.

54. Thus, participating as an accomplice in the commission of the offence and organizing its commission are criminalized in the same way as the offence itself. Moreover, contributing to the commission of an offence by a group of persons acting with a common purpose is also regarded as the commission of an offence if such involvement is wilful and aimed at furthering the criminal activity or criminal purpose of the group where such activity or purpose involves the commission of an offence (as set forth in the Convention) or if such contribution is made in the knowledge of the group's intention to commit an offence (as set forth in the Convention).

55. The Convention also applies to accomplices that are legal entities (art. 2, para. 5). To this end, it provides for a system of liability of legal entities based on the establishment of the principle of liability of legal entities present in their territory or constituted according to their legislation. The form that such liability takes is variable and may be criminal, civil or administrative, depending on the particular case.

56. Where national legislation does not provide for criminal liability for legal entities, it is possible, if drafters do

not wish to generalize such liability throughout their national law, to insert an article specifying that legal entities shall be criminally liable in the specific cases provided for by the law. Needless to say, such cases must relate to offences concerning financing of terrorism. Where there is no possibility at all of recognizing such liability, only civil or administrative penalties can be considered.

3. Penalties

57. In articles 4, 5 and 8, the Convention requires States to set up an effective system for the punishment of offences defined in article 2. Each Member State must accordingly criminalize the offences set forth in article 2 (art. 4) and punish them with appropriate penalties. Article 5 urges States to provide in their national law for the criminal, civil or administrative liability of legal entities.⁴⁰ States are called upon to take into account the grave nature of the offences. The punishment established must be proportionate, i.e. particularly severe.

4. No possible justification

58. The offence of financing of terrorism is under no circumstance justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature (art. 6). This type of provision⁴¹ strengthens the obligation to establish such acts as criminal offences in national law by requiring States parties to preclude, in their legislation, the possibility of offenders' benefiting from any grounds of justification, for such grounds would reduce the effective application of the criminalized act in national law. The discriminatory reasons adduced in support of such rejected grounds of justification reinforce the absolute character of the general prohibition of terrorism.

4. INFORMATION SOURCES AND ILLUSTRATIONS

59. Other regional or subregional sources are relevant to efforts to combat the financing of terrorism. In addition to the formal sources of international obligations, the Financial Action Task Force on Money-laundering⁴²

⁴⁰See below, Subsection III.3, "Liability of legal entities".

⁴¹A similar provision can be found in the 1997 Terrorist Bombings Convention. See also, below, the subsection concerning the exclusion of any justification, in Section III, "Forms of liability".

⁴²FATF is an intergovernmental body set up to promote and develop policies, at the national and international levels, to combat money-laundering and terrorist financing. It is thus a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

FATF monitors members' progress in implementing necessary measures, reviews money-laundering and terrorist financing techniques and countermeasures, and promotes the adoption and implementation of appropriate measures globally. In performing these activities, it collaborates with other international bodies involved in combating money-laundering and the financing of terrorism.

FATF does not have a tightly defined constitution or an unlimited lifespan. The Task Force reviews its mission every five years. FATF has been in existence since 1989 (it was created at the G7 Summit in Paris, 1989, in response to the growing concern about money-laundering) and its current mandate extends to the end of 2004. It will only continue to exist and to perform its function after this date if Member Governments agree on the need for it to do so.

(FATF), formed as the result of an intergovernmental agreement whose Secretariat is provided by the Paris-based Organisation for Economic Cooperation and Development (OECD), issued on 30 October 2001 eight Special Recommendations and invited all countries to apply them and report to FATF on their implementation.⁴³ A ninth Special Recommendation was adopted on 22 October 2004 on the subject of “cash couriers”.⁴⁴ Authorities planning to enact a law to implement the Financing of Terrorism Convention will certainly find it helpful to refer to this work. The FATF Special Recommendations go beyond the provisions of the 1999 Convention and Security Council resolution 1373 in several respects. They were in addition to its original 40 Recommendations on the control of money-laundering in 1990, revised in 1996 and further revised in 2003 to be applicable to both money-laundering and terrorism. The eight Special Recommendations deal with:

- (1) Ratification and implementation of the 1999 Financing of Terrorism Convention and implementation of the United Nations resolutions relating to the financing of terrorism;
- (2) Criminalization of the financing of terrorism, terrorist acts and terrorist organizations and designation of such offences as money-laundering predicate offences;
- (3) Freezing and confiscating terrorist assets;
- (4) Reporting suspicious transactions involving terrorist acts or organizations;
- (5) International cooperation in connection with investigations of terrorism and the financing of terrorism;
- (6) Control of alternative remittance systems;
- (7) Collection of more detailed information on originators of wire transfers; and
- (8) Controls to prevent the misuse of non-profit organizations in the financing of terrorism.

60. The first five Special Recommendations overlap, to a great extent, with the provisions of the 1999 Convention and resolution 1373, whereas the last three cover new ground regarding non-informal remittance systems, information collection on originators of wire transfers and controls to prevent the use of non-profit organizations in the financing of terrorism.

61. Recommendation (9) concerns “cash couriers”.

62. In 2002, the International Monetary Fund (IMF)⁴⁵ and the World Bank⁴⁶ added the FATF Forty Recommendations⁴⁷ on money-laundering and the eight special recommendations on terrorist financing to their list of useful standards and undertook a pilot project of assessments involving IMF, the World Bank, FATF and Task Force-style regional bodies. The assessments will be undertaken by IMF and the World Bank in their Financial Sector Assessment Programme and by IMF under its programme of assessments of offshore financial centres. In order to

guide these assessments, FATF adopted a *Methodology for Assessing Compliance with Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Standard*.⁴⁸

63. There are evidently significant factual differences between the practices and offences of money-laundering and terrorist financing. Money-laundering typically involves transferring significant proceeds from illegal transactions into legitimate banking or commerce circuits, often divided or disguised to avoid detection. Conversely, terrorist financing may involve aggregating sums derived from lawful or minor criminal activities and transferring them to a person or organization which, in turn, may channel relatively small amounts to support terrorist activities. In the latter case, the funds do not acquire a criminal character until the person holding them intends to use them to finance a terrorist act. Notwithstanding the differences between the two phenomena, global efforts to curb money-laundering and terrorist financing need the support of the financial institutions and professions so that suspicious transactions can be detected, and it is necessary in both cases to have recourse to information gathering and analysis, often by intelligence units specialized in financial activities. This is illustrated by the application of a control mechanism, originally set up to counter money-laundering, for reporting suspicious activities linked to terrorist financing. The systems established worldwide to combat the two phenomena are increasingly integrated.

64. In some cases, therefore, where the existing legal framework and, in particular, the money-laundering laws are poorly developed or outdated, a good solution may be to enact umbrella legislation with common provisions to counter both terrorist financing and money-laundering.

65. The Central African Economic and Monetary Community (CAEMC), in Regulation No. 01/03 CAEMC-CAMU⁴⁹ concerning prevention and suppression of money-laundering and terrorist financing in Central Africa, adopted on 28 March 2003, took account of provisions to penalize money-laundering and terrorist financing. The definition of this latter offence is given in article 2 of the Regulation and reads: “For the purposes of the present regulation, any person commits an offence of financing of terrorism if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (a) an act which constitutes an offence as defined in one of the relevant international treaties ratified in due form by a Member State; (b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a

⁴³See the OECD website: <http://www.oecd.org>.

⁴⁴That is, to the natural persons who personally transport funds and cross borders with them. See the OECD website: <http://www.oecd.org>.

⁴⁵The website of IMF is at <http://www.imf.org>; *Suppressing the Financing of Terrorism: A Handbook for Legislative Drafting* is available at <http://www.imf.org/external/pubs/nft/2003/SFTH/index.htm>.

⁴⁶The website of the World Bank is at <http://www.worldbank.org>.

⁴⁷The FATF Recommendations can be used as a model.

⁴⁸See footnote 42.

⁴⁹The Central African Monetary Union/Central African Economic and Monetary Community. For CAEMC Member States, this regulation is directly applicable in their law and provides the applicable punishments. In principle, therefore, the implementation of these offences in domestic law offence does not require the adoption of a legislative act.

Government or an international organization to do or to abstain from doing any act”.

66. In the “Nassau Declaration on International Terrorism: the CARICOM response” issued on 11 and 12 October 2001, the Governments of the Caribbean Community (CARICOM) firmly “support[ed] the efforts of the international and regional financial institutions” in the fight against terrorist financing.

67. Similar declarations were formulated by the Member States of the Asian Pacific Economic Cooperation (APEC) in Los Cabos, Mexico City, on 26 October 2002 and also by the Member Countries of the Association of Southeast Asian Nations (ASEAN) in a Joint Declaration with the Foreign Ministers of the European Union on 27 and 28 January 2003 in Brussels.

68. *An example of legislation: Law of the Grand Duchy of Luxembourg, 12 August 2003:*

Article 135-5. The offence of financing of terrorism shall be constituted by the act of providing or collecting by any means, directly or indirectly, unlawfully and wilfully, funds, securities, shares or assets of any nature, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out one or more of the offences set forth in articles 135-1 to 135-4 and 442-1, even if the funds were not actually used to carry out one of those offences.

Article 135-6. Any person committing an offence of financing of terrorism set forth in the preceding article shall be punishable by the same penalties as those set forth in articles 135-1 to 135-4 and 442-1 and in accordance with the distinctions established therein. (Unofficial translation)

69. *An example of legislation: Sovereign Ordinance of the Principality of Monaco, 8 April 2002:*

Article 1

For the purposes of the present ordinance, the terms “funds”, “governmental or State facility” and “proceeds” have the meaning that is given to them in article 1 of the United Nations International Convention for the Suppression of the Financing of Terrorism adopted in New York on 9 December 1999.

Article 2

Any person commits an offence of “financing of terrorism” within the meaning of the present ordinance and shall be punishable for such offence if that person, by any means, directly or indirectly, provides, collects or manages funds with the intention that they should be used or in the knowledge that they are to be used in order to carry out the following acts:

(1) An act committed, whether or not on board, which may jeopardize the safety of an aircraft or of persons or property therein or which jeopardize good order and discipline on board.

(2) An act committed on board an aircraft in flight in which a person unlawfully, by force or threat thereof, seizes or exercises control of that aircraft, or attempts to

perform or participates as an accomplice in the performance of any such act.

(3) An act committed by any person who, unlawfully and intentionally, using any device, substance or weapon:

(a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

(b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport.

(4) An act committed by any person who seizes one or more hostages, detains and threatens to kill, to injure or to continue to detain such person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage, or who attempts to perform or participates as an accomplice in the performance of such acts.

(5) The intentional commission of any of the following acts:

(a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;

(b) the theft or robbery of nuclear material;

(c) the embezzlement or fraudulent obtaining of nuclear material;

(d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;

(e) the threat:

i. to use nuclear material to cause death or serious injury to any person or substantial property damage;

ii. to commit an offence described in subparagraph (b) in order to compel a natural or juridical person, an international organization or State to do or to refrain from doing any act.

(6) An act committed by any person who, unlawfully and intentionally:

(a) seizes or exercises control over a ship or fixed platform by force or threat thereof;

(b) performs an act of violence against a person on board a ship or fixed platform if that act is likely to endanger the safety of the fixed platform or the safe navigation of that ship;

(c) destroys a ship or causes damage to a ship or its cargo which is likely to endanger the safe navigation of that ship or destroys a fixed platform or causes damage to it which is likely to endanger its safety;

(d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship or cause damage to it or its cargo which endangers or is likely to endanger the safety of the ship; or places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy the fixed platform or which causes damage which is likely to endanger its safety;

(e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship;

(f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship;

(g) injures or kills any person in connection with the commission or attempted commission of any of the acts set forth in subparagraph (a) to (f);

(h) attempts to commit any of the acts previously set forth or participates as an accomplice therein;

(i) threatens to commit one of the acts set forth in subparagraphs (b), (c) and (e) with a condition aimed at compelling a natural or juridical person to do or refrain from doing any act, if that threat is likely to endanger the safe navigation of the ship in question.

(7) The terrorist acts set forth in article 2 of the Sovereign Ordinance No. 15.088 of 30 October 2001.

(8) Any other act intended to cause death or serious injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when, by its nature or context, the purpose of such act is to intimidate a population or to compel a Government or an international organization to do or to abstain from doing any act.

Article 3

The offence set forth in article 2 is constituted even if the funds were not actually used to carry out the acts set forth in paragraphs 1 to 8 of said article. (Unofficial translation)

70. *An example of legislation: articles 421-1 and 421-2-2 of the French Penal Code:*

Article 421-1

The following offences shall constitute acts of terrorism where they are committed intentionally in connection with an individual or collective undertaking the purpose of which is to seriously disturb public order through intimidation or terror: (...)

(6) The offences of laundering set forth in Book III, Title II, Chapter IV of the present code. (Unofficial translation)

(7) The offence of insider dealing, as provided in article L. 465-1 of the monetary and financial code.

Article 421-2-2

(Added by Law No. 2001-1062 of 15 November 2001, article 33, Official Gazette of 16 November 2001)

It shall also constitute an act of terrorism to finance a terrorist organization by providing, collecting or managing funds, securities, or property of any kind, or by giving advice for that purpose, intending that such funds, security or property be used, or knowing that they are intended to be used, in whole or in part, for the commission of any of the acts of terrorism listed in the present chapter, irrespective of whether such an act takes place. (Unofficial translation)

71. *The example of Switzerland:*

Article 260 sexies (new – draft amendment of the Penal Code of 2002)

Any person who, with the intention of financing a crime within the meaning of art. 260 *quinquies**, collects

or provides funds shall be punished by rigorous imprisonment for a maximum of five years or by ordinary imprisonment.

*Article 260 *quinquies* (new) Terrorism

1. Any person who performs an act of criminal violence intended to intimidate a population or to compel a State or an international organization to do or to refrain from doing any act shall be punished by rigorous imprisonment.

2. In particularly serious cases, notably when the act has caused injuries or death to a large number of persons, the offender can be punished by rigorous imprisonment for life.

3. An offender who acts in foreign territory shall also be punishable. Article 6 *bis* shall be applicable. (Unofficial translation)

72. To be noted within the framework of the Council of Europe is the recent adoption of three important conventions, including the Convention on the Prevention of Terrorism and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. These conventions will be opened for signature by Member States of the Council of Europe at the Summit of Heads of State and Government of the Council to be held in Warsaw on 16 and 17 May 2005.

5. RECOMMENDATIONS

73. *Article: Financing of terrorism*

1. Any person who, by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to commit:

(a) One of the offences referred to in [relevant articles];

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking a direct part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or international organization to do or to refrain from doing any act

shall be punished by [penalties taking into account the seriousness of the offence]. It shall not be necessary that the funds have actually been used to commit the offence.

2. The same penalties shall be applicable to any person who:

(a) Directs others to commit an offence as set forth in paragraph 1 or

(b) Contributes to the commission of one or more offences as set forth in paragraph 1 by a group of persons acting with a common purpose if such contribution is intentional and if it is either made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 or is made in the knowledge of the intention of the group to commit an offence as set forth in that paragraph.

3. When the person responsible for the management or

control of a juridical person situated in the territory of [name of country] or constituted under its legislation has, in this capacity, committed an offence involving the financing of terrorism, that juridical person shall be subject to [effective, proportional and dissuasive penal sanctions]. These sanctions may be monetary in nature.

4. Paragraph 3 of this article shall be applicable without prejudice to the criminal responsibility of the natural per-

sons who committed the offences.

5. An attempt to commit any such offence shall be punished by [penalty taking into account the seriousness of the offence].

6. Participating as an accomplice to offences referred to in this article shall be punished in accordance with the terms of [relevant text].

2. Offences based on the status of victims: hostage-taking and crimes against internationally protected persons

74. Offences based on the status of victims relate to hostage-taking and crimes against internationally protected persons.

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 1973)

Article 2 (The offences)

1. The intentional commission of:

(a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;

(b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;

(c) a threat to commit any such attack;

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

(e) an act constituting participation as an accomplice in any such attack shall be made by each State Party a crime under its internal law.

International Convention against the Taking of Hostages (New York, 1979)

Article 1 (The offences)

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

(a) attempts to commit an act of hostage-taking, or

(b) participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking

likewise commits an offence for the purposes of this Convention.

1. INTRODUCTION

75. *Protection of diplomatic agents:* There have long been enshrined in international law a number of fundamental rules relating to diplomatic inviolability, privileges and immunities. The Vienna Conventions of 18 April 1961 on Diplomatic Relations and 24 April 1963 on Consular Relations and the New York Convention of 8 December 1969 on Special Missions have already codified the customary law on the subject.⁵⁰ With the adop-

tion of these conventions, the States of residence of diplomatic agents undertook to respect diplomatic privileges and immunities and to take all necessary protective measures. However, the end of the 1960s marked a renewed outbreak of crime directed against such persons. Thus, faced with the difficulty of increasing the obligations of States of residence and that of implementing their responsibility, the General Assembly of the United Nations assigned the matter to the International Law Commission. Resolution 2780 (1971) mandated it to examine the issue and make proposals. Its work quickly reached a successful conclusion with the signing, on 14 December 1973, of the Convention on the Prevention and Punishment of Crimes against

⁵⁰See the texts of the Vienna Convention of 18 April 1961 and 24 April 1964 in *Official Documents on the Vienna Convention*.

Internationally Protection Persons, including Diplomatic Agents.⁵¹ This was one of the first universal instruments to respond to the development of international terrorism targeting in particular diplomats or diplomatic missions but also Heads of States and Heads of Government and foreign ministers on mission abroad or any representative or official of a State or any official or agent of an international intergovernmental organization. Today, even with national protection measures, the risk of attack is still ever present. Violent attacks upon internationally protected persons or their official premises, private accommodation or means of transport are thus serious criminal offences.⁵² Accession to the Convention allows States to affirm their determination to guarantee protection in their territory for the different categories of internationally protected persons.

76. *Hostage-taking*: The 1949 Geneva Conventions relative to the Protection of Civilian Persons in Time Of War prohibit the taking of hostages and consider such an act to constitute a war crime.⁵³ The grave nature of the offence had therefore already been recognized when, in 1976, the Federal Republic of Germany requested the United Nations to elaborate a text on the subject.⁵⁴ The point at issue was to define this wrongful act as an international offence not contingent upon a state of war. The General Assembly adopted the International Convention against the Taking of Hostages⁵⁵ in New York on 18 December 1979. The Security Council has thus on many occasions condemned hostage-taking and kidnapping of any kind as manifestations of terrorism. These offences, regarded as serious violations of international humanitarian law, are typical terrorist acts creating a climate of fear and providing terrorists with massive and immediate publicity, and are a means of obtaining concessions from the State or private bodies on which terrorists put pressure.

77. It is noteworthy that, under article 12 of the Convention, the text does not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions, including armed conflicts in which “peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination”. This qualification would appear potentially controversial. In fact, one of the justifications used by terrorists is this very right recognized by the Charter of the United Nations. However, the validity of the concept of self-determination depends, of course, on the party invoking it. Thus, while this limitation of the scope of the text can be explained by historical considerations relating to the time of its signature, it is advisable in today’s climate to pay close attention to its positive interpretation. Moreover, no similar article exists in recent conventions. Hostage-taking must be prohibited and thus punished in all circumstances and can never be an acceptable means of combat.

⁵¹See the text of the United Nations Convention on the Protection of Diplomatic Agents, 14 December 1973, Doc. U.N., 3166, A/9407.

⁵²See article 2 of the Convention.

⁵³This prohibition is formulated in article 3 common to all four Conventions.

⁵⁴This request is formulated in resolution 31/103, December 15, 1976.

⁵⁵See the text of the Convention in *Official documents of the General Assembly*, 34th session, supplement No. 39 (A/34/39), section IV.

78. Furthermore, article 13 renders the text inapplicable in the event that the alleged offender and the hostage are nationals of the same State. Thus, the Convention applies only to acts of hostage-taking with a transnational element. Clearly, where the act of hostage-taking is purely domestic, an internal settlement of the conflict is called for.

79. In addition, the New York Convention states, in article 14, that nothing in this text “shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations”.⁵⁶

80. It should be noted that the texts concerning offences committed against diplomatic agents and the offence of hostage-taking are mainly inspired by those relating to hijacking. Their most notable common feature is that they make these acts extraditable offences.⁵⁷

2. REQUIREMENTS

81. States should:

Establish the following acts as criminal offences:

- Seizing or detaining and threatening to kill, to injure or to continue to detain another person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage (1979 International Convention against the Taking of Hostages);
- Intentionally committing a murder, kidnapping or other attack upon the person or liberty of an internationally protected person (1973 Convention);
- Committing a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his or her person or liberty (1973 Convention);
- Attempting to commit one of the preceding offences;
- Participating as an accomplice of any person who commits or attempts to commit one of the preceding offences.

3. COMMENTARY

82. The objective of the 1973 Convention is the prevention and punishment of offences against internationally protected persons, including diplomatic agents.

Persons covered

83. In its first article, the text exhaustively lists the persons covered by the Convention, i.e. persons enjoying international protection. These are Heads of State, including any member of a collegial body performing the functions of Head of State under the constitution of the State

⁵⁶This clause is referred to as the “Entebbe Clause”. In fact, the drafters of the Convention were largely influenced by the operations conducted by the State of Israel in Entebbe in July 1976 to free the passengers of an Air France flight hijacked there.

⁵⁷See Part IV below.

concerned; Heads of Government or ministers of foreign affairs, whenever any such person is in a foreign State, as well as family members accompanying such person. “Internationally protected person” also means any representative, civil servant or official of a State or any civil servant, official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where an offence against him or her, his or her official premises, private accommodation or means of transport is committed, is entitled under international law to special protection from any attack on his or her person, freedom or dignity, as well as members of his or her family forming part of his or her household.

The elements of the offences

84. The aim of article 2 is to determine the elements of the offence.

85. *Objective elements:* The text combines violent acts of varying degrees of gravity. The acts in question are murder, kidnapping or other attack upon the person or liberty of a person,⁵⁸ the act of committing a violent attack upon the official premises, private accommodation or means of transport of an internationally protected person or one of his or her family members, an attack likely to endanger his or her person or liberty⁵⁹ and a threat to commit any such act.⁶⁰

86. States should also punish attempted crimes and the act of participating as an accomplice.⁶¹

87. *Subjective element:* The offence is established by intent. There is no connection between the offence and the victim’s functions. Thus, an offence committed against a diplomat for purely personal reasons falls within the scope of the Convention. The legislator may then include an interpretation of the concept of “attack” contained in article 2 specifying that only acts set forth in article 2, which by their nature or context aim at intimidating a population or compelling a government or an international organization to do or abstain from doing any act, constitute offences within the meaning of the 1973 Convention. In drafting such a declaration, the legislator will be using the formula set out in the 1999 Financing of Terrorism Convention in the article defining the specific intent of the terrorist act in the same terms.

88. The other articles of the 1973 Convention define cases in which States have jurisdiction and recommend cooperation between signatory States.⁶²

How the 1973 Convention interrelates with other instruments

89. The United Nations Convention on the Safety of United Nations and Associated Personnel of 9 December

1994⁶³ grants a protective regime to “persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation”. Part of that personnel falls within the scope of the 1973 Convention. However, the 1994 Convention covers all categories of United Nations personnel and associated personnel, whereas the 1973 Convention is concerned only with the Secretary-General, Assistant Secretaries-General, Under-Secretaries-General and Directors of the United Nations. To avoid any legal conflict, an explanatory statement may be included, specifying that accession to the 1973 Convention does not limit the scope of application of the 1994 Convention, which is broader and covers different cases.

90. *The 1979 International Convention against the Taking of Hostages* is a criminalization Convention. It is based on two fundamental principles of international law referred to in the preamble, principles which are deemed complementary. Firstly, the Convention grants individuals the rights recognized internationally as set out in the Universal Declaration of Human Rights of 1948 and the International Covenant on Civil and Political Rights of 1966.⁶⁴ It refers in particular to the rights to life, liberty and security of persons. Nevertheless, these rights, which are accorded to persons at the international level, are to be enjoyed to the extent that their exercise does not interfere with the principle of State sovereignty. This is the purpose of the third preambular paragraph, which states the principles of equal rights and self-determination of peoples. These principles are re-stated in article 14 of the Convention, which affirms that “nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations”.

The elements of the offence

91. The Convention seeks to give a broad yet precise definition of hostage-taking in order to cover all situations and not allow impunity by default.

92. *Objective element:* It defines the offence as the act of seizing or detaining or threatening to kill, to injure or to continue to detain another person.⁶⁵

93. *Subjective element:* The act must be intended to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage.

94. Thus, there are three cumulative conditions:

- (1) seizing or detaining or threatening to kill, to injure or to continue to detain another person;
- (2) in order to compel a third party;

⁵⁸See article 2(a).

⁵⁹See article 2(b).

⁶⁰See article 2(c).

⁶¹See article 2(d) and (e).

⁶²See Parts III and IV of the present *Legislative Guide*.

⁶³See the developments concerning this Convention in the annex of the present *Legislative Guide*.

⁶⁴These texts are reproduced in annexes 4 and 5 of the present *Legislative Guide*.

⁶⁵See article 1 of the Convention.

(3) to do or abstain from doing any act (as an explicit or implicit condition for the release of the hostage).

95. This Convention is only concerned with kidnapping, detention, threats and constraints related to a hostage-taking comprising a transnational element. If such an act causes death or physical injuries, other conventions and treaties can also apply, but the initial act, that is kidnapping, detention or threats, constitutes a sufficient basis to invoke the provisions of this Convention.

96. An attempt to commit the offence and the act of participating as an accomplice are also punishable.⁶⁶

Persons protected

97. The Convention protects in a broad manner all natural or juridical persons (which includes States as recipients of specific demands of terrorists) that could be the victims of a hostage-taking or the subject of blackmail. Thus, the Convention is applicable, except for cases where humanitarian rights are applicable as *lex specialis*, to all forms of hostage-taking, whatever the particular situation.

98. The penalties to be established by States are not specified but must, obviously, take into account the grave nature of the offence.

4. INFORMATION SOURCES AND ILLUSTRATIONS

99. In addition to international instruments to combat hostage-taking, there are also regional instruments that serve the same purpose.

100. Conventions have been signed with the aim of increasing regional cooperation. Examples include the European Convention on the Suppression of Terrorism, concluded in Strasbourg on 27 January 1977, the Organization of African States (OAS) Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, signed in Washington on 2 February 1971, and the Arab Convention for the Suppression of Terrorism, signed by the Secretaries of State and Justice Ministers of the 22 members of the Arab League in Cairo on 22 April 1998.

101. *An example of legislation: Article 421-1 of the French Penal code:*

Article 421-1

The following offences shall constitute acts of terrorism where they are committed intentionally in connection with an individual or collective undertaking the purpose of which is seriously to disturb public order through intimidation or terror:

(1) Wilful attacks on life and on the physical integrity of persons, abduction and unlawful detention (...), defined by Book II of the present Code; (...)

(5) Receiving proceeds from one of the offences set out in paragraphs 1 to 4 above. (Unofficial translation)

102. The Cook Islands Crimes (Internationally Protected Persons and Hostages) Act 1982, No. 6, which criminalizes attacks upon internationally protected persons and hostage-taking,⁶⁷ implements these two conventions in one statute. It should be noted that, while the 1973 Internationally Protected Persons Convention requires penalization of attacks upon internationally protected persons, it is silent as to whether that intent must include knowledge of the victim's protected status. The Cook Islands Act, in criminalizing the acts established by the two conventions, resolves this issue in the following manner:

“7. Prosecution need not prove certain matters: Notwithstanding anything in sections 3 to 6 of this Act [Crimes against persons; Crimes against premises or vehicles; Threats against persons; Threats against premises or vehicles], in any proceedings brought under any of those sections it shall not be necessary for the prosecution to prove the following matters:

(a) In respect of any internationally protected person to whom paragraph (a) or paragraph (c) of the definition of that term in section 2 of this Act applies, that defendant knew, at the time of the alleged crime, the identity of that person or the capacity in which he was internationally protected;

(b) In respect of any internationally protected person to whom paragraph (b) of that definition applies, that defendant knew, at the time of the alleged crime, that the internationally protected person was accompanying any other person to whom paragraph (a) of that definition applies;

(c) in respect of any internationally protected person to whom paragraph (c) of that definition applies, that defendant knew, at the time of the alleged crime, that the internationally protected person was entitled under international law to special protection from attack on his person, freedom, or dignity;

(d) In respect of any internationally protected person to whom paragraph (d) of that definition applies, that defendant knew, at the time of the alleged crime, that the internationally protected person was a member of the household of any other person referred to in paragraph (c) of that definition.”

103. Such an approach is typically used by those countries that provide particular penalties or special jurisdiction, for example, by national authorities in a federal system, for assaults on government officials. Invocation of such special jurisdiction or particular penalties does not depend upon proof that the perpetrator knew that the victim occupied an official position. The necessary element of a criminal intent is supplied by the fact that an assault upon any person is a clearly criminal act, a *malum in se*. Such legislation can be regarded as a demonstration of a Government's commitment to protecting functionaries of and relationships with other States rather than as a special deterrent to criminal conduct.

⁶⁶See article 2(a) and (b) of the Convention.

⁶⁷Available at http://www.paclii.org/ck/legis/num_act/cppaha1982554/

104. *The example of Morocco:*

Article 436. Persons who kidnap, arrest, detain or confine any other person, except as commanded by lawful authorities or as permitted or required by law to seize individuals, shall be punishable by rigorous imprisonment for five to ten years.

If the detention or the confinement lasted thirty days or more, the penalty shall be rigorous imprisonment for ten to twenty years.

Article 437. If the purpose of the kidnapping, apprehension, detention or confinement was to take hostages, whether to prepare or facilitate the commission of a felony or misdemeanor or to assist the flight or ensure the impunity of the perpetrators of a felony or a misdemeanor, the penalty shall be rigorous life imprisonment.

The same shall apply if the purpose of the acts was to execute an order or fulfil a condition, in particular through payment of a ransom. (Unofficial translation)

5. RECOMMENDATION

105. *Article: Offences against internationally protected persons*

1. Any person who

(a) commits a murder, kidnapping or other attack upon the person or liberty of an internationally protected person or

(b) commits a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his or her person or liberty or

(c) threatens to commit any such attack shall be punished by [penalty taking into account the seriousness of the offence].

2. An attempt to commit any such offence shall be punished by [penalty taking into account the seriousness of the offence].

3. Participating as an accomplice in the offences referred to in this article shall be punished in accordance with the terms of [relevant text].

106. *Article: Hostage-taking*

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person in order to compel a third party, namely a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or refrain from doing any act as an explicit or implicit condition for the release of the hostage shall be punished by [penalty taking into account the seriousness of the offence].

2. An attempt to commit any such offence shall be punished by [penalty taking into account the seriousness of the offence].

3. Participating as an accomplice in the offences referred to in this article shall be punished in accordance with the terms of [relevant text].

3. Offences linked to civil aviation

**Convention for the Suppression of Unlawful Seizure of Aircraft
(The Hague, 1970)**

*Article 1
(The offences)*

Any person who on board an aircraft in flight:

(a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or

(b) is an accomplice of a person who performs or attempts to perform any such act commits an offence (hereinafter referred to as "the offence").

**Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
(Montreal, 1971)**

and

**Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving
International Civil Aviation, Supplementary to the Convention for the Suppression
of Unlawful Acts against the Safety of Civil Aviation
(Montreal, 1988)**

*Article 1
(The offences)*

1. Any person commits an offence if he unlawfully and intentionally:

(a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or

(b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or

(c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

(d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or

(e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.

1 *bis*. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:

(a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

(b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport.

2. Any person also commits an offence if he:

(a) attempts to commit any of the offences mentioned in paragraph 1 of this article; or

(b) is an accomplice of a person who commits or attempts to commit any such offence.

1. INTRODUCTION

107. Threats to aircraft safety give people an extreme sense of fragility and vulnerability because attacks on aircraft are so very spectacular and result in large numbers of victims. Hijacking aircraft is a strategy favoured by terrorists, especially since the 9/11 attacks, which demonstrated how in increasingly open societies where transportation plays a key role individuals are able to strike democratic States at all their most vulnerable points. Terrorists nowadays have no qualms about harnessing modern means of communication, trade and transport to their own ends. While not designed to be used as bombs, civil aircraft can nevertheless be turned into formidable weapons. Hence, the special legislation that has been drafted in this area.

108. Three conventions have been concluded within the framework of the International Civil Aviation Organization (ICAO) as well as a protocol supplementing the last convention. They are, however, of unequal value. The first, signed in Tokyo, dates from 16 September 1963.⁶⁸ It does not directly criminalize terrorism but determines the procedures to be followed in the event of offences on board aircraft. In particular, it establishes the obligation of States to come to the assistance of crews and determines the jurisdiction of the aircraft commander. However, it allows the contracting State total discretion with regard to offenders.

109. The other texts are of greater importance.

110. The first is the Convention for the Suppression of Unlawful Seizure of Aircraft, known as “The Hague Convention”, adopted during the International Conference on Air Law on 16 December 1970.⁶⁹ Its purpose is to ensure the safety of persons and property and the good operation of air services⁷⁰ by preventing and penalizing acts against aircraft. Its first article defines the offence explicitly. It incriminates any person who seizes or exercises control of an aircraft in an unlawful manner by force or threat thereof. The following articles state the rules relative to the exercise of jurisdiction and handing down of penalties. Interestingly, the text provides for broad mutual legal assistance for all criminal procedures instituted.

⁶⁸See text of the Tokyo Convention in annex 2 of the present *Legislative Guide*.

⁶⁹See text of the Hague Convention in annex 2 of the present *Legislative Guide*.

⁷⁰The objectives of the Convention are expressed in its preamble.

111. A second convention, signed in Montreal on 23 September 1971,⁷¹ concerns all unlawful acts against the safety of civil aviation. It thus addresses air navigation more comprehensively.

112. This convention was supplemented on 24 February 1988 by a Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation.⁷² It adds serious acts of violence committed in airports serving international civil aviation against persons, facilities or aircraft to the list of offences set forth in the convention.

2. REQUIREMENTS

113. States should:

Define the following acts, when they are committed illicitly and intentionally, as criminal offences and punish them severely:

— Seizing or exercising control of, by force or threat thereof or by any other means of intimidation, an aircraft in flight (Convention for the Suppression of Unlawful Seizure of Aircraft, 1970);

— Performing an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft (Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971);

— Destroying an aircraft in service or causing damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;

— Placing or causing to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or causing damage to it which is likely to endanger its safety in flight (Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971);

— Destroying or damaging air navigation facilities or interfering with their operation, if any such act is likely to endanger the safety of aircraft in flight (Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971);

— Communicating information which the person knows to be false, thereby endangering the safety of an aircraft in

⁷¹See text of the Montreal Convention in annex 2 of the present *Legislative Guide*.

⁷²See text of the Protocol in annex 2 of the present *Legislative Guide*.

flight (Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971);

— Performing an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death (Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation);

— Destroying or seriously damaging the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupting the services of the airport, if such an act endangers or is likely to endanger safety at that airport (Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation);

— Attempting to commit one of the offences listed above;

— Being the accomplice of a person who commits or attempts to commit the offences listed above.

3. COMMENTARY

114. The three universal instruments concerning the safety of civil aviation include increasingly rigorous provisions for punishing terrorist acts of this type.

115. Elaborated within the framework of ICAO, the *1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft* in article 1 establishes the criminal liability of “any person who on board an aircraft in flight:

“(a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act; or

“(b) is an accomplice of a person who performs or attempts to perform any such act”.

116. These acts must be punished severely (article 2).

117. The Hague Convention thus confines its scope to the act of seizing or exercising control of an aircraft in flight, defining an aircraft as being in flight “from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board”.⁷³ This period is therefore not limited to the time between take-off and landing.

118. The *1971 Montreal Convention*, also an ICAO text, defines in its first article the notion of offences committed in air space. It thus has the broader objective of suppressing unlawful acts against the safety of civil aviation. The definition takes the form of a list of acts to be penalized, the aim being to cover all terrorist acts against civil aviation in the light of the individual cases. Such cases could consist in violence against a person on board an aircraft, destruction of the aircraft, placing destructive substances on board the aircraft or using the threat of an explosion for purposes of blackmail.

119. In addition, this text criminalizes communicating false information which endangers the safety of the aircraft

as well as attempting to commit any of the offences set forth in article 1 or participating as an accomplice.⁷⁴

120. The definition of the aircraft in flight is taken from the Hague Convention. However, it is also intended for attacks on aircraft in service, meaning from the beginning of the preflight preparation of the aircraft by ground personnel for a specific flight until twenty-four hours after any landing.⁷⁵ Thus, under article 2(a) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight is deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board; (b) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service will, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this article.

121. The two conventions only protect aircraft that are not used in military, customs or police services.⁷⁶

122. The 1988 Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation supplemented the aforementioned convention by adding the conduct of “any person who unlawfully and intentionally, using any device, substance or weapon:

“(a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

“(b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport”.⁷⁷

123. It is not required, however, that the intention of the offender was to compromise the safety of the airport. Thus, an ordinary criminal offence or a terrorist act which compromises that safety is covered by the Protocol. An attempt to commit any such offence and the act of participating as an accomplice are punishable acts, as in previous cases.

124. Finally, whether a terrorist act against civil aviation is committed by a public or a private person,⁷⁸ it will fall

⁷⁴See article 1, paragraphs 1 and 2.

⁷⁵See article 2(a) and, for the definition of an aircraft in service, article 2(b).

⁷⁶See article 3-2 of the Hague Convention and article 4-1 of the Montreal Convention.

⁷⁷See article II of the Protocol.

⁷⁸Thus, following the attacks carried out against Pan American flight 103 (Lockerbie attack, 21 December 1988) and U.T.A. flight 772 (in the Chad desert), in which Libyan agents were implicated, the Security Council condemned Libya. In addition, it decided in its resolution 748 of 31 March 1992 that “the Libyan Government must commit itself to cease all forms of terrorist action and all assistance to terrorist groups and that it must promptly, by concrete actions, demonstrate its renunciation of terrorism” (see paragraph 2).

⁷³See article 3-1.

within the scope of these international texts. For instance, the International Court of Justice has recognized that the Montreal Convention could be applied to both State agents and private persons.⁷⁹

125. From the perspective of domestic law, the 1988 Montreal Protocol criminalizes acts which already constitute criminal offences in States, i.e. acts of violence which cause or are likely to cause serious injury or death in a State's territory. However, the Protocol has a significant consequence: it imposes an international treaty obligation on States parties to either extradite or to exercise their own national jurisdiction and to cooperate internationally.⁸⁰

126. Ultimately, these conventions demonstrate the will to counter acts against the safety of civil aviation. However, while the texts impose on signatories an obligation to punish such acts, the actual punishment remains subject to the constitutional and legal rules in force in the requested State.⁸¹

4. INFORMATION SOURCES AND ILLUSTRATIONS

127. As previously indicated, the 1970 Convention on the Unlawful Seizure of Aircraft, the 1971 Convention on the Safety of Civil Aviation and the 1988 Protocol on the Safety of Airports define a progressive series of offences ranging from the diversion of an aircraft in flight or acts of violence directed against an aircraft in flight or persons on board to attacks against an aircraft on the ground and, lastly, acts of violence against persons in airports and the airports themselves or other ground facilities. Several countries have addressed this evolution by enacting separate ratification and implementing laws, initially for the 1963 Convention and then for later conventions.

128. As a result of the conventions and the protocol, ICAO noted a decrease in aircraft hijacking and many States were able to enter into bilateral conventions⁸² for the extradition of hijackers and punishment of illicit acts against air safety.

129. *An example of legislation: article 421-1 of the French Penal code*

Article 421-1

The following offences shall constitute acts of terrorism where they are committed intentionally in connection with an individual or collective undertaking the purpose of which is seriously to disturb public order through intimidation or terror:

⁷⁹See "Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie", *Libya v. United Kingdom and United States*, measures of conservation, Ord. 14 April 1992.

⁸⁰See Parts III and IV below.

⁸¹See articles 4, paragraph 3 and 8, paragraph 2 of the Hague Convention.

⁸²For example, the Convention concluded between Cuba and the United States in 1973.

1. Wilful attacks on life and on the physical integrity of persons, abduction and unlawful detention and hijacking of aircraft, vessels or any other means of transport, as defined by Book II of the present Code; (...)

5. Receiving proceeds from one of the offences set out in paragraphs 1 to 4 above. (Unofficial translation)

130. The *Implementation Kits* prepared by the Commonwealth Secretariat contain model statutes to implement each of the four aviation instruments.

131. Legislative implementation has been achieved in other countries by combining the jurisdictional bases and the offences required by the various aviation instruments in a single statute. After negotiation of the 1971 Convention, a number of countries approved legislation that combined implementation of the related 1963, 1970 and 1971 Conventions on air travel safety. Examples are the New Zealand law for the suppression of crimes against civil aviation of 20 October 1972, the Malawi law against the hijacking of aircraft of 31 December 1972, the Malaysian law on the suppression of offences committed against civil aviation of 1984 and the Mauritius law for the suppression of the hijacking of aircraft and other offences against the safety of civil aviation of 1985. Some of those laws were later amended through the addition of an article implementing the 1988 Protocol on the safety of airports, as in the case of Mauritius. Its 1985 law set penalties for hijacking aircraft, acts of violence against passengers or crew members and acts endangering the safety of aircraft, i.e. offences set forth in the conventions on the safety of civil aviation negotiated up to 1971.⁸³ In 1994, this law was amended through the addition of a single article (section 6A), in response to the 1988 Protocol, in order to punish acts threatening the safety of airports and airport facilities. This article states:

"1. Any person commits an offence if he unlawfully and intentionally, using a device, substance or weapon:

"(a) performs an act of violence against a person which causes or is likely to cause serious injury or death;

"(b) performs an act which causes or is likely to cause serious damage to the environment;

"(c) destroys or seriously damages an aircraft not in service located in an airport; or

"(d) disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport;

"2. Any person who attempts to do so or is an accomplice of any person who performs any of the aforementioned acts also commits an offence." (Unofficial translation)

132. The act indicated in paragraph 1(b) was not defined as an offence in the 1988 Montreal Protocol.

133. Other consolidated laws enacted after negotiation of the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports incorporate not only the offences defined therein but go beyond the requirements of the Convention by penalizing the unauthorized introduction of

⁸³*National Laws and Regulations on the Prevention and Suppression of International Terrorism: Part I, United Nations Legislative Series* (United Nations publication, Sales No. E/F.02.V.7), pp. 246-250.

weapons and other dangerous articles into airports and on board aircraft. The Australia Crimes (Aviation) Act 1991 and the Fiji Civil Aviation (Security) Act 1994 are comprehensive post-1988 rewritings of prior aviation safety enactments. These laws not only incorporate the 1988 Protocol provisions into national law but also provide ancillary airport security measures, such as forbidding the introduction of weapons and other dangerous articles, and in the Fiji law include provisions on airport access, security searches and related topics.

134. *The example of the Moroccan Penal Code:*

Article 607 bis

Any person who, while on board an aircraft in flight, seizes or exercises control of that aircraft by force or by any other means shall be punished by rigorous imprisonment for 10 to 20 years.

Any person who intentionally threatens or uses force against crew members on board the aircraft in flight for the purpose of diverting it or of endangering its safety shall be punished by rigorous imprisonment for five to ten years, without prejudice to more severe penalties which the person could incur under articles 392 and 403 of the Penal Code.

For the purposes of the two preceding articles, an aircraft shall be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is open for disembarkation. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for the persons and property on board.

Without prejudice to the application of the provisions of articles 580, 581 and 585 of the Penal Code, any person who intentionally causes damage to an aircraft which renders it incapable of flight or is likely to endanger its safety in flight shall be punished by rigorous imprisonment for five to ten years.

An aircraft shall be considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing.

Article 607 ter

Any person who destroys or damages air navigation facilities or interferes with their operation if such act is likely to endanger the safety of the aircraft in flight or communicates information which he knows to be false for the purpose of endangering that safety shall be punished by rigorous imprisonment for five to ten years. (Unofficial translation)

5. RECOMMENDATIONS

135. *Article: Hijacking*

1. Any person who, by force, threat thereof or any other form of intimidation seizes an aircraft in flight, a ship or a fixed platform shall be punished by [penalty taking into account the seriousness of the offence].

2. An attempt to commit any such offence shall be punished by [penalty taking into account the seriousness of the offence].

3. Participating as an accomplice to the offences set forth in this article shall be punished in accordance with the terms of [relevant text].

136. *Offences against the safety of civil aviation*

1. Any person who performs one of the following acts, if such an act endangers or is likely to endanger the safety of an aircraft, shall be punished by [penalties taking into account the seriousness of the offences]:

(a) Performs an act of violence against a person on board an aircraft in flight;

(b) Destroys or causes serious damage to an aircraft, whether in service or not;

(c) Places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substances likely to destroy that aircraft or to cause damage to it which renders it incapable of flight or is likely to endanger its safety in flight;

(d) Destroys or damages air navigation facilities or interferes with their operation;

(e) Communicates information which he or she knows to be false.

2. Any person who threatens to commit any of the offences referred to in paragraph 1, subparagraphs (a), (b) and (d), in order to compel a natural or juridical person to do or to refrain from doing any act shall be punished by [penalties taking into account the seriousness of the offences].

3. An attempt to commit any such offence shall be punished by [penalty taking into account the seriousness of the offence].

4. Participating as an accomplice to the offences set forth in this article shall be punished in accordance with the terms of [relevant text].

137. *Article: Offences against airport safety*

1. Any person who performs one of the following acts, using a device, a substance or a weapon, if these acts are likely to endanger the safety of an airport serving international civil aviation, shall be punished by [penalties taking into account the seriousness of the offences]:

(a) Performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious bodily injury or death; or

(b) Destroys or seriously damages the facilities or disrupts the services of an airport serving international civil aviation.

2. Any person who threatens to commit any of the offences set forth in paragraph 1 in order to compel a natural or juridical person to do or to refrain from doing any act shall be punished by [penalty taking into account the seriousness of the offences].

3. An attempt to commit any such offence shall be punished by [penalty taking into account the seriousness of the offence].

4. Participating as an accomplice to the offences set forth in this article shall be punished in accordance with the terms of [relevant text].

4. Offences linked to ships and fixed platforms

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 1988)

Article 3 (The offences)

1. Any person commits an offence if that person unlawfully and intentionally:
 - (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
 - (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
 - (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
 - (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
 - (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
 - (f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
 - (g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).
2. Any person also commits an offence if that person:
 - (a) attempts to commit any of the offences set forth in paragraph 1; or
 - (b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
 - (c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 1988)

Article 2 (The offences)

1. Any person commits an offence if that person unlawfully and intentionally:
 - (a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or
 - (b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or
 - (c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
 - (d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or
 - (e) injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).
2. Any person also commits an offence if that person:
 - (a) attempts to commit any of the offences set forth in paragraph 1; or
 - (b) abets the commission of any such offences perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
 - (c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b) and (c), if that threat is likely to endanger the safety of the fixed platform.

1. INTRODUCTION

138. In view of the inadequacy of the existing maritime piracy texts,⁸⁴ the International Maritime Organization concluded the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the “1988 Safety of Maritime Navigation Convention”) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (the “1988 Fixed Platforms Protocol”),⁸⁵ both signed in Rome on 10 March 1988.⁸⁶ The first is similar to the one used for civil aviation.⁸⁷ Its preamble calls for the intervention of the international community at the international, regional, subregional and State levels.⁸⁸

139. It may be perceived by some countries that are landlocked, do not have oil drilling or other platforms on a continental shelf and do not have a significant commercial fleet under their flag and registration that the two 1988 texts are inapplicable to their interests. However, a country may be confronted by situations in which their nationals are killed or injured on board a ship or a fixed platform or commit an offence under either text, suspected offenders are found within its territory or preparations for the commission of offences against the safety of maritime navigation or a fixed platform are made within its territory. All those situations are covered by these two instruments and legal procedures agreed to in advance under these international agreements could minimize post-attack friction between States. It should also be remembered that ratification and implementation of the global anti-terrorism instruments were called for in Security Council resolution 1373 (2001) and by the Counter-Terrorism Committee, without regard to whether or not a State possessed a sea coast.⁸⁹

⁸⁴The Geneva Convention of the High Seas, 29 April 1958, article 15, defines an act of maritime piracy as an act of violence, detention or depredation committed for private ends by the crew or passengers of a private or public ship whose crew has mutinied and taken control of the ship. A similar definition is given in article 101 of the United Nations Convention on the Law of the Sea (Montego Bay Convention) of 10 December 1982. In any event, these texts do not require States to criminalize maritime piracy. States are merely required to cooperate in the suppression of these acts to the fullest possible extent. In fact, article 14 of the Geneva Convention establishes less a duty to prosecute than a right to do so. Thus, in this convention, States can find either a basis for an obligation or simply an option.

⁸⁵These texts were adopted following the *Achille Lauro* case, where the facts of the case did not correspond to the definition of piracy. An Italian cruise ship, the *Achille Lauro*, was seized by a Palestinian commando in October 1985 and an American passenger was killed.

⁸⁶The texts of the Convention and Protocol are given in annex 2 of the present *Legislative Guide*.

The Protocol criminalizes acts against the safety of fixed platforms located on the continental shelf. It is open only to States parties to the Convention.

⁸⁷See above.

⁸⁸The final subparagraph of the preamble recognizes “the need for all States, in combating unlawful acts against the safety of maritime navigation, strictly to comply with rules and principles of general international law”.

⁸⁹Non-coastal countries such as Austria and Hungary have ratified both the Convention and its Protocol.

140. The Convention criminalizes the unlawful seizure of a ship by force or threat thereof and any act aimed at intentionally damaging a ship or its cargo if the act endangers the safe navigation of the ship. Any act of serious violence against a person is also penalized if the act is connected to the aforementioned acts or to attempts to perform such acts.⁹⁰ The text is intended to apply when acts are committed against a ship that is navigating or is scheduled to navigate beyond the territorial sea of a single State. The same is true if the offender or alleged offender is found in the territory of a State party other than the State in whose waters the offence was committed.

2. REQUIREMENTS

141. States should:

Define the following acts as criminal offences when they are unlawfully and intentionally committed:

— Seizing or exercising control over a ship by force or threat thereof or any other form of intimidation;

— Performing an act of violence against a person on board a ship or a fixed platform if that act is likely to endanger the safe navigation of that ship or the safety of the platform;

— Destroying a ship or a fixed platform or causing damage to a ship or to its cargo or to a fixed platform which is likely to endanger the safe navigation of that ship or the safety of the fixed platform;

— Placing or causing to be placed on a ship or a fixed platform, by any means whatsoever, a device or substance which is likely to destroy or cause damage to that ship, to its cargo or to the fixed platform which endangers or is likely to endanger the safe navigation of that ship or the safety of the fixed platform;

— Destroying or seriously damaging maritime navigational facilities or seriously interfering with their operation, if any such act is likely to endanger the safe navigation of a ship;

— Communicating information which the person knows to be false, thereby endangering the safe navigation of a ship;

— Injuring or killing any person, in connection with the commission or the attempted commission of any of the aforementioned offences;

— Attempting to commit any of the aforementioned offences;

— Abetting the commission of any of the aforementioned offences perpetrated by any person;

— Being the accomplice of the perpetrator of such an offence;

— Threatening to commit any of the aforementioned offences if such threat is likely to compromise the safety of the navigation of the ship or the safety of the fixed platform, the aforesaid threat being with or without a condition aimed at compelling a natural or juridical person to do or refrain from doing any act.

⁹⁰It should be noted that this Convention could have applied in the *Achille Lauro* case. In fact, a murder was committed on board that ship. Yet the text is a priori concerned only with acts that endanger the safety of navigation, which is not the case for murder. However, drawing on this experience, the drafters of the Convention took care to include acts of violence connected to the principal offence.

3. COMMENTARY

142. The 1988 Safety of Maritime Navigation Convention defines the protected ship as “a vessel of any type whatsoever [...] including dynamically supported craft, submersibles, or any other floating craft”.⁹¹ Warships and ships used as a naval auxiliary or for customs or police purposes are however excluded from the Convention.⁹² The text lists unlawful and intentional acts to be made punishable:⁹³

— Seizing or exercising control over a ship by force or threat thereof;⁹⁴

— Exerting violence against a person on board a ship, on the condition that this act is likely to endanger the safe navigation of that ship;⁹⁵

— Destroying or causing damage to a ship or to its cargo;⁹⁶

— Placing or causing to be placed on the ship a device or substance which is likely to produce the aforementioned result;⁹⁷

— Destroying or seriously damaging maritime navigational facilities or seriously interfering with their operation;⁹⁸

— Communicating false information with full knowledge of the facts;⁹⁹

— Injuring or killing a person in connection with the aforementioned offences.¹⁰⁰

Attempting to commit any such offence and abetting the commission of and, more broadly, complicity in such acts if carried out are also required to be penalized. Once again, the threat, conditional or not, to commit an act specified in article 3-1(b), (c), and (e) is criminalized if that threat is likely to endanger the safe navigation of the ship.

143. Also signed in Rome on 10 March 1988 was the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (“1988 Fixed Platforms Protocol”). The continental shelf extends beyond territorial seas to the edge of the continental margin, or up to 200 nautical miles, whichever is the greater distance, and includes the seabed and subsoil.¹⁰¹ In general, there can be no safety of maritime navigation without the protection of fixed platforms, this term meaning “an artificial island, installation or structure

⁹¹See article 1.

⁹²See article 2.

⁹³See article 3.

⁹⁴See article 3-1(a).

⁹⁵See article 3-1(b).

⁹⁶See article 3-1(c).

⁹⁷See article 3-1(d).

⁹⁸See article 3-1(e).

⁹⁹See article 3-1(f).

¹⁰⁰See article 3-1(g).

¹⁰¹The State can exercise its rights and obligations for the exploration and exploitation of mineral resources and other natural non-biological resources, as well as living organisms (only sedimentary species). According to article 76 of the United Nations Convention on the Law of the Sea (Montego Bay, 1982), countries which have a coastline have the possibility, subject to certain criteria (see the website <http://www.ifremer.fr/drogm/zee/extraplac/criteres.htm>), to request the extension of their continental shelf beyond the 200 nautical miles from the baselines (and up to 350 nautical miles from the same baselines). The request applications must be presented to the Commission on the Limits of the Continental Shelf by 13 May 2009.

permanently attached to the seabed for the purpose of exploration or exploitation of resources or for other economic purposes”.¹⁰²

144. Consequently, fixed platforms are protected from all unlawful and intentional acts that threaten the safety of ships, including in particular “piracy” in the sense of the violent capture of the protected object. Two acts, however, are not included as offences. The first is the destruction of, serious damaging of or interference with the operation of maritime navigational facilities. Such a provision would actually be redundant as the fixed platform is a facility in any case. The second, the deliberate communication of false information, is also not listed as an offence, but this is hardly likely to affect fixed platforms.

4. INFORMATION SOURCES AND ILLUSTRATIONS

145. The Commonwealth Secretariat *Implementation Kits* contain model statutes to implement the Convention and its Protocol.

146. An example of a law enacted by a coastal State is the Australia 1992 Crimes (Ships and Fixed Platforms) Act, which simultaneously implements the Convention and the Protocol.

147. *An example of legislation: Article 421-1 of the French Penal Code:*

Article 421-1

The following offences shall constitute acts of terrorism where they are committed intentionally in connection with an individual or collective undertaking the purpose of which is seriously to disturb public order through intimidation or terror:

1. Wilful attacks on life and on the physical integrity of persons, abduction and unlawful detention and hijacking of aircraft, vessels or any other means of transport, as defined by Book II of the present Code; (...)

5. Receiving proceeds from one of the offences set out in paragraphs 1 to 4 above. (Unofficial translation)

148. *The example of Cameroon Penal Code:*

Article 293 – Acts of violence against ships

The following shall be prosecuted and tried as pirates:

(1) Any person who is a member of the crew of a ship which commits armed acts of depredation or violence, either against Cameroonian ships or ships of another country with which Cameroon is not at war, or against the crews or cargo of such ships;

(2) Any person who, as a crew member of a foreign ship, during peacetime and without a letter of marque or regular commission, commits the said acts against Cameroonian ships or their crews or cargos;

¹⁰²See article 1-3 of the Protocol.

(3) The captain and the officers of any ship that commits hostile acts under a flag other than that of the State from which it has a commission.

Article 295 – The act of seizing a ship by force

The following shall be prosecuted and tried as pirates:

- (1) Any person who is a member of the crew of a Cameroonian ship which, by fraud or violence against the captain, seizes the said ship;
- (2) Any person who is a member of the crew of a Cameroonian ship which surrenders it to pirates or to the enemy. (Unofficial translation)

5. RECOMMENDATIONS

149. *Article: Offences against the safety of ships or fixed platforms*

1. Any person who commits one of the following acts, if such an act endangers or is likely to endanger the safety of the ship or fixed platform concerned, shall be punished by [penalties taking into account the seriousness of the offences]:

(a) Performs an act of violence against a person on board a ship or a fixed platform;

(b) Destroys or causes serious damage to a ship or its cargo or to a fixed platform;

(c) Places or causes to be placed on a ship or a fixed platform, by any means whatsoever, a device or substance which is likely to destroy the ship or the fixed platform or cause damage to the ship, its cargo or the fixed platform;

(d) Destroys or seriously damages maritime navigational facilities or seriously interferes with their operation;

(e) Communicates information which he or she knows to be false.

2. Any person who threatens to commit any of the offences set forth in paragraph 1, subparagraphs (a), (b) and (d), in order to compel a natural or juridical person to do or to refrain from doing any act shall be punished by [penalties taking into account the seriousness of the offences].

3. An attempt to commit any such offence shall be punished by [penalty taking into account the seriousness of the offence].

4. Participating as an accomplice to the offences set forth in this article shall be punished in accordance with the terms of [relevant text].

5. Offences linked to dangerous materials

Convention on the Physical Protection of Nuclear Material (Vienna, 1980)

*Article 7
(The offences)*

1. The intentional commission of:
 - (a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;
 - (b) a theft or robbery of nuclear material;
 - (c) an embezzlement or fraudulent obtaining of nuclear material;
 - (d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
 - (e) a threat:
 - i. to use nuclear material to cause death or serious injury to any person or substantial property damage, or
 - ii. to commit an offence described in subparagraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
 - (f) an attempt to commit any offence described in paragraphs (a), (b) or (c); and
 - (g) an act which constitutes participation in any offence described in paragraphs (a) to (f) shall be made a punishable offence by each State Party under its national law.
2. Each State Party shall make the offences described in this article punishable by appropriate penalties which take into account their grave nature.

International Convention for the Suppression of Terrorist Bombings (New York, 1997)

*Article 2
(The offences)*

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:
 - (a) With the intent to cause death or serious bodily injury; or
 - (b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.
3. Any person also commits an offence if that person:
 - (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2 of the present article; or
 - (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 of the present article; or
 - (c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

1. INTRODUCTION

150. Three conventions deal with inherently dangerous substances: the 1980 Nuclear Material Convention, the 1991 Plastic Explosives Convention and the 1997 Terrorist Bombing Convention, which is concerned with bombs and other lethal devices. Here we shall confine our attention to the 1980 and 1997 Conventions, since the 1991 Plastic Explosives Convention does not define any offence.¹⁰³

151. The international community has long been concerned by the potential consequences, for both public safety and the environment, if nuclear material were to be unlawfully obtained or used. To meet this concern some nuclear material suppliers include physical protection clauses in supply contracts. Because of the discriminatory situation that this might produce between States, it rapidly became evident that there was a need for international standardization of physical protection provisions. With the 1980 Convention on the Physical Protection of Nuclear Material (Nuclear Material Convention),¹⁰⁴ States parties agreed to introduce measures in their national law to protect transportation of nuclear material and to prohibit the export of nuclear material unless the importing country receives assurances from the exporting country that the necessary protection will be ensured.¹⁰⁵ Terrorists could indeed attempt to steal a nuclear weapon or obtain nuclear material for the manufacture of a nuclear device or acquire radioactive materials to develop a radioactivity dispersion

device, i.e. a “dirty bomb”. They could also perform acts of sabotage against nuclear thermal power stations, research reactors, storage facilities or transport operations in order to cause widespread radioactive contamination. Thus, the global objective of the fight against “nuclear terrorism” is to prevent non-State actors from acquiring nuclear weapons.

152. *The 1997 International Convention for the Suppression of Terrorist Bombings (Terrorist Bombings Convention)* is a criminalizing text intended as a global legal instrument for the suppression of terrorist bombings, whatever their location or the medium used. It is thus a completely different approach from the one that led, in the 1960s to the 1980s, to the adoption of international conventions focused on precisely demarcated types of international terrorist activity. Moreover, this Convention belongs to a generation of legal instruments unequivocally designed to fight terrorism without accepting any political justification.¹⁰⁶ The first article provides a broad definition of explosive devices. The definition of terrorist acts is also sufficiently broad to cover most situations. The same applies to the object of attacks and the persons behind them. It thus gives serious attention to one of the main forms of international terrorism.

2. REQUIREMENTS

153. States should:

Define the following acts as criminal offences:

- The intentional commission of the:
 - Receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material, without lawful authority, and which causes or is likely to cause death or serious injury to any person or substantial damage to property;
 - Theft or robbery of nuclear material;
 - Embezzlement or fraudulent obtaining of nuclear material;
 - Demand for nuclear material by threat or use of force or by any other form of intimidation (1980 Nuclear Material Convention);

¹⁰³For developments relating to this universal anti-terrorism instrument, see Part II below.

¹⁰⁴The depository of this Convention is the Vienna-based International Atomic Energy Agency (IAEA), whose website is at www.iaea.or.at. Since 1993 IAEA has recorded some 550 cases of illicit traffic in nuclear material.

¹⁰⁵A convention for the suppression of nuclear terrorism is currently being negotiated within the Sixth Committee. This text should, inter alia, extend the provisions of the 1988 Nuclear Material Convention to nuclear facilities and strengthen criminal law provisions in this area. A draft amendment to strengthen the provisions of the Convention is currently being prepared by an expert group, chaired by a French expert from the Institut de radioprotection et de sûreté nucléaire (IRSN), who has submitted a final report to the Director General of IAEA as depository of the 1979 Convention. Consensus has been reached on several amendments, but various points need to be discussed informally by experts. The agreed amendments will then be formally adopted by a specially convened diplomatic conference. The strengthening of the Nuclear Material Convention is one of the priorities identified, in the wake of 11 September, for strengthening the nuclear non-proliferation regime and combating terrorism.

¹⁰⁶The preamble to the Convention refers to General Assembly resolution 49/60, of 17 February 1995, which states 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 circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them”.

- The threat to:
 - Use nuclear material to cause death or serious injury to any person or substantial property damage;
 - Commit the theft or robbery of nuclear material in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
- The act of unlawfully and intentionally:
 - Delivering, placing, discharging or detonating an explosive or any other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility with the intent to cause death or serious bodily injury or to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss;
 - Contributing to the commission of one or more of these offences by a group of persons acting with a common purpose, such contribution being intentional and either made with the aim of furthering the general criminal activity or purpose of the group or made in the knowledge of the intention of the group to commit the offence or offences concerned (1997 Terrorist Bombings Convention);
 - Define, in addition, the following acts as criminal offences:
 - Attempting to commit any offence described in paragraph 1;
 - Participating as an accomplice, organizing or directing others to commit the aforementioned offences;
 - Adopt measures to ensure that the criminal acts described in paragraph 1.1.4 (1997 Terrorist Bombings Convention):
 - are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons.

3. COMMENTARY

154. *The 1980 Nuclear Material Convention* concerns certain types of fissionable nuclear material used for peaceful purposes and seeks to protect this material against theft, hijacking, and so forth while in international transport by applying standard levels of protection, involving surveillance by guards or by electronic devices, armed escorts and similar means.

155. The preamble to the 1980 Convention emphasizes the right of all States to develop and apply nuclear energy for peaceful purposes and recognizes the need for facilitating international cooperation in this field.

156. The text also establishes that:

- There is a need to avert the potential dangers posed by the unlawful taking and use of nuclear material;
- Offences relating to nuclear material are a matter of grave concern and effective measures must be taken to ensure their prevention, detection and punishment;
- Effective measures to ensure the physical protection of nuclear material must be taken by the international community;

- The Convention must facilitate the safe transport of nuclear material;
- The physical protection of nuclear material in domestic use, storage and transport must be ensured on national territory.

157. The term “nuclear material” means plutonium except that with isotopic concentration exceeding 80 per cent in plutonium-238, uranium-233, uranium enriched in the isotopes 235 or 233, uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue and any material containing one or more of the foregoing.

158. The term “uranium enriched in the isotope 235 or 233” means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

159. The term “international nuclear transport” means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates, beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of final destination.

160. In article 7, the text requires States to punish the act of intentionally committing any of the following offences:

- The receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material, without lawful authority, which causes or is likely to cause death or serious injury to any person or substantial damage to property;
- The theft, robbery or embezzlement of nuclear material;
- The threat of using nuclear material to commit any of the aforementioned offences or in order to compel a natural or juridical person, international organization or State to do or to refrain from doing any act and the act of demanding nuclear material by threat or use of force.

161. States are required to make these offences punishable by penalties taking into account their grave nature, notably with regard to threats. The Convention also contains provisions on mutual legal assistance, information exchange and the obligation to prosecute or extradite.¹⁰⁷

162. As with the maritime texts, some States with no nuclear resources may wonder whether there is any point in ratifying such an instrument and incorporating its provisions in their domestic law. The answer must be similar to that concerning offences relating to ships and fixed platforms. This provision is necessary because: (1) if a terrorist using nuclear material takes refuge in the State and that State has not ratified the text, it will be difficult for it to extradite; and (2) if the person prepares for or performs terrorist acts using nuclear material on the territory of a State that has not ratified the Convention, the authorities of that State will not be able to try that person. Two other advantages accrue from ratification and legislative incor-

¹⁰⁷See Parts III and IV below.

poration. First, national transport companies can be put in charge of the international transport of nuclear material for peaceful uses. Second, the transit of nuclear material for peaceful uses can also be subject to authorization under the national regulations in force. Each State must be able to assert its jurisdiction if such an offence is committed. This Convention is currently under review.

163. *The 1997 Terrorist Bombings Convention* has a broad scope in terms of the materials covered and geographical range, as well as the elements of the offence.

Material scope

164. The notion of terrorist bombings excludes by definition other types of terrorist acts. However, because of way “explosive” is defined and classed together with “other lethal devices”, it does in fact cover most attacks.¹⁰⁸ Under article 1(3) these terms apply to explosive or incendiary devices or devices that disseminate or release toxic chemicals, toxins or radioactive material.¹⁰⁹

Geographical scope

165. Attacks within the scope of the Convention must, according to article 2, be committed or planned “in or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility”. The term “place of public use” means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.

166. The term “State or government facility” means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties. The term “infrastructure facility” includes any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications. The term “place with public use” includes all places that are accessible or open to the public.

167. While the geographical scope is limited, it does in fact cover the preferred locations for attacks, i.e. those allowing maximum injury to persons and damage to property.

¹⁰⁸“Explosives or other lethal devices” means:

“(a) An explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or

“(b) a weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.”

¹⁰⁹This Convention would therefore be applicable to acts of the kind committed in the Paris Metro, to the sarin gas attack in Tokyo and to the September 11 attacks on the World Trade Center.

168. It should be noted that the Convention excludes from its scope offences committed within a State by a national of that State, found in the territory of that State and against victims that are nationals of that State.

Elements of the offence

169. Here, again, the approach adopted by the Convention is a broad one.

170. *Objective element:* Any person who delivers, places or sets off any of the previously defined devices in any of the aforementioned locations commits an offence within the meaning of this Convention.

171. *Subjective element:* The act must have been committed intentionally and with intent to cause death or serious bodily injury or major economic loss.

172. *Persons responsible:* The offender is responsible for the offence, but a person who unsuccessfully plans an attack may also be deemed responsible. The Convention is of course also aimed at persons who participate as accomplices or organize such acts and not only at persons performing them.

173. However, during an armed conflict and in the exercise of their official duties armed forces are excluded from the scope of the Convention under the terms of its preamble and article 19, paragraph 2. The main goal here is to ensure the entry into force of a convention that can, realistically, be applied by signatories. In any event, armed forces come under international humanitarian law during an armed conflict.

4. INFORMATION SOURCES AND ILLUSTRATIONS

174. *An example of legislation: Article 421-1 of the French Penal Code:*

Article 421-1

The following offences shall constitute acts of terrorism where they are committed intentionally in connection with an individual or collective undertaking the purpose of which is seriously to disturb public order through intimidation or terror: (...)

4. The manufacture or possession of arms, lethal weapons or explosives, as defined in article 3 of the Act of 19 June 1871 repealing the Decree of 4 September 1870 on the production of weapons of war;

— The production, sale, import or export of explosive substances, as defined by article 6 of Act No. 70-575 of 3 July 1970 amending the regulations applying to explosive powders and substances;

— The purchase, possession, transport or unlawful carriage of explosive substances or of devices made with such explosive substances, as defined by article 38 of the Ordinance of 18 April 1939 defining the regulations governing military equipment, weapons and ammunition;

— The possession, bearing and transport of weapons and ammunition falling within the first and fourth categories defined by articles 24, 28, 31 and 32 of the aforementioned Ordinance;

— The offences defined by articles 1 and 4 of Act No. 72-467 of 9 June 1972 prohibiting the development, production, possession, stockpiling, purchase or sale of biological or toxin weapons;

— The offences referred to under articles 58 to 63 of Act No. 98-467 of 17 June 1998 on the application of the Convention of the 13 January 1993 on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction;

5. Receiving proceeds from one of the offences set out in paragraphs 1 to 4 above. (Unofficial translation)

5. RECOMMENDATION

175. *Article: Offences involving nuclear material*

1. Any person who commits one of the following acts shall be punished by [penalties taking into account the seriousness of the offences]:

(a) An act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious bodily injury to any person or substantial damage to property;

(b) The theft or robbery of nuclear material;

(c) The embezzlement or fraudulent obtaining of nuclear material;

(d) An act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;

(e) A threat to use nuclear material to cause death or serious bodily injury to any person or substantial property damage, or to commit one of the offences referred to in subparagraph (b) in order to compel a natural or juridical person, international organization or State to do or to refrain from doing any act.

2. An attempt to commit any such offence shall be pun-

ished by [penalty taking into account the seriousness of the offence].

3. Participating as an accomplice to the offences set forth in this article shall be punished in accordance with the terms of [relevant text].

176. *Offences committed using explosives or other lethal devices*

1. Any person who delivers, places, discharges or detonates in or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

(a) An explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or

(b) A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material with the intent to cause death or serious bodily injury or with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss, shall be punished by [penalties taking into account the seriousness of the offences].

2. The same penalties shall be applicable to any person who:

(a) Directs others to commit one of the offences referred to in paragraph 1; or

(b) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 by a group of persons acting with a common purpose, if such a contribution is intentional and made either with the aim of furthering the general criminal activity or purpose of the group or in the knowledge of the intention of the group to commit the offence or offences concerned.

3. An attempt to commit any such offence shall be punished by [penalty taking into account the seriousness of the offence].

4. Participating as an accomplice to the offences set forth in this article shall be punished in accordance with the terms of [relevant text].

III. FORMS OF LIABILITY

1. Exclusion of any justification

177. Analysis of the universal anti-terrorism instruments reveals a firm resolve. Terrorist acts are increasingly defined in agreements so as to limit or disallow the application of exceptions made on grounds of political offence or even to stipulate that considerations of a political or ideological nature cannot, under national law, justify the pre-defined terrorist acts.

178. While the 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft expressly excluded from its scope criminal offences of a political nature or offences under laws based on racial or religious discrimination, no reference to exceptions on such grounds has been included in subsequent universal counter-terrorism instruments, except the 1979 Hostages Convention. This last text, however, includes an extradition clause.

179. Those anti-discrimination articles that accompany the articles eliminating the political offence exception correspond to the principles of non-discrimination and impartiality embodied in the Universal Declaration of Human Rights of 10 December 1948 (General Assembly resolution 217 A (III)). Article 7 of the Declaration recognizes that: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination". Article 10 of the Declaration establishes that: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

180. The 1997 Terrorist Bombings Convention and the 1999 Financing of Terrorism Convention include articles requiring States parties not to acknowledge, in their national political and legal system, political justification for terrorist acts covered by the aforementioned Conventions. The preamble to the 1997 Convention refers to resolution 49/60 of the United Nations General Assembly of 9 December 1994, which maintains 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 circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them". In article 5, the 1997 Convention specifies that: "Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature". According to this provision, therefore, such considerations should not be allowable as

mitigating circumstances for punishment purposes, nor can they be invoked as a defence to criminal liability.

181. In addition, article 11 of the Terrorist Bombings Convention and article 14 of the Financing of Terrorism Convention provide that, for the purposes of extradition or mutual legal assistance between States parties, a request for extradition or mutual legal assistance based on offences set forth in article 2 (definition of offences in both Conventions) may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

182. The articles eliminating the political offence exception are immediately followed in both conventions by the reservation quoted below concerning discrimination, which appears in article 12 of the 1997 Convention and article 15 of the 1999 Convention. These identical articles read as follows: "Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons."

183. In other words, the corpus of international anti-terrorism instruments rests on an unequivocal condemnation of this type of malfeasance, with no concession to any possibility of ideological justification. Specific clauses¹¹⁰ authorize the refusal of a request of extradition or mutual legal assistance based on political considerations. These are thus on a different level, since they enable a request to be considered according to motive rather than the nature of the act. They therefore allow States to take precautions against improper requests.

184. Independently of the provisions of the Terrorist Bombings Convention and the Financing of Terrorism Convention that eliminate the political offence exception, the Security Council in paragraph 3(g) of resolution 1373 (2001) expressly requested all States: "to ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists".

185. Ultimately, no terrorist offence can be justified by considerations of a political nature. The inclusion of this type of clause supplements the obligation to criminalize

¹¹⁰These clauses are sometimes referred to as "discrimination clauses".

terrorist acts in national law by requiring States parties to exclude in their legislation the possibility of invoking such exceptions, since the latter would serve to largely nullify the effect of the penalizing provisions. The discriminatory grounds adduced in favour of the rejected exceptions strengthen the absolute nature of the general prohibition of terrorism.

186. Accordingly, the draft comprehensive convention on terrorism referred to insists on the non-existence of grounds for justification. It states that States are required to adopt such measures as may be necessary to ensure that the criminalized terrorist acts can never be justified in national law by “considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature”.

INFORMATION SOURCES AND ILLUSTRATIONS

Regional conventions

187. Many regional organizations have adopted conventions defining acts of terrorism and rejecting any political offence exception or justification of an ideological or political nature in relation to these offences.¹¹¹

188. The Organization of American States (OAS) Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance (1971) predated the Internationally Protected Persons Convention negotiated under the aegis of the United Nations in 1973. The OAS Convention establishes the principle of *aut tradere aut judicare* (either extradite or prosecute) concerning perpetrators of terrorist acts, which means that the requested State must either extradite the alleged offender or bring the case before its national courts. Article 2 of the Convention states:

“For the purposes of this convention, kidnapping, murder, and other assaults against the life or personal integrity of those persons to whom the State has the duty to give special protection according to international law, as well as extortion in connection with those crimes, shall be considered common crimes of international significance, regardless of motive”.

189. The Commonwealth of Independent States Treaty on Cooperation in Combating Terrorism¹¹² was signed in 1999. It lists different forms of international cooperation to combat terrorism. Article 4, paragraph 1, states:

“In cooperating in combating terrorist acts, inter alia through the extradition of perpetrators, Parties shall not regard the acts involved as other than criminal.”

¹¹¹Source: *Report of the United Nations Office on Drugs and Crime, Terrorism Prevention Branch, on the treatment reserved to the political exception in the international legal instruments against terrorism*, report prepared in connection with the reevaluation by the International Criminal Police Organization–Interpol of article 3 of its Constitution, which states that “It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character” (GT-ART3-2004.12).

¹¹²A union of most of the former States of the Soviet Union.

190. The European Convention on the Suppression of Terrorism¹¹³ was opened for signature in 1977. Its first two articles provide for restrictions excluding the political offence exception, some mandatory and others optional:

“Article 1: For the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives: [a list of offences defined in various universal conventions and a series of violent ordinary criminal offences follows].

“Article 2: For the purposes of extradition between Contracting States, a Contracting State may decide not to regard as a political offence or as an offence connected with a political offence or as an offence inspired by political motives a serious offence involving an act of violence, other than one covered by article 1, against the life, physical integrity or liberty of a person. The same shall apply to a serious offence involving an act against property, other than one covered by article 1, if the act created a collective danger for persons.”

191. The South Asian Association for Regional Cooperation (SAARC) Regional Convention on Suppression of Terrorism, 1987, provides in its first article that:

“Subject to the overall requirements of the law of extradition, conduct constituting any of the following offences, according to the law of the Contracting State, shall be regarded as terroristic and for the purpose of extradition shall not be regarded as political offence or as an offence connected with a political offence or as an offence inspired by political motives” [a list of offences defined in various universal conventions, as well as violent ordinary criminal offences that are committed indiscriminately and lead to death or serious bodily harm].

192. Article 2 permits further restriction of the political offence exception:

“For the purpose of extradition between SAARC Member States, any two or more Contracting States may, by agreement, decide to include any other serious offence involving violence, which shall not be regarded as a political offence or an offence connected with a political offence or an offence inspired by political motives”.

¹¹³Available at <http://conventions.coe.int/Treaty/en/Treaties/Html/090.htm>. The Protocol (Strasbourg, 15.V.2003) amending the European Convention on the Suppression of Terrorism is available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/190.htm>. In its preamble the Protocol states: “Bearing in mind the General Assembly of the United Nations Resolution A/RES/51/210 on measures to eliminate international terrorism and the annexed Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, and its resolution A/RES/49/60 on measures to eliminate international terrorism and the Declaration on Measures to Eliminate International Terrorism annexed thereto”.

To be noted within the framework of the Council of Europe is the recent adoption of three important conventions, including the Convention on the Prevention of Terrorism and the Conventions on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. These conventions will be opened for signature by member States of the Council of Europe at the Summit of Heads of State and Government of the Council to be held in Warsaw on 16 and 17 May 2005.

193. The aforementioned conventions exclude applicability of the political offence exception for the offences they define; the European Convention nevertheless authorizes this exception by providing for reservations to the treaty, provided they are applied judiciously and case by case.

194. A second category of regional conventions eliminates the exception for the offences they define, but exclude struggles for self-determination from their scope of application.

195. The Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism (1999) defines a terrorist act in article 1 as a violation of the criminal laws of a State party which may endanger the life of any person or cause damage to property and is intended to intimidate, force or coerce, or disrupt any public service or create a general insurrection in a State.

196. Article 3, paragraph 1, provides that:

“Notwithstanding the provisions of article 1, the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces, shall not be considered as terrorist acts”.

197. Paragraph 2 of the same article states that:

“Political, philosophical, ideological, racial, ethnic, religious or other motives shall not be a justifiable defence against a terrorist act”.

198. States parties commit themselves to extradite in article 8 of this Convention. The grounds for refusing extradition must be transmitted at the time of ratification or accession to the Convention, with an indication of the legal basis in national legislation or international conventions that prevents such extradition. Since article 3, paragraph 2, stipulates that political considerations cannot justify a terrorist act, it can at least be argued that the intention is to prevent such considerations from being used to justify a refusal of extradition by a State party for an offence covered by the Convention.

199. The Arab Convention for the Suppression of Terrorism (1998) defines terrorism in article 1. In an English translation provided by the Secretariat of the United Nations, article 2 reads as follows:

“(a) All cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, in accordance with the principles of international law, shall not be regarded as an offence. This provision shall not apply to any act prejudicing the territorial integrity of any Arab State.” (Unofficial translation)

200. It should be noted that in an English translation of the Committee of Interior and Justice Ministers of the League of Arab States the article does not include the phrase “by whatever means” and is drafted as follows:

“The actions, including armed struggles, led against foreign occupation and aggression as well as for liberation and self-determination shall not be regarded as offences, in accordance with the principles of international law.

However, actions which are carried out with the intent to harm the unity and integrity of any Arab State are excluded.” (Unofficial translation)

201. Article 2(b) in both translations stipulates that none of the terrorist offences defined by the Convention should be regarded as a political offence. In addition, attacks committed against [list of government representatives], premeditated murder or theft accompanied by the use of force, acts of sabotage and destruction of private property as well as offences connected to weapons, should also not be regarded as political offences. Article 6, which concerns extradition, goes on to indicate, without referring to article 2, that extradition is not permissible if the offence for which it is requested is regarded under the laws in force in the requested State as an offence of a political nature.

202. The Convention of the Organization of the Islamic Conference on Combating International Terrorism (1999) defines terrorism, in article 1, as any act of violence or threat thereof which, irrespective of motives or intentions, is perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them; the definition then lists the offences as defined in the international conventions cited in the same article.

203. Article 2 of this Convention contains four paragraphs:

“(a) Peoples’ struggle, including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law, shall not be considered a terrorist offence.

“(b) None of the terrorist offences mentioned in the previous article shall be considered political offences.

“(c) In the implementation of the provisions of this Convention the following crimes shall not be considered political offences, even when politically motivated:

—Aggression against kings and heads of State of Contracting States or against their spouses or relatives in the ascendant or descendant line.

—Aggression against crown princes or vice-presidents or deputy heads of government or ministers in any of the Contracting States.

—Aggression against persons enjoying international immunity, including ambassadors and diplomats in Contracting States or in countries of accreditation.

—Murder or aggravated robbery of persons or authorities or means of transport and communications.

—Acts of sabotage and destruction of public property and property intended for public use, even if belonging to another Contracting State.

—Offences of manufacturing, trafficking or possessing arms and ammunition, explosives or other devices designed for committing terrorist acts.

“(d) All forms of transnational crime, including illegal trafficking in narcotics and human beings, as well as money-laundering intended for the financing of terrorism, shall be deemed terrorist acts.”

204. Article 6, paragraph 1, establishes that extradition is not permissible: “if the offence for which extradition is requested is deemed by the laws in force in the requested Contracting State to be a political offence, without preju-

dice to the provisions of article 2, paragraphs (b) and (c), of this Convention”.

205. These three conventions, which admit the possibility of an exemption for armed struggles, allow a broad scope for its application, as any movement resorting to terrorism will claim the noble intentions of self-determination and national independence, whether it represents a majority of the population and asserts claims recognized by the whole community or is a small group whose members are alone in their sense of oppression.

206. A fundamental restriction applies, in these three regional conventions, on unlimited applicability of the exception for armed struggles, in that the struggle (or “the actions” according to the translation) must be carried out in accordance with the principles of international law. This may be interpreted in the sense that any means are justifiable provided that the reasons for the struggle are recognized as just according to the principles of international law. Such an interpretation could go against the provisions of the Geneva Conventions and their Protocols, which set limits for acts of violence perpetrated legally against civilians not directly involved in hostilities in time of war or against obligations stated in the 1997 Terrorist Bombings Convention and the 1999 Financing of Terrorism Convention. These two instruments call upon States parties not to apply the political offence exception to offences covered by these conventions and to proscribe in national legislation any justification of such offences on the basis of political or ideological considerations.

207. There is also some question as to whether such an interpretation complies with Security Council resolution 1373, which establishes the obligation to refuse asylum¹¹⁴ to terrorists and invites States to ensure political motivation is not regarded as justification for rejecting requests for the extradition of alleged terrorists.

208. Another interpretation would be to apply the requirement of conformity to the principles of international law, which is stated insistently in regional conventions, not only to the legitimacy of armed struggle but also to the legitimacy of the means of political violence used. The exclusion of armed struggle could then be understood as the assertion that political violence inherent to an armed struggle does not of itself fall under the definition of terrorism or of a terrorist act. Such violence would be excluded from the scope of a convention provided that the motive for armed struggle and the acts committed conformed with the principles of international law.

209. Although the subject is too complex to analyse here, the Geneva Conventions and their Protocols, as well as the universal anti-terrorism conventions and protocols, are unquestionably the instruments that set forth the principles of international law. If there is a fundamental principle to be drawn from these sources, it would be the following: innocent civilians and other persons not directly involved in hostilities in time of war cannot be the targets or the arbitrary victims of political violence. Consequently, for acts of violence committed during a legitimate armed struggle to be regarded as conforming with the principles of international law, it would be necessary for those acts to be directed against enemy combatants and not against persons not directly involved in the hostilities. Conversely, acts of violence whose targets or arbitrary victims are schoolchildren or persons in a marketplace not directly involved in hostilities would be regarded as not conforming with the principles of international law and would not be excluded from the scope of a convention, even if in that instance recourse to armed struggle were recognized as legitimate by virtue of the principles of international law.

National legislations

210. An example of national law applying these principles and rules of the Convention in the context of extradition is the Australian 1988 Extradition Act, as amended by the Suppression of the Financing of Terrorism Act (No. 66 of 2002). Section 5 of the amended Act excludes from the definition of “political offences” a list of offences taken from article 2 of the 1999 Financing of Terrorism Convention. This section incorporates the nine other anti-terrorism instruments which define the penalized offences. Section 5 also excludes offences which national law deems not to be of a political nature. The non-discrimination elements of the 1999 Convention are applied by Section 7, which lists the objections that could be opposed to an extradition request, including the discriminatory nature of the request or the discriminatory effect that the extradition would have.

RECOMMENDATION

No justification for terrorism

211. None of the criminalized terrorist acts can, under any circumstance, be justified by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

¹¹⁴On the subject of asylum rights, refugee status and terrorism, see Part III of the present *Guide*, Section I, “No safe haven for terrorists”.

2. Special forms of participation

212. The issue of the extent of participation that gives rise to criminal liability in relation to terrorism is essential. The universal instruments require punishment of both the perpetrators and accomplices of completed or attempted offences and, for specific offences, persons who organize, direct or threaten to commit terrorist acts.

213. Thus, nine of the ten conventions and protocols that create criminal offences expressly require the penalization of participation as an accomplice and several require that other specified forms of participation be made offences, such as organizing or directing a terrorist bombing offence.

214. The texts do not always allow a clear-cut interpretation of the degree of criminal participation required. For example, the 1980 Nuclear Material Convention refers simply to “participation in any offence” described in article 7 of that Convention. It is difficult to determine whether “participation” should be regarded as equivalent to the criminal liability of an accomplice or was intended to move toward a broader liability for participation, as has developed in many legal systems.

215. The 1999 Financing of Terrorism Convention, on the other hand, is perfectly clear, specifying in article 2, paragraph 5, that any person also commits an offence if that person participates as an accomplice in an offence and if a person organizes or directs others to commit an offence. Again, in article 2, paragraph 5(c), it specifies that contributing to the commission of an offence by a group of persons acting with a common purpose is also considered an offence if such contribution is intentional and is made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence within the meaning of the Convention, or is made in the knowledge of the intention of the group to commit an offence within the meaning of the convention.

216. Moreover, in addition to the obligations established by the universal anti-terrorism instruments, resolution 1373 (2001) requires States to criminalize any act of support for or in preparation of terrorist offences.

217. It should be noted in this regard that the provisions on complicity in the national law of States are not sufficient, since, essentially, the accomplice is only punished if the perpetrator has actually committed the act in question, which is not required by resolution 1373. Moreover, in most countries, complicity exists only if the alleged perpetrator knows the principal offence is being committed or attempted, whereas, in the Financing of Terrorism Convention for instance, the link with a terrorist offence is not commission or attempted commission but the fact that the alleged perpetrator intends the funds to be used to commit a terrorist act or knows that they will be so used.

218. Authorities are therefore recommended to criminalize acts of supporting terrorist offences as autonomous offences, particularly with regard to supplying of weapons, financing of terrorism and recruitment of members of terrorist groups.

219. The fact that the United Nations Convention against Organized Transnational Crime establishes participation in a criminal group as a criminal offence is likely to assist action to counter terrorism. The Security Council notes “with concern” in resolution 1373 “the close connection between international terrorism and transnational organized crime”.¹¹⁵ However, an act penalized under a universal anti-terrorism instrument could be committed by an organized criminal group operating transnationally for profit. The advantage of using such an instrument, if the elements of the offence are established and the State in question is a party to that Convention, is that commission of the offence need not have started. In other words, it allows penalization of an “obstacle offence”,¹¹⁶ which many legal systems penalize as criminal conspiracy.

220. In connection with all these concepts of participation, it is necessary to maintain the distinction that participation with others in a terrorism offence cannot be characterized, as can an organized-crime associational offence, as being committed for financial or other material advantage. At the same time, defining an ideological or religious purpose to be an element of the offence may create a nearly impossible burden of proof unless the alleged offender voluntarily declares such a purpose. Such an element may not be regarded as necessary when the offence is objectively characterized by particularly harmful terrorist tactics, such as a bomb attack on a civilian population.

INFORMATION SOURCES AND ILLUSTRATIONS

221. Within the framework of the drafting of an international convention on terrorism, the report of the Ad Hoc Committee established by General Assembly resolution 51/210 states in Supplement No. 37¹¹⁷ that complicity in a terrorist act is criminalized as the act of organizing or directing others to commit [a terrorist]¹¹⁸ offence; or in any other way participating in the planning or preparation of the commission of one or more [terrorist]¹¹⁹ offences by a group of persons acting with a common purpose.

222. In Italy, various associations to commit crimes generally, to engage in Mafia-type activities and to engage in terrorism, including international terrorism, are penalized. (See article 416 of the Penal Code, *Associazione per delinquere*, article 416 *bis*, *Associazione di tipo mafioso* and new article 270 *bis*, *Associazione con finalità di terrorismo anche internazionale*.)

¹¹⁵See paragraph 4 of resolution 1373 (2001).

¹¹⁶In other words, an act that is criminalized for a preventive social purpose because of the indication it provides of the dangerous crime to follow.

¹¹⁷Official documents, fifty-second session, Supplement No. 37 (A/52/37) 1997.

¹¹⁸Term added by the drafters of the present *Legislative Guide*.

¹¹⁹*Ibid.*

223. In order to combat its own organized crime phenomenon, the United States has developed not only an expansive concept of conspiracy but also the concept of membership in a racketeering enterprise (RICO) proved by participation in a pattern of specified crimes and the further possibility of a conspiracy to engage in a racketeering enterprise involving various crimes, including terrorism offences. (See Title 18, sections 371 and 1962, of the United States Code.)¹²⁰

224. Article 340 of Law No. 599 of 24 July 2000 of Colombia, in Title XII, Chapter I, entitled: “Conspiracy, terrorism, threats and incitement”, stipulates: “When a number of persons conspire together for the purpose of committing crimes, each of them shall be punished, for this conduct alone, with imprisonment”.

225. Article 343, entitled “Terrorism”, provides that: “Whoever provokes a state of fright or terror in the population, or a sector of it, through acts that endanger life, the physical integrity or the liberty of persons or structures or means of communication, transport, processing or transmission of fluids or energy, using means capable of causing mass destruction, shall be incarcerated for this offence, without prejudice to any separate penalties provided for other crimes committed in the course of this conduct...” (Unofficial translation)

226. While this law unquestionably requires the mens rea (culpable intent) of a criminal agreement, whether the necessary actus reus (criminal act) is closer to what would be called an attempt in many legal cultures or conspiracy as applied in common-law systems requires interpretation by persons familiar with Colombian jurisprudence.

227. Article 2 of the Federal Act against Organized Crime of Mexico provides that: “When three or more persons conspire or agree to conspire in order to engage, continuously or repeatedly, in conduct which in itself or in combination with other conduct has as its purpose or result the perpetration of one or more of the following offences, they shall be punished, solely by virtue of that fact, as members of organized criminal groups: “1. Terrorism, as provided for in article 139, first paragraph, ... of the Federal Penal Code.”

228. *A further example of legislation: the French Penal Code:*

Article 421-2-1

Participation in a group formed or an association established with a view to the preparation, as indicated by one or more material facts, of any of the terrorist acts referred to in the previous articles shall also constitute a terrorist act.

Article 434-6

Providing the perpetrator of or accomplice to a felony or an act of terrorism punished by at least ten years’ imprisonment with accommodation, a hiding place, funds, the means of existence or any other means of evading searches or arrest, shall be punishable by three years’ imprisonment

and a fine of €45,000. The penalty shall be increased to five years’ imprisonment and a fine of €75,000 where the offence is committed habitually.

Exempted from the above provisions shall be:

1. Relatives in a direct line and their spouses, and the brothers and sisters and their spouses, of the perpetrator of or accomplice to the felony or terrorist offence;
2. The spouse of the perpetrator of or accomplice to the felony or act of terrorism, or the person who openly cohabits with such person. (Unofficial translation)

229. *Chad:*

Article 161: Any association established, irrespective of its duration or the number of its members, or any conspiracy formed for the purpose of preparing or committing offences against persons or property shall constitute an offence against public peace and order.

Article 163: Any person who knowingly and intentionally encourages the perpetrators of the offences set forth in article 161, by providing them with the instruments of crime, means of correspondence, accommodation or a meeting place shall be punishable by the same penalty. (Unofficial translation)

230. *Guinea:*

Article 269: Any association established, for whatever length of time or number of members or any conspiracy formed for the purpose of preparing or committing offences against persons or property shall constitute an offence against public peace and order.

Article 270: Any person who has become a member of an association established, or has participated in a conspiracy formed, for the purpose specified in the previous article shall be punished by rigorous imprisonment of 10 to 20 years. Persons who commit the offence referred to in the present article shall be exempted from punishment if, prior to prosecution, they inform the constituted authorities of the existence of such conspiracy or association.

Article 271: Any person who has knowingly and intentionally encouraged the perpetrators of the offences referred to in article 269 by providing them with instruments of crime, means of correspondence, accommodation or a meeting place shall be punished by rigorous imprisonment of 10 to 20 years.

The guilty party shall, in addition, be deprived of residence rights for a period of 5 to 10 years. The provisions contained in article 270, paragraph (2), shall, however, be applicable to offenders under the present article. (Unofficial translation)

RECOMMENDATIONS

231. *Recruitment*

Any person who recruits other persons for the commission of any of the offences referred to in [relevant articles] shall be punished by [penalties taking into account the seriousness of the offences].

¹²⁰Available at www.law.cornell.edu/uscode/18.

232. *Criminal association*

Any person who conspires with another person to commit one of the offences referred to in [relevant articles] or abets, instigates, organizes or prepares the commission of any of these offences shall be punished by [penalties taking into account the seriousness of the offences].

233. *Provision of support and services*

Any person who provides any kind of support or service with the intention that it should be used or in the knowledge that it is to be used in order to commit one of the offences referred to in [relevant articles] shall be punished by [penalties taking into account the seriousness of the offences].

3. Liability of legal entities

234. Article 5 of the 1999 Financing of Terrorism Convention requires States parties to take the necessary measures to enable a legal entity in its territory or organized under its laws to be held liable when a person responsible for the management or control of that entity has, in that capacity, committed an offence as set forth in the Convention. It adds that such liability may be criminal, civil or administrative, without prejudice to the liability of the individuals who have committed the offences. It is certainly a fact that legal entities and/or non-profit entities are open to misuse for the purpose of financing terrorism.

235. It is clear, therefore, that the 1999 Convention gives States the power to choose whether the responsibility of legal entities will be criminal, civil or administrative. Nevertheless, in the absence of national legislation on the responsibility of legal entities and if a State wishes this responsibility to be criminal, special provision for such responsibility should be made. Moreover, providing for civil or administrative sanctions can require the modification of other laws, in particular company or banking law.

236. It should be noted that the draft comprehensive convention on international terrorism, currently a subject of Sixth Committee discussions, includes an innovative provision on the matter of the responsibility of legal entities. It provides that when an act criminalized by the convention has been committed by a person responsible for the management or control of a legal entity and that person acted in that capacity, the State where the legal entity is located or under whose law it was constituted is required to adopt the necessary measures to establish the criminal, civil or administrative liability of the legal entity in accordance with national law. The sanctions against the legal entity must be dissuasive and proportionate to the grave nature of the acts and may be of a monetary character. The liability of the legal entity is incurred without prejudice to the criminal liability of the individual responsible.

237. It should also be noted that the United Nations Convention against Transnational Organized Crime, in article 10, requires States parties to establish the liability of legal entities in their national law. This liability covers all the offences established by the Convention. Thus, if an act criminalized under a universal anti-terrorism instrument is committed by an organized criminal group operating at a transnational level for profit and comes under the legal competence of a State party to the Convention, the prosecution of the legal entity can be initiated on that basis.¹²¹

¹²¹Regarding complementarity between the universal anti-terrorism instruments and the United Nations Convention against Transnational Organized Crime, see Part II, Section 5, below.

INFORMATION SOURCES AND ILLUSTRATIONS

238. An interesting example of criminal liability of a legal entity is given by French law. In a general way, and under article 121-2 of the Penal Code, “legal entities, with the exception of the State, are criminally liable for offences committed on their account by their organs or representatives, according to the distinctions set out in articles 121-4 to 121-7”. The drafter has made sure here that this possibility can be used to respond to the terrorist activities of specific groups.

239. The conditions for application of such liability are those provided by ordinary law. Firstly, the terrorist group or movement must have legal personality. The name or nature of the legal structure disguising the criminal activities has little bearing. It could be a commercial company, an association, a political grouping or even a foundation. Without legal personality, a terrorist group would be classifiable as a criminal conspiracy. Thus, any legal entity that facilitates the movement of terrorists, acquisition of weapons or explosives, public representation of their action or relations with foreign countries is punishable under criminal law. Second, the offence must be committed by the organs or representatives of the legal entity. In other words, the acts in question must be those of either the person or persons representing the legal entity, i.e. its duly authorized legal representatives, or of its representatives under its statutes or even by virtue of a delegation of powers or formal agreement. This notion of representation is broad enough to trigger the criminal liability of a legal entity that commissions the terrorist. Moreover, this notion, which encompasses more than the directorial function, is also intended to include persons who act in the interests of the person presumed to be represented. This notion of interest requires one last condition. The offence must be committed on behalf of the legal entity. It therefore involves an element of imputability, deriving from the consequences of the criminal action. Consequently, criminal liability can be imputed if the aims of the legal entity are terrorist in nature.

240. If these conditions are satisfied, the legal entity is punishable under criminal law, which does not, of course, exclude the possibility of punishing the natural person who has contributed as perpetrator or accomplice. The penalties applicable to legal entities are of two types. In the first place, they may be liable to a fine at a rate five times that applicable to natural persons. Second, article 131-39 of the French Penal Code lists penalties that can be defined as restricting or removing rights and liberties. These are nevertheless suited to the nature of legal entities. A legally incorporated group found guilty of an act of terrorism risks being dis-

solved. This “civil death” is the most severe penalty that can be inflicted on a legal entity. The decision to dissolve depends, however, on two alternative conditions. The group must either have been created for the purpose of committing a terrorist act or else it must have been diverted from its original objective for the same purpose and the felony or misdemeanor must be punishable, where the perpetrator is a natural person, by a term of imprisonment of more than three years. Another penalty is to prohibit, either permanently or temporarily, the direct or indirect pursuit of one or more of the entity’s corporate or professional activities. A temporary prohibition may not exceed five years. In addition, article 422-5 of the Penal Code specifies that the prohibited activity must be an activity in the course of which or on the occasion of which the offence was committed. Finally, all other applicable penalties provided for in article 131-39 of the same Code can be handed down as either alternative or cumulative penalties. These include permanent closure or closure for up to five years of one or more establishments of the enterprise used to commit the offence and placement under judicial supervision for a maximum period of five years. Other sentencing options are permanent or temporary disqualification from public tenders, permanent or temporary prohibition on issuing cheques, confiscation of the object used to commit the offence, and public display or dissemination of the sentence. Some of these penalties, however, are not applicable to public-law corporations, political parties or associations, or unions or institutions representing workers that have committed a terrorist offence.¹²²

RECOMMENDATIONS

241. *Criminal liability of legal entities*

1. With the exception of the State, legal entities shall be criminally liable for offences provided for in articles [to be determined, but with an obligation to provide for criminal liability for the financing of terrorism] of this law when such offences have been committed on their account by their organs or representatives.
2. Legal entities that are liable shall be punished by [penalties taking into account the seriousness of the offence. These may be a fine; dissolution; prohibition to carry on, permanently or for a specified period, directly or indirectly, one or more corporate or professional activities; placement under judicial supervision for a specified period; closure, permanent or for a specified period, of one or more of the establishments of the enterprise used to commit the offences; permanent disqualification from public tenders or such disqualification for a specified period; prohibition, permanent or for a defined period, on making a public appeal for funds; prohibition, for a defined period, to draw cheques, except those allowing the withdrawal of funds by the drawer from the drawee or certified cheques, or to use credit cards; confiscation of the object used or intended for commission of the offence or of the object forming its proceeds; or public display of the sentence or its dissemination by either print media or other type of broadcasting].

¹²²Public-law corporations, political parties and groups, and professional associations are immune to dissolution or placement under judicial supervision. Institutions representing staff may not be dissolved.

Part II

MEASURES TO ENSURE EFFECTIVE CRIMINALIZATION

242. The universal instruments can be beneficial as a legal basis in countering terrorism only if States agree to take steps to ensure effective criminalization. This involves establishing penalties (I), prohibiting the encouragement or toleration of terrorist acts (II) and adopting measures relating to the financing of terrorism (III) and the marking of explosives (IV). It is useful also to examine the complementarity between the universal counter-terrorism instruments and the Convention against Transnational Organized Crime and the Protocols thereto (V).

I. PENALTIES

243. Preventing acts of terrorism is a necessity in any State governed by the rule of law in order to neutralize the threat that could undermine the public peace. However, such action in itself is insufficient if sanctions are not applied and the law ceases to be a deterrent. What defines criminal law is precisely the punishment. In the area of terrorism, sentencing is especially important. That is true in regard to society as a whole, which, when confronted with the intent of perpetrators of such crimes to create a climate of fear, refuses to succumb to another kind of fear by not condemning those acts.

244. In this respect, the universal instruments are useful as a legal basis in combating terrorism only if States agree to their practical application. By providing for the criminalization of terrorist acts, these instruments constitute wholly essential tools in the fight against this scourge. However, States have to be committed to implementing them in order that they become effective tools. How indeed can the criminalization of a wrongful act be effective if an appropriate penalty is not at the same time provided for?

245. While the universal instruments stipulate that penalties for terrorism have to be severe, in line with the principle of proportionality of the gravity of the punishment to the gravity of the act,¹²³ they do not specify their levels. Fixing penalties comes within the sovereignty of States. It is for each State party to impose appropriate punishments in accordance with its obligation to penalize acts of terrorism; hence the necessity of incorporating international instruments into domestic law. The system of penalties must be especially dissuasive and heavy sentences need to be laid down for perpetrators of such acts.

246. While the universal instruments do not cover the issue of informants,¹²⁴ the Convention against Transnational

Organized Crime¹²⁵ does. In cases where a terrorist offence comes within the scope of the Convention against Transnational Organized Crime and that Convention has been ratified by a State, the system of informants will be applicable.

247. Collaboration by informants has the dual advantage of discouraging associations of criminals, through their exposure to the ever-present risk of denouncement, and of dissuading existing associations from carrying out their plans. Some national legislators are relatively lenient towards informants in the area of sentencing. In France, for example, this takes the form of a statutory ground for exemption from punishment or a reduction in penalty.¹²⁶ There are similar laws in Italy, Great Britain, Portugal and Spain. Such a mechanism warrants consideration by national legislators.

RECOMMENDATIONS

248. It is recommended that articles which criminalize acts of terrorism should state the following: "... shall be punished by [penalty taking into account the seriousness of the offence]". In cases where the collaboration mechanism is adopted by national legislators, the related provisions of the Convention against Transnational Organized Crime may be incorporated as set out below.

249. *Terrorism: special provisions*

1. Persons who participate or who have participated in acts of terrorism and who:

(a) Supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

- i. The identity, nature, composition, structure, location or activities of terrorists;
- ii. Links, including international links, with other terrorists;
- iii. Offences that terrorists have committed or may commit or who

¹²³For example, the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, in article 2, requires parties to the Convention to impose "severe penalties" in cases of hijacking; the 1973 Internationally Protected Persons Convention, in article 2, paragraph 2, requires each State party to make such crimes punishable and to impose "appropriate penalties which take into account their grave nature", and the 1979 Hostages Convention, in article 2, stipulates that each State party must make the offences set forth punishable "by appropriate penalties which take into account the grave nature of those offences"; this is also the case in article 5 of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and in article 4(b) of the Terrorist Bombings Convention, while article 4 of the 1999 Financing of Terrorism Convention requires States to adopt such measures as may be necessary to "make those offences punishable by appropriate penalties which take into account the grave nature of the offences".

¹²⁴An "informant" may be defined as a person whose intervention makes it possible either to prevent an offence and limit its effects or to identify its perpetrators and thus arrest them.

¹²⁵See article 26 of the Convention against Transnational Organized Crime. In that text, States are required to take measures to encourage members of organized criminal groups to testify, to supply information on offences committed and on the group's structure and activities and to provide concrete help to the authorities with a view to depriving organized criminal groups of their resources. As a "reward", States may enact provisions for mitigating punishment, for granting immunity from prosecution, subject, however, to consistency with fundamental principles of domestic law, and for providing protection similar to that granted to witnesses (such as a change of address or identity).

¹²⁶Under article 422-1 of the French Criminal Code, "any person who has attempted to commit an act of terrorism shall be exempt from punishment if, having informed the judicial or administrative authority, he makes it possible to prevent the completion of the offence and to identify any other perpetrators".

(b) Provide factual, concrete help to competent authorities that may contribute to depriving terrorists of their resources or of the proceeds of crime, may be granted a reduction in their punishment [to be specified].

2. In accordance with fundamental principles of domestic law, immunity from prosecution may be granted to a person who provides substantial cooperation in the investigation or prosecution of an offence referred to.

3. Protection of such persons shall be guaranteed [to be specified].

4. Where a person referred to in paragraph 1 of this article located in one State party can provide substantial cooperation to the competent authorities of another State party, the States parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State party of the treatment set forth in paragraphs 1 and 2 of this article.

II. PROHIBITING THE ENCOURAGEMENT OR TOLERATION OF ACTS OF TERRORISM

250. International law lays down a number of requirements linked to the duty of States to refrain from encouraging or

tolerating terrorist activities (1). These governmental obligations have to be reflected in proactive measures (2).

1. Extent of States' obligations in the light of international law

251. The general obligation on States to refrain from tolerating terrorist activities requires them to adopt proactive measures in order to prevent those acts. This involves specific steps that States must implement as part of their duty of diligence under general international law. Such measures are set forth essentially in resolutions of the General Assembly and Security Council.

252. *Diligence* is a traditional obligation in general international law. It is a corollary of sovereignty, which requires a State to ensure, to the extent of its means, that activities do not develop from territories under its jurisdiction or control and infringe foreign interests located there or violate the rights of other States.

253. That duty of diligence is particularly applicable in the area of terrorism. The General Assembly expressly addressed this issue in adopting resolution 2625 (XXV), which is seen in both case-law and legal literature as reflecting customary law.¹²⁷ The obligations relating to non-toleration, in a State's territory, of activities organized for the purpose of carrying out terrorist acts in other States are also contained in the principle, as set out in that resolution, concerning the duty not to intervene in matters within the domestic jurisdiction of any State. The corollary of

the principle of non-intervention in matters coming within a State's jurisdiction is that "no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State".¹²⁸

254. Also, States' duty to cooperate in preventing terrorist acts stems, as a corollary, from all the obligations relating to the concept of territorial sovereignty.

255. On 9 December 1985, the General Assembly adopted resolution 40/61 by consensus. In paragraph 6 of the operative part of that resolution, the General Assembly called upon all States to "refrain from organizing, instigating, assisting or participating in terrorist acts in other States". Those States are under an obligation not to "acquiesce in activities within their territory directed towards the commission of such acts in other States".

256. This highlights the extent of the obligations devolving upon States. Not only may they not in any way support groups which carry out terrorist acts against another State; they may not even tolerate the development of such acts in their own territory, which entails adopting proactive prevention and enforcement measures. Such duties have been referred to in several resolutions of the General Assembly¹²⁹ and Security Council.¹³⁰

257. The duty of diligence in connection with combating terrorism has been expanded further in relation to States'

¹²⁷General Assembly resolution 2625 (XXV), of 24 October 1970, on principles of international law concerning friendly relations and cooperation among States.

Resolutions of the General Assembly are not limited solely to recommendations; they can also be declarations of customary rules. Also, a General Assembly resolution formulated in normative language will be binding on any State that accepts it (see, in this connection, International Court of Justice (ICJ), Advisory Opinion, Namibia, ICJ Reports 1971, p. 50, para. 105). Such a resolution, in which the customary rule is set forth, will thus be incorporated into the legal system of the State in question without any specific procedural formality. Such situations may come as a surprise. Criminal court judges are not in the habit of referring to penal norms that are not clearly set forth in their domestic criminal laws. However, this rule provided valid grounds, for example, for the forced return of Klaus Barbie to France, without an extradition convention with Bolivia, to stand trial for crimes against humanity pursuant to the General Assembly resolution of 13 February 1946. See C.A. Lyon, ch. acc., 8 July 1983, and Ch. crim., 6 October, 1983, JDI 1983, pp. 781 ff.

¹²⁸See resolution 2625 (XXV). This obligation under general international law was referred to by the International Court of Justice in its ruling of 27 June 1986 in the case concerning military and paramilitary activities in and against Nicaragua, Judgment, ICJ Reports 1986, p. 200, which states that the *opinio juris* of States can be deduced, with the necessary caution, from their attitude vis-à-vis certain General Assembly resolutions.

¹²⁹See resolutions 34/145 of 17 December 1979 and 38/130 of 19 December 1983.

¹³⁰See resolution 1189 (1998) of 13 August 1998 on condemnation of the attacks in Nairobi and Dar-es-Salam.

obligation to ensure the observance of both human rights (a) and humanitarian law (b).¹³¹

(a) International human rights law

258. International human rights law requires States, through their organs of government, not only to observe the relevant rules in this area but also to ensure that individuals under their jurisdiction do not infringe the rights of other individuals,¹³² by adopting appropriate prevention and enforcement measures. From these principles it can be inferred that States have a duty of vigilance in opposing terrorism as an activity that may violate the fundamental rights of individuals, in particular the right to life, liberty and security and the right to live free from fear.¹³³ This link between the protection of basic rights and the fight against terrorism has been underscored in several General Assembly resolutions entitled “Human rights and terrorism”.¹³⁴ In those resolutions the General Assembly describes the “acts, methods and practices of terrorism” as activities “aimed at the destruction of human rights, fundamental freedoms and democracy”, reaffirming that States have an obligation to promote and protect human rights and fundamental freedoms and that every individual should strive to secure their universal and effective recognition and observance. To that end, the General Assembly calls upon States “to take all necessary and effective measures in accordance with relevant provisions of international law,

including international human rights standards, to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever and by whomever committed”.

(b) International humanitarian law

259. International humanitarian law places States under an obligation to fight terrorism. Article 1 common to the four 1949 Geneva Conventions, which forms part of the general principles of international humanitarian law,¹³⁵ requires States to respect and enforce humanitarian law. This means that States not only have an obligation to comply with humanitarian law themselves when participating in armed conflict, which excludes terrorism as a combat method; they also have a duty to use the means at their disposal to ensure that individuals also comply with it.¹³⁶

260. This duty of vigilance was included by the Security Council in the preamble to resolution 1373 (2001) of 28 September 2001, in which it reaffirms the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998), namely that every State “has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts”.

2. Proactive measures within the framework of States’ obligations

261. The general obligation on States to refrain from tolerating terrorist activities requires them to adopt proactive measures with a view to preventing and penalizing those activities. The specific obligations devolving upon States by virtue of the twelve universal instruments are discussed in this paragraph and in the paragraphs of the present *Guide* which deal with criminal proceedings and international cooperation in criminal matters. It is, however, useful first to examine the measures that States have committed themselves to implement as part of their duty of diligence under general international law. These measures have been affirmed essentially in General Assembly and Security Council resolutions. They correspond in substance to measures advocated by States at the time of the debates on terrorism which were held in the General Assembly following the attacks of 11 September 2001.

262. Formulated primarily as recommendations, these measures have in some instances over the last ten years been worded in a far more exhortative or even compelling manner where involving resolutions of the Security Council acting under Chapter VII of the Charter of the United Nations.

263. The reference text on preventive and punitive measures against terrorist activities is the Declaration on Measures to Eliminate International Terrorism of 9 December 1994, annexed to resolution 49/60 supplemented by resolution 51/210 of 17 December. After stressing the “imperative need to further strengthen international cooperation between States in order to take and adopt practical and effective measures to prevent, combat and eliminate all forms of terrorism that affect the international community as a whole”, the General Assembly stated the following in operative paragraph 5 of the Declaration:¹³⁷

¹³¹See, in this connection, resolution 1269 (1999) of 19 October 1999, in which the Security Council emphasizes “the necessity to intensify the fight against terrorism at the national level and to strengthen, under the auspices of the United Nations, effective international cooperation in this field on the basis of the principles of the Charter of the United Nations and norms of international law, including respect for international humanitarian law and human rights”.

¹³²See article 2 of the International Covenant on Civil and Political Rights, 1966, the text of which is reproduced in an annex to the present *Guide*. A similar obligation can be found in article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

¹³³See General Assembly resolutions 52/133 of 12 December 1997 and 54/164 of 17 December 1999.

¹³⁴See General Assembly resolutions 52/133 of 12 December 1997, 54/164 of 17 December 1999 and 56/160 of 19 December 2001.

¹³⁵See ICJ, Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America), Judgment, ICJ Records 1986, p. 200.

¹³⁶The duty of vigilance and the obligation to prevent terrorist activities have also been affirmed in connection with diplomatic and consular protection. In the case concerning diplomatic and consular staff in Teheran, the ICJ concluded that the State of Iran had failed to ensure the protection of the American Embassy against acts of hostage-taking, an obligation which, according to the Court, was based not only on the 1961 and 1963 Vienna Conventions on diplomatic and consular relations but also on “general international law”; ICJ, Case concerning United States diplomatic and consular staff in Teheran, Judgment of 24 May 1980, ICJ Reports 1980, p. 3.

¹³⁷See the Declaration at <http://www.un.org/depts/dhl/dhlf/resources/terrorism/docs/ares4960.pdf>.

“States must also fulfil their obligations under the Charter of the United Nations and other provisions of international law with respect to combating international terrorism and are urged to take effective and resolute measures in accordance with the relevant provisions of international law and international standards of human rights for the speedy and final elimination of international terrorism, in particular:

“(a) To refrain from organizing, instigating, facilitating, financing, encouraging or tolerating terrorist activities and to take appropriate practical measures to ensure that their respective territories are not used for terrorist installations or training camps, or for the preparation or organization of terrorist acts intended to be committed against other States or their citizens;

“(b) To ensure the apprehension and prosecution or extradition of perpetrators of terrorist acts, in accordance with the relevant provisions of their national law;

“(c) To endeavour to conclude special agreements to that effect on a bilateral, regional and multilateral basis, and to prepare, to that effect, model agreements on cooperation;

“(d) To cooperate with one another in exchanging relevant information concerning the prevention and combating of terrorism;

“(e) To take promptly all steps necessary to implement the existing international conventions on this subject to which they are parties, including the harmonization of their domestic legislation with those conventions;

“(f) To take appropriate measures, before granting asylum, for the purpose of ensuring that the asylum-seeker has not engaged in terrorist activities and, after granting asylum, for the purpose of ensuring that the refugee status is not used in a manner contrary to the provisions set out in subparagraph (a) above”.

264. These measures are presented by the General Assembly as constituting obligations for States, as is indicated by the reference to “provisions of international law with respect to combating international terrorism”. With the exception of subparagraph (c), the adoption of these measures appears as a specific obligation arising out of the Charter and from the general duty to combat terrorism. Already in resolutions dating from 1989 and 1991, similar measures had been indicated as mandatory for States in order to “fulfil their obligations under international law”.¹³⁸

265. In resolution 1373, the Security Council decided that all States should suppress the recruitment of members of terrorist groups (a) and eliminate the supply of weapons to terrorists (b).¹³⁹ This may be included in the criminalization of acts of support for or in preparation of terrorist offences.¹⁴⁰ States should also operate effective border controls and prevent the forgery of travel documents and identity papers (c).

¹³⁸See resolutions 44/29 of 4 December 1989 and 46/51 of 9 December 1991.

¹³⁹See article 2(a) of the resolution.

¹⁴⁰See Part I, Section III, of the present *Guide*, concerning acts of support for or in preparation of terrorist offences.

(a) Suppressing the recruitment of members of terrorist groups

266. The reader is invited to refer to Part I, Section III, of the present *Guide*, which deals with acts in preparation or support of terrorist offences.

(b) Arms trafficking

267. With regard to the supplying of weapons, the universal instruments do not detail the measures to be taken in this respect; reference can, however, be made to another international text. The Security Council notes “with concern” in resolution 1373¹⁴¹ “the close connection between international terrorism and transnational organized crime ... (and) arms trafficking”. Terrorists readily employ the same methods as transnational organized crime groups.¹⁴² One of the protocols supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Convention)¹⁴³ of 31 May 2001, namely the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition,¹⁴⁴ can effectively assist in the fight against terrorism, especially since, apart from the fact that weapons can be of material use in terrorist acts, arms trafficking is undeniably a means of financing those activities.

268. Two conditions are required for this text to apply: (1) the offence committed must come within the scope of application of the Palermo Convention¹⁴⁵ and (2) States have to be parties to the Protocol in order to use it as a legal basis, it being stipulated that to become party to a protocol supplementing the Convention a State must also be a party to the Convention.¹⁴⁶

269. The purpose of the Protocol, as set out in its article 2, is to promote, facilitate and strengthen cooperation among States parties with a view to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. Its scope of application is relatively broad. The definition of firearm in article 3 of the Protocol refers to “any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas”. The Protocol also covers ammunition, parts and components, as defined in its article 3, and article 5 of the Protocol establishes a series of offences relating to

¹⁴¹See article 4 of resolution 1373.

¹⁴²See, on this key point, Section VI of this Part, which examines the complementarity between the anti-terrorism instruments and the Convention on Transnational Organized Crime and the Protocols thereto.

¹⁴³General Assembly resolution 55/25 of 15 November 2000, available at www.un.org.

¹⁴⁴General Assembly resolution 55/255 of 31 May 2001, available at www.un.org.

¹⁴⁵For this to be the case, the terrorist offence has to have been committed by an organized criminal group, as defined in the Convention (see its article 2), operating at a transnational level, within the meaning of the Convention, for the purpose of obtaining a financial benefit, as referred to in the Convention.

¹⁴⁶In article 37, paragraph 2 of the Convention.

illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

270. In general terms, the Protocol is aimed at the establishment of a legal framework authorizing the legitimate manufacture and transfer of firearms while at the same time allowing the detection of illicit transactions and facilitating the prosecution of offenders and the fixing of penalties.

RECOMMENDATIONS

271. In order to comply with the Protocol, it is recommended that the acts set out in its article 5 should be established as criminal offences on the basis of the definitions contained in the Protocol.

272. Either the relevant national legislation should be appropriately modified (by an amendment to the criminal code) or an article dealing with the matter should be inserted in the criminal code, if no such provision exists, or be incorporated in a law against terrorism and transnational organized crime.

273. The wording could be as follows:

Illicit manufacturing of and trafficking in firearms, their parts, components and ammunition

1. Illicit manufacturing of firearms, their parts and components and ammunition shall mean the manufacturing or assembly of firearms, their parts and components or ammunition:

— Without marking the firearms at the time of manufacture [in accordance with the provisions of domestic law on marking] or

— From parts and components illicitly trafficked or

— Without a licence or authorization [from the competent authority].

The illicit manufacturing of firearms, their parts and components and ammunition, where committed intentionally, shall be punished by [penalty taking into account the seriousness of the offence].

2. Illicit trafficking in firearms, their parts and components and ammunition shall mean the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of the Republic to that of another State if there is no lawful authorization or if the firearms are not marked [in accordance with the provisions of domestic law on marking].

Illicit trafficking in firearms, their parts and components and ammunition, where committed intentionally, shall be

punished by [penalty taking into account the seriousness of the offence].

3. Anyone who intentionally and illicitly falsifies, obliterates, removes or alters the marking(s) required on firearms [in accordance with the provisions of domestic law on marking] shall be punished by [penalty taking into account the seriousness of the offence].

4. Any attempt to commit an offence established in accordance with this article shall be punished by [penalty taking into account the seriousness of the offence].

5. The organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence established in accordance with this article shall be punished by [penalty taking into account the seriousness of the offence].

(c) Controlling borders and preventing forgery of travel documents and identity papers

274. The Security Council decided in resolution 1373 that, in order to prevent the movement of terrorists or terrorist groups, States should institute effective border controls and means to prevent the forgery of travel documents and identity papers.¹⁴⁷

275. Competent national authorities are thus required to operate effective controls on the issuance of identity papers and travel documents and adopt measures to prevent their counterfeiting, forgery or fraudulent use.

276. In this connection, the Convention against Transnational Organized Crime and articles 11 to 13 of its supplementary protocols on trafficking in persons and smuggling of migrants require States to strengthen border controls and other security arrangements by requiring international carriers to check travel documents of passengers (article 11), by taking the necessary measures to prevent, where possible, the falsification of travel documents and identity papers (article 12) and by verifying travel documents within a reasonable time at the request of a State party (article 13).

RECOMMENDATIONS

277. In this regard, fraudulent alteration of stated facts in a public document through a process specified by law should be established as a criminal offence. Legislators may criminalize both physical alteration of the document and falsification of its substance or content which thus leaves no trace. Manufacture and fraudulent use of forged documents should also be established as criminal offences.

¹⁴⁷See paragraph 2(g) of resolution 1373. With regard to airport security, ICAO possesses specific programmes.

III. FINANCIAL MATTERS

278. Paragraph 1 of resolution 1373 refers not just to criminalizing the financing of terrorism. It also requires States to freeze funds of persons who commit or attempt to commit terrorist acts, report suspicious transactions to the authorities,¹⁴⁸ and control alternative remittance systems (informal funds transfer networks or systems, informal banking networks and the *hawala* system)¹⁴⁹ and non-profit institutions. It is not a question of criminalizing such procedures but of ensuring that they are not fraudulently used. The joint measures adopted by the Security Council in response to terrorism as a threat to international peace and security thus require States to take measures against persons, groups, organizations and their financial assets.

279. An obligation in paragraph 1(d) of the resolution stipulates that States should “prohibit their nationals or any

persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons”. This part of the resolution creates a separate obligation, which does not appear in the 1999 Financing of Terrorism Convention, since the latter does not deal with financial assistance to terrorists or to terrorist entities.

280. It is useful to examine the issues of identification, freezing and preservation of financial assets of terrorists and terrorist organizations (1), transfer of funds (2) and non-profit organizations (3).

1. Identification, freezing, seizure and preservation of financial assets of terrorists and terrorist organizations

Resolution 1373, paragraph 1

- (...)
 (c) “freeze (...) funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts (...);
 (d) “prohibit their nationals or any persons (...) within their territories from making any funds (...) available (...) for the benefit of (such) persons”.

COMMENTARY

281. Resolution 1373 requires States to freeze without delay funds and other financial assets of persons who commit, or attempt to commit, or participate in or facilitate terrorist acts. This obligation also applies to entities owned or controlled, directly or indirectly, by such persons. The resolution does not mention the previous Security Council resolutions laying down the obligation to freeze financial assets of specific persons and entities; nor does it refer to any lists of these persons or entities published in former resolutions. The general obligation to freeze terrorists’ financial assets, as set out in the resolution, is thus independent of the system established by those earlier resolutions. The general obligation imposed by the resolution regarding the freezing of such assets is similar to the obligation contained in the 1999 Financing of Terrorism

Convention concerning the taking of measures to freeze funds used or allocated for the purpose of being used to commit terrorist offences.¹⁵⁰ On this point the Convention is, however, broader than the resolution, since it requires States parties to take measures for the identification, detection, freezing, seizure and forfeiture of funds used or intended to be used for the perpetration of terrorist acts, which States are called upon, under the Convention, to establish as criminal offences, whereas the resolution requires only the freezing of financial assets of terrorists and of those who support them.

282. The resolution and the Convention allow States wide scope in devising a system for asset freezing, seizure and forfeiture. Taking into account the very broad wording used in paragraph 1(c) of the resolution, the Counter-Terrorism Committee adopted the interpretation that the resolution called for the freezing of financial assets of persons or entities suspected of terrorism whether or not they appeared on the lists established by the Security Council or were identified as such by States. However, given the lack of a uniform definition of terrorism from one State to another, the different levels of legal protection accorded to those whose names appear on these lists and the fact that States are often reluctant to communicate the full factual information on which they base their suspicions, doubts arose regarding the obligation to freeze financial assets of alleged terrorists designated by States. The Security Council’s

¹⁴⁸This provision is concerned with banks and financial institutions that conduct banking transactions. These establishments must thus be able to notify and inform the public authorities regarding such suspicious transactions.

¹⁴⁹*Hawala* is the name given to a technique of offsetting remittances that is regularly employed between members of the same ethnic community in their commercial transactions. Their relationships are based on strong social cohesion and total trust in the legitimacy of their dealings. These offsetting arrangements are not in themselves illegal unless already prohibited but they may be used for clandestine financing or money-laundering operations, which will be virtually undetectable owing to the impenetrable nature of the community’s internal relations and the difficulty of verifying allegations as to the source of the money. The *hawala* system is one of the various types of informal transfer system existing in the world.

¹⁵⁰See article 8, paragraphs 1 and 2.

establishment of a list of persons suspected of terrorism in accordance with procedures agreed upon at the international level has allayed those concerns.¹⁵¹ In view of the foregoing, many States' response to Security Council decisions regarding freezing is now based on resolution 1373 (2001) and not on previous resolutions.

The 1999 Financing of Terrorism Convention

283. Even though the 1999 Convention is a convention to establish criminal offences, it also contains important provisions such as the stipulation that bank secrecy may not be invoked against investigators or that an offence may not, for the purposes of extradition or mutual legal assistance, be

regarded as a fiscal offence. Preventive measures based on generally accepted anti-money-laundering principles have been incorporated (article 17). All judicial officers and police investigators consulted prior to and during the drafting of this Convention emphasized one particular point: the difficulty involved in obtaining proof in the financial sphere. The Convention accordingly includes several provisions that are based directly on generally accepted anti-money-laundering principles whose purpose is to encourage States parties to take internal measures requiring financial institutions to better identify their usual or potential customers, in particular by prohibiting the holding of anonymous accounts, formally identifying account holders and maintaining for at least five years all records on transactions carried out.

The 1999 Financing of Terrorism Convention

Article 8

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.
2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.
3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.
4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.
5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

COMMENTARY

284. The Convention establishes a general obligation for States parties to require financial institutions and other financial intermediaries to take necessary measures for the identification of their customers (including account beneficiaries), to pay special attention to unusual or suspicious transactions and to report suspicious transactions. States parties are required to cooperate in preventing the offences set forth in the Convention "by taking all practicable meas-

ures, inter alia, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories",¹⁵² including:

"(a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences" (set forth in the Convention) and

"(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize

¹⁵¹In its previous resolutions 1267 (1999) and 1333 (2000), the Security Council, acting under Chapter VII of the Charter, decided that Member States of the United Nations should freeze the respective assets of the Taliban and Usama Bin Laden and of any entities owned or controlled by them, as designated by the Sanctions Committee (now called the 1267 Committee, being a Security Council committee established pursuant to resolution 1267 (1999), as per paragraph 1 of the *Guidelines of the Committee for the conduct of its work*, drawn up pursuant to each of the resolutions and adopted on 7 November 2002. Unlike resolution 1373 (2001), those resolutions establish an "autonomous" regime for freezing financial assets, whereby lists of persons or entities whose funds are to be frozen have been published and modified from time to time under the authority of the Security Council. Because the 1267 Committee is a special committee of the Security Council, it is composed in the same way as the Council. It has published a list of persons and entities connected or associated with the Taliban and the Al-Qaida organization (the most recent update of the list is available on the internet site of the Sanctions Committee established pursuant to resolution 1267 (1999) at <http://www.un.org/french/docs/sc/committees/1267/1267ListFren.htm>). A single consolidated list is now published pursuant to resolution 1390 (2002); see U.N. SCOR, fifty-seventh session, 4452nd

meeting, United Nations, document S/INF/58 (2002). The decisions and rules of the 1267 Committee include detailed provisions concerning procedures for making additions to the list of persons and entities whose assets must be frozen and for dealing with de-listing requests. The Committee, meeting in closed sessions, determines such persons and entities on the basis of information provided by Member States of the United Nations. Proposed additions should to the extent possible include "a narrative description of the information that forms the basis or justification for taking action". Persons and entities may submit de-listing requests following the procedure laid down by the Committee. A person or entity wishing to be de-listed may petition the Government of residence and/or citizenship to request a review of the case. If the Government to which the petition is submitted decides to pursue the de-listing request, it should seek the agreement of the original designating Government. If no agreement is reached, the case may be referred by the petitioned Government to the Committee (and, at a secondary level, to the Security Council). The updated lists, including the list of de-listed names, are communicated without delay to Members States. The list is also published on the website of the 1267 Committee (<http://www.un.org/french/docs/sc/committees/1373/>).

¹⁵²See article 18, paragraph 1.

the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity”.

285. One important aspect of the Convention is its aim of combating the setting up of front companies, which disregard all the usual standards relating to the establishment of commercial corporations. To that end, States parties should, taking into account the provisions of the Convention, consider adopting rules such as:

— Prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

— With respect to legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and structure of the customer and imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

— Requiring financial institutions to maintain all records on transactions for at least five years.

286. States parties are also required to establish and maintain information channels between their competent agencies and services (which could be financial intelligence units) to facilitate the secure and rapid exchange of information on offences set forth in the Convention.¹⁵³

REMARKS

287. The provisions of the Convention and those of the resolution fully complement each other. The Convention requires every State party to take appropriate measures “for the identification, detection and freezing or seizure¹⁵⁴ of any funds used or allocated for the purpose of committing the offences” set forth in the Convention and “for the forfeiture¹⁵⁵ of funds used or allocated for the purpose of committing (those) offences, and the proceeds derived from such offences”.¹⁵⁶ The resolution lays down the following detailed obligations for States in regard to the freezing of

¹⁵³See article 18, paragraph 3(a).

¹⁵⁴Neither resolution 1373 (2001) nor the Financing of Terrorism Convention defines “freezing” but article 2(f) of the United Nations Convention against Transnational Organized Crime includes a definition of this term: “‘Freezing’ or ‘seizure’ shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority”.

¹⁵⁵In article 2(g) of the Convention against Transnational Organized Crime, the term “confiscation” is defined as the permanent deprivation of property by order of a court or other competent authority.

¹⁵⁶See article 8, paragraphs 1 and 2. In article 2(e) of the Convention against Transnational Organized Crime, the expression “proceeds of crime” is defined as any property derived from or obtained, directly or indirectly, through the commission of an offence.

terrorists’ assets: “[they] shall (...) freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities”.¹⁵⁷

288. In implementing these binding provisions,¹⁵⁸ financial institutions and other professions involved in financial transactions have to utilize the most efficient measures available for identification purposes. States parties should accordingly consider adopting concrete measures such as prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable and ensuring that such institutions verify the identity of the real owners of such transactions; verifying, when necessary, the legal existence and structure of the customer by obtaining proof of incorporation, including information concerning the customer’s name, legal form, address, directors and provisions regulating the power to bind the entity; reporting promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith; and maintaining, for at least five years, all “necessary records” on domestic and international transactions. This provision is thus a general one which is directed at the identification, detection, freezing, seizure and confiscation of financial assets of terrorists.¹⁵⁹

289. Countries that are parties to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Vienna Convention) or the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990 Strasbourg Convention) may, with regard to money-laundering offences, have instituted similar freezing, seizure and forfeiture mechanisms to those laid down by the Convention in respect of terrorists’ funds.

290. The 1988 Vienna Convention requires States parties to adopt the necessary measures to enable confiscation of proceeds derived from drug trafficking and the necessary measures to enable their authorities to identify, trace and freeze or seize proceeds, property or instrumentalities connected with such offences, for the purpose of confiscation.

291. The 1990 Strasbourg Convention contains similar provisions, which are not restricted to drug-related offences but are concerned with all offences.

¹⁵⁷See also article 1(c) of the 1999 Financing of Terrorism Convention (annex 2 of the present *Guide*).

¹⁵⁸See article 18 of the 1999 Financing of Terrorism Convention (annex 2 of the present *Guide*).

¹⁵⁹The previous Security Council resolutions required States to freeze the assets of persons and organizations appearing on the list published under the authority of the Security Council.

292. To implement those two conventions, States parties have generally incorporated in their criminal law various mechanisms for the freezing, seizure and confiscation of proceeds derived from offences. These mechanisms empower the competent authorities to seize or freeze assets if they suspect or consider that such assets are proceeds of an offence and to confiscate them (or to confiscate assets of equivalent value), generally after a person has been convicted of the offence in question.

293. Resolutions 1267 (1999) and 1390 (2002) require Member States to seize (but not confiscate) the assets of persons or organizations appearing on lists published under the authority of the Security Council. These resolutions present two characteristics. First, they require every Member State to freeze assets belonging to persons or entities irrespective of whether the Member State suspects or is satisfied that those persons or entities are engaged in terrorist activities. Secondly, the resolutions call for the freezing of assets of persons whose names appear on the lists but without specifying any time limit for the freezing operation. The resolutions thus transform into a potentially permanent measure what is usually a temporary measure intended to prevent assets from being taken out of a country during investigations or judicial proceedings.

294. Two distinct international requirements accordingly exist in regard to the freezing, seizure and forfeiture of terrorists' assets. One calls for a comprehensive mechanism to be established allowing the freezing, seizure and confiscation of the assets of terrorists, as provided for in article 8 of the 1999 Convention and (in connection with seizure) in article 1(c) of resolution 1373. Countries which already have a general legislative framework for the freezing, seizure and forfeiture of assets derived from offences may, where appropriate, envisage amending that framework in order to bring it into line with the provisions of the Convention and the resolution in this respect. The other calls for the seizure of assets of persons and entities that appear on lists published under the authority of the Security Council (or designated as such by other States). In the case of States parties whose constitutional systems allow for direct application of treaties, there is no need for these provisions to be incorporated. However, if States so wish, the legislative basis for the inclusion of such lists may be established within the same instrument or in a separate law provided that the legislation presents the characteristics of the Security Council resolutions examined above.

ILLUSTRATION

295. *The example of Belgium:*

Royal decree of 2 May 2002 on restrictive measures against certain persons and entities with a view to combating terrorism

Article 1. Funds, other financial assets or economic resources of persons and entities that commit, or attempt to commit, terrorist acts or facilitate or participate in such acts, as included in the lists established by a decision taken pursuant to the European Regulations established on the basis of resolution 1373 (2001), adopted by the United Nations Security Council on 28 September 2001, and also financial services or other related services provided for the benefit of such persons and entities shall be regulated in accordance with the provisions of Council Regulation (EC) No. 2580/2001, of 27 December 2001, on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, established on the basis of resolution 1373 (2001) adopted by the United Nations Security Council on 28 September 2001.

Article 2. The penalties set forth in the Law of 11 May 1995 shall apply.

Article 3. The Belgian Minister for Foreign Affairs and Minister of Finance shall be responsible, each with regard to matters within his purview, for the execution of the present Decree. (Unofficial translation)

RECOMMENDATIONS

296. *Confiscation*

In the case of a conviction in respect of an offence set forth in [reference to the relevant article(s) relating to the financing of terrorism], confiscation of the funds and property used or allocated for the purpose of committing such offence, funds and property forming the subject of the offence and proceeds derived from the offence shall be ordered. If the funds and assets to be confiscated cannot be produced, confiscation may be ordered for the equivalent value.

297. *Freezing of funds*

The competent authority [named] may order the freezing of funds and property of persons and organizations committing or attempting to commit any of the offences set forth in [relevant articles].

298. *Provisional measures*

The competent authority [named] may order any provisional measures, at the expense of the State, including the freezing of funds or financial transactions relating to property of whatsoever nature capable of being seized or confiscated.

299. *Seizure*

The competent authority [named] may seize property connected with the offence being investigated, in particular funds used or allocated for the purpose of committing the offences set forth in [relevant articles], and also the proceeds derived from such offences and any evidence that might allow their identification.

2. Transfer of funds

300. In addition to the measures referred to in subsection 1 above, Security Council resolution 1373 requires categorically that all States prohibit the making of any funds available, directly or indirectly, to persons involved in such acts.¹⁶⁰

301. The 1999 Financing of Terrorism Convention, in its article 18, requires States to prevent the financing of terrorism by various means, including the imposition of obligations on financial institutions such as the requirement to “report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith”.¹⁶¹

302. These measures are similar in substance to those set out, in connection with combating the laundering of proceeds of crime, in the Convention on Transnational Organized Crime.¹⁶² However, the obligations imposed on financial institutions in connection with countering terrorism must, in accordance with the 1999 Financing of Terrorism Convention, go further than those measures.

303. Thus, under paragraph 1 of resolution 1373, States have to ensure that financial institutions, including their directors and employees, report, on their own initiative, to the authorities any facts that might be evidence of an act of financing terrorism.

304. In order to be effective, the obligation on these persons to report suspicious financial transactions to their authorities should be accompanied by appropriate penalties for violations.

305. This obligation does not apply solely to financial institutions. For such measures to be fully effective, all professions involved in financial transactions (for example, external chartered accountants, lawyers, notaries and tax consultants) have to be subject to this obligation, hence the reference in article 18, paragraph 1(b), of the 1999 Convention to “other professions involved in financial transactions”.

RECOMMENDATIONS

306. *Reporting of suspicious financial transactions*

1. All financial institutions and other professionals involved in financial transactions [establish a list] having a reasonable suspicion that funds or financial services are linked to an offence relating to the financing of terrorism [relevant articles] or are being used to facilitate any such offence shall promptly inform the [competent authority] thereof.

2. Failure to report the facts stated in paragraph 1 of this article shall be punished by [appropriate penalty].

3. Non-profit organizations

307. The problem posed by organizations which have or claim to have charitable, social or cultural goals had been raised by the General Assembly in paragraph 3(f)¹⁶³ of resolution 51/210 of 1996.

308. Significantly, Security Council resolution 1373 requires all States to “prevent and suppress the financing of terrorist acts”¹⁶⁴ and the 1999 Convention for the Suppression of the Financing of Terrorism calls upon States parties to cooperate in “prohibiting in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission” of offences relating to the financing of terrorism.¹⁶⁵

309. In the light of evidence that non-profit organizations are occasionally used as a means of funnelling money for terrorist ends, it is recommended to States that they review

the adequacy of their laws and regulations in relation to entities that may be abused for the purpose of financing terrorism. Since non-profit organizations are particularly vulnerable, countries must ensure that they cannot be used by terrorist organizations posing as legitimate entities. Terrorists should be prevented from exploiting legitimate entities as a means of financing their criminal activities, in particular through the clandestine diversion of funds intended for legitimate ends to support terrorist organizations.¹⁶⁶

310. To that end, specific procedures could be provided for the registration of non-profit associations and organizations, the recording in appropriate registers and declaration of any donation considered significant and the keeping of full accounts clearly showing all financial transactions of such associations or organizations. These obligations may be made the subject of penalties. Also, any association or organization which knowingly encourages, instigates, organizes or commits any of the offences referred to as a terrorist offence should be banned or dissolved.

¹⁶⁰See paragraph 1(d) of the resolution.

¹⁶¹See article 18, paragraph 1(b)(iii), of the 1999 Convention.

¹⁶²See article 6 of the Convention against Transnational Organized Crime.

¹⁶³The text of this subparagraph is recalled in the sixth preambular paragraph of the Financing of Terrorism Convention.

¹⁶⁴Subparagraph (a) of paragraph 1.

¹⁶⁵Article 18, paragraph 1(a).

¹⁶⁶The FATF secretariat has published a paper on international best practices in curbing the misuse of non-profit organizations. See *Combating the Abuse of Non-Profit Organizations: International Best Practices*, 11 October 2002, www.fatf-gafi.org/TerFinance_fr.htm.

INFORMATION SOURCES AND ILLUSTRATIONS

311. One of the FATF special recommendations on terrorist financing (No. VIII) focuses on non-profit organizations, requiring countries to ensure that they cannot be misused (i) by terrorist organizations posing as legitimate entities (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures, and (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations. The second part of the recommendation deals more specifically with non-profit organizations. The *Guidance notes* state that “jurisdictions should ensure that such entities may not be used to disguise or facilitate terrorist financing activities, to escape asset-freezing measures or to conceal diversions of legitimate funds to terrorist organizations”. The use of non-profit organizations to channel funds for terrorist activities is a disturbing trend in that it is difficult to distinguish such funds from other funds managed by the same non-profit entity. The only difference between a legal and an illegal donation to or by a non-profit organization is the underlying intention of the transaction. Also, it is possible that in some cases the management of the entity is unaware that it is being used for illegal purposes.

RECOMMENDATIONS

312. *Procedure for registration of non-profit associations and organizations*

1. Any non-profit association or organization wishing to collect or receive, grant or transfer funds must be entered in the register of non-profit associations or organizations in accordance with procedures defined by [to be specified].
2. The initial application for registration shall include the forenames, surnames, addresses and telephone numbers of all persons given responsibility for the operation of the association, in particular the president, vice-president, general secretary, members of the board of directors and treasurer, as applicable. Any change in the identity of such persons must be reported to the authority responsible for maintaining the register.

313. *Donations made to non-profit associations and organizations*

1. Any donation made to an association or organization referred to in the preceding article for an amount equal to or greater than the sum of [to be specified] shall be recorded in a register maintained for this purpose by the association or organization, including full details of the donor and the date, nature and amount of the donation. The register shall be kept for a period of [to be specified] years

and be submitted, upon request, to any authority responsible for the oversight of non-profit organizations and, upon demand, to judicial police officers in charge of a criminal investigation.

2. Where the person donating a sum greater than that amount wishes to remain anonymous, the record may omit the donor’s identification but the association or organization shall be required, upon demand, to disclose the donor’s identity to judicial police officers in charge of a criminal investigation.

314. *Mandatory declarations for non-profit associations and organizations*

1. Any cash donation for an amount equal to or greater than the sum of [to be specified] shall be declared to the financial intelligence unit¹⁶⁷ in accordance with defined procedures.

2. Any donation shall also be declared to the financial intelligence unit if the funds are suspected of being connected with a terrorist operation or the financing of terrorism.

315. *Accounting and bank accounts of non-profit associations and organizations*

1. Non-profit associations or organizations shall be required to keep accounts in accordance with the standards in force and to furnish the authorities designated for that purpose with their financial statements for the preceding year within [to be specified] months following the close of their financial year.

2. Non-profit associations and organizations shall be required to deposit in a bank account with an approved banking institution all sums of money submitted to them as donations or in connection with transactions which they are called upon to carry out.

316. *Banning of non-profit associations and organizations*

Notwithstanding the conduct of criminal proceedings, the competent authority may, by administrative decision, order a temporary ban on or the dissolution of non-profit associations or organizations which knowingly encourage, instigate, organize or commit offences set forth in [relevant articles].

317. *Penalties applying to non-profit associations and organizations*

Any violation of the provisions of this article shall be punished by one of the following penalties:

- (a) A fine [amount to be specified];
- (b) A temporary ban on the activities of the association or organization for a maximum period of [to be specified];
- (c) The dissolution of the association or organization.

¹⁶⁷On the subject of financial intelligence units (FIUs), see below, Part IV, Section III.2, “Cooperation in combating the financing of terrorism”.

IV. MARKING OF EXPLOSIVES

318. Following numerous attacks perpetrated against civil aviation using plastic explosives, in particular the Lockerbie bombing of 21 December 1988, the Security Council and subsequently the General Assembly¹⁶⁸ have urged the International Civil Aviation Organization¹⁶⁹ to continue its research into devising an international regime for the marking of explosives. That should make it easier to detect plastic or sheet explosives. The Montreal Convention on the Marking of Plastic Explosives for the Purpose of Identification was accordingly signed on 1 March 1991.¹⁷⁰ ICAO is its depositary.¹⁷¹

319. The Convention requires each contracting State to prohibit and prevent the manufacture, use and movement into or out of its territory of unmarked explosives and to mark all explosives in its territory or, failing that, destroy them or render them ineffective within a period of three to fifteen years from the entry into force of the Convention in the State concerned. The applicable period is three years in the case of explosives not held by military or police authorities and fifteen years in the case of explosives held by those authorities.

320. For the purposes of the Convention:¹⁷²

1. "Explosives" means explosive products, commonly known as "plastic explosives", including explosives in flexible or elastic sheet form, as described in the Technical Annex to this Convention;¹⁷³
2. "Detection agent" means a substance as described in the Technical Annex to this Convention which is introduced into an explosive to render it detectable;
3. "Marking" means introducing into an explosive a detec-

tion agent in accordance with the Technical Annex to this Convention;

4. "Manufacture" means any process, including reprocessing, that produces explosives;

5. "Duly authorized military devices" include, but are not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned;

6. "Producer State" means any State in whose territory explosives are manufactured.

321. The Convention also established a commission of experts, the International Explosives Technical Commission (IETC), appointed by the ICAO Council. This Commission is responsible for reporting on developments in the manufacture, marking and detection of such explosives. To that end, it has issued recommendations for amendments to the Technical Annex to the Convention, which sets out a chemical description of the explosives referred to in the Convention and of the agents to be used in order to make explosives more detectable by means of vapour pressure. Also, ICAO may provide technical assistance in the drafting of implementation laws.

322. Following recommendations by IETC, various amendments to the Technical Annex have been proposed by the ICAO Council to States parties. In June 2002, IETC recommended an amendment to part 2 of the Technical Annex. On 31 May 2004, the Council agreed to the recommendation and decided that a draft Assembly resolution would be presented for adoption.¹⁷⁴

¹⁶⁸See respectively resolution 635 of 14 June 1989 and resolution 44/29 of 4 December 1989.

¹⁶⁹See the ICAO website: <http://www.icao.int>.

¹⁷⁰See the text of the Montreal Convention reproduced in an annex to the present *Guide*.

¹⁷¹As it is also the depositary of the conventions on safety of civil aviation and the 1988 protocol on airport security. See the addresses of depositaries in annex 10 of the present *Guide*.

¹⁷²Article 1 of the Convention.

¹⁷³See the Technical Annex to the Convention, which forms an integral part of the Convention, in annex 2 of the present *Guide*.

¹⁷⁴The text of the draft resolution appears in an ICAO working paper, which can be viewed at: http://www.icao.int/icao/en/assembl/a35/wp/wp062_fr.pdf.

V. COMPLEMENTARITY BETWEEN THE UNIVERSAL ANTI-TERRORISM INSTRUMENTS AND THE CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO

323. The Security Council noted “with concern” in resolution 1373¹⁷⁵ “the close connection between international terrorism and transnational organized crime”. In its resolution 55/25 of 8 January 2001 on the Convention against Transnational Organized Crime, the General Assembly noted “with deep concern the growing links between transnational organized crime and terrorist crimes”. The Ministers of Justice of the French-speaking African States noted these links “with deep concern” in the Cairo Declaration¹⁷⁶ and the Port-Louis Declaration.¹⁷⁷ Combined occurrences of these two crime forms are gradually overtaking isolated occurrences. Because terrorists readily employ the same methods as transnational organized crime groups, it is possible to make effective use of the legislative tools for combating organized crime in order to counter terrorism. An act defined as a criminal offence in a universal anti-terrorism instrument may in effect be committed by an organized criminal group operating on a transnational scale for purposes of profit. The complementarity between organized crime and terrorism can also be found on a more operational level. By way of illustration, the Convention against Transnational Organized Crime requires the criminalization of corruption, an offence which sometimes precedes one of the offences set forth in the twelve universal anti-terrorism instruments.

324. For that reason, it is strongly recommended to States that have not yet ratified and/or incorporated the Convention against Transnational Organized Crime and the three protocols thereto,¹⁷⁸ namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition,¹⁷⁹ that they become parties to these instruments.

¹⁷⁵See paragraph 4 of resolution 1373.

¹⁷⁶Regional Ministerial Conference of French-speaking Countries of Africa for the promotion of ratification of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, Cairo, Egypt, 2-4 September 2003, Cairo Declaration, 4 September 2003 (General Assembly, fifty-eighth session, document A/C.3/58/4, 16 October 2003).

¹⁷⁷Port Louis Declaration, Mauritius, 27 October 2004, Regional Ministerial Conference of French-speaking Countries of Africa for promotion of the ratification and implementation of the United Nations conventions on combating terrorism, corruption and transnational organized crime and of the universal counter-terrorism instruments, 25-27 October 2004.

¹⁷⁸As stipulated in article 37, paragraph 2, of the Convention, a State must be a party to the Convention in order to become a party to one of its supplementary protocols.

¹⁷⁹These texts are available at the website www.un.org. UNODC can also provide a paper version of the texts. There is a legislative guide on the implementation of the Convention and the Protocols thereto, which is available at the website: www.un.org, or may be requested as a paper-based document from UNODC.

325. The main measures set out in the Convention against Transnational Organized Crime and its supplementary Protocols are summarized below.

Convention against Transnational Organized Crime

326. The purpose of the Convention is to “promote cooperation to prevent and combat transnational organized crime more effectively” (article 1).

327. The structure of the Convention is as follows:

- It defines and standardizes terminology.
- It requires States to establish:
 - Specific offences;
 - Special control measures (on money-laundering, corruption, etc.);
 - Procedures for seizing the proceeds of offences;
 - Sophisticated cooperation mechanisms (extradition, mutual legal assistance, investigative techniques, etc.);
 - Appropriate training programmes and specific measures concerning information and research;
 - Preventive measures.

328. Its scope of application is broad (article 3, paragraph 1(a) and (b)). The Convention applies to the prevention, investigation and prosecution of offences established in accordance with its provisions (articles 5, 6, 8 and 23), serious crime as defined in its article 2 and offences established in accordance with the Protocols, where the offence concerned is transnational in nature and involves an organized criminal group.

— An offence is transnational in nature if it is committed in more than one State, or a substantial part of its preparation, planning, direction or control takes place in another State, or it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State or has substantial effects in another State (article 3, paragraph 2).

— An organized criminal group means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing a serious crime or an offence established in accordance with the Convention in order to obtain, directly or indirectly, a financial or other material benefit (article 2(a)).

— A structured group is defined as a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure (article 2(c)). Offences are classed as serious crime. That means conduct constituting an offence under domestic law punishable by a maximum deprivation of liberty of at least four years or a more serious penalty (article 2(b)).

329. The Convention requires States parties to criminalize four basic offences:

- Participation in an organized crime group (article 5);
- Laundering of proceeds of crime (article 6);
- Corruption (article 8) and
- Obstruction of justice (article 23).

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

330. The purposes of the Protocol are to prevent and combat trafficking in persons, to protect and assist the victims and to promote cooperation among States.

331. The Protocol applies to the prevention, investigation and prosecution of the offences established in accordance with its provisions, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

332. Trafficking in persons is defined (article 3(a)) as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or the simple situation of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over the victim, for the purpose of exploitation, which includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour, slavery or practices similar to slavery, servitude or the removal of organs. The consent of the victim is irrelevant where any of the means set forth above have been used.

333. There are special provisions relating to children. These deal with the recruitment, transportation, transfer or harbouring of a child for the purpose of exploitation. Such acts are to be regarded as trafficking in persons even if they do not involve any of the unlawful means set forth. The term child means any person under eighteen years of age.

334. States parties are required to criminalize acts of trafficking, as defined in article 3, as well as attempting to commit, participating as an accomplice in and organizing the commission of an offence set forth in the Protocol.

335. The Protocol recognizes that victims of trafficking are particularly vulnerable and contains additional measures of protection and support, namely protection of the privacy and identity of victims, provision of necessary information on court and administrative proceedings, physical safety of victims, protection against further victimization and provision of assistance and care to victims.

Protocol against the Smuggling of Migrants by Land, Sea and Air

336. The purpose of the Protocol, as stated in its article 2, is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States parties, while protecting the rights of smuggled migrants.

337. The definition of smuggling is given in article 3(a). It is the procurement of the illegal entry of a person into a State party of which the person is not a national or a permanent resident in order to obtain, directly or indirectly, a financial or other material benefit.

338. As stated in its article 4, the Protocol applies to the prevention, investigation and prosecution of the offences set forth in article 6, where they are transnational in nature and involve an organized criminal group.

339. States parties have to criminalize actual smuggling of migrants and also the acts of producing or procuring a fraudulent travel or identity document, enabling a person to remain in a State without complying with the necessary requirements and participating as an accomplice in such offences or organizing their commission. Cases where an offence is committed in circumstances that endanger the safety of migrants or entail inhuman or degrading treatment are to be established as aggravating circumstances.

*Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition*¹⁸⁰

340. The purpose of the Protocol (article 2) is to promote, facilitate and strengthen cooperation among States parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms. This text harmonizes terminology (article 3) since it standardizes the definitions of firearm, trafficking and tracing. It links exportation to the existence of import licences (article 3(e) and article 10, paragraph 2). It requires the marking of firearms and the maintenance of information in relation to them for the purpose of facilitating their identification and tracing (articles 7 and 8). It lays down security measures aimed at preventing the diversion of firearms (article 11). It requires States to establish as criminal offences the illicit manufacturing of, trafficking in and removal of markings on firearms (article 5). It seeks to strengthen international cooperation in regard to tracing and prevention (articles 12 and 13).

¹⁸⁰See, above, 2(b), "Arms trafficking", in the section on prohibiting the encouragement or toleration of acts of terrorism.

Part III

PROCEDURAL LAW

341. In the context of globalization, criminals often attempt to evade domestic legal systems by moving from one State to another or by operating in the territory of more than one State. That is very true of terrorism, as the international community has unfortunately observed. The latter's main concern is that no act of terrorism should go unpunished and that all such acts be penalized wherever they are perpetrated. It is thus important not to allow terrorists any possibility of finding a safe haven in any national territory (I). That calls for the provision of rules of jurisdiction regarding the initiation of proceedings (II), with specific powers devolving upon aircraft commanders (III). Universal condemnation of terrorism and the prosecution of offenders must nevertheless be in conformity with the law. It is therefore important that procedural rules meet the standard of "fair treatment" (IV). For criminal trials to be effective, specific measures have to be considered in regard to witness protection (V). A number of measures can also be taken in connection with victim compensation (VI).

I. NO SAFE HAVEN FOR TERRORISTS

1. Right of asylum, refugee status and terrorism

342. By resolution 1373, the Security Council decided that all States should “deny safe haven to those who finance, plan, support, or commit terrorist acts”.¹⁸¹ Also, in that resolution, the Security Council¹⁸² expressly called upon all States to “[e]nsure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists”.

343. Although States are obliged under international humanitarian law to accord protection through the grant of asylum to any person fleeing political persecution, such protection may in no circumstances apply to terrorists. Accordingly, as emphasized above, acts of terrorism cannot be justified.¹⁸³ Security Council resolution 1373 calls on States to work together urgently in order to prevent and suppress terrorist acts and to complement international cooperation by additional measures at the national level.

344. That resolution, if properly interpreted and implemented, is consistent with the principles of international refugee law.

345. With regard to recognition of refugee status, the adoption of measures aimed at preventing asylum from being granted to terrorists stems first and foremost from application of the 1951 Geneva Convention relating to the Status of Refugees. The 1951 Convention is not applicable “to any person with respect to whom there are serious reasons for considering that (...) he has been guilty of acts contrary to the purposes and principles of the United Nations”.¹⁸⁴ In operative paragraph 5 of resolution 1373, acts of terrorism are declared to be contrary to those purposes and principles. Article 33 of the 1951 Convention states that the benefit of protection may not be “claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country”. The duty to refrain from granting asylum to persons suspected of terrorism can also be linked to the general obligation to refrain from providing a safe haven for terrorist activities.¹⁸⁵ The adoption of

measures similar to those set forth in General Assembly resolution 49/60¹⁸⁶ was also advocated by the Security Council in its resolution 1269 (1999).¹⁸⁷ States are called upon to “take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not participated in terrorist acts”.

346. It should be emphasized that the purpose of Security Council resolution 1373 in requesting States, *inter alia*, to ensure that asylum-seekers have not committed terrorist acts is to prevent those countries from opposing their extradition on political grounds. The procedures for obtaining refugee status under domestic law should thus be revised in full conformity with the 1951 Geneva Convention.¹⁸⁸

347. Ensuring that the perpetrators or organizers of terrorist acts or those who facilitate such acts do not abuse refugee status and that claims of political motivation are not recognized as grounds for rejecting requests for extradition of alleged terrorists involves establishing jurisdiction with respect to terrorism. This is a crucial point. The most important form of jurisdiction that States are required to establish under the international instruments is for the purpose of ensuring that there is no safe haven for terrorists. The principle of *aut dedere, aut judicare*, whereby a country that does not extradite an alleged offender must assume jurisdiction to judge that individual in accordance with its own laws, is now the fundamental principle of the counter-terrorism instruments.

348. The 10 conventions and protocols which require States to punish defined offences (i.e. all the anti-terrorism instruments except the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft and the 1991 Plastic Explosives Convention) also require them to establish jurisdiction whenever an alleged offender is present in their territory and they do not extradite that person to a State that has established jurisdiction pursuant to the convention concerned.

¹⁸¹See paragraph 2(c).

¹⁸²See paragraph 3(g).

¹⁸³See, above, in Part I, “No possible justification”.

¹⁸⁴Article 1. F(c).

¹⁸⁵See resolution 2625 (XXV), entitled “Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations”, 24 October 1970.

¹⁸⁶Resolution 49/60 of 9 December 1994.

¹⁸⁷Resolution 1269 of 19 October 1999.

¹⁸⁸See the website of the Office of the United Nations High Commissioner for Refugees, <http://www.unhcr.ch/cgi-bin/texis/vtx/home>, and the United Nations document entitled “Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms; Protection of human rights and fundamental freedoms while countering terrorism”. Report of the Secretary-General, General Assembly, A/58/266, 8 August 2003, <http://www.un.org/french/ga/58/documentation/list2.html>.

ILLUSTRATION

349. The French legislature has adopted specific measures concerning aliens suspected of acts of terrorism. For the prevention of terrorist acts, French law draws on instruments from administrative and civil law. Thus, terrorist conduct can constitute grounds for refusal to grant French nationality since such status is subject to a requirement of good character and to the absence of any convictions for acts of terrorism, as provided for in article 21-23 of the Civil Code. The administrative authority has the power to oppose the entry, into national territory, of aliens suspected of terrorist activities. Perpetrators of terrorist acts are denied refugee status. The commission of acts of terrorism

can constitute grounds for refusing right of asylum. In addition to the penalties applicable to terrorists of any nationality, a terrorist of foreign nationality can incur a territory ban. This possibility is the outcome of the Law of 24 August 1993 on immigration control and conditions of aliens' entry, reception and residence in France. Foreigners found guilty of joining an association with a view to committing a terrorist offence are also liable to this ban. In addition, a territory ban automatically gives rise to deportation upon completion of the sentence of imprisonment. Deportation is thus the corollary of a territory ban. Deportation should be distinguished from expulsion, which is a measure aimed at removing from the territory an alien whose presence may seriously threaten law and order.

2. *Aut dedere, aut judicare*

350. The *aut dedere, aut judicare* principle translates the "extradite or prosecute" alternative contained in resolution 1373 and in the 12 universal anti-terrorism instruments:

— Resolution 1373: "Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice (...)"¹⁸⁹ and "(...) that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists".¹⁹⁰

— Some examples taken from the universal counter-terrorism instruments:

1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation: "The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution (...)"¹⁹¹

1999 International Convention for the Suppression of the Financing of Terrorism: "The State Party in the territory of which the alleged offender is present shall, (...) if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State (...)"¹⁹²

351. With regard to the offences set forth in it, the above-mentioned Convention requires a State party, upon receiving information that an offender or alleged offender may be present in its territory, to investigate the facts contained in the information. Upon being satisfied that the circumstances so warrant, the State party must ensure that person's presence, notify the other States parties that have established jurisdiction over the offence and indicate whether it intends to exercise its jurisdiction and prosecute the person concerned.¹⁹³ If it does not agree to extradite the person to the State party that claims jurisdiction, the

State party must, without exception, submit the case to its prosecution authorities.¹⁹⁴

352. This principle (*aut dedere, aut judicare*) expresses the common cause of States in fighting the most serious forms of crime. It represents an alternative for the requested State whenever the extradition of an individual present in its territory is requested: that State must either hand over the person concerned to the requesting State or try the case itself.

353. The obligation to prosecute does not, however, mean that an allegation which, following an investigation, is established as unfounded has to be brought before a court. The constitutional law and substantive and procedural rules of the country concerned will determine to what extent the prosecution must be pursued but the universal instruments require States parties to initiate the prosecution process as for a serious offence under domestic law.

354. The fact that the perpetrator of a terrorist act who is present in a State's territory must be prosecuted or extradited regardless of the place where the act was committed corresponds to the concept of universal jurisdiction. The matter of jurisdiction should thus be considered in the light of the universal counter-terrorism instruments. The other circumstances in which States parties are required to establish jurisdiction over defined offences will vary depending on the nature of the terrorist activity in question and the development of anti-terrorist measures over time, as examined below.¹⁹⁵

INFORMATION SOURCES AND ILLUSTRATIONS

355. At the twenty-first meeting of the Standing Committee of the Sixth National People's Congress, held on 23 June 1987, China adopted a direct approach to this obligation to establish jurisdiction: "The twenty-first meeting of the Standing Committee of the Sixth National People's Congress resolves that the People's Republic of

¹⁸⁹Paragraph 2(e).

¹⁹⁰Paragraph 3(g).

¹⁹¹Article 7.

¹⁹²Article 10.

¹⁹³Article 9, paragraphs 1 and 2.

¹⁹⁴Article 10, paragraph 1.

¹⁹⁵See Section II, "Jurisdiction".

China shall, within the scope of its treaty obligations, exercise criminal jurisdiction over crimes prescribed in the international treaties to which the People's Republic of China is a party or has acceded".¹⁹⁶

356. The appendices to the legislative provisions then quote articles of five of the global conventions, which stipulate that a State party in whose territory an alleged offender is present must, if it does not extradite that person, submit the case to its competent authorities, without exception and without undue delay, for the purpose of prosecution, thus clearly demonstrating the statutory intention to establish such jurisdiction.

357. Section I, article 4, of the Russian Federation law on the suppression of terrorism, of 25 July 1998, achieves the same effect. That article stipulates as follows: "The Russian Federation, guided by the interests of ensuring the safety and security of the individual, society and the State, shall prosecute persons within its territory who are involved in terrorism [term defined elsewhere as including various offences provided for in the conventions], including in circumstances where the acts of terrorism were planned or

committed outside the Russian Federation but caused harm to the Russian Federation, and in other circumstances provided for by the Russian Federation's international agreements".¹⁹⁷

358. The *Implementation Kits* prepared by the Commonwealth Secretariat¹⁹⁸ for the application of the various protocols and conventions do not include any provisions expressly mentioning the "extradite or prosecute" principle found in the global instruments but do refer to this issue in detailed notes and explain that States must, in order to fulfil their obligations in this regard, promulgate legislative measures allowing prosecution when the only jurisdictional basis is the alleged offender's presence in their territory. The Commonwealth Secretariat model laws provide several options of jurisdiction based on the presence of the alleged offender in the territory of the State in question or a more restricted jurisdiction based on the presence of the person concerned in the territory of the State plus the impossibility of extradition, which would presumably arise from an impediment such as a legitimate fear of discriminatory prosecution or a constitutional ban on the extradition of nationals.

II. JURISDICTION

359. Every State has to determine the limits of its legislative and criminal jurisdiction. The issue of legal jurisdiction and competence of domestic courts can be dealt with in various ways. Four methods for delimiting the scope of application of the law in this respect are conceivable. First, the most standard is the territoriality principle, whereby the criminal law applicable is that of the place of commission of the offence irrespective of the nationality of the perpetrator or the victim. The rationale of this principle is that a sovereign State has a duty to maintain order in its territory and punish wrongdoers. Secondly, there is the nationality principle. Under this system, the offence is judged in accordance with the domestic law of the offender (active nationality) or of the victim (passive nationality). Thirdly, under the protective principle, only the fundamental interests of the injured State are taken into account. That State will then have jurisdiction regardless of the place of commission of the offence and the nationality of the offenders. Finally, there is the universality principle. Under this system it is the State in which the offender is arrested that will have jurisdiction.

360. International priority is based, as has been stated, on the "extradite or prosecute" principle. The corollary of this principle means the establishment of universal jurisdiction for cases where a State in whose territory the alleged

offender is present does not have jurisdiction by reason of its own jurisdictional rules and refuses to extradite. States are being urged to assert their jurisdiction on more traditional bases: principle of territorial jurisdiction, either ordinary or extended, notably to flag vessels or State-registered aircraft; nationality principle, in particular active nationality, establishing the jurisdiction of the State whose national is suspected of committing the offence, but also passive nationality, whereby the State of which the victim is a national has jurisdiction to prosecute the offender. Finally, some conventions provide for States' optional jurisdiction where the alleged offender is a stateless person or the offence involved State interests.

361. The draft comprehensive convention on international terrorism provides that States parties are free to exercise criminal jurisdiction under any other jurisdictional basis provided for by their domestic law but without prejudice to the rules of general international law.¹⁹⁹

362. Also, the 1999 Financing of Terrorism Convention lays down a basic rule in cases of conflict of jurisdiction. It is stipulated in article 7, paragraph 5, that "[w]hen more than one State Party claims jurisdiction over the offences set forth [in the Convention], the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance".

¹⁹⁶*National Laws and Regulations on the Prevention and Suppression of International Terrorism: Part I*, United Nations Legislative Series (United Nations publication, No. E/F.02.V.7), p.115.

¹⁹⁷*Ibid.*, pp. 347–361.

¹⁹⁸All these documents are available at www.thecommonwealth.org/law/model.html.

¹⁹⁹See, in this connection, the judgment of the International Court of Justice in the case concerning the arrest warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), in which the Court points out several times that the existence of State criminal jurisdiction is conditioned by international law. See the ICJ website at <http://www.icj-cij.org/cijwww/cijhome.htm>.

363. This original rule is included in the current draft of the comprehensive convention on international terrorism referred to above.

364. States are also under an obligation to conduct an inquiry, to report findings and to advise of their intent to exercise jurisdiction. The universal instruments require a State in whose territory the alleged offender is present to inform the State of which that person is a national whether it intends to exercise jurisdiction. All the instruments that define criminal offences (that is, all the conventions examined in the present publication except the 1963 Tokyo Convention and the 1991 Plastic Explosives Convention) lay down that every State party which has an obligation to

ensure the presence of a person for the purpose of prosecution or extradition must conduct a preliminary inquiry into the alleged offence and must report its findings and indicate its intent to exercise jurisdiction to the States concerned. The 1980 Nuclear Material Convention uses more generic language, stipulating that a State party which is required to ensure the presence of the alleged offender for the purpose of prosecution or extradition must take appropriate measures and communicate them to the States concerned.

365. It is useful to examine the bases of jurisdiction – universality (1), territoriality (2), nationality (3) and protective principle (4) – in the light of the universal counter-terrorism instruments.

1. Universality principle

366. Certain interests warrant universal protection. These involve the interests of the international community. In such instances the universality principle is applied. It enables national jurisdiction to be asserted vis-à-vis perpetrators of particularly serious acts who are arrested in the national territory. This is so with acts of terrorism. The application of the universality principle should not be overlooked in cases involving attempts to commit terrorist offences whenever they are punishable.

367. The draft comprehensive convention on international terrorism incorporates the *aut dedere, aut judicare* rule, of which the universality principle is a corollary. Every State party should be required to exercise its criminal jurisdiction when an alleged offender is present in its territory and it does not extradite that person to a State having jurisdiction in the matter, either because it has to do so or because it is able to do so under the terms to be expressly provided for in the convention.

2. Territoriality principle

368. The concept of territorialism is capable of several interpretations. Accordingly, principal territorial jurisdiction will apply in cases where the act constituting an offence is committed in the territory of a State (a); subsidiary territorial jurisdiction can arise in the event of collusion (b); and there may be extended territorial jurisdiction in cases where spaces are deemed part of a territory and also in indivisible or connected situations (c).

(a) Principal territorial jurisdiction: an act constituting an offence committed in the territory of a State

369. Principal territorial jurisdiction is established upon the commission of an offence in the territory of a State party. Legislators should be mindful to specify that a territory comprises not only land but also maritime areas and air space linked to it.

370. National law may be regarded as applicable provided that at least one of the acts constituting the offence was committed in the State's territory. Nevertheless, the concept of acts constituting an offence can be considerably expanded. It may go beyond the simple notion of constituent elements. Acts in preparation or prerequisites for an offence, if carried out in the territory, can qualify for domestic law jurisdiction.

(b) Subsidiary territorial jurisdiction: collusion

371. Pure territorialism has to be viewed in conjunction with subsidiary territorialism, where the law applies to acts

of collusion committed in the territory of a State. Cases can occur where an act of collusion is committed abroad while the related principal offence is committed in a State's territory. The question of jurisdiction with regard to such act of collusion may then arise.

(c) Extended territorial jurisdiction

372. An extended conception of the territoriality principle should prompt legislators to treat certain spaces as part of the territory of a State. These involve ships and aircraft (1). This conception may lead the authorities to link offences committed abroad to a State's territory if there is indivisibility or connectivity (2).

1. Spaces deemed part of a territory: ships and aircraft

373. National law is applicable to offences committed on board or against national flag vessels or aircraft, wherever they may be located. Such jurisdiction is even exclusive if military means of transport are involved.

ILLUSTRATION

374. The Criminal Code of the Republic of Korea very clearly expresses these types of jurisdiction.²⁰⁰

²⁰⁰National Laws and Regulations on the Prevention and Suppression of International Terrorism: Part I, United Nations Legislative Series (United Nations publication, No. E/F.02.V.7), p. 331.

“Article 2 (*Territorial jurisdiction*) This Code shall apply both to Korean nationals and to aliens who commit crimes within the territory of the Republic of Korea.

...

“Article 4 (*Jurisdiction in respect of crimes committed by aliens on board a Korean vessel outside Korea*) This Code shall apply to aliens who commit crimes on board a Korean vessel or aircraft outside the territory of the Republic of Korea.”

2. Linkage of an offence to national territory: indivisibility or connectivity

375. Legislators are at liberty to extend territorial jurisdiction. It may be decided to apply national law to offences committed wholly abroad provided that they have indivisible or connective links with terrorist offences perpetrated within the territory.

376. The 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft requires States parties to establish jurisdiction over offences committed on board aircraft on the basis of their registration. The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft provides for the establishment of jurisdiction on the basis of registration, as do the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and its 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, which add the requirement that States parties establish jurisdiction on a territorial basis over the offences defined in those instruments. This new rule of territorial jurisdiction reflects the nature of these two instruments, which were developed as reactions to attacks on aircraft on the ground before and after flight and attacks on ground facilities such as airports.

377. The 1973 Internationally Protected Persons Convention also requires States parties to establish jurisdiction for offences committed in their territory or on board ships flying their flag or aircraft registered in their territory, as does the 1979 Hostages Convention.

378. The 1980 Nuclear Material Convention focuses on the protection and transit of nuclear material, requiring States parties to establish jurisdiction over offences involving such material on the basis of territoriality and the flag of the ship or registration of the aircraft involved. The 1988

Safety of Maritime Navigation Convention and its Fixed Platforms Protocol stipulate that States parties must establish jurisdiction on the basis of territoriality (i.e. in the case of the Protocol, location on the continental shelf of a State) and the flag of the vessel on board which an offence is committed. The 1997 Terrorist Bombings Convention and the 1999 Financing of Terrorism Convention both require States parties to establish jurisdiction on the basis of territoriality and the flag of a ship or registration of an aircraft.

379. Another form of jurisdiction or competence provided for in the 1997 Terrorist Bombings Convention and the 1999 Financing of Terrorism Convention is that relating to offences committed within the territory of one State that affect another State. Article 6 of the 1997 Terrorist Bombings Convention and article 7 of the 1999 Financing of Terrorism Convention may be divided into two categories. Article 6 of the 1997 Terrorist Bombings Convention stipulates in paragraph 1 that States parties must establish jurisdiction on the basis of territoriality, the flag of a vessel or registration of an aircraft and the nationality of the offender. Paragraph 2 of the same article refers to various jurisdictional bases which States parties may choose to invoke, such as the nationality of a victim or an attempt to compel the State concerned to do or refrain from doing any act. Article 7, paragraph 1, of the 1999 Financing of Terrorism Convention sets forth the same obligatory bases of jurisdiction as does the 1997 Terrorist Bombings Convention. Paragraph 2 of that article then lists the discretionary bases upon which jurisdiction may be established, similar to those set forth in paragraph 2 of article 6 of the 1997 Convention. With regard to these mandatory and discretionary bases of jurisdiction provided for under the 1997 and 1999 Conventions, it is useful to recall Security Council resolution 1373 (2001), which, in paragraph 2, subparagraphs (d) and (e), requires all States to:

“(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

“(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts.”

3. Nationality principle

380. Strict application of the territoriality principle should mean denying a State jurisdiction in regard to offences committed outside that State’s territory. However, the case may involve a State by reason of the nationality of the offender or the victim.

(a) Active nationality

381. Legislative jurisdiction is established on the basis of the nationality of the offender.

382. The 1973 Internationally Protected Persons Convention was the first of the universal anti-terrorism instruments to introduce the rule whereby a State party has to establish jurisdiction over any alleged offender who is a national of that State. The 1980 Nuclear Material Convention, the 1988 Safety of Maritime Navigation Convention and its Fixed Platforms Protocol, the 1997 Terrorist Bombings Convention and the 1999 Financing of Terrorism Convention all require jurisdiction to be established on the basis of the nationality of the alleged offender.

ILLUSTRATIONS

383. The Criminal Code of the Republic of Korea clearly states this type of jurisdiction: “*Article 3 (Jurisdiction with regard to crimes committed by Koreans outside Korea): This Code shall apply to all Korean nationals who commit crimes outside the territory of the Republic of Korea.*”

4. Protective principle

385. The nature of an offence may have consequences with regard to determining jurisdiction. A terrorist offence committed abroad can affect fundamental interests of another State or specified interests.

386. The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft and the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation stipulate that States parties must establish jurisdiction when the lessee of an aircraft has his principal place of business in their territory.

387. The 1973 Internationally Protected Persons Convention requires parties to establish jurisdiction over crimes committed against a person whose protected status derives from functions that he or she exercises on behalf of a State which is a party to the Convention.

388. The 1979 Hostages Convention, the 1980 Nuclear Material Convention, the 1988 Safety of Maritime Navigation Convention and its Fixed Platforms Protocol all define as offences acts of violence or threats used to compel a Government or an organization to do or refrain from doing an act. However, only the 1979 Hostages Convention expressly requires each State party to establish jurisdiction over an offence committed to compel that State to do or refrain from doing any act.

389. The 1988 Safety of Maritime Navigation Convention and its 1988 Protocol, the 1997 Terrorist Bombings Convention and the 1999 Financing of Terrorism Convention list that circumstance among the discretionary bases which a State may invoke to establish its jurisdiction.

ILLUSTRATION

390. Articles 129 and 129a of the German Criminal Code define the offences of forming, belonging to, supporting or recruiting for a criminal (article 129) or terrorist (129a) organization. Article 129b establishes the following jurisdiction, based on various State interests: “Articles 129 and 129a shall also apply to organizations abroad. If the offence relates to an organization outside the Member States of the European Union, those articles shall apply only if the offence was committed by virtue of an activity conducted within the territorial scope of application of the present law or if the perpetrator or the victim is a German national or is within German territory. In the latter case, a prosecution may be initiated only with the authorization of the Federal Ministry of Justice. Such authorization may be granted for individual cases or in general for the prosecution of future acts of a specific

(b) Passive nationality

384. Legislative jurisdiction is established on the basis of the nationality of the victim. A State party may establish its jurisdiction with regard to any victim who is a national of that State.

organization. In deciding whether to grant authorization, the Federal Ministry of Justice shall determine whether the activities of the organization concerned are directed against the fundamental values of a state order which respects human dignity or against the peaceful coexistence of peoples and whether such activities seem to be reprehensible when the entire circumstances are weighed up.”²⁰¹

Maintaining jurisdiction for purposes of extradition or prosecution following the arrest of an alleged offender

391. In practice, all the conventions that lay down criminal law obligations (that is, all except the Plastic Explosives Convention, which is not of a penal nature) establish the fundamental principle of “no safe haven for terrorists” by stipulating that a State in whose territory an alleged offender is present must arrest that person for the purpose of prosecution or extradition. The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft and the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation contain provisions requiring a State in whose territory an aircraft lands with the offender on board to establish jurisdiction. Most often, this is generally the same territory as that in which the offender is present but there have been cases where a hijacked aircraft has first landed in one State and then continued on to another State. In that event, the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft would require the State of registration, the State in whose territory the aircraft landed and the State in whose territory the suspect is eventually found all to establish jurisdiction and the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation also requires the State in whose territory the offence was committed to do so.

ILLUSTRATIONS

392. *Congo: Code of Criminal Procedure:*

Article 610

1. Any Congolese citizen who outside the territory of the Republic is guilty of an offence defined as a felony punishable under Congolese law may be prosecuted and judged by the Congolese courts.
2. Any Congolese citizen who outside the territory of the Republic is guilty of an offence defined by Congolese law as a misdemeanour may be prosecuted and judged by the Congolese courts if the offence is punishable under the leg-

²⁰¹See Germany, *Strafgesetzbuch* (Criminal Code), article 129b.

isolation of the country in which it was committed. With regard to misdemeanours constituting a violation of State security, forgery of the State seal or counterfeiting of legal tender, the offence shall, if committed outside the territory of the Republic, be punishable as an offence committed within the territory.

3. The provisions of paragraphs 1 and 2 above shall be applicable to perpetrators who acquired Congolese citizenship only after commission of the offence with which they are charged.

Article 611

Any person who in the territory of the Republic is an accessory to a felony or misdemeanour committed abroad may be prosecuted and judged by the Congolese courts if the offence is punishable both under the foreign law and under Congolese law provided that the perpetration of the offence defined as a felony or misdemeanour has been established by final decision of the foreign court.

Article 612

In the case of a misdemeanour committed against a private individual, proceedings may be instituted only upon application by the public prosecutor's office; they shall be preceded by a complaint by the aggrieved party or by an official accusation to the Congolese authority by the authority of the country where the offence was committed.

Article 613

In the cases referred to in the preceding articles, whether involving felonies or misdemeanours, no proceedings may take place if the accused can prove that he has been the subject of a final judgment abroad and, in the event of a conviction, that his sentence has been served or time-barred or that he has been granted a pardon.

Article 614

An offence shall be deemed to have been committed in the territory of the Republic if an act forming one of its constituent elements was carried out in the Congo.

Article 615

Any foreigner who outside the territory of the Republic is guilty as the perpetrator of or an accessory to a felony or misdemeanour constituting a violation of State security, forgery of the State seal or counterfeiting of legal tender may be prosecuted and judged in accordance with the provisions of Congolese law if he was arrested in the Congo or if the Government obtained his extradition.

Article 616

1. Any Congolese guilty of misdemeanours or petty offences concerning forestry, fishing, customs or indirect taxation matters in the territory of a neighbouring State may be prosecuted and judged in the Congo under

Congolese law if that State authorizes the prosecution of its nationals for the same offences committed in the Congo.
2. Reciprocity shall be legally established by international conventions.

Article 617

1. In the cases provided for in the present title, proceedings shall be instituted upon application by the public prosecutor's office at the place of residence of the accused or the place of his last known address or the place where he is found.

2. The Supreme Court may, upon application by the public prosecutor's office or by the parties, refer the case for trial by a court nearer to the scene of the felony or misdemeanour. (Unofficial translation)

393. *Central African Republic (Criminal Code):*

Article 249

(a) Any Central African citizen who outside the territory of the Republic is guilty of an offence defined as a felony punishable under Central African law may be prosecuted and judged by the Central African courts.

(b) Any Central African citizen who outside the territory of the Republic is guilty of an offence defined by Central African law as a misdemeanour may be prosecuted and judged by the Central African courts if the offence is punishable under the legislation of the country in which it was committed.

(c) The provisions of paragraphs (a) and (b) above shall be applicable to perpetrators who acquired Central African citizenship only after commission of the offence with which they are charged.

Article 250

Any person who in the territory of the Republic is an accessory to a felony or misdemeanour committed abroad may be prosecuted and judged by the Central African courts if the act is punishable both under the foreign law and under Central African law provided that the perpetration of the offence defined as a felony or misdemeanour has been established by final decision of the foreign court.

Article 251

In the case of a misdemeanour committed against a private individual, proceedings may be instituted only upon application by the public prosecutor's office; they shall be preceded by a complaint by the aggrieved party or by an official accusation to the Central African authority by the authority of the country where the offence was committed.

Article 252

In the cases referred to in the preceding articles, whether involving a felony or misdemeanour, no pro-

ceedings may take place if the accused can prove that he has been the subject of a final judgment and that his sentence has been served or time-barred or that he has been granted a pardon.

Article 253

An offence shall be deemed to have been committed in the territory of the Republic if an act forming one of its constituent elements was carried out in the Central African Republic.

Article 254

Any foreigner who outside the territory of the Republic is guilty as the perpetrator of or an accessory to a felony or misdemeanour constituting a violation of State security, forgery of the State seal or counterfeiting of legal tender may be prosecuted and judged in accordance with the provisions of Central African law if he was arrested in the Central African Republic or if the Government obtained his extradition.

Article 255

(a) Any Central African guilty of misdemeanours or petty offences concerning forestry, rural, fishing, customs or indirect taxation matters in the territory of a neighbouring State may be prosecuted and judged in the Central African Republic if that State authorizes the prosecution of its nationals for the same offences committed in the Central African Republic.

(b) Reciprocity shall be legally established by international conventions or by decree.

Article 256

(a) In the cases provided for in the present title, proceedings shall be instituted upon application by the public prosecutor's office at the place of residence of the accused or the place of his last known address or the place where he is found.

(b) The Supreme Court may, upon application by the public prosecutor's office or by the parties, refer the case for trial by the court nearest to the scene of the felony or misdemeanour. (Unofficial translation)

RECOMMENDATIONS

394. *Jurisdiction of the courts*

1. The courts of [State party] shall have jurisdiction to try offences referred to in [articles criminalizing acts of terrorism] if such offences were committed:

(a) In the territory of [State party] or

(b) On board an aircraft registered in [State party], a vessel flying the flag of [State party] or a fixed platform located on the continental shelf of [State party].

2. Furthermore, the courts of [State party] shall have jurisdiction:

(a) If the offence was committed by a national of [State party] or

(b) In regard to an offence involving aircraft as referred to in the relevant article [Hijacking], if the offence was committed on board the aircraft and the aircraft lands in the territory of [State party] with the alleged offender still on board or

(c) In the case of an offence referred to in the relevant article [Hostage-taking], if the offence was committed in order to compel the Government of [State party] to do or refrain from doing any act or

(d) In the case of an offence referred to in the relevant article [Offences against internationally protected persons], if the offence was committed against an internationally protected person who enjoys such status by virtue of functions that he or she exercises on behalf of [State party].

3. The provisions of this article shall be applicable to an attempt to commit any such offence whenever it is punishable.

395. *Prosecute or extradite*

The courts of [State party] shall have jurisdiction to judge the offences referred to in [articles criminalizing acts of terrorism] in cases where the alleged perpetrator of any such offence is present in the territory of the State and that State does not extradite the person concerned to one of the States parties that have established jurisdiction in accordance with [jurisdiction of the courts]. Such jurisdiction shall be established independently of the alleged offender's nationality or his or her stateless status and irrespective of the place where the offence was committed. The courts of [State party] shall also have jurisdiction to try attempts to commit any of the offences referred to in [articles criminalizing acts of terrorism].

III. SPECIFIC POWERS OF AIRCRAFT COMMANDERS

Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963

CHAPTER III: POWERS OF THE AIRCRAFT COMMANDER

Article 5

1. The provisions of this Chapter shall not apply to offences and acts committed or about to be committed by a person on board an aircraft in flight in the airspace of the State of registration or over the high seas or any other area outside the territory of any State unless the last point of take-off or the next point of intended landing is situated in a State other than that of registration, or the aircraft subsequently flies in the airspace of a State other than that of registration with such person still on board.
2. Notwithstanding the provisions of article 1, paragraph 3, an aircraft shall for the purposes of this Chapter be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the provisions of this Chapter shall continue to apply with respect to offences and acts committed on board until competent authorities of a State take over the responsibility for the aircraft and for the persons and property on board.

Article 6

1. The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft an offence or act contemplated in article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:
 - (a) to protect the safety of the aircraft, or of persons or property therein; or
 - (b) to maintain good order and discipline on board; or
 - (c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.
2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.

Article 7

1. Measures of restraint imposed upon a person in accordance with article 6 shall not be continued beyond any point at which the aircraft lands unless:
 - (a) such point is in the territory of a non-Contracting State and its authorities refuse to permit disembarkation of that person or those measures have been imposed in accordance with article 6, paragraph 1(c) in order to enable his delivery to competent authorities;
 - (b) the aircraft makes a forced landing and the aircraft commander is unable to deliver that person to competent authorities; or
 - (c) that person agrees to onward carriage under restraint.
2. The aircraft commander shall as soon as practicable, and if possible before landing in the territory of a State with a person on board who has been placed under restraint in accordance with the provisions of article 6, notify the authorities of such State of the fact that a person on board is under restraint and of the reasons for such restraint.

Article 8

1. The aircraft commander may, in so far as it is necessary for the purpose of subparagraph (a) or (b) of paragraph 1 of article 6, disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in article 1, paragraph 1(b).
2. The aircraft commander shall report to the authorities of the State in which he disembarks any person pursuant to this article the fact of, and the reasons for, such disembarkation.

Article 9

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal law of the State of registration of the aircraft.
2. The aircraft commander shall, as soon as practicable and if possible before landing in the territory of a Contracting State with a person on board whom the aircraft commander intends to deliver in accordance with the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons therefor.
3. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered in accordance with the provisions of this article with evidence and information which, under the law of the State of registration of the aircraft, are lawfully in his possession.

Article 10

For actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.

COMMENTARY

396. An aircraft commander has certain powers under the 1963 Convention. Those powers are exercised from the time of embarkation, i.e. the moment when the doors are closed, until the doors are opened for disembarkation. In the event of a forced landing, his powers remain valid until a State takes over responsibility for the aircraft.

397. If the aircraft is in flight, his powers apply only if the last point of take-off or the next point of intended landing is situated in the territory of a State other than that of registration. The aircraft commander is relieved of all responsibility in connection with the treatment undergone by the person committing the criminalized acts.

The aircraft commander's powers

398. An aircraft commander has the authority to take any necessary measures, including restraint, when he has reasonable grounds for believing that a person will jeopardize the safety of the aircraft. He is also empowered to require the assistance of the crew and to request, but not require, the assistance of passengers. Any crew member or passenger may also take any reasonable preventive measures without authorization in order to protect the safety of the aircraft.

399. Measures of restraint may not be continued beyond landing unless the landing is in the territory of a non-contracting State and the local authority disallows the disembarkation of the person concerned, or in the event of a forced landing. The aircraft commander is required to notify the authorities, as soon as practicable, of the fact that a person on board is under restraint.

400. None of those involved (aircraft commander, crew, passengers or operator or owner of the aircraft) may be held responsible on account of the treatment undergone by the person on whom measures of restraint have been imposed.

These provisions consequently give rise to powers and duties of States.

401. Every State party has to allow the aircraft commander to disembark a person who has committed an act endangering safety on board.

402. In the case of a serious offence, a State party must agree to disembarkation of the person whom the aircraft commander delivers to it. The receiving State may place the person in custody or return him to his State of residence or the State in which he commenced his journey.

403. The person is at liberty to proceed to any State of his choice except in the case of criminal proceedings or extradition.

404. A State which is not the State of registration may intervene if the offence is against its security, constitutes a breach of its air regulations, has effects on its territory or was committed by or against one of its nationals or residents.

405. This Convention contains only one article dealing with unlawful seizure of aircraft, which requires States to take appropriate measures to restore control of the aircraft to the lawful commander or preserve his control of the aircraft and to permit the passengers and crew to continue their journey as soon as practicable.²⁰²

406. Offences committed on board an aircraft are, as already indicated, treated as having been committed in the territory of the State of registration.

²⁰²See article 11 of the Convention.

IV. FAIR TREATMENT

407. In remarks at the special meeting of the Counter-Terrorism Committee of the Security Council held with international, regional and subregional bodies on 6 March 2003, the Secretary-General stated that, as terrorism involved the calculated use of violence in violation of the law, the response should aim to ensure the rule of law. He also noted that “[t]errorist acts, particularly those involving the loss of life, constitute grave violations of human rights. Our responses to terrorism, as well as our efforts to thwart it and prevent it should uphold the human rights that terrorists aim to destroy. Human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism – not privileges to be sacrificed at a time of tension.”²⁰³

408. United Nations human rights treaty bodies, special rapporteurs and regional organizations voiced a number of concerns which had become critical in the context of the fight against terrorism. Those critical areas call for special attention to ensure that human rights are fully respected in the pursuit of anti-terrorism measures.²⁰⁴

409. Respect for human rights in the fight against terrorism necessarily includes observance of “fair treatment” of alleged perpetrators of terrorist acts. The concept of “fair treatment” is very broad. The expression originates in the English-speaking world and derives from “fair trial” or “fair hearing”, i.e. the concept of the due process of law, or “fair play”. That principle is set forth in the Universal Declaration of Human Rights²⁰⁵ and is contained in the International Covenant on Civil and Political Rights,²⁰⁶ whose articles 9 and 14 are reproduced below.

International Covenant on Civil and Political Rights

Article 9

“1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or deten-

²⁰³See press release SM/8624-SC/7680 on the Secretary-General’s statement.

²⁰⁴See Report of the Secretary-General, document A/58/266, entitled “Protection of human rights and fundamental freedoms while countering terrorism”. That report was submitted pursuant to General Assembly resolution 57/219, entitled “Protection of human rights and fundamental freedoms while countering terrorism”. It begins with a review of comments received from Governments and international and non-governmental organizations in response to a letter from the United Nations High Commissioner for Human Rights seeking views and information on the protection of human rights while countering terrorism. The report then provides an overview of rights that have come under significant pressure worldwide as a result of counter-terrorism measures, including the rights to life and to freedom from torture, due process rights and the right to seek asylum. The report concludes with a number of general observations.

In connection with regional counter-terrorism efforts and respect for human rights and fair treatment in criminal proceedings, see *Council of Europe. Guidelines on Human Rights and the Fight against Terrorism*, Council of Europe publications, March 2005.

²⁰⁵Adopted and proclaimed by the General Assembly on 10 December 1948 (see article 10).

²⁰⁶Signed in New York on 19 December 1966 (see article 14, paragraph 1: fair and public hearing).

tion. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

“2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

“3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

“4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

“5. Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.”

Article 14

“1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the Parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

“2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

“3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

“(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

“(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

“(c) To be tried without undue delay;

“(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

“(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

“(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

“(g) Not to be compelled to testify against himself or to confess guilt.

“4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

“5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

“6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the

ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

“7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”

410. Rights relating to fair treatment of alleged offenders can be provided for at different stages of the proceedings. It is useful to examine the rights existing from the time of arrest (1) and at all stages of the proceedings (2) before considering the rights of the accused in custody (3) and reasonable time for the conduct of proceedings (4).

1. From the time of arrest: right to notification and communication

411. Under the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft, the State of nationality of an alleged offender must be immediately notified of the detention of the person concerned with a view to prosecution or extradition and that person has the right to treatment which is no less favourable than that accorded by the State of custody to its nationals in like circumstances. This notification provision has become the rule in all the counter-terrorism instruments, although it is sometimes worded differently.

412. In line with standard provisions in the matter, the 1999 Financing of Terrorism Convention, in its article 9, stipulates (in particular in connection with extradition procedures) that a person being prosecuted is entitled to communicate without delay with the appropriate representative of his or her State or, in the case of a stateless person, with a representative of the State in whose territory that person habitually resides,²⁰⁷ to be visited by such representative,²⁰⁸ to be informed of his or her rights²⁰⁹ and to communicate with the International Committee of the Red Cross (ICRC).²¹⁰

413. The draft comprehensive convention on international terrorism lays down that an accused has the right to communicate with and be visited by a representative of the State of which he or she is a national. The accused is also entitled to be informed of his or her rights.

414. Concerning the right to assistance from a defence lawyer, the Human Rights Committee has expressed concern about counter-terrorism measures that deny detainees access to counsel immediately following arrest. The need

for a measure providing for a time limit – which has to be short – for granting such access can be justified but must be in conformity with the requirements of articles 9 and 14 of the International Covenant on Civil and Political Rights.²¹¹

415. The above-mentioned provisions operate within the framework of the laws and regulations of the State in whose territory the offender or alleged offender is present but on the understanding that such laws and regulations must enable full effect to be given to the purposes for which they are set forth in the relevant universal instruments.

ILLUSTRATION

416. One example of how this obligation is incorporated in domestic law is provided by article 5 of the Suppression of Terrorist Bombings Act, No. 11/1999, of Sri Lanka:

“Where a person who is not a citizen of Sri Lanka is arrested for an offence under this Act, such person shall be entitled:

“(a) to communicate, without delay, with the appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights, or, if he is a stateless person, with the nearest appropriate representative of the State in the territory of which he was habitually resident;

“(b) to be visited by a representative of that State; and

“(c) to be informed of his rights under paragraphs (a) and (b).”

²⁰⁷See article 9, paragraph 3(a).

²⁰⁸See article 9, paragraph 3(b).

²⁰⁹See article 9, paragraph 3(c).

²¹⁰See article 9, paragraph 5.

²¹¹See Report of the Secretary-General, A/58/266, “Protection of human rights and fundamental freedoms while countering terrorism”.

2. At all stages of the proceedings

417. Article 9 of the 1973 Internationally Protected Persons Convention reads as follows: “Any person regarding whom proceedings are being carried out in connection with any of the crimes set forth in article 2 shall be guaranteed fair treatment at all stages of the proceedings”. The crimes established by the Convention are defined in article 2.

418. The 1980 Nuclear Material Convention contains a provision identical to that appearing in the 1973 Internationally Protected Persons Convention but the 1979 Hostages Convention has added the following text: “... including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present”. That formulation was followed in the 1988 Safety of Maritime Navigation Convention and additional text was inserted in the 1997 Terrorist Bombings Convention: “... and applicable provisions of international law, including international law of human rights”.

419. The 1999 Financing of Terrorism Convention states, in its article 17, that “[a]ny person ... shall be guaranteed fair treatment, including enjoyment of all rights and guar-

antees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law”.

420. It is useful to refer in this regard to judicial interpretation between members of regional groupings and, in particular to the jurisprudence of regional courts such as the Inter-American Court of Human Rights or the European Court of Human Rights. Where all the parties involved in a dispute concerning the interpretation of any such provision are not bound by a common jurisprudence, the Universal Declaration of Human Rights,²¹² the International Covenant on Civil and Political Rights,²¹³ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²¹⁴ and other relevant United Nations standards and instruments should be consulted.

421. The draft comprehensive convention on international terrorism aims to guarantee fair treatment in accordance both with the law of the State concerned and also with applicable norms of international law, including the Standard Minimum Rules for the Treatment of Prisoners.²¹⁵

3. Pre-trial detention

422. The issue of pre-trial detention has raised a number of concerns in the context of the fight against terrorism, including judicial supervision of such detention, the right not to be subjected to torture, the right to be informed promptly of the reasons for one’s arrest and of the existence of any charges, and the unlawfulness of prolonged pre-trial detention. In cases where pre-trial or preventive detention is used, the Human Rights Committee has observed that such confinement must not be arbitrary and must be based on grounds and procedures established by law, the person concerned must be informed of the reasons for the arrest, and court control of the detention must be available as must compensation in the case of a breach.²¹⁶

423. In general terms, the Committee noted, by way of a principle, that pre-trial detention should be an exception

and be as short as possible.²¹⁷ It has been stated that prolonged pre-trial detention constitutes a violation of the right to presumption of innocence.²¹⁸

424. The 1999 Financing of Terrorism Convention stipulates, in its article 17, that any person taken into custody has to be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in whose territory that person is present and applicable provisions of international law, including human rights law.

425. The Convention against Transnational Organized Crime contains provisions that are more comprehensive than in the universal counter-terrorism instruments with regard to rights of persons being prosecuted and thus to fair treatment. That is the subject of article 16, paragraph 13.²¹⁹

²¹²See the text reproduced in an annex to the present *Guide*.

²¹³See the text reproduced in an annex to the present *Guide*.

²¹⁴General Assembly resolution 39/46.

²¹⁵See the United Nations document entitled “Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms; Protection of human rights and fundamental freedoms while countering terrorism”. Report of the Secretary-General, General Assembly, A/58/266, 8 August 2003, <http://www.un.org/french/58/documentation/list2.html>.

²¹⁶See HRI/GEN/1/Rev.6, chap. II, General comment 8, para. 4.

²¹⁷See HRI/GEN/1/Rev.6, chap. II, General comment 8, para. 3.

²¹⁸See Annual Report of the Inter-American Commission on Human Rights, 1997, case 11.205, report No. 2/97, case of Bronstein, and Annual Report of the Inter-American Commission on Human Rights, 1995, case 11.245, report No. 12/96, case of Gimenez.

²¹⁹Article 16, paragraph 13, of the Convention: “Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present”.

4. Reasonable time

426. Under the 1999 Financing of Terrorism Convention, the State party in whose territory an alleged offender is present is required, if it intends to prosecute, to submit the case without undue delay to its competent authorities.²²⁰

427. The right of an individual to be tried within a reasonable period is guaranteed by the International Covenant on Civil and Political Rights, in its article 14, paragraph 3(c).²²¹

V. WITNESS PROTECTION

428. No specific witness protection measures are provided for in the universal anti-terrorism instruments, even though facilitating the taking of evidence and statements from persons is of particular importance in curbing such crimes. Such aspects of criminal proceedings can be helpful both in preventing and in combating this scourge. The perpetrators of terrorist acts should be prevented from undermining the integrity of the criminal justice process and attempting to evade law enforcement action.

429. The draft comprehensive convention on international terrorism contains special provisions concerning witnesses and justice collaborators, either charged or convicted.²²²

It would be useful to adopt legislation dealing with witness protection in general.

430. In this connection, the Convention against Transnational Organized Crime encourages States parties to incorporate provisions of this kind in their domestic law. That is the purpose of article 24 of the Convention, which is reproduced below. In this text, States are required to take appropriate measures to provide protection for witnesses from potential acts of retaliation or intimidation. Victims have to receive similar protection. The establishment of procedural and evidentiary rules to strengthen such measures of protection is thus called for.

Convention against Transnational Organized Crime

Article 24

Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

²²⁰See article 10, paragraph 1.

²²¹This right is also guaranteed by regional conventions such as the European Convention on Human Rights, in its article 5, paragraph 3, and article 6, paragraph 1. However, those two provisions should not be confused. The purpose of article 5 is to protect persons being prosecuted against arbitrary deprivation of their liberty, since an unreasonable extension of their detention would constitute an advance penalty and thus be a violation of the principle of presumption of innocence. By contrast, the function of article 6, whereby “everyone is entitled to a (...) hearing within a reasonable time”, is to protect those involved in criminal proceedings, i.e. not only defendants but also complainants, from excessive slowness of the justice system. Over the last few years, the European Court has been required to rule on the issue of reasonable time. This was so, inter alia, in the *Kemmache* case, in which the Court ruled that France was in breach of article 6, paragraph 1; see *Case of Kemmache*, ECHR, 19 February 1991, Series A, No. 218. In that judgment, the Court pointed out that the “reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court’s case-law, in particular the complexity of the case, the applicant’s conduct and that of the competent authorities.” It would seem from this ruling that the complexity of terrorist cases should allow the judicial authorities a longer-than-usual period to settle the action. This impression is, however, qualified in the light of the position adopted by the

European Court in the *Tomasi v. France* case; see *Case of Tomasi* ECHR, 27 August 1992, Chamber, Series A, vol. 241-A. A person arrested on suspicion of murder and attempted murder classed as terrorist acts was taken into police custody, charged and detained on remand. During his pre-trial detention, which lasted five years and seven months, he submitted twenty-three applications for release. All those applications were rejected by the investigating judges, either separately or simultaneously, for four main reasons. These relate to the seriousness of the crimes, the protection of public order, the risks of pressure being brought to bear on witnesses and of collusion between the co-defendants, and the danger of Mr Tomasi’s absconding. In the opinion of the European Court, some of those grounds for rejection were relevant and sufficient; however, they lose those qualities with the passage of time, hence the Court’s ruling that France had violated article 5, paragraph 3. In the area of terrorism, as in all other criminal matters, one rule accordingly has to be observed: pre-trial detention of the accused may not be maintained beyond reasonable limits. It is nonetheless necessary to distinguish between the length of preventive detention and the length of the pre-trial procedure. Thus, within the same case, a long investigation can be justified and deemed to be in conformity with article 6 of the European Convention on Human Rights whereas preventive detention of a similar duration will be punishable under article 5, paragraph 3.

²²²See below, Part IV, “Mutual legal assistance in criminal matters”.

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

VI. MECHANISMS ESTABLISHED UNDER THE FINANCING OF TERRORISM CONVENTION FOR COMPENSATING VICTIMS OF TERRORIST ACTS

431. The 1999 Financing of Terrorism Convention urges States to establish mechanisms whereby monies derived from asset forfeiture are utilized to compensate the victims of terrorist offences or their families (article 8, paragraph 4).

432. Such a mechanism could mean that States parties set up, for example, a fund to compensate victims of terrorism. The introduction of the fund would be based on national measures. Specific provisions on the allocation of proceeds to the guarantee fund for the victims of terrorist acts would be incorporated into the legislation.

ILLUSTRATION

433. By a law of 9 September 1986, France instituted a fund to compensate victims of terrorism:

— The guarantee fund, which is an autonomous public body and in that capacity draws up the rules governing compensation, provides for victims to be fully compensat-

ed for all harm caused to them, independently of criminal proceedings. It is subrogated to the rights of the victim in civil law. The fund may obtain reimbursement of amounts paid by guilty parties, to the extent of their solvency. Victims retain their full rights in criminal law.

— The beneficiaries are:

For terrorist acts committed in France: any victim or assignee, irrespective of nationality or of regularity of residence in France;

For acts committed abroad: any victim or assignee of French nationality. French nationals who are victims abroad have the same rights as victims of acts committed in France.

RECOMMENDATION

434. *Disposal of confiscated assets*

Confiscated funds shall become the property of the State, which may allocate them for the purpose of compensating victims of terrorism offences or their families.

Part IV

MODALITIES OF INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

435. The effectiveness of anti-terrorism measures calls for close cooperation between States. This scourge can be successfully opposed solely through joint action by States. Such cooperation can be seen not only in the extradition of untried suspects or convicted offenders (I) but also in mutual legal assistance in criminal matters (II) and in other forms of cooperation (III).

Preliminary remarks

436. State authorities are advised to ensure that, in the absence of extradition and mutual legal assistance treaties and specific domestic legislation, they are clearly in a position to grant extradition and mutual legal assistance:

- With regard to all offences provided for in the universal anti-terrorism instruments and
- To all other States parties to those instruments.

437. It is recalled in this connection that the universal anti-terrorism instruments offer States parties the possibility of

using them as a sufficient legal basis for granting extradition and mutual legal assistance.

438. Authorities should also note that:

— Claims of political motivation may not be recognized as grounds for refusing requests for the extradition of alleged terrorists. This obligation stems directly from Security Council resolution 1373 and also from the 1999 Financing of Terrorism Convention and the 1997 Terrorist Bombings Convention;

— Under article 12, paragraph 2, of the 1999 Financing of Terrorism Convention, mutual legal assistance may not be refused on the ground of bank secrecy.

439. In cases where the adoption of specific domestic legislation proves essential, in particular for the establishment of procedural rules and conditions to which extradition and mutual legal assistance are to be subject, the United Nations Office on Drugs and Crime will be able to provide specific model laws at the request of Governments.²²³

²²³See the United Nations Model Treaty on Extradition (A/RES/45/116) and its *Guide for Implementation, the Model Treaty on Mutual Assistance in Criminal Matters*, adopted by General Assembly resolution 45/117, and the *Manual on the Model Treaty on Mutual Assistance in Criminal Matters*. These texts are reproduced in an annex to the present *Guide*.

See also *International Review of Criminal Policy*, Nos. 45 and 46, 1995 (United Nations Publication, Sales No. F.96.IV.2).

In particular, there is a document entitled *Revised Manuals on the Model Treaties on Extradition and Mutual Assistance in Criminal Matters* and a Model Law on Extradition. These documents are available on request from the Division of Treaty Affairs/Terrorism Prevention Branch (DTA/TPB), P.O. Box 500, A-1400 Vienna, Austria.

I. EXTRADITION

440. The requirement regarding the apprehension, prosecution or extradition²²⁴ of persons suspected of terrorist activities reflects the *aut dedere, aut judicare* principle contained in all the existing anti-terrorism instruments. In the particular area of extradition, this rule is regarded as forming part of customary law.²²⁵ Since it is included in resolution 1373, it is binding in all circumstances.

441. Extradition is the procedure whereby a sovereign State, referred to as the requested State, agrees to hand over an individual to another sovereign State, referred to as the requesting State, for prosecution by it or, if that person has already been tried and convicted, for enforcement of the sentence.

442. The extradition procedure is an exemplary mechanism of cooperation between States which is governed by international treaties such as the Model Treaty on Extradition,²²⁶ adopted by General Assembly resolution 45/116 of 14 December 1990, and, at the regional level, by, for example, the European Convention on Extradition, which was signed in 1957, the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States of the European Union, the Arab Convention for the Suppression of Terrorism, 1998 (article 6), the Convention of the Organization of the Islamic Conference on Combating International Terrorism, 1999 (article 6), the Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism, 1999 (article 8) and the ECOWAS²²⁷ Convention A/PI/8/94 on Extradition.

443. As stated in the preliminary remarks, the universal counter-terrorism instruments offer States parties the possibility of using them as a sufficient legal basis for granting extradition.

444. The offences referred to in the 12 instruments are deemed automatically included in existing bilateral or multilateral extradition treaties. It is therefore not necessary for States parties to negotiate specific agreements with each other.

445. All the penal conventions concluded since 1970 (that is, all except the 1991 Plastic Explosives Convention) contain a provision whereby the offences defined in them are deemed to be included as extraditable offences in any existing extradition treaty between the parties, who undertake to include them as extraditable offences in every future extradition treaty between them. If the existence of a treaty is required, the parties may treat the instrument in question as the legal basis for extradition. If the existence of a treaty is not required, the offence is recognized as extraditable. For purposes of extradition, offences are to be treated as having been committed not only in the place where they occurred but also in the territory of the States required to establish jurisdiction under the convention or protocol concerned (or in a place within the jurisdiction of the requesting party, a formulation used only in the 1988 Safety of Maritime Navigation Convention).

446. The universal instruments set out minimum basic rules for extradition in relation to offences defined in them and advocate the adoption of various mechanisms aimed at rationalizing the extradition process.

447. None of the offences set forth in the universal instruments may, for purposes of extradition, be regarded as a political offence, as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition based on such an offence may not be refused on the sole ground that it concerns a political offence, an offence connected with a political offence or an offence inspired by political motives.²²⁸

448. Offences connected with the financing of terrorist acts may not be regarded as fiscal offences for purposes of extradition.²²⁹

449. No provision is to be interpreted as imposing an obligation to extradite on the requested State party if that State party has substantial grounds for believing that the request

²²⁴Cf. *Declaration on Measures to Eliminate International Terrorism* of 9 December 1994, II, 5. "States are urged ... (b) To ensure the apprehension and prosecution or extradition of perpetrators of terrorist acts, in accordance with the relevant provisions of their national law", General Assembly resolution 49/60, annex.

²²⁵This point of view was put forward by several judges of the International Court of Justice in connection with the Lockerbie case, which was concerned with the handing over of Libyans suspected of an aerial bombing. Judge Weeramantry deemed the *aut dedere, aut judicare* principle to be a "rule of customary international law", ICJ, *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie, Libyan Arab Jamahiriya v. United Kingdom*, Provisional Measures, Order of 14 April 1992, ICJ Reports 1992, p. 69. Judge Ranjeva expressed a similar opinion, *op. cit.*, p.72.

²²⁶Text reproduced in annex 7 of the present *Guide*.

²²⁷ECOWAS: the Economic Community of West African States.

²²⁸See, for example, article 14 of the 1999 Financing of Terrorism Convention and see above, on this subject, Part I, Section III, "Forms of liability".

²²⁹See article 13 of the 1999 Financing of Terrorism Convention and see above, on this subject, *ibid.*

was made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person for any of those reasons.²³⁰

450. In the draft comprehensive convention on international terrorism, the *aut dedere, aut judicare* requirement is accompanied by a series of rules relating to the obligation to extradite. One article stipulates that the offences set forth in the draft instrument are deemed to be extraditable offences under any extradition treaties between the parties, whether already concluded or to be concluded. Existing treaties between States parties are, with regard to the offences defined in the draft convention and in relation to those States only, deemed modified insofar as their provisions are incompatible with the convention. If, in the absence of any such treaty, the domestic law of the requested State makes extradition conditional on such a treaty, that State may regard the draft convention as a sufficient legal basis for extradition. If necessary, the offences set forth in the convention are to be treated, for the purposes of extradition between States parties, as if they had been committed not only in the place where they occurred but also in the territory of the States that have established jurisdiction under the convention.

451. One key provision of the draft states that the offences set forth in the convention may not be regarded as political offences in order to refuse on that sole ground a request for extradition or mutual legal assistance. It is, however, specified that both extradition and mutual legal assistance can be refused if the requested State has substantial grounds for believing that the request was made for the purpose of prosecuting or punishing a person for reasons of race, religion, nationality, ethnic origin or political opinion; refusal is also justified if compliance with the request would cause prejudice to that person's position for any of those reasons.

452. On the question of extradition of nationals, the draft convention stipulates that the obligation to prosecute without exception and without delay or to extradite is deemed discharged if, under its domestic law, a State makes extradition conditional upon the return of its national in order to serve the sentence imposed by the requesting State or upon any other terms deemed appropriate by the States concerned.

INFORMATION SOURCES AND ILLUSTRATIONS

453. Examples:

- United Nations Model Treaty on Extradition (A/RES/45/116) and its *Guide for Implementation*;²³¹
- Inter-American Convention on Extradition;
- Convention of the Arab League on Mutual Assistance in Criminal Matters, 1983;
- Convention, drawn up on the basis of article K.3 of the Treaty of the European Union, on simplified extradition procedure between the Member States of the European Union (European arrest warrant);
- ECOWAS Convention on Extradition, 1994;
- European Convention on Extradition;
- *Implementation Kits* prepared by the Commonwealth Secretariat²³² for the various anti-terrorism instruments, which all contain virtually identical provisions concerning extradition.
- Articles 7 and 8 of the Suppression of Terrorist Bombings Act of Sri Lanka set out typical provisions used for implementing the standard obligation under the conventions:

“7. Where there is an extradition arrangement made by the Government of Sri Lanka with any Convention State in force on the date on which this Act comes into operation, such arrangement shall be deemed, for the purposes of the Extradition Law of 1977, to include provision for extradition in respect of the offences specified in the Schedule to this Act.

“8. Where there is no extradition arrangement made by the Government of Sri Lanka with any Convention State, the Minister may, by order published in the Gazette, treat the Convention, for the purposes of the Extradition Law of 1977, as an extradition arrangement made by the Government of Sri Lanka with that Convention State providing for extradition in respect of the offences specified in the Schedule to this Act.”
- Canada's Extradition Act (1999, c. 18) can be downloaded at the following site: <http://laws.justice.gc.ca/en/e-23.01/55322.html>.

RECOMMENDATIONS

454. See below, following subsection II on mutual legal assistance, for recommendations concerning both extradition and mutual legal assistance.

²³⁰See, for example, article 15 of the 1999 Financing of Terrorism Convention and see above, on this subject, *ibid*.

²³¹The UNODC Division of Treaty Affairs/Terrorism Prevention Branch (DTA/TPB) has prepared a model law on extradition, the draft of which was discussed from 11 to 20 May 2004 in Vienna and which is available on request from DTA/TPB, P.O. Box 500, A-1400 Vienna, Austria. There is also a document entitled *Revised Manuals on the Model Treaties on Extradition and Mutual Assistance in Criminal Matters*, which is also available from the same address.

²³²See the website www.thecommonwealth.org/law/model.html.

II. MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

455. In the context of globalization, national authorities increasingly need the assistance of other countries for the successful investigation, prosecution and punishment of wrongdoers, in particular those who have committed terrorist offences, which are most often essentially transnational crimes. The Security Council, in resolution 1373, decided that all States should afford one another the greatest “measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings.”²³³ This provision is binding, including with regard to States that have not ratified all or some of the universal counter-terrorism instruments.

456. A country’s capacity to establish jurisdiction and ensure the presence of an alleged offender in its territory for reasons of extradition is certainly a significant step. It is nevertheless insufficient. Criminals’ international mobility and knowledge of technology are two factors which more than ever impose a need for cooperation between detection, law enforcement and judicial authorities and for assistance to the State that has established jurisdiction in the matter.

457. To achieve those objectives, States most frequently make use of bilateral or multilateral treaties on mutual legal assistance in criminal matters.²³⁴ These instruments assist the work of detection and law enforcement services in several ways. For example, they enable the authorities to obtain evidence abroad through a procedure that is admissible under their domestic law, to summon witnesses, to trace individuals, to secure the production of documents and other evidentiary items and to issue warrants.

458. Those instruments supplement other information-sharing arrangements such as liaison between police departments or intelligence obtained via the International Criminal Police Organization (Interpol).²³⁵ Exchanging information through Interpol is advocated in article 18,

paragraph 4, of the 1999 Financing of Terrorism Convention.

459. In the universal anti-terrorism instruments, the requirement that States parties afford one another assistance in connection with criminal proceedings first appeared in the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft. It is repeated in all the subsequent penal conventions (that is, not the 1991 Plastic Explosives Convention).

460. The conventions on air safety provide that any contracting State in whose territory a person who has committed an offence of unlawful seizure of an aircraft is present must immediately make a preliminary inquiry into the facts and “promptly report its findings” to the State of registration of the aircraft and to the State of nationality of the offender.²³⁶ The 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation even lays down that any State “having reason to believe that one of the offences (...) will be committed” has to furnish any relevant information in its possession.²³⁷ All the conventions concluded since that Convention require the parties to adopt measures with a view to preventing the commission of offences against other States parties.

461. This obligation was broadened in the 1973 Internationally Protected Persons Convention to include the duty to exchange information and coordinate administrative and other preventive measures. All subsequent instruments also lay down such a duty, except the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, since that Convention did not contain such an obligation. In the 1979 Hostages Convention and ensuing instruments, such assistance is expressly defined as including the supplying of all evidence at the disposal of States parties.

²³³See paragraph 2(f) of resolution 1373.

²³⁴A number of multilateral treaties on mutual legal assistance in criminal matters and combating certain offences may be cited by way of example. These are notably the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (see article 7), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (see articles 8 to 10), the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, 2000, the Inter-American Convention against Corruption, 1996 and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. There have also been regional initiatives such as the Convention Implementing the Schengen Agreement, often referred to as the Schengen Convention (which is binding on all Member States of the European Union except the United Kingdom and Ireland), the European Convention on Mutual Assistance in Criminal Matters, the Inter-American Convention on Mutual Assistance in Criminal Matters and the Convention of the Arab League on Mutual Assistance in Criminal Matters, 1983. Also, the Convention against Transnational Organized Crime, in its article 18, advocates the widest possible measure of mutual legal assistance.

²³⁵In general, information on offences and their perpetrators is exchanged within the framework of the International Criminal Police Organization (ICPO), more commonly known as Interpol. Strictly speak-

ing, this is not an international organization as it brings together not States but rather police bodies designated by States (article 4 of its Constitution). It nevertheless has legal personality. In accordance with article 2 of the Constitution, the aims of ICPO are to “ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights and to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes”. It thus has a key role in investigative work and in communicating information received, especially since, in resolution AGN/53/RES/7 of 1984, the General Assembly of Interpol officially decided to cooperate to the suppression of terrorist acts, its mandate having hitherto been limited to crimes under “ordinary law”. The Organization cannot in any way replace a national authority or directly lead investigations. Its role is officially established in the conventions on mutual legal assistance in criminal matters and, in particular, in the conventions adopted by the Council of Europe. Also, the Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia provide that the Prosecutor may, in the conduct of investigations, request the assistance of Interpol. The Organization possesses extensive computer-based data files.

²³⁶Article 6 of the 1970 Convention; article 6 of the 1971 Convention.

²³⁷Article 12 of the 1971 Convention.

462. The 1980 Nuclear Material Convention stipulates that cooperation between States should be concerned with the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.²³⁸ The 1997 Terrorist Bombings Convention advocates consultations on the development of standards with regard to explosives, involving cooperation in the area of research.

463. As already stated, bank secrecy may not constitute a ground for refusing requests relating to judicial investigations.²³⁹ Consequently, if a State party's law allows bank secrecy to be invoked as a reason for refusal, that law has to be modified. Where such a ground for refusal is provided for in a mutual legal assistance treaty binding a State party, the fact of that country's becoming a party to the Convention must make it possible under the law of treaties to regard as void the provisions of any treaties which conflict with the Convention. If a State party's legal system provides that treaties do not directly apply, it might be necessary to amend its domestic law with a view to remedying the situation. Banking laws should possibly also be amended in order to protect banks and their personnel against potential civil liability under tort or contract law for having disclosed information when so ordered in response to a request for mutual legal assistance.

464. None of the offences defined in the universal instruments may, for the purposes of mutual legal assistance, be regarded as a political offence, as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for mutual assistance based on any such offence may not be refused on the sole ground that it concerns a political offence, an offence connected with a political offence or an offence inspired by political motives.²⁴⁰

465. Offences involving the financing of terrorist acts may not be regarded as fiscal offences for the purposes of mutual legal assistance.²⁴¹

466. No provision is to be interpreted as requiring a State party to accede to a request for mutual legal assistance if it has substantial grounds for believing that the request was made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person for any of those reasons.²⁴²

467. The 1999 Financing of Terrorism Convention invites States parties to give consideration to establishing mechanisms for sharing with other States parties information or evidence needed to establish criminal, civil or administra-

tive liability.²⁴³ The text recommends that the most effective channels of communication be used. An exchange of information is called for in particular when a State has substantial grounds for believing that an offence will be committed; it must then alert the States concerned and furnish them with useful information.

468. Information-sharing in the fight against terrorism is part of States' specific duty of cooperation.²⁴⁴ That duty has to be formalized through the conclusion of agreements aimed at defining its various modalities since it is not formulated precisely in the text of the resolution.

469. In the aftermath of the terrorist attacks of 11 September 2001, several countries issued decrees instructing governmental bodies to become more closely involved in international cooperation. Since cooperation other than judicial assistance can largely be undertaken by the executive branch within its existing powers, such orders may be an expeditious and effective way for States to discharge their basic mutual assistance obligations.

470. More formal and binding arrangements can be established by ratification and implementation of the universal counter-terrorism instruments and by negotiation of bilateral or multilateral treaties on mutual legal assistance. In this connection, States are invited to refer to the Model Treaty on Mutual Assistance in Criminal Matters,²⁴⁵ adopted by General Assembly resolution 45/117, and the United Nations Manual on the Model Treaty on Mutual Assistance in Criminal Matters.²⁴⁶ The Model Treaty, as set out in the annex to that resolution, states that mutual legal assistance may include:²⁴⁷

- Taking evidence or statements from persons;
- Assisting in the availability of detained persons or others to give evidence or assist in investigations;
- Effecting service of judicial documents;
- Executing searches and seizures;
- Examining objects and sites;
- Providing information and evidentiary items and
- Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

471. In resolution 1373, the Security Council calls upon States to intensify and accelerate the exchange of operational information, especially regarding actions or movements of terrorists, forged or falsified travel documents,

²⁴³See article 12, paragraph 4.

²⁴⁴Resolution 49/60: "... In order to combat effectively the increase in, and the growing international character and effects of, acts of terrorism, States should enhance their cooperation in this area through, in particular, systematizing the exchange of information concerning the prevention and combating of terrorism..."

²⁴⁵Text reproduced in an annex.

²⁴⁶See *International Review of Criminal Policy*, Nos. 45 and 46, 1995 (United Nations Publication, Sales No. F.96.IV.2).

There is also a document entitled *Revised Manuals on the Model Treaties on Extradition and Mutual Assistance in Criminal Matters*. This document is available on request from the Division of Treaty Affairs/Terrorism Prevention Branch (DTA/TPB), P.O. Box 500, A-1400 Vienna, Austria.

²⁴⁷See resolution, annex, article 1.

²³⁸See article 5, paragraph 3.

²³⁹See article 12, paragraph 2, of the 1999 Financing of Terrorism Convention.

²⁴⁰See, for example, article 14 of the 1999 Financing of Terrorism Convention.

²⁴¹See article 13 of the 1999 Financing of Terrorism Convention.

²⁴²See, for example, article 15 of the Financing of Terrorism Convention.

traffic in firearms, explosives or sensitive materials, the use of communications technologies and the threat posed by the possession of weapons of mass destruction by terrorist groups. It also calls upon States to cooperate on administrative and judicial matters.

472. The mutual legal assistance provisions contained in resolution 1373,²⁴⁸ the universal anti-terrorism instruments and other relevant texts referred to above provide a State party with a legal basis for the communication to another State party of information or evidence that it deems important in combating terrorist offences, even if the other country has not made any request for assistance and is totally unaware of the existence of such information or evidence.

473. For States parties whose legal systems allow for direct application of treaties, those provisions authorize them to transmit information on their own initiative without the need to adopt domestic legislation in this respect. If a State party does not already possess an internal legal basis providing for such voluntary communications and those clauses cannot be applied owing to its legal system, it is strongly encouraged to take the necessary measures to establish that legal basis.

474. States are also encouraged to set up a central authority for receiving requests for mutual legal assistance. It might also be useful to designate liaison officers to serve as intermediaries between the judicial and central authorities with a view to resolving difficulties and expediting procedures. They could be members of the judiciary whose knowledge of host countries' institutional systems and legal rules, whose command of foreign languages and whose close dealings with the authorities would, inter alia, contribute effectively to increasing the speed of exchanges and execution of international letters rogatory.

INFORMATION SOURCES AND ILLUSTRATIONS

475. While a number of international or regional instruments have been cited above, States parties intending to broaden their network of bilateral or multilateral treaties on mutual legal assistance can be guided by the examples indicated below, which may also be of interest to States parties intending to institute or modify a legal assistance regime in the absence of a mutual judicial assistance treaty:

- Revised Model Treaty on Mutual Assistance in Criminal Matters and its *Guide for Implementation* (already referred to);²⁴⁹
- Inter-American Convention on Mutual Assistance in Criminal Matters (<http://www.oas.org/>);
- 1959 Council of Europe Convention and its first and second protocols (the latter dating from 2001);

²⁴⁸In operative paragraph 3 of resolution 1373, States are called upon to intensify the exchange of operational information and thus to establish an effective law enforcement cooperation mechanism.

²⁴⁹The document entitled *Revised Manuals on the Model Treaties on Extradition and Mutual Assistance in Criminal Matters* is available on request from the Division of Treaty Affairs/Terrorism Prevention Branch (DTA/TPB), P.O. Box 500, A-1400 Vienna, Austria.

- 2000 European Union Convention and 2001 Protocol;
- Commonwealth Plan of Action (concerning mutual assistance in criminal matters within the Commonwealth);
- ECOWAS Convention A/P.1/7/92 on Mutual Legal Assistance in Criminal Matters (July 1992);
- Canada: Law on mutual assistance in criminal matters (can be downloaded at: <http://laws.justice.gc.ca/fr/M-13.6/>);
- Germany: Gesetz über die internationale Rechtshilfe in Strafsachen: <http://jurcom5.juris.de/bundesrecht/irg/gesamt.pdf>;
- Switzerland: Federal law on international assistance in criminal matters 351.1, in French: http://www.admin.ch/ch/fr/rs/351_1/index.html];
- United Kingdom: a description of procedures is available in French at the website: <http://www.homeoffice.gov.uk/oicd/jcu/guidelns.htm>;
- Thailand: Act on Mutual Assistance in Criminal Matters, B.E. 2535: <http://www.amlo.go.th/Law/Mutual%20Assistance%20in%20Criminal%20Matters%20BE2535.htm>.

RECOMMENDATIONS CONCERNING INTERNATIONAL COOPERATION

476. International cooperation

Chapter 1. General provisions

General provisions

1. The national authorities undertake to afford the widest possible measure of cooperation to those of other States for purposes of information exchange, investigation and court proceedings for the purpose of extradition and mutual legal assistance.

Chapter 2. Safety measures

Investigations

2. Upon receiving information that the perpetrator or alleged perpetrator of an offence set forth in [relevant articles] may be present in its territory, the public prosecutor's office shall take such measures as may be necessary to investigate the facts contained in the information.

Security measures

3. Upon being satisfied that the circumstances so warrant, the public prosecutor's office shall take the appropriate measures to ensure that person's presence for the purpose of prosecution or extradition, if necessary by ordering the opening of a judicial inquiry and the placing of the person being investigated under judicial supervision or in custody.

Right of communication

4. Any person regarding whom the measures referred to in article 3 are being taken shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights, or, if that person is a stateless person, the State in the territory of which that person is habitual resident;

(b) To be visited by a representative of that State;

(c) To be informed of that person's rights under subparagraphs (a) and (b) above.

5. Upon receiving a request to do so from a State which has established jurisdiction over the offence, the public prosecutor's office shall make the necessary arrangements for a person detained under article 3 to be visited by a representative of the International Committee of the Red Cross.

Notification to competent States

6. Where a person who is the subject of an investigation referred to in article 2 has been taken into custody, the public prosecutor's office shall immediately notify, directly or through the Secretary-General of the United Nations, the States which have established jurisdiction over the offence, and, if it considers it advisable, any other interested States, of the fact that that person is in custody and of the circumstances which warrant such detention. The public prosecutor's office shall promptly inform those States of its findings and shall indicate whether it intends to exercise jurisdiction.

Chapter 3. Requests for mutual legal assistance

Purpose of mutual assistance requests

7. Upon application by a foreign State, requests for mutual assistance in connection with offences referred to in article 2 of the present law shall be executed in accordance with the principles set out in this title. Mutual assistance may include in particular:

- Taking evidence or statements from persons;
- Assisting in making detained persons or others available to the judicial authorities of the requesting State in order to give evidence or assist in investigations;
- Effecting service of judicial documents;
- Carrying out searches and seizures;
- Examining objects and sites;
- Providing information and evidentiary items;
- Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

Refusal to execute requests

8. A request for mutual assistance may be refused only:

(a) If there are substantial grounds for believing that the measure or order being sought is directed at the person in question solely on account of that person's race, religion, nationality, ethnic origin or political opinions;

(b) If it was not made by a competent authority in accordance with the legislation of the requesting country or if it was not transmitted in the proper manner;

(c) If the offence to which it relates is the subject of

criminal proceedings or has already been the subject of a final judgment in the territory of [State adopting the law].

9. Bank secrecy may not be invoked as a ground for refusal to comply with the request.

10. The public prosecutor's office may appeal against a court's decision to refuse compliance within [...] days following such decision.

11. The Government shall promptly inform the foreign Government of the grounds for refusal to comply with its request.

Chapter 4. Extradition

Requests for extradition

12. In the event of a request for extradition, the provisions of the Convention, the non-conflicting procedures and principles laid down in any extradition treaty in force between the requesting State and [name of the country adopting the law] and the provisions of the present law shall be applied.

Security measures

13. Upon being satisfied that the circumstances so warrant, the public prosecutor's office shall take the appropriate measures to ensure the presence of the person referred to in the request for extradition, if necessary by applying to the court to which the request for extradition was made to have the person placed under judicial supervision or in custody.

Dual criminality

14. Under the present law, extradition shall be carried out only if the extraditable offence or a similar offence is provided for in the legislation of the requesting State and of the requested State or if the States are parties to the Convention or Protocol serving as the legal basis for its criminalization.

Mandatory grounds for refusal

15. Extradition shall not be granted:

(a) If there are substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;

(b) If a final judgement has been rendered in respect of the offence for which extradition is requested;

(c) If the person whose extradition is requested has, under the legislation of either country, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;

(d) If the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in article 14 of the International Covenant on Civil and Political Rights.

Optional grounds for refusal

16. Extradition may be refused:

(a) If a prosecution in respect of the offence for which extradition is requested is pending against the person whose extradition is requested;

(b) If the person whose extradition is requested has been tried or would be liable to be tried or sentenced in the requesting State by an extraordinary or ad hoc court or tribunal;

(c) If the competent authorities, while also taking into account the nature of the offence and the interests of the requesting State, consider that, in the circumstances of the case, the extradition of the person in question would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of that person;

(d) If the extradition is requested in execution of a final judgment rendered *in absentia* and the convicted person has not had the opportunity to arrange for his or her defence for reasons beyond his or her control;

(e) If the requested State has established jurisdiction over the offence.

Chapter 5. Provisions common to requests for mutual assistance and requests for extradition

Political nature of offences

17. The offences referred to in [relevant article] shall not be regarded as offences of a political nature, as offences connected with a political offence, as offences inspired by political motives or as fiscal offences.

III. OTHER FORMS OF INTERNATIONAL COOPERATION

477. Other forms of cooperation are concerned with the transfer of persons being detained or serving sentences (1)

and specific measures relating to the suppression of the financing of terrorism (2).

1. Transfer of persons being detained or serving sentences

478. The 1997 Terrorist Bombings Convention and the 1999 Financing of Terrorism Convention deal with the transfer of persons who are being detained or serving sentences.²⁵⁰

479. Thus, “a person detained or serving a sentence in the territory of one State party whose presence in another State party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in [...] may be transferred”. However, a number of conditions have to be met:

— The person must freely give his or her informed consent;

— The competent authorities of both States must agree, subject to such conditions as those States deem appropriate.

480. For the purposes of this procedure, the State to which the transfer is made has the authority and obligation to keep the person concerned in custody unless otherwise requested or authorized by the State from which the person was transferred. It must also without delay discharge its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand or as otherwise agreed by the competent authorities of both States. Furthermore, it may not require the State from which the person was transferred to initiate extradition proceedings for the return of the person.

481. Various guarantees are provided. The person transferred has to receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred. Unless the State party from which a person is to be transferred so agrees, that person, whatever his or her nationality, may not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions prior to his or her departure from the territory of the State from which such person was transferred.

482. With regard to the appearance of detained persons as witnesses or justice collaborators, the draft comprehensive convention on international terrorism contains certain directions. It is stipulated that a person charged or convicted must freely give his or her consent to collaborate with the authorities and that the international transfer of that person to another State party is to be regulated for such purpose by the convention. It is also provided that the person will receive credit for service of the sentence for the time spent in custody.

RECOMMENDATION

483. *Temporary transfer of persons being detained or serving sentences*

1. Where the national authorities agree to a request for temporary transfer of a person detained in its territory to another State for the purpose of giving testimony or assist-

²⁵⁰See article 13 of the 1997 Convention and article 16 of the 1999 Convention.

ing in the investigation or prosecution of an offence referred to in [relevant articles], the competent judicial officer may submit an application for a transfer warrant to the court.

2. The request shall state:

(a) The name of the detained person and the place of his or her confinement;

(b) The duration of the requested transfer;

(c) The country to which the person is to be transferred;

(d) The person or category of persons into whose custody the person in question is to be delivered for the purpose of transfer;

(e) The reason for the transfer.

3. Where the judicial officer dealing with an application submitted in accordance with paragraph 1 above is satisfied that the detained person consents to the transfer and that the transfer will be for a fixed period, the judicial officer shall issue a transfer warrant, specifying all such conditions as the judicial officer deems appropriate.

4. Notwithstanding any specific provisions (in particular with regard to immigration), where the competent national authority has submitted an application for temporary transfer of a person detained in a State for the purpose of giving testimony or assisting in the investigation or prosecution of an offence referred to in [relevant articles], the competent authority may authorize the detained person to enter the [territory of the State concerned] with a view to remaining at a specified place (or places) for a specified period.

5. The competent authority may modify the conditions of the authorization granted pursuant to paragraph 4 above.

6. A person present in the national territory as a result of an application submitted by a State shall not be prosecuted or detained or subjected to any restriction of his or her personal liberty other than that imposed in that territory in respect of acts or convictions prior to his or her departure from the territory of the State party to the Convention from which such person was transferred.

2. Cooperation in combating the financing of terrorism

484. A number of measures of cooperation are required under article 18 of the 1999 Financing of Terrorism Convention. The text stipulates as follows:

“1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, inter alia, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

“(a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

“(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

“i. Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

“ii. With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer’s name, legal form, address, directors and provisions regulating the power to bind the entity;

“iii. Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions which have no apparent economic or obviously

lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

“iv. Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic and international.

“2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

“(a) Measures for the supervision, including, for example, the licensing, of all money-transmission agencies;

“(b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

“3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

“(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

“(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

“i. The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

“ii. The movement of funds relating to the commission of such offences.

“4. States Parties may exchange information through the International Criminal Police Organization (Interpol).”

485. In addition to sharing information on terrorist financing under mutual legal assistance agreements, States may exchange such information through arrangements between

financial intelligence units (FIUs).²⁵¹ Such units have been established in a large number of countries as a “central national agency responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities disclosures of financial information (i) concerning suspected proceeds of crime; or (ii) required by national legislation or regulation, in order to counter money-laundering”.

486. While the original purpose of establishing FIUs was the detection of transactions suspected of being related to money-laundering, they are now being used also to detect transactions suspected of being linked to terrorism. Thus, Special Recommendation IV of FATF sets as a standard that such transactions have to be reported to “competent authorities”.

487. FIUs are grouped together in an informal association called the Egmont Group, which has adopted the above-mentioned definition of an FIU and uses it as a criterion for the admission of new members.

488. FIUs share information with each other on the basis of the Egmont Group’s Principles for Information Exchange between Financial Intelligence Units for Money-Laundering Cases. These Principles were adopted at The Hague on 13 June 2001. Until the end of 2001, the arrangements for the exchange of information between FIUs focused mainly on information concerning money-laundering cases. As countries enact legislation requiring the reporting of transactions suspected of being related to the financing of terrorism, FIUs will also have to exchange information with each other on cases of terrorism financing.

489. The Egmont Group has already taken steps to improve its information collection and sharing in this area.²⁵² The Principles state that “FIUs should be able to exchange information freely with other FIUs on the basis of reciprocity or mutual agreement...” and that such exchange should involve “any available information that may be relevant to the analysis or investigation of financial transactions and other relevant information related to money-laundering and the persons or companies involved.”²⁵³

490. Information furnished by an FIU to another FIU may be used only for the purposes for which it was requested

and the receiving FIU may not transfer it or make use of it for administrative, investigative, prosecutorial or judicial purposes without the consent of the FIU which provided it. Such information must be subject to strict safeguards to protect its confidential character.

ILLUSTRATIONS

491. Some FIUs are empowered to share information with other FIUs even in the absence of an agreement with the other FIU on the exchange of information (usually in the form of a memorandum of understanding or an exchange of letters). This is the case with FinCEN, the United States FIU. Many FIUs are authorized to enter into information-sharing agreements with other FIUs, while others may do so only after consultation with or approval by the minister responsible. In Canada, for example, agreements on the exchange of information between the Canadian FIU and other FIUs may be concluded either by the minister responsible or, with the consent of the minister responsible, by the FIU. The types of information that may be exchanged are enumerated in Canadian law. In most cases, once the memorandum of understanding is in force (if needed), the FIU can exchange information directly with the other FIU. In the case of Monaco, the law makes the exchange of information subject to reciprocity and to the finding that no criminal proceedings have been instituted in Monaco in connection with the same acts.

RECOMMENDATIONS

492. *Cooperation in financial matters*

Requests for investigative measures in combating the financing of terrorism

1. Investigative measures shall be executed in accordance with national law unless the competent foreign authorities have requested that a specific procedure compatible with national law be followed.
2. A judicial officer or a public official designated by the competent foreign authority may attend the execution of the measures depending on whether they are carried out by a judicial officer or by a public official and with the authorization of the competent authority [to be specified].

Requests for provisional measures

The court to which a request from a competent foreign authority for the taking of provisional measures is referred shall order such requested measures in accordance with national law.

Requests for confiscation

1. In the case of a request for mutual legal assistance with a view to the making of a confiscation order, the court shall rule upon referral of the matter to the prosecuting authority. The confiscation order shall relate to funds used or allocated for the purpose of committing an offence involving the financing of terrorism, or constituting the

²⁵¹Source: IMF, *Suppressing the Financing of Terrorism: A Handbook for Legislative Drafting*; which is available in paper form (contact IMF) or may be downloaded at: <http://www.imf.org/external/pubs/ft/SFTH/fra/pdf/chp4.pdf>.

²⁵²At a special meeting in October 2002, the Egmont Group agreed to: (i) work to eliminate impediments to information exchange; (ii) make terrorist financing a form of suspicious activity to be reported by all financial sectors to their respective FIU; (iii) undertake joint studies of particular money-laundering vulnerabilities, especially when they may have some bearing on counter-terrorism, such as *hawala*, and (iv) create sanitized cases for training purposes. See James S. Sloan, Director, FinCEN, Statement before the Subcommittee on Oversight and Investigations of the Committee on Financial Services, 11 March 2003.

²⁵³Egmont Group, *Principles for Information Exchange between Financial Intelligence Units for Money-Laundering Cases*, The Hague, 13 June 2001, paragraph 6.

proceeds of any such offence, and located in the national territory.

2. The court to which a request for the enforcement of a confiscation order issued abroad is referred shall be bound by the findings as to the facts on which the order is based, and it may refuse to grant the request solely on one of the grounds stated in article ... [article concerning possibilities of refusing mutual legal assistance or extradition].

Disposal of confiscated property

The State shall have power of disposal of funds confiscated in its territory at the request of foreign authorities. It may, however, conclude agreements with foreign States providing for the sharing, on a regular or case-by-case basis, of funds derived from acts of confiscation ordered at their request.

DRAFT LAW AGAINST TERRORISM

Preliminary remarks

493. On the basis of the analysis of the universal counter-terrorism instruments made in the present *Guide*, a draft law against terrorism is proposed, reproducing the mandatory provisions of those instruments. As an alternative to the draft law, national authorities may implement the instruments by amending their criminal code and code of criminal procedure.

494. The terminology suggested for the different articles reflects that used in the aforementioned instruments. Authorities are strongly encouraged to retain such termi-

nology in order to facilitate cooperation in criminal matters with other States.

495. National authorities are requested to provide for penalties that take into account the seriousness of the offences involved. State authorities are also encouraged to give consideration to applying the recommendations contained in the instruments.

496. Authorities are further advised to fulfil their obligations under international human rights instruments and, following an examination of their national law, to adopt legislation, where necessary, with a view to promoting comprehensive international cooperation.

Text of the draft law against terrorism

The present law is adopted for the purpose of implementing the universal anti-terrorism instruments.

TITLE 1 TERRORISM OFFENCES

Article 1 *Unlawful seizure*

Any person who, by force or threat thereof or any other form of intimidation, seizes an aircraft in flight, a ship or a fixed platform shall be punished by [penalties taking into account the seriousness of the offence].

Article 2 *Offences against the safety of civil aviation*

1. Any person who performs any of the following acts, if such act endangers or is likely to endanger the safety of an aircraft, shall be punished by [penalties taking into account the seriousness of the offence]:

(a) Commits an act of violence against a person on board an aircraft in flight;

(b) Destroys or causes serious damage to an aircraft, whether or not that aircraft is in service;

(c) Places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight or which is likely to endanger its safety in flight;

(d) Destroys or damages air navigation facilities or interferes with their operation;

(e) Communicates information which he or she knows to be false.

2. Any person who threatens to commit any of the offences set forth in subparagraphs (a), (b) and (d) above aimed at

compelling a natural or juridical person to do or refrain from doing any act shall be punished by [penalties taking into account the seriousness of the offence].

Article 3 *Offences against airport safety*

1. Any person who performs any of the following acts using any device, substance or weapon, if such act endangers or is likely to endanger the safety of an airport serving international civil aviation, shall be punished by [penalties taking into account the seriousness of the offence]:

(a) Commits an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death or

(b) Destroys or seriously damages the facilities or disrupts the services of an airport serving international civil aviation.

2. Any person who threatens to commit any of the offences set forth in paragraph 1 above aimed at compelling a natural or legal person to do or refrain from doing any act shall be punished by [penalty taking into account the seriousness of the offence].

Article 4 *Offences against the safety of ships or fixed platforms*

1. Any person who performs any of the following acts using any device, substance or weapon, if such acts are likely to endanger the safety of maritime navigation, shall be punished by [penalties taking into account the seriousness of the offences]:

(a) Commits an act of violence against a person on board a ship or a fixed platform;

(b) Destroys or causes serious damage to a ship, to its cargo or to a fixed platform;

(c) Places or causes to be placed on a ship or a fixed platform, by any means whatsoever, a device or substance which is likely to destroy the ship or the fixed platform or to cause damage to the ship, to its cargo or to the fixed platform;

(d) Destroys or seriously damages maritime navigational facilities or seriously interferes with their operation;

(e) Communicates information which he or she knows to be false.

2. Any person who threatens to commit any of the offences set forth in subparagraphs (a), (b) and (d) above aimed at compelling a natural or juridical person to do or refrain from doing any act shall be punished by [penalties taking into account the seriousness of the offence].

3. An attempt to commit any such offence shall be punished by [penalties taking into account the seriousness of the offence].

Article 5 *Hostage-taking*

Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or refrain from doing any act as an explicit or implicit condition for the release of the hostage shall be punished by [penalty taking into account the seriousness of the offence].

Article 6 *Offences against internationally protected persons*

Any person who performs any of the following acts shall be punished by [penalties taking into account the seriousness of the offence]:

(a) Commits a murder, kidnapping or other attack upon the person or the liberty of an internationally protected person;

(b) Commits a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his or her person or liberty or

(c) Threatens to commit any such attack.

Article 7 *Offences committed using explosives or other lethal devices*

1. Any person who delivers, places, discharges or detonates in or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

(a) An explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage or

(b) A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material

— with the intent to cause death or serious bodily injury or

— with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss, shall be punished by [penalties taking into account the seriousness of the offence].

2. The same penalties shall be applicable to any person who:

(a) Directs others to commit an offence as set forth in paragraph 1 above or

(b) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 above by a group of persons acting with a common purpose, if the contribution is intentional and if it is either made with the aim of furthering the general criminal activity or purpose of the group or made in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 8 *Offences relating to nuclear material*

Any person who performs any of the following acts shall be punished by [penalty taking into account the seriousness of the offence]:

(a) Receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material, without lawful authority, which causes or is likely to cause death or serious injury to any person or substantial damage to property;

(b) Theft or robbery of nuclear material;

(c) Embezzlement or fraudulent obtaining of nuclear material;

(d) An act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;

(e) A threat to use nuclear material to cause death or serious injury to any person or substantial property damage or to commit an offence referred to in subparagraph (b) above in order to compel a natural or juridical person, international organization or State to do or refrain from doing any act.

Article 9 *Financing of terrorism*

1. Any person who by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of articles 1 to 8 and 10;

(b) Any other act intended to cause death or serious injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or refrain from doing any act

shall be punished by [penalties taking into account the seriousness of the offence]. It shall not be necessary that the funds were actually used to commit the offence.

2. The same penalties shall be applicable to any person who:

(a) Directs others to commit an offence as set forth in paragraph 1 above or

(b) Contributes to the commission of one or more offences as set forth in paragraph 1 above by a group of persons acting with a common purpose if such contribution is intentional and if it is either made with the aim of furthering the criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 above, or made in the knowledge of the intention of the group to commit an offence as set forth in that paragraph.

3. When the person responsible for the management or control of a legal entity located in the territory of [name of country] or organized under its laws has, in that capacity, committed an offence relating to the financing of terrorism, that legal entity shall be subject to [effective, proportionate and dissuasive criminal sanctions]. Such sanctions may include monetary sanctions.

4. Paragraph 3 of this article shall be applicable without prejudice to the criminal liability of the individuals who committed the offences.

*Article 10
Recruitment*

Any person who recruits others for the commission of any of the offences set forth in articles 1 to 9 and 11 shall be punished by [penalties taking into account the seriousness of the offences].

*Article 11
Suppling of weapons*

Any person who supplies weapons for the commission of any of the offences referred to in articles 1 to 10 shall be punished by [penalties taking into account the seriousness of the offences].

*Article 12
Attempts to commit offences and complicity*

1. Any person who attempts to commit, or participates as an accomplice in the commission of, any of the offences referred to in articles 1 to 11 shall be punished by [penalties taking into account the seriousness of the offences].

2. Paragraph 1 above shall not apply to attempts consisting of threats to commit any of the offences referred to in articles 1 to 11.

*Article 13
Criminal association*

Any person who conspires with another to commit any of the offences referred to in articles 1 to 11 or abets, instigates, organizes or prepares the commission of any such offence shall be punished by [penalties taking into account the seriousness of the offences].

*Article 14
Provision of support and services*

Any person who provides any kind of support or service with the intention that it should be used or in the knowledge that it is to be used in order to commit any of the offences referred to in articles 1 to 11 shall be punished by [penalties taking into account the seriousness of the offences].

TITLE II
SPECIFIC MEASURES RELATING TO THE
FINANCING OF TERRORISM

*Article 15
Confiscation*

1. In the case of a conviction in respect of an offence set forth in [reference to the relevant article(s) relating to the financing of terrorism], confiscation of the funds and property used or allocated for the purpose of committing such offence, funds and property forming the subject of the offence and proceeds derived from the offence shall be ordered.

2. If the funds and assets to be confiscated cannot be produced, confiscation may be ordered for the equivalent value.

*Article 16
Disposal of confiscated assets*

Confiscated funds shall become the property of the State, which may allocate them for the purpose of compensating victims of terrorism offences or their families.

*Article 17
Freezing of funds*

The competent authority [named] may order the freezing of funds and property of persons and organizations committing or attempting to commit any of the offences set forth in [relevant articles].

*Article 18
Provisional measures*

The competent authority [named] may order any provisional measures, at the expense of the State, including the freezing of funds or financial transactions relating to property of whatsoever nature capable of being seized or confiscated.

*Article 19
Seizure*

The competent authority [named] may seize property connected with the offence being investigated, in particular funds used or allocated for the purpose of committing the offences set forth in [relevant articles], and also the proceeds derived from such offences and any evidence that might allow their identification.

*Article 20
Reporting of suspicious financial transactions*

1. All financial institutions and other professionals involved in financial transactions [establish a list] having a reasonable suspicion that funds or financial services are linked to an offence relating to the financing of terrorism [relevant articles] or are being used to facilitate any such offence shall promptly inform the [competent authority] thereof.

2. Failure to report the facts stated in paragraph 1 of this article shall be punished by [appropriate penalty].

Article 21

Specific rules relating to non-profit associations and organizations

Registration procedure

1. Any non-profit association or organization wishing to collect or receive, grant or transfer funds shall be entered in the register of non-profit associations or organizations in accordance with procedures defined by [to be specified].
2. The initial application for registration shall include the forenames, surnames, addresses and telephone numbers of all persons given responsibility for the operation of the association, in particular the president, vice-president, general secretary, members of the board of directors and treasurer, as applicable. Any change in the identity of such persons shall be reported to the authority responsible for maintaining the register.

Donations

3. Any donation made to an association or organization referred to in the preceding article for an amount equal to or greater than the sum of [to be specified] shall be recorded in a register maintained for this purpose by the association or organization, including full details of the donor and the date, nature and amount of the donation. The register shall be kept for a period of [to be specified] years and be submitted, upon request, to any authority responsible for the oversight of non-profit organizations and, upon demand, to judicial police officers in charge of a criminal investigation.
4. Where the donor of a sum greater than that amount wishes to remain anonymous, the record may omit the donor's identification but the association or organization shall be required, upon demand, to disclose the donor's identity to judicial police officers in charge of a criminal investigation.

Mandatory declarations

5. Any cash donation for an amount equal to or greater than the sum of [to be specified] shall be declared to the financial intelligence unit in accordance with defined procedures.
6. Any donation shall also be declared to the financial intelligence unit if the funds are suspected of being connected with a terrorist operation or the financing of terrorism.

Accounting and bank accounts

7. Non-profit associations or organizations shall be required to keep accounts in accordance with the standards in force and to furnish the authorities designated for that purpose with their financial statements for the preceding year within [to be specified] months following the close of their financial year.
8. Non-profit associations and organizations shall be required to deposit in a bank account with an approved banking institution all sums of money submitted to them as donations or in connection with transactions which they are called upon to carry out.

Bans

9. Notwithstanding the conduct of criminal proceedings, the competent authority may, by administrative decision, order a temporary ban on or the dissolution of non-profit associations or organizations which, with full knowledge of the facts, encourage, instigate, organize or commit offences set forth in [relevant articles].

Penalties

10. Any violation of the provisions of this article shall be punished by one of the following penalties:
 - (a) A fine [amount to be specified];
 - (b) A temporary ban on the activities of the association or organization for a maximum period of [to be specified];
 - (c) The dissolution of the association or organization.

TITLE III JURISDICTION

Article 22 *Jurisdiction of the courts*

1. The courts of [name of country] shall have jurisdiction to try offences referred to in articles 1 to 14 if such offences were committed:
 - (a) In the territory of [name of country] or
 - (b) On board an aircraft registered in [name of country], a vessel flying the flag of [name of country] or a fixed platform located on the continental shelf of [name of country].
2. Furthermore, the courts of [name of country] shall have jurisdiction:
 - (a) If the offence was committed by a national of [name of country] or
 - (b) In regard to an offence involving aircraft as referred to in article 1 (Unlawful seizure), if the offence was committed on board the aircraft and the aircraft lands in the territory of [name of country] with the alleged offender still on board or
 - (c) In the case of an offence referred to in article 5 (Hostage-taking), if the offence was committed in order to compel the Government of [name of country] to do or refrain from doing any act or
 - (d) In the case of an offence referred to in article 6 (Offences against internationally protected persons), if the offence was committed against an internationally protected person who enjoys such status by virtue of functions that he or she exercises on behalf of [name of country].

Article 23 *Prosecute or extradite*

The courts of [name of country] shall have jurisdiction to try offences referred to in articles 1 to 14 in cases where the alleged perpetrator of any such offence is present in the territory of [name of country] in the absence of a decision of the competent authority to extradite that person. Such jurisdiction shall be established independently of the alleged offender's nationality or his or her stateless status. The courts of [name of country] shall also have jurisdiction to try attempts to commit any of the offences referred to in those articles.

*Article 24**Non-recognition of the political or fiscal nature of offences*

For the purposes of extradition or mutual legal assistance:

(a) The offences referred to in articles 1 to 14 shall not be regarded as political offences, as offences connected with political offences or as offences inspired by political motives;

(b) The offence referred to in article 9 shall not be regarded as a fiscal offence.

TITLE IV INTERNATIONAL COOPERATION

Chapter I General provisions

*Article 25**General provisions*

The national authorities undertake to afford the widest possible measure of cooperation to those of other States for purposes of information exchange, investigation and court proceedings for the purpose of extradition and mutual legal assistance.

Chapter II Safety measures

*Article 26**Investigations*

Upon receiving information that the perpetrator or alleged perpetrator of an offence referred to in [relevant articles] may be present in its territory, the public prosecutor's office shall take such measures as may be necessary to investigate the facts contained in the information.

*Article 27**Security measures*

Upon being satisfied that the circumstances so warrant, the public prosecutor's office shall take the appropriate measures to ensure that person's presence for the purpose of prosecution or extradition, if necessary by ordering the opening of a judicial inquiry and the placing of the person being investigated under judicial supervision or in custody.

*Article 28**Right of communication*

1. Any person regarding whom the measures referred to in article 26 are being taken shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights, or, if that person is a stateless person, the State in the territory of which that person is habitually resident;

(b) To be visited by a representative of that State;

(c) To be informed of that person's rights under subparagraphs (a) and (b) above.

2. Upon receiving a request to do so from a State which has established jurisdiction over the offence, the public prosecutor's office shall make the necessary arrangements for a person detained under article 26 to be visited by a representative of the International Committee of the Red Cross.

*Article 29**Notification to competent States*

Where a person who is the subject of an investigation referred to in article 25 has been taken into custody, the public prosecutor's office shall immediately notify, directly or through the Secretary-General of the United Nations, the States which have established jurisdiction over the offence, and, if it considers it advisable, any other interested States, of the fact that that person is in custody and of the circumstances which warrant such detention. The public prosecutor's office shall promptly inform those States of its findings and shall indicate whether it intends to exercise jurisdiction.

Chapter III Requests for mutual legal assistance

*Article 30**Purpose of mutual assistance requests*

Upon application by a foreign State, requests for mutual assistance in connection with offences referred to in article 25 of the present law shall be executed in accordance with the principles set out in this title. Mutual assistance may include in particular:

- Taking evidence or statements from persons;
- Assisting in making detained persons or others available to the judicial authorities of the requesting State in order to give evidence or assist in investigations;
- Effecting service of judicial documents;
- Carrying out searches and seizures;
- Examining objects and sites;
- Providing information and evidentiary items;
- Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

*Article 31**Refusal to execute requests*

1. A request for mutual assistance may be refused only:

(a) If there are substantial grounds for believing that the measure or order being sought is directed at the person in question solely on account of that person's race, religion, nationality, ethnic origin or political opinions;

(b) If it was not made by a competent authority in accordance with the legislation of the requesting country or if it was not transmitted in the proper manner;

(c) If the offence to which it relates is the subject of criminal proceedings or has already been the subject of a final judgment in the territory of [State adopting the law].

2. Bank secrecy may not be invoked as a ground for refusal to comply with the request.

3. The public prosecutor's office may appeal against a court's decision to refuse compliance within [...] days following such decision.

4. The competent authorities shall promptly inform the competent foreign authorities of the grounds for refusal to comply with their request.

Chapter IV Extradition

Article 32

Requests for extradition

In the event of a request for extradition, the non-conflicting procedures and principles laid down in any extradition treaty in force between the requesting State and [name of country adopting the law] and the provisions of the present law shall be applied.

Article 33

Security measures

Upon being satisfied that the circumstances so warrant, the public prosecutor's office shall take the appropriate measures to ensure the presence of the person referred to in the request for extradition, if necessary by applying to the court to which the request for extradition was made to have the person placed under judicial supervision or in custody.

Article 34

Dual criminality

Under the present law, extradition shall be carried out only if the extraditable offence or a similar offence is provided for in the legislation of the requesting State and of the requested State or if the States are parties to the [relevant] Convention or [relevant] Protocol serving as the legal basis for its criminalization.

Article 35

Mandatory grounds for refusal

Extradition shall not be granted:

(a) If there are substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;

(b) If a final judgment has been rendered in respect of the offence for which extradition is requested;

(c) If the person whose extradition is requested has, under the legislation of either country, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;

(d) If the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in article 14 of the International Covenant on Civil and Political Rights.

Article 36

Optional grounds for refusal

Extradition may be refused:

(a) If a prosecution in respect of the offence for which extradition is requested is pending against the person whose extradition is requested;

(b) If the person whose extradition is requested has been tried or would be liable to be tried or sentenced in the requesting State by an extraordinary or ad hoc court or tribunal;

(c) If the competent authorities, while also taking into account the nature of the offence and the interests of the requesting State, consider that, in the circumstances of the case, the extradition of the person in question would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of that person;

(d) If the extradition is requested in execution of a final judgment rendered in absentia and the convicted person has not had the opportunity to arrange for his or her defence for reasons beyond his or her control;

(e) If the requested State has established jurisdiction over the offence.

Chapter V

Provisions common to requests for mutual assistance and requests for extradition

Article 37

Nature of offences

For the purposes of the present law, the offences referred to in [relevant text] shall not be regarded as offences of a political nature, as offences connected with a political offence, as offences inspired by political motives or as fiscal offences.

TITLE V

OTHER FORMS OF COOPERATION

Chapter I

Transfer of detained persons

Article 38

Temporary transfer of persons being detained or serving sentences

1. Where the national authorities agree to a request, made by a State party to the [relevant] Convention, for temporary transfer of a person detained in its territory to the State party to the Convention for the purpose of giving testimony or assisting in the investigation or prosecution of an offence referred to in [relevant articles], the competent judicial officer may submit an application for a transfer warrant to the court.

2. The request shall state:

(a) The name of the detained person and the place of his or her confinement;

(b) The duration of the requested transfer;

(c) The country to which the person is to be transferred;

(d) The person or category of persons into whose cus-

tody the person in question is to be delivered for the purpose of transfer;

(e) The reason for the transfer.

3. Where the judicial officer dealing with an application submitted in accordance with paragraph 1 above is satisfied that the detained person consents to the transfer and that the transfer will be for a fixed period, the judicial officer shall issue a transfer warrant, specifying all such conditions as the judicial officer deems appropriate.

4. Notwithstanding any specific provisions (in particular with regard to immigration), where the competent national authority has submitted an application for temporary transfer of a person detained in a State party to the Convention for the purpose of giving testimony or assisting in the investigation or prosecution of an offence referred to in [relevant articles], the competent authority may authorize the detained person to enter the [territory of the State concerned] with a view to remaining at a specified place (or places) for a specified period.

5. The competent authority may modify the conditions of the authorization granted pursuant to paragraph 4 above.

6. A person present in the national territory as a result of an application submitted by a State party shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in that territory in respect of acts or convictions prior to his or her departure from the territory of the State party to the Convention from which such person was transferred.

Chapter II

Cooperation in financial matters

Article 39

Requests for investigative measures in combating the financing of terrorism

1. Investigative measures shall be executed in accordance with national law unless the competent foreign authorities have requested that a specific procedure compatible with national law be followed.

2. A judicial officer or a public official designated by the competent foreign authority may attend the execution of the measures depending on whether they are carried out by a judicial officer or by a public official and with the authorization of the competent authority [to be specified].

Article 40

Requests for provisional measures

The court to which a request from a competent foreign authority for the taking of provisional measures is referred shall order such requested measures in accordance with national law.

Article 41

Requests for confiscation

1. In the case of a request for mutual legal assistance with a view to the making of a confiscation order, the court shall rule upon referral of the matter to the prosecuting authority. The confiscation order shall relate to funds used or allocated for the purpose of committing an offence involving the financing of terrorism, or constituting the proceeds of any such offence, and located in the national territory.

2. The court to which a request for the enforcement of a confiscation order issued abroad is referred shall be bound by the findings as to the facts on which the order is based, and it may refuse to grant the request solely on one of the grounds stated in article 34 of the present law.

Article 42

Disposal of confiscated property

The State shall have power of disposal of funds confiscated in its territory at the request of foreign authorities. It may, however, conclude agreements with foreign States providing for the sharing, on a regular or case-by-case basis, of funds derived from acts of confiscation ordered at their request.

ANNEXES

ANNEX 1

RESOLUTIONS 1373 AND 1566 OF THE UNITED NATIONS SECURITY COUNCIL

Resolution 1373 (2001)

Adopted by the Security Council at its 4385th meeting, on 28 September 2001

The Security Council,

Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* that all States shall:

(a) Prevent and suppress the financing of terrorist acts;

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or

attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. *Decides also* that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. *Calls upon* all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. *Notes with concern* the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. *Declares* that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations

and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. *Directs* the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. *Expresses* its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. *Decides* to remain seized of this matter.

Resolution 1566 (2004)

Adopted by the Security Council at its 5053rd meeting, on 8 October 2004

The Security Council,

Reaffirming its resolutions 1267 (1999) of 15 October 1999 and 1373 (2001) of 28 September 2001 as well as its other resolutions concerning threats to international peace and security caused by terrorism,

Recalling in this regard its resolution 1540 (2004) of 28 April 2004,

Reaffirming also the imperative to combat terrorism in all its forms and manifestations by all means, in accordance with the Charter of the United Nations and international law,

Deeply concerned by the increasing number of victims, including children, caused by acts of terrorism motivated by intolerance or extremism in various regions of the world,

Calling upon States to cooperate fully with the Counter-Terrorism Committee (CTC) established pursuant to resolution 1373 (2001), including the recently established Counter-Terrorism Committee Executive Directorate (CTED), the "Al-Qaida/Taliban Sanctions Committee" established pursuant to resolution 1267 (1999) and its Analytical Support and Sanctions Monitoring Team, and the Committee established pursuant to resolution 1540 (2004), and *further calling upon* such bodies to enhance cooperation with each other,

Reminding States that they must ensure that any measures taken to combat terrorism comply 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,

Reaffirming that terrorism in all its forms and manifestations constitutes one of the most serious threats to peace and security,

Considering that acts of terrorism seriously impair the enjoyment of human rights and threaten the social and economic development of all States and undermine global stability and prosperity,

Emphasizing that enhancing dialogue and broadening the understanding among civilizations, in an effort to prevent the indiscriminate targeting of different religions and cultures, and addressing unresolved regional conflicts and the full range of global issues, including development issues, will contribute to international cooperation, which by itself is necessary to sustain the broadest possible fight against terrorism,

Reaffirming its profound solidarity with victims of terrorism and their families,

Acting under Chapter VII of the Charter of the United Nations,

1. *Condemns* in the strongest terms all acts of terrorism

irrespective of their motivation, whenever and by whomsoever committed, as one of the most serious threats to peace and security;

2. *Calls upon* States to cooperate fully in the fight against terrorism, especially with those States where or against whose citizens terrorist acts are committed, in accordance with their obligations under international law, in order to find, deny safe haven and bring to justice, on the basis of the principle to extradite or prosecute, any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or commission of terrorist acts or provides safe havens;

3. *Recalls* that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature;

4. *Calls upon* all States to become party, as a matter of urgency, to the relevant international conventions and protocols whether or not they are a party to regional conventions on the matter;

5. *Calls upon* Member States to cooperate fully on an expedited basis in resolving all outstanding issues with a view to adopting by consensus the draft comprehensive convention on international terrorism and the draft international convention for the suppression of acts of nuclear terrorism;

6. *Calls upon* relevant international, regional and subregional organizations to strengthen international cooperation in the fight against terrorism and to intensify their interaction with the United Nations and, in particular, the CTC with a view to facilitating full and timely implementation of resolution 1373 (2001);

7. *Requests* the CTC in consultation with relevant international, regional and subregional organizations and the United Nations bodies to develop a set of best practices to assist States in implementing the provisions of resolution 1373 (2001) related to the financing of terrorism;

8. *Directs* the CTC, as a matter of priority and, when appropriate, in close cooperation with relevant international, regional and subregional organizations to start visits to States, with the consent of the States concerned, in order to enhance the monitoring of the implementation of resolution 1373 (2001) and facilitate the provision of technical and other assistance for such implementation;

9. *Decides* to establish a working group consisting of all members of the Security Council to consider and submit recommendations to the Council on practical measures to be imposed upon individuals, groups or entities involved in or associated with terrorist activities, other than those designated by the Al-Qaida/Taliban Sanctions Committee, including more effective procedures considered to be appropriate for bringing them to justice through prosecution or extradition, freezing of their financial

assets, preventing their movement through the territories of Member States, preventing supply to them of all types of arms and related material, and on the procedures for implementing these measures;

10. *Requests* further the working group, established under paragraph 9 to consider the possibility of establishing an international fund to compensate victims of terrorist acts and their families, which might be financed through voluntary contributions, which could consist in part of assets seized from terrorist organizations, their members and sponsors, and submit its recommendations to the Council;

11. *Requests* the Secretary-General to take, as a matter of urgency, appropriate steps to make the CTED fully operational and to inform the Council by 15 November 2004;

12. *Decides* to remain actively seized of the matter.

ANNEX 2

THE UNIVERSAL ANTI-TERRORISM INSTRUMENTS

Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963

*The States Parties to this Convention,
Have agreed as follows:*

Chapter III
Powers of the aircraft commander

Article 5

Chapter I
Scope of the convention

Article 1

1. This Convention shall apply in respect of:
 - (a) offences against penal law;
 - (b) acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.
2. Except as provided in Chapter III, this Convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State.
3. For the purposes of this Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.
4. This Convention shall not apply to aircraft used in military, customs or police services.

Article 2

Without prejudice to the provisions of article 4 and except when the safety of the aircraft or of persons or property on board so requires, no provision of this Convention shall be interpreted as authorizing or requiring any action in respect of offences against penal laws of a political nature or those based on racial or religious discrimination.

Chapter II
Jurisdiction

Article 3

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board.
2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 4

A Contracting State which is not the State of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in the following cases:

- (a) the offence has effect on the territory of such State;
- (b) the offence has been committed by or against a national or permanent resident of such State;
- (c) the offence is against the security of such State;
- (d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in force in such State;
- (e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement.

1. The provisions of this Chapter shall not apply to offences and acts committed or about to be committed by a person on board an aircraft in flight in the airspace of the State of registration or over the high seas or any other area outside the territory of any State unless the last point of take-off or the next point of intended landing is situated in a State other than that of registration, or the aircraft subsequently flies in the airspace of a State other than that of registration with such person still on board.
2. Notwithstanding the provisions of article 1, paragraph 3, an aircraft shall for the purposes of this Chapter, be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the provisions of this Chapter shall continue to apply with respect to offences and acts committed on board until competent authorities of a State take over the responsibility for the aircraft and for the persons and property on board.

Article 6

1. The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:
 - (a) to protect the safety of the aircraft, or of persons or property therein; or
 - (b) to maintain good order and discipline on board; or
 - (c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.
2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.

Article 7

1. Measures of restraint imposed upon a person in accordance with article 6 shall not be continued beyond any point at which the aircraft lands unless:
 - (a) such point is in the territory of a non-Contracting State and its authorities refuse to permit disembarkation of that person or those measures have been imposed in accordance with article 6, paragraph 1(c) in order to enable his delivery to competent authorities;
 - (b) the aircraft makes a forced landing and the aircraft commander is unable to deliver that person to competent authorities; or
 - (c) that person agrees to onward carriage under restraint.
2. The aircraft commander shall as soon as practicable, and if possible before landing in the territory of a State with a person on board who has been placed under restraint in accordance with the provisions of article 6, notify the authorities of such State of the fact that a person on board is under restraint and of the reasons for such restraint.

Article 8

1. The aircraft commander may, in so far as it is necessary for the purpose of subparagraph (a) or (b) of paragraph 1 of article 6, disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in article 1, paragraph 1(b).
2. The aircraft commander shall report to the authorities of the State in which he disembarks any person pursuant to this article, the fact of, and the reasons for, such disembarkation.

Article 9

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal law of the State of registration of the aircraft.
2. The aircraft commander shall as soon as practicable and if possible before landing in the territory of a Contracting State with a person on board whom the aircraft commander intends to deliver in accordance with the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons therefor.
3. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered in accordance with the provisions of this article with evidence and information which, under the law of the State of registration of the aircraft, are lawfully in his possession.

Article 10

For actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.

Chapter IV
Unlawful seizure of aircraft

Article 11

1. When a person on board has unlawfully committed by force or threat thereof an act of interference, seizure, or other wrongful exercise of control of an aircraft in flight or when such an act is about to be committed, Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft.
2. In the cases contemplated in the preceding paragraph, the Contracting State in which the aircraft lands shall permit its passengers and crew to continue their journey as soon as practicable, and shall return the aircraft and its cargo to the persons lawfully entitled to possession.

Chapter V
Powers and duties of States

Article 12

Any Contracting State shall allow the commander of an aircraft registered in another Contracting State to disembark any person pursuant to article 8, paragraph 1.

Article 13

1. Any Contracting State shall take delivery of any person whom the aircraft commander delivers pursuant to article 9, paragraph 1.
2. Upon being satisfied that the circumstances so warrant, any Contracting State shall take custody or other measures to ensure the presence of any person suspected of an act contemplated in article 11, paragraph 1 and of any person of whom it has taken delivery. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is reasonably necessary to enable any criminal or extradition proceedings to be instituted.
3. Any person in custody pursuant to the previous paragraph shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.
4. Any Contracting State, to which a person is delivered pursuant to article 9, paragraph 1, or in whose territory an aircraft lands following the commission of an act contemplated in article 11, paragraph 1, shall immediately make a preliminary enquiry into the facts.
5. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the State of registration of the aircraft and the State of nationality of the detained person and, if it considers it advisable, any other interested State of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 4 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 14

1. When any person has been disembarked in accordance with article 8, paragraph 1, or delivered in accordance with article 9, paragraph 1, or has disembarked after committing an act contemplated in article 11, paragraph 1, and when such person cannot or does not desire to continue his journey and the State of landing refuses to admit him, that State may, if the person in question is not a national or permanent resident of that State, return him to the territory of the State of which he is a national or permanent resident or to the territory of the State in which he began his journey by air.
2. Neither disembarkation, nor delivery, nor the taking of custody or other measures contemplated in article 13, paragraph 2, nor return of the person concerned, shall be considered as admission to the territory of the Contracting State concerned for the purpose of its law relating to entry or admission of persons and nothing in this Convention shall affect the law of a Contracting State relating to the expulsion of persons from its territory.

Article 15

1. Without prejudice to article 14, any person who has been disembarked in accordance with article 8, paragraph 1, or delivered in accordance with article 9, paragraph 1, or has disembarked after committing an act contemplated in article 11, paragraph 1, and who desires to continue his journey shall be at liberty as soon as practicable to proceed to any destination of his choice unless his presence is required by the law of the State of landing for the purpose of extradition or criminal proceedings.
2. Without prejudice to its law as to entry and admission to, and extradition and expulsion from its territory, a Contracting State in whose territory a person has been disembarked in accordance with article 8, paragraph 1, or delivered in accordance with article 9, paragraph 1 or has disembarked and is suspected of having committed an act contemplated in article 11, paragraph 1, shall accord to such person treatment which is no less favourable for his protection and security than that accorded to nationals of such Contracting State in like circumstances.

Chapter VI
Other provisions

Article 16

1. Offences committed on aircraft registered in a Contracting State shall be treated, for the purpose of extradition, as if they had been committed not only in the place in which they have occurred but also in the territory of the State of registration of the aircraft.
2. Without prejudice to the provisions of the preceding paragraph, nothing in this Convention shall be deemed to create an obligation to grant extradition.

Article 17

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

Article 18

If Contracting States establish joint air transport operating organizations or international operating agencies, which operate aircraft not registered in any one State those States shall, according to the circumstances of the case, designate the State among them which, for the purposes of this Convention, shall be considered as the State of registration and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

Chapter VII
Final clauses

Article 19

Until the date on which this Convention comes into force in accordance with the provisions of article 21, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

Article 20

1. This Convention shall be subject to ratification by the signatory States in accordance with their constitutional procedures.
2. The instruments of ratification shall be deposited with the International Civil Aviation Organization.

Article 21

1. As soon as twelve of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the twelfth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Convention comes into force, it shall be registered with the Secretary-General of the United Nations by the International Civil Aviation Organization.

Article 22

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or of any of the Specialized Agencies.
2. The accession of a State shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect on the ninetieth day after the date of such deposit.

Article 23

1. Any Contracting State may denounce this Convention by notification addressed to the International Civil Aviation Organization.
2. Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation.

Article 24

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention, which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.
3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the International Civil Aviation Organization.

Article 25

Except as provided in article 24 no reservation may be made to this Convention.

Article 26

The International Civil Aviation Organization shall give notice to all States Members of the United Nations or of any of the Specialized Agencies:

- (a) of any signature of this Convention and the date thereof;
- (b) of the deposit of any instrument of ratification or accession and the date thereof;
- (c) of the date on which this Convention comes into force in accordance with article 21, paragraph 1;
- (d) of the receipt of any notification of denunciation and the date thereof; and
- (e) of the receipt of any declaration or notification made under article 24 and the date thereof.

In witness whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

Done at Tokyo on the fourteenth day of September, one thousand nine hundred and sixty-three in three authentic texts drawn up in the English, French and Spanish languages.

This Convention shall be deposited with the International Civil Aviation Organization with which, in accordance with article 19, it shall remain open for signature and the said Organization shall send certified copies thereof to all States Members of the United Nations or of any Specialized Agency.

Convention for the Suppression of Unlawful Seizure of Aircraft, 1970

The States Parties to this Convention,

Considering that unlawful acts of seizure or exercise of control of aircraft in flight jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation;

Considering that the occurrence of such acts is a matter of grave concern;

Considering that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

Have agreed as follows:

Article 1

Any person who on board an aircraft in flight:

(a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or

(b) is an accomplice of a person who performs or attempts to perform any such act commits an offence (hereinafter referred to as "the offence").

Article 2

Each Contracting State undertakes to make the offence punishable by severe penalties.

Article 3

1. For the purposes of this Convention, an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.

2. This Convention shall not apply to aircraft used in military, customs or police services.

3. This Convention shall apply only if the place of take-off or the place of actual landing of the aircraft on board which the offence is committed is situated outside the territory of the State of registration of that aircraft; it shall be immaterial whether the aircraft is engaged in an international or domestic flight.

4. In the cases mentioned in article 5, this Convention shall not apply if the place of take-off and the place of actual landing of the aircraft on board which the offence is committed are situated within the territory of the same State where that State is one of those referred to in that article.

5. Notwithstanding paragraphs 3 and 4 of this article, articles 6, 7, 8, and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registration of that aircraft.

Article 4

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence, in the following cases:

(a) when the offence is committed on board an aircraft registered in that State;

(b) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

(c) when the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business

or, if the lessee has no such place of business, his permanent residence, in that State.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 5

The Contracting States which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

Article 6

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the State of registration of the aircraft, the State mentioned in article 4, paragraph 1(c), the State of nationality of the detained person and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 8

1. The offence shall be deemed to be included as an extraditable offence in any extradition treaty existing between Contracting States. Contracting States undertake to include the offence as an extraditable offence in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis

for extradition in respect of the offence. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offence as an extraditable offence between themselves subject to the conditions provided by the law of the requested State.

4. The offence shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4, paragraph 1.

Article 9

1. When any of the acts mentioned in article 1(a) has occurred or is about to occur, Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft.

2. In the cases contemplated by the preceding paragraph, any Contracting State in which the aircraft or its passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 10

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offence and other acts mentioned in article 4. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 11

Each Contracting State shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

(a) the circumstances of the offence;

(b) the action taken pursuant to article 9;

(c) the measures taken in relation to the offender or the alleged offender, and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 12

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.

3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary Governments.

Article 13

1. This Convention shall be open for signature at The Hague on 16 December 1970, by States participating in the International Conference on Air Law held at The Hague from 1 to 16 December 1970 (hereinafter referred to as The Hague Conference). After 31 December 1970, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This Convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in The Hague Conference.

4. For other States, this Convention shall enter into force on the date of entry into force of this Convention in accordance with paragraph 3 of this article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this Convention, and other notices.

6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article 14

1. Any Contracting State may denounce this Convention by written notification to the Depositary Governments.

2. Denunciation shall take effect six months following the date on which notification is received by the Depositary Governments.

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

Done at The Hague, this sixteenth day of December, one thousand nine hundred and seventy, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971

The States Parties to the Convention,

Considering that unlawful acts against the safety of civil aviation jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation,

Considering that the occurrence of such acts is a matter of grave concern,

Considering that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders,

Have agreed as follows:

Article 1

1. Any person commits an offence if he unlawfully and intentionally:

(a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or

(b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or

(c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

(d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or

(e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.

2. Any person also commits an offence if he:

(a) attempts to commit any of the offences mentioned in paragraph 1 of this article; or

(b) is an accomplice of a person who commits or attempts to commit any such offence.

Article 2

For the purposes of this Convention:

(a) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;

(b) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this article.

Article 3

Each Contracting State undertakes to make the offences mentioned in article 1 punishable by severe penalties.

Article 4

1. This Convention shall not apply to aircraft used in military, customs or police services.

2. In the cases contemplated in subparagraphs (a), (b), (c) and (e) of paragraph 1 of article 1, this Convention shall apply, irrespective of whether the aircraft is engaged in an international or domestic flight, only if:

(a) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registration of that aircraft; or

(b) the offence is committed in the territory of a State other than the State of registration of the aircraft.

3. Notwithstanding paragraph 2 of this article, in the cases contemplated in subparagraphs (a), (b), (c) and (e) of paragraph 1 of article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registration of the aircraft.

4. With respect to the States mentioned in article 9 and in the cases mentioned in subparagraphs (a), (b), (c) and (e) of paragraph 1 of article 1, this Convention shall not apply if the places referred to in subparagraph (a) of paragraph 2 of this article are situated within the territory of the same State where that State is one of those referred to in article 9, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.

5. In the cases contemplated in subparagraph (d) of paragraph 1 of article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.

6. The provisions of paragraphs 2, 3, 4 and 5 of this article shall also apply in the cases contemplated in paragraph 2 of article 1.

Article 5

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences in the following cases:

(a) when the offence is committed in the territory of that State;

(b) when the offence is committed against or on board an aircraft registered in that State;

(c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

(d) when the offence is committed against or on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in article 1, paragraph 1(a), (b) and (c), and in article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 6

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States mentioned in article 5, paragraph 1, the State of nationality of the detained person and, if it considers it advisable, any other interested State of the fact that such person is in custody and of the circumstances which

warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 8

1. The offences shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States. Contracting States undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1 (b), (c) and (d).

Article 9

The Contracting States which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

Article 10

1. Contracting States shall, in accordance with international and national law, endeavour to take all practicable measure for the purpose of preventing the offences mentioned in article 1.
2. When, due to the commission of one of the offences mentioned in article 1, a flight has been delayed or interrupted, any Contracting State in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 11

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 12

Any Contracting State having reason to believe that one of the offences mentioned in article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States which it believes would be the States mentioned in article 5, paragraph 1.

Article 13

Each Contracting State shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

- (a) the circumstances of the offence;
- (b) the action taken pursuant to article 10, paragraph 2;
- (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 14

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.
3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary Governments.

Article 15

1. This Convention shall be open for signature at Montreal on 23 September 1971, by States participating in the International Conference on Air Law held at Montreal from 8 to 23 September 1971 (hereinafter referred to as the Montreal Conference). After 10 October 1971, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.
2. This Convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, which are hereby designated the Depositary Governments.
3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in the Montreal Conference.
4. For other States, this Convention shall enter into force on the date of entry into force of this Convention in accordance with paragraph 3 of this article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.
5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date

of deposit of each instrument of ratification or accession, the date of entry into force of this Convention, and other notices.

6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to article 102 of the Convention on International Civil Aviation (Chicago, 1944).

Article 16

1. Any Contracting State may denounce this Convention by written notification to the Depositary Governments.

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and the promotion of friendly relations and cooperation among States,

Considering that crimes against diplomatic agents and other internationally protected persons jeopardizing the safety of these persons create a serious threat to the maintenance of normal international relations which are necessary for cooperation among States,

Believing that the commission of such crimes is a matter of grave concern to the international community,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention and punishment of such crimes,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "internationally protected person" means:

(a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State, as well as members of his family who accompany him;

(b) any representative or official of a State or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household;

2. "alleged offender" means a person as to whom there is sufficient evidence to determine *prima facie* that he has committed or participated in one or more of the crimes set forth in article 2.

Article 2

1. The intentional commission of:

(a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;

(b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;

(c) a threat to commit any such attack;

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

(e) an act constituting participation as an accomplice in any such attack shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from

2. Denunciation shall take effect six months following the date on which notification is received by the Depositary Governments.

In witness thereof the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

Done at Montreal, this twenty-third day of September, one thousand nine hundred and seventy-one, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

Article 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 in the following cases:

(a) when the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) when the alleged offender is a national of that State;

(c) when the crime is committed against an internationally protected person as defined in article 1 who enjoys his status as such by virtue of functions which he exercises on behalf of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these crimes in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 4

States Parties shall cooperate in the prevention of the crimes set forth in article 2, particularly by:

(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;

(b) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

Article 5

1. The State Party in which any of the crimes set forth in article 2 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to all other States concerned, directly or through the Secretary-General of the United Nations, all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever any of the crimes set forth in article 2 has been committed against an internationally protected person, any State Party which has information concerning the victim and the circumstances of the crime shall endeavour to transmit it, under the conditions provided for in its internal law, fully and promptly to the State Party on whose behalf he was exercising his functions.

Article 6

1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall

take the appropriate measures under its internal law so as to ensure his presence for the purpose of prosecution or extradition. Such measures shall be notified without delay directly or through the Secretary-General of the United Nations to:

- (a) the State where the crime was committed;
- (b) the State or States of which the alleged offender is a national or, if he is a stateless person, in whose territory he permanently resides;
- (c) the State or States of which the internationally protected person concerned is a national or on whose behalf he was exercising his functions;
- (d) all other States concerned; and
- (e) the international organization of which the internationally protected person concerned is an official or an agent.

2. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

- (a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, which he requests and which is willing to protect his rights, and
- (b) to be visited by a representative of that State.

Article 7

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 8

1. To the extent that the crimes set forth in article 2 are not listed as extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every future extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the procedural provisions and the other conditions of the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and the other conditions of the law of the requested State.
4. Each of the crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 3.

Article 9

Any person regarding whom proceedings are being carried out in connexion with any of the crimes set forth in article 2 shall be guaranteed fair treatment at all stages of the proceedings.

Article 10

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the crimes set forth in article 2, including the supply of all evidence at their disposal necessary for the proceedings.
2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 11

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 12

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those Treaties.

Article 13

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 14

This Convention shall be open for signature by all States, until 31 December 1974 at United Nations Headquarters in New York.

Article 15

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

Article 16

This Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 17

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 18

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect six months following the date

on which notification is received by the Secretary-General of the United Nations.

Article 19

The Secretary-General of the United Nations shall inform all States, *inter alia*:

(a) of signatures to this Convention, of the deposit of instruments of ratification or accession in accordance with articles 14, 15 and 16 and of notifications made under article 18.

(b) of the date on which this Convention will enter into force in accordance with article 17.

International Convention against the Taking of Hostages, 1979

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and cooperation among States,

Recognizing in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Reaffirming the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, as well as in other relevant resolutions of the General Assembly,

Considering that the taking of hostages is an offence of grave concern to the international community and that, in accordance with the provisions of this Convention, any person committing an act of hostage taking shall either be prosecuted or extradited,

Being convinced that it is urgently necessary to develop international cooperation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism,

Have agreed as follows:

Article 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

(a) attempts to commit an act of hostage-taking, or

(b) participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking likewise commits an offence for the purposes of this Convention.

Article 2

Each State Party shall make the offences set forth in article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

Article 3

1. The State Party in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his

Article 20

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 14 December 1973.

release and, after his release, to facilitate, when relevant, his departure.

2. If any object which the offender has obtained as a result of the taking of hostages comes into the custody of a State Party, that State Party shall return it as soon as possible to the hostage or the third party referred to in article 1, as the case may be, or to the appropriate authorities thereof.

Article 4

States Parties shall cooperate in the prevention of the offences set forth in article 1, particularly by:

(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts of taking of hostages;

(b) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1 which are committed:

(a) in its territory or on board a ship or aircraft registered in that State;

(b) by any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;

(c) in order to compel that State to do or abstain from doing any act; or

(d) with respect to a hostage who is a national of that State, if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the alleged offender is present shall, in accordance with its laws, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted. That State Party shall immediately make a preliminary inquiry into the facts.

2. The custody or other measures referred to in paragraph 1 of this article shall be notified without delay directly or through the Secretary-General of the United Nations to:

- (a) the State where the offence was committed;
- (b) the State against which compulsion has been directed or attempted;
- (c) the State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;
- (d) the State of which the hostage is a national or in the territory of which he has his habitual residence;
- (e) the State of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence;
- (f) the international intergovernmental organization against which compulsion has been directed or attempted;
- (g) all other States concerned.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

(a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

(b) to be visited by a representative of that State.

4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State in the territory of which the alleged offender is present subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of this article are intended.

5. The provisions of paragraphs 3 and 4 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with paragraph 1(b) of article 5 to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States or organization referred to in paragraph 2 of this article and indicate whether it intends to exercise jurisdiction.

Article 7

The State Party where the alleged offender is prosecuted shall in accordance with its laws communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States concerned and the international intergovernmental organizations concerned.

Article 8

1. The State Party in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 1 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present.

Article 9

1. A request for the extradition of an alleged offender, pursuant to this Convention, shall not be granted if the requested State Party has substantial grounds for believing:

(a) that the request for extradition for an offence set forth in article 1 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion; or

(b) that the person's position may be prejudiced:

- i. for any of the reasons mentioned in subparagraph (a) of this paragraph, or
- ii. for the reason that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.

2. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

Article 10

1. The offences set forth in article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. The offences set forth in article 1 shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 5.

Article 11

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the offences set forth in article 1, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 12

In so far as the Geneva Conventions of 1949 for the protection of war victims or the Additional Protocols to those Conventions are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts mentioned in article 1, paragraph 4, of Additional Protocol I of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

Article 13

This Convention shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.

Article 14

Nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations.

Article 15

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those treaties.

Article 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General in the United Nations.

Convention on the Physical Protection of Nuclear Material, 1980

The States Parties to this Convention,

Recognizing the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

Convinced of the need for facilitating international cooperation in the peaceful application of nuclear energy,

Desiring to avert the potential dangers posed by the unlawful taking and use of nuclear material,

Convinced that offences relating to nuclear material are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures to ensure the prevention, detection and punishment of such offences,

Aware of the need for international cooperation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material,

Convinced that this Convention should facilitate the safe transfer of nuclear material,

Stressing also the importance of the physical protection of nuclear material in domestic use, storage and transport,

Recognizing the importance of effective physical protection of nuclear material used for military purposes, and understanding

Article 17

1. This Convention is open for signature by all States until 31 December 1980 at United Nations Headquarters in New York.
2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. This Convention is open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 19

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 20

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary General of the United Nations, who shall send certified copies thereof to all States.

In witness thereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 18 December 1979.

that such material is and will continue to be accorded stringent physical protection,

Have agreed as follows:

Article 1

For the purposes of this Convention:

(a) "nuclear material" means plutonium except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;

(b) "uranium enriched in the isotope 235 or 233" means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;

(c) "international nuclear transport" means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the

arrival at a facility of the receiver within the State of ultimate destination.

Article 2

1. This Convention shall apply to nuclear material used for peaceful purposes while in international nuclear transport.
2. With the exception of articles 3 and 4 and paragraph 3 of article 5, this Convention shall also apply to nuclear material used for peaceful purposes while in domestic use, storage and transport.
3. Apart from the commitments expressly undertaken by States Parties in the articles covered by paragraph 2 with respect to nuclear material used for peaceful purposes while in domestic use, storage and transport, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State regarding the domestic use, storage and transport of such nuclear material.

Article 3

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex 1.

Article 4

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex 1.
2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex 1.
3. A State Party shall not allow the transit of its territory by land or internal waterways or through its airports or seaports of nuclear material between States that are not parties to this Convention unless the State Party has received assurances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex 1.
4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex 1 to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.
5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex 1 according to paragraphs 1 to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.
6. The responsibility for obtaining assurances referred to in paragraph 1 may be transferred, by mutual agreement, to the State Party involved in the transport as the importing State.
7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including that over its airspace and territorial sea.

Article 5

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthor-

ized removal, use or alteration of nuclear material or in the event of credible threat thereof.

2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, States Parties shall, in accordance with their national law, provide cooperation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:

(a) each State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof and to inform, where appropriate, international organizations;

(b) as appropriate, the States Parties concerned shall exchange information with each other or international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:

- i. coordinate their efforts through diplomatic and other agreed channels;
- ii. render assistance, if requested;
- iii. ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events. The means of implementation of this cooperation shall be determined by the States Parties concerned.

3. States Parties shall cooperate and consult as appropriate, with each other directly or through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

Article 6

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

Article 7

1. The intentional commission of:

(a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;

(b) a theft or robbery of nuclear material;

(c) an embezzlement or fraudulent obtaining of nuclear material;

(d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;

(e) a threat:

i. to use nuclear material to cause death or serious injury to any person or substantial property damage; or

ii. to commit an offence described in subparagraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;

(f) an attempt to commit any offence described in paragraphs (a), (b) or (c); and

(g) an act which constitutes participation in any offence described in paragraphs (a) to (f) shall be made a punishable offence by each State Party under its national law.

2. Each State Party shall make the offences described in this article punishable by appropriate penalties which take into account their grave nature.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 7 in the following cases:

(a) when the offence is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) when the alleged offender is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 11 to any of the States mentioned in paragraph 1.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

4. In addition to the States Parties mentioned in paragraphs 1 and 2, each State Party may, consistent with international law, establish its jurisdiction over the offences set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.

Article 9

Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the States required to establish jurisdiction pursuant to article 8 and, where appropriate, all other States concerned.

Article 10

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 11

1. The offences in article 7 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences as extraditable offences in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph 1 of article 8.

Article 12

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 7 shall be guaranteed fair treatment at all stages of the proceedings.

Article 13

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 7, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 14

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties.

2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.

3. Where an offence involves nuclear material used for peaceful purposes in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceeding arising out of such an offence.

Article 15

The Annexes constitute an integral part of this Convention.

Article 16

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of this Convention to review the implementation of the Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.

2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

Article 17

1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.

2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which has made a reservation to that procedure.

4. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary.

Article 18

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention will be open for accession by all States.

4. (a) This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

(b) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfil the responsibilities which this Convention attributes to States Parties.

(c) When becoming party to this Convention such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it.

(d) Such an organization shall not hold any vote additional to those of its Member States.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

Article 19

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty first instrument of ratification, acceptance or approval with the depositary.

2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the twenty first instrument of ratification, acceptance or approval, 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 20

1. Without prejudice to article 16 a State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately

to all States Parties. If a majority of States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be promptly circulated by the depositary to all States Parties.

2. The amendment shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the amendment.

Article 21

1. Any State Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

Article 22

The depositary shall promptly notify all States of:

- (a) each signature of this Convention;
- (b) each deposit of an instrument of ratification, acceptance, approval or accession;
- (c) any reservation or withdrawal in accordance with article 17;
- (d) any communication made by an organization in accordance with paragraph 4(c) of article 18;
- (e) the entry into force of this Convention;
- (f) the entry into force of any amendment to this Convention; and
- (g) any denunciation made under article 21.

Article 23

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

In witness thereof, the undersigned, being duly authorized, have signed this Convention, opened for signature at Vienna and at New York on 3 March 1980.

ANNEX I

Levels of Physical Protection to be Applied in International Transport of Nuclear Material as Categorized in Annex II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:

(a) for Category 111 materials, storage within an area to which access is controlled;

(b) for Category 11 materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;

(c) for Category I material, storage within a protected area as defined for Category 11 above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

2. Levels of physical protection for nuclear material during international transport include:

(a) for Category 11 and 111 materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;

(b) for Category I materials, transportation shall take place under special precautions identified above for transportation of Category 11 and 111 materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;

(c) for natural uranium other than in the form of ore or ore-residue, transportation protection for quantities exceeding 500 kilograms uranium shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

ANNEX II

Table: Categorization of Nuclear Material

Material	Form	Category			
		I	II	III ^(c)	
1. Plutonium ^(a)	Unirradiated ^(b)	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g	
2. Uranium 235	Unirradiated ^(b)	—uranium enriched to 20% ²³⁵ U or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less but more than 15 g
		—uranium enriched to 10% ²³⁵ U but less than 20%	—	10 kg or more	Less than 10 kg but more than 1 kg
		—uranium enriched above natural, but less than 10% ²³⁵ U	—	—	10 kg or more
3. Uranium 233	Unirradiated ^(b)	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15 g	
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content) ^{(d) / (e)}		

(a) All plutonium except that with isotopic concentration exceeding 80 per cent in plutonium-238.

(b) Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one metre unshielded.

(c) Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice.

(d) Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.

(e) Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rads/hour at one metre unshielded.

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 1988

Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation

The States Parties to this Convention,

Considering that unlawful acts of violence which endanger or are likely to endanger the safety of persons at airports serving international civil aviation or which jeopardize the safe operation of such airports undermine the confidence of the peoples of the world in safety at such airports and disturb the safe and orderly conduct of civil aviation for all States,

Considering that the occurrence of such acts is a matter of grave concern to the international community and that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders,

Considering that it is necessary to adopt provisions supplementary to those of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, to deal with such unlawful acts of violence at airports serving international civil aviation,

Have agreed as follows:

Article I

This Protocol supplements the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (hereinafter referred to as "the Convention"), and, as between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument.

Article II

1. In article 1 of the Convention, the following shall be added as new paragraph 1 *bis*:

"1 *bis*. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:

(a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

(b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport."

2. In paragraph 2(a) of article 1 of the Convention, the following words shall be inserted after the words "paragraph 1":

"or paragraph 1 *bis*".

Article III

In article 5 of the Convention, the following shall be added as paragraph 2 *bis*:

"2 *bis*. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in article 1, paragraph 1 *bis*, and in article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to the State mentioned in paragraph 1(a) of this article."

Article IV

This Protocol shall be open for signature at Montreal on 24 February 1988 by States participating in the International Conference on Air Law held at Montreal from 9 to 24 February 1988. After 1 March 1988, the Protocol shall be open for signa-

ture to all States in London, Moscow, Washington and Montreal, until it enters into force in accordance with article VI.

Article V

1. This Protocol shall be subject to ratification by the signatory States.
2. Any State which is not a Contracting State to the Convention may ratify this Protocol if at the same time it ratifies or accedes to the Convention in accordance with article 15 thereof.
3. Instruments of ratification shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America or with the International Civil Aviation Organization, which are hereby designated the Depositories.

Article VI

1. As soon as ten of the signatory States have deposited their instruments of ratification of this Protocol, it shall enter into force between them on the thirtieth day after the date of the deposit of the tenth instrument of ratification. It shall enter into force for each State which deposits its instrument of ratification after that date on the thirtieth day after deposit of its instrument of ratification.
2. As soon as this Protocol enters into force, it shall be registered by the Depositories pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article VII

1. This Protocol shall, after it has entered into force, be open for accession by any nonsignatory State.
2. Any State which is not a Contracting State to the Convention may accede to this Protocol if at the same time it ratifies or accedes to the Convention in accordance with article 15 thereof.

3. Instruments of accession shall be deposited with the Depositories and accession shall take effect on the thirtieth day after the deposit.

Article VIII

1. Any Party to this Protocol may denounce it by written notification addressed to the Depositories.
2. Denunciation shall take effect six months following the date on which notification is received by the Depositories.
3. Denunciation of this Protocol shall not of itself have the effect of denunciation of the Convention.
4. Denunciation of the Convention by a Contracting State to the Convention as supplemented by this Protocol shall also have the effect of denunciation of this Protocol.

Article IX

1. The Depositories shall promptly inform all signatory and acceding States to this Protocol and all signatory and acceding States to the Convention:
 - (a) of the date of each signature and the date of deposit of each instrument of ratification of, or accession to, this Protocol; and
 - (b) of the receipt of any notification of denunciation of this Protocol and the date thereof.
2. The Depositories shall also notify the States referred to in paragraph 1 of the date on which this Protocol enters into force in accordance with article VI.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Protocol.

Done at Montreal on the twenty-fourth day of February of the year one thousand nine hundred and eighty-eight, in four originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and cooperation among States,

Recognizing in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Deeply concerned about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

Considering that unlawful acts against the safety of maritime navigation jeopardize the safety of persons and property, seriously affect the operation of maritime services, and undermine the confidence of the peoples of the world in the safety of maritime navigation,

Considering that the occurrence of such acts is a matter of grave concern to the international community as a whole,

Being convinced of the urgent need to develop international cooperation between States in devising and adopting effective and practical measures for the prevention of all unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators,

Recalling resolution 40/61 of the General Assembly of the United Nations of 9 December 1985 which, inter alia, "urges all

States unilaterally and in cooperation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security",

Recalling further that resolution 40/61 "unequivocally condemns, as criminal) all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security",

Recalling also that by resolution 40/61, the International Maritime Organization was invited to "study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures",

Having in mind resolution A.584(14) of 20 November 1985, of the Assembly of the International Maritime Organization, which called for development of measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews,

Noting that acts of the crew which are subject to normal ship-board discipline are outside the purview of this Convention,

Affirming the desirability of monitoring rules and standards relating to the prevention and control of unlawful acts against ships and persons on board ships, with a view to updating them as necessary, and, to this effect, taking note with satisfaction of

the Measures to Prevent Unlawful Acts against Passengers and Crews on Board Ships, recommended by the Maritime Safety Committee of the International Maritime Organization,

Affirming further that matters not regulated by this Convention continue to be governed by the rules and principles of general international law,

Recognizing the need for all States, in combating unlawful acts against the safety of maritime navigation, strictly to comply with rules and principles of general international law, *Have agreed* as follows:

Article 1

For the purposes of this Convention, “ship” means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

Article 2

1. This Convention does not apply to:
 - (a) a warship; or
 - (b) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or
 - (c) a ship which has been withdrawn from navigation or laid up.
2. Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

Article 3

1. Any person commits an offence if that person unlawfully and intentionally:
 - (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
 - (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
 - (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
 - (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
 - (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
 - (f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
 - (g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).
2. Any person also commits an offence if that person:
 - (a) attempts to commit any of the offences set forth in paragraph 1; or
 - (b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
 - (c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

Article 4

1. This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.

2. In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

Article 5

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:
 - (a) against or on board a ship flying the flag of the State at the time the offence is committed; or
 - (b) in the territory of that State, including its territorial sea; or
 - (c) by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
 - (a) it is committed by a stateless person whose habitual residence is in that State; or
 - (b) during its commission a national of that State is seized, threatened, injured or killed; or
 - (c) it is committed in an attempt to compel that State to do or abstain from doing any act.
3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as “the Secretary-General”). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.
4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.
5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.
3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:
 - (a) communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;
 - (b) be visited by a representative of that State.
4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1

and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 8

1. The master of a ship of a State Party (the "flag State") may deliver to the authorities of any other State Party (the "receiving State") any person who he has reasonable grounds to believe has committed one of the offences set forth in article 3.
2. The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.
3. The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 1. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.
4. The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master's possession which pertains to the alleged offence.
5. A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.

Article 9

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

Article 10

1. The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.
2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.

Article 11

1. The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 3. Extradition shall be subject to the other conditions provided by the law of the requested State Party.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 3 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 3 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.

5. A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 7 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.

6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.

7. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

Article 12

1. State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 3, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford each other assistance in accordance with their national law.

Article 13

1. States Parties shall cooperate in the prevention of the offences set forth in article 3, particularly by:

(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;

(b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3.

2. When, due to the commission of an offence set forth in article 3, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

Article 14

Any State Party having reason to believe that an offence set forth in article 3 will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

Article 15

1. Each State Party shall, in accordance with its national law), provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:
 - (a) the circumstances of the offence;
 - (b) the action taken pursuant to article 13, paragraph 2;
 - (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.
2. The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.
3. The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the International Maritime Organization (hereinafter referred to as "the Organization"), to the other States concerned, and to the appropriate international intergovernmental organizations.

Article 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.
3. Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.

Article 17

1. This Convention shall be open for signature at Rome on 10 March 1988 by States participating in the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and at the Headquarters of the Organization by all States from 14 March 1988 to 9 March 1989. It shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Article 18

1. This Convention shall enter into force ninety days following the date on which fifteen States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Convention after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

Article 19

1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

Article 20

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.
3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

Article 21

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
 - (a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
 - i. each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
 - ii. the date of the entry into force of this Convention;
 - iii. the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
 - iv. the receipt of any declaration or notification made under this Convention;
 - (b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.
3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 22

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

In witness whereof the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

Done at Rome this tenth day of March, one thousand nine hundred and eighty-eight.

**Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms
Located on the Continental Shelf, 1988**

*The States Parties to this Convention,
Being parties to the Convention for the Suppression of
Unlawful Acts against the Safety of Maritime Navigation,*

*Recognizing that the reasons for which the Convention was
elaborated also apply to fixed platforms located on the continen-
tal shelf,*

Taking account of the provisions of that Convention,

*Affirming that matters not regulated by this Protocol continue
to be governed by the rules and principles of general International
law,*

Have agreed as follows:

Article 1

1. The provisions of articles 5 and 7 and of articles 10 to 16 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereafter referred to as "the Convention") shall also apply mutatis mutandis to the offences set forth in article 2 of this Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.
2. In cases where this Protocol does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State in whose international waters or territorial sea the fixed platform is located.
3. For the purposes of this Protocol, "fixed platform" means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

Article 2

1. Any person commits an offence if that person unlawfully and intentionally:
 - (a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or
 - (b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or
 - (c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
 - (d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or
 - (e) injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).
2. Any person also commits an offence if that person:
 - (a) attempts to commit any of the offences set forth in paragraph 1; or
 - (b) abets the commission of any such offences perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
 - (c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b) and (c), if that threat is likely to endanger the safety of the fixed platform.

Article 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when the offence is committed:
 - (a) against or on board a fixed platform while it is located on the continental shelf of that State; or
 - (b) by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) it is committed by a stateless person whose habitual residence is in that State;

(b) during its commission a national of that State is seized, threatened, injured or killed; or

(c) it is committed in an attempt to compel that State to do or abstain from doing any act.

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organisation (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that Jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

5. This Protocol does not exclude any criminal jurisdiction exercised in accordance with national law

Article 4

Nothing in this Protocol shall affect in any way the rules of international law pertaining to fixed platforms located on the continental shelf.

Article 5

1. This Protocol shall be open for signature at Rome on 10 March 1988 and at the Headquarters of the International Maritime Organization (hereinafter referred to as "the Organization") from 14 March 1988 to 9 March 1989 by any State which has signed the Convention. It shall thereafter remain open for accession.
2. States may express their consent to be bound by this Protocol by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
4. Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

Article 6

1. This Protocol shall enter into force ninety days following the date on which three States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof. However, this Protocol shall not enter into force before the Convention has entered into force.
2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

Article 7

1. This Protocol may be denounced by any State Party at any time after the expiry of one year from the date on which this Protocol enters into force for that State.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.
4. A denunciation of the Convention by a State Party shall be deemed to be a denunciation of this Protocol by that Party.

Article 8

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.
2. The Secretary-General shall convene a conference of the States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or five States Parties, whichever is the higher figure.
3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

Article 9

1. This Protocol shall be deposited with the Secretary-General.
2. The Secretary-General shall:

- (a) inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:
 - i. each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - ii. the date of entry into force of this Protocol;
 - iii. the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;
 - iv. the receipt of any declaration or notification made under this Protocol or under the Convention, concerning this Protocol.

(b) transmit certified true copies of this Protocol to all States which have signed this Protocol or acceded thereto.

3. As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 10

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

In witness whereof the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

Done at Rome this tenth day of March, one thousand nine hundred and eighty-eight.

Convention on the Marking of Plastic Explosives for the Purpose of Identification, 1991

The States Parties to this Convention,
Conscious of the implications of acts of terrorism for international security,

Expressing deep concern regarding terrorist acts aimed at destruction of aircraft, other means of transportation and other targets,

Concerned that plastic explosives have been used for such terrorist acts,

Considering that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts,

Recognizing that for the purpose of deterring such unlawful acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives are duly marked,

Considering United Nations Security Council Resolution 635 of 14 June 1989, and United Nations General Assembly Resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection,

Bearing in mind Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection,

Noting with satisfaction the role played by the Council of the International Civil Aviation Organization in the preparation of the Convention as well as its willingness to assume functions related to its implementation,

Have agreed as follows,

Article 1

For the purposes of this Convention:

1. "Explosives" mean explosive products, commonly known as "plastic explosives", including explosives in flexible or elastic sheet form, as described in the Technical Annex to this Convention.
2. "Detection agent" means a substance as described in the Technical Annex to this Convention which is introduced into an explosive to render it detectable.
3. "Marking" means introducing into an explosive a detection agent in accordance with the Technical Annex to this Convention.
4. "Manufacture" means any process, including reprocessing, that produces explosives.
5. "Duly authorized military devices" include, but are not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned.
6. "Producer State" means any State in whose territory explosives are manufactured.

Article 2

Each State Party shall take the necessary and effective measures to prohibit and prevent the manufacture in its territory of unmarked explosives.

Article 3

1. Each State Party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives.

2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by authorities of a State Party performing military or police functions, of unmarked explosives under the control of that State Party in accordance with paragraph 1 of article 4.

Article 4

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

2. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this article not held by its authorities performing military or police functions are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of this Convention in respect of that State.

3. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this article held by its authorities performing military or police functions and that are not incorporated as an integral part of duly authorized military devices are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of fifteen years from the entry into force of this Convention in respect of that State.

4. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which may be discovered therein and which are not referred to in the preceding paragraphs of this article, other than stocks of unmarked explosives held by its authorities performing military or police functions and incorporated as an integral part of duly authorized military devices at the date of the entry into force of this Convention in respect of that State.

5. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of the explosives referred to in paragraph 2 of Part 1 of the Technical Annex to this Convention so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

6. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives manufactured since the coming into force of this Convention in respect of that State that are not incorporated as specified in paragraph 2(d) of Part 1 of the Technical Annex to this Convention and of unmarked explosives which no longer fall within the scope of any other subparagraphs of the said paragraph 2.

Article 5

1. There is established by this Convention an International Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of not less than fifteen nor more than nineteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.

3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.

4. Sessions of the Commission shall be convened, at least once a year at the Headquarters of the International Civil Aviation

Organization, or at such places and times as may be directed or approved by the Council.

5. The Commission shall adopt its rules of procedure, subject to the approval of the Council.

Article 6

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.

2. The Commission, through the Council, shall report its findings to the States Parties and international organizations concerned.

3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the Technical Annex to this Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.

4. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Technical Annex to this Convention.

Article 7

1. Any State Party may, within ninety days from the date of notification of a proposed amendment to the Technical Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.

2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, and taking into account the nature of the amendment and the comments of States Parties, including producer States, may propose the amendment to all States Parties for adoption.

3. If a proposed amendment has not been objected to by five or more States Parties by means of written notification to the Council within ninety days from the date of notification of the amendment by the Council, it shall be deemed to have been adopted, and shall enter into force one hundred and eighty days thereafter or after such other period as specified in the proposed amendment for States Parties not having expressly objected thereto.

4. States Parties having expressly objected to the proposed amendment may, subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment.

5. If five or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.

6. If the proposed amendment has not been adopted in accordance with paragraph 3 of this article, the Council may also convene a conference of all States Parties.

Article 8

1. States Parties shall, if possible, transmit to the Council information that would assist the Commission in the discharge of its functions under paragraph 1 of article 6.

2. States Parties shall keep the Council informed of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties and international organizations concerned.

Article 9

The Council shall, in cooperation with States Parties and international organizations concerned, take appropriate measures to facilitate the implementation of this Convention, including the

provision of technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives.

Article 10

The Technical Annex to this Convention shall form an integral part of this Convention.

Article 11

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

Article 12

Except as provided in article 11, no reservation may be made to this Convention.

Article 13

1. This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 1 March 1991 the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this article. Any State which does not sign this Convention may accede to it at any time.

2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary. When depositing its instrument of ratifica-

tion, acceptance, approval or accession, each State shall declare whether or not it is a producer State.

3. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, provided that no fewer than five such States have declared pursuant to paragraph 2 of this article that they are producer States. Should thirty-five such instruments be deposited prior to the deposit of their instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of their instruments of ratification, acceptance, approval or accession.

5. As soon as this Convention comes into force, it shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article 14

The Depositary shall promptly notify all signatories and States Parties of:

1. each signature of this Convention and date thereof;
2. each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State;
3. the date of entry into force of this Convention;
4. the date of entry into force of any amendment to this Convention or its Technical Annex;
5. any denunciation made under article 15; and
6. any declaration made under paragraph 2 of article 11.

Article 15

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

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

Done at Montreal, this first day of March, one thousand nine hundred and ninety-one, in one original, drawn up in five authentic texts in the English, French, Russian, Spanish and Arabic languages.

TECHNICAL ANNEX

Part 1: Description of explosives

1. The explosives referred to in paragraph 1 of article 1 of this Convention are those that:

(a) are formulated with one or more high explosives which in their pure form have a vapour pressure less than 10⁻⁴ Pa at a temperature of 25°C;

(b) are formulated with a binder material; and

(c) are, as a mixture, malleable or flexible at normal room temperature.

2. The following explosives, even though meeting the description of explosives in paragraph 1 of this Part, shall not be considered to be explosives as long as they continue to be held or used for the purposes specified below or remain incorporated as there specified, namely those explosives that:

(a) are manufactured, or held, in limited quantities solely for use in duly authorized research, development or testing of new or modified explosives;

(b) are manufactured, or held, in limited quantities solely for use in duly authorized training in explosives detection and/or development or testing of explosives detection equipment;

(c) are manufactured, or held, in limited quantities solely for duly authorized forensic science purposes; or

(d) are destined to be and are incorporated as an integral part of duly authorized military devices in the territory of the producer State within three years after the coming into force of this Convention in respect of that State. Such devices produced in this period of three years shall be deemed to be duly authorized military devices within paragraph 4 of article 4 of this Convention.

3. In this Part:

“duly authorized” in paragraph 2(a), (b) and (c) means permitted according to the laws and regulations of the State Party concerned; and “high explosives” include but are not restricted to cyclotetramethylenetetranitramine (HMX), pentaerythritol tetranitrate (PETN) and cyclotrimethylenetrinitramine (RDX)

Part 2: Detection agents

A detection agent is any one of those substances set out in the following Table. Detection agents described in this Table are intended to be used to enhance the detectability of explosives by vapour detection means. In each case, the introduction of a detection agent into an explosive shall be done in such a manner as to achieve homogeneous distribution in the finished product. The minimum concentration of a detection agent in the finished product at the time of manufacture shall be as shown in the said Table.

TABLE

<i>Name of detection agent</i>	<i>Molecular formula</i>	<i>Molecular weight</i>	<i>Minimum concentration</i>
Ethylene glycol dinitrate (EGDN)	C ₂ H ₄ (NO ₃) ₂	152	0.2% by mass
2,3-Dimethyl-2,3-dinitrobutane (DMNB)	C ₆ H ₁₂ (NO ₂) ₂	176	0.1% by mass
para-Mononitrolooluene (p-MNT)	C ₇ H ₇ NO ₂	137	0.5% by mass
ortho-Mononitrolooluene (o-MNT)	C ₇ H ₇ NO ₂	137	0.5% by mass

Any explosive which, as a result of its normal formulation contains any of the designated detection agents at or above the required minimum concentration level shall be deemed to be marked.

International Convention for the Suppression of Terrorist Bombings, 1997

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

Recalling also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, “the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States”,

Noting that the Declaration also encouraged States “to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter”,

Recalling General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed thereto,

Noting that terrorist attacks by means of explosives or other lethal devices have become increasingly widespread,

Noting also that existing multilateral legal provisions do not adequately address these attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism and for the prosecution and punishment of their perpetrators,

Considering that the occurrence of such acts is a matter of grave concern to the international community as a whole,

Noting that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws, *Have agreed* as follows:

Article 1

For the purposes of this Convention

1. “State or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an inter-governmental organization in connection with their official duties.
2. “Infrastructure facility” means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications.
3. “Explosive or other lethal device” means:
 - (a) an explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or
 - (b) a weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.
4. “Military forces of a State” means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security and persons acting in support of those armed forces who are under their formal command, control and responsibility.
5. “Place of public use” means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.
6. “Public transportation system” means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

(a) with the intent to cause death or serious bodily injury; or
 (b) with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

3. Any person also commits an offence if that person:

(a) participates as an accomplice in an offence as set forth in paragraph 1 or 2 of the present article; or

(b) organizes or directs others to commit an offence as set forth in paragraph 1 or 2 of the present article; or

(c) in any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1 or paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 10 to 15 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) to establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;

(b) to make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) the offence is committed in the territory of that State; or

(b) the offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(c) the offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) the offence is committed against a national of that State; or

(b) the offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(c) the offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(d) the offence is committed in an attempt to compel that State to do or abstain from doing any act; or

(e) the offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 7

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled to:

(a) communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) be visited by a representative of that State;

(c) be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, subparagraph 1(c) or 2(c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that that person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 8

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever

and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

Article 9

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between State Parties to the extent that they are incompatible with this Convention.

Article 10

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 11

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 12

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 13

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

(a) the person freely gives his or her informed consent; and

(b) the competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

(a) the State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) the State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) the State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) the person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 14

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

Article 15

States Parties shall cooperate in the prevention of the offences set forth in article 2, particularly:

(a) by taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the perpetration of offences as set forth in article 2;

(b) by exchanging accurate and verified information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as set forth in article 2;

(c) where appropriate, through research and development regarding methods of detection of explosives and other harmful substances that can cause death or bodily injury, consultations on the development of standards for marking explosives in order to identify their origin in post-blast investigations, exchange of information on preventive measures, cooperation and transfer of technology, equipment and related materials.

Article 16

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 17

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 18

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 19

- Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.
- The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

Article 20

- Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any

one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21

1. This Convention shall be open for signature by all States from 12 January 1998 until 31 December 1999 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 22

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 23

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 24

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York, on 12 January 1998.

International Convention for the Suppression of the Financing of Terrorism, 1999

The States Parties to this Convention,

Bearing in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995,

Recalling also all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and the annex thereto on the Declaration on Measures to Eliminate International Terrorism, in which the States Members

of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

Noting that the Declaration on Measures to Eliminate International Terrorism also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

Recalling paragraph 3(f) of General Assembly resolution 51/210 of 17 December 1996, in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,

Recalling also General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation of the measures set out in paragraphs 3(a) to (f) of its resolution 51/210,

Recalling further General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments,

Considering that the financing of terrorism is a matter of grave concern to the international community as a whole,

Noting that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

Noting also that existing multilateral legal instruments do not expressly address such financing,

Being convinced of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "Funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.
2. "State or government facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.
3. "Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

2. (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;

(b) when a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraph (a) or (b).

4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

5. Any person also commits an offence if that person:

(a) participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;

(b) organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;

(c) contributes to the commission of one or more offences as set forth in paragraph 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

- i. be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or
- ii. be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1 or 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences as set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

Article 5

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity

located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence as set forth in article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals who have committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) the offence is committed in the territory of that State;

(b) the offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;

(c) the offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) the offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State;

(b) the offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State;

(c) the offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act;

(d) the offence is committed by a stateless person who has his or her habitual residence in the territory of that State;

(e) the offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 8

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.

3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled:

(a) to communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) to be visited by a representative of that State;

(c) to be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.
2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 11

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.
2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.
5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.
2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.
3. The requesting Party shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.
4. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.
5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist

between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 13

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

Article 14

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 15

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 may be transferred if the following conditions are met:
 - (a) the person freely gives his or her informed consent;
 - (b) the competent authorities of both States agree, subject to such conditions as those States may deem appropriate.
2. For the purposes of the present article:
 - (a) the State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
 - (b) the State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
 - (c) the State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
 - (d) the person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.
3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 17

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 18

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, inter alia, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(a) measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(b) measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

- i. adopting regulations prohibiting the opening of accounts, the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;
- ii. with respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;
- iii. adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;
- iv. requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic and international.

2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

(a) measures for the supervision, including, for example, the licensing, of all money-transmission agencies;

(b) feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

(a) establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

- i. the identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;
- ii. the movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 20

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 21

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 23

1. The annex may be amended by the addition of relevant treaties:

(a) that are open to the participation of all States;

(b) that have entered into force;

(c) that have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.

2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.

3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.

4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties that have deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

Article 24

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.
2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.
3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 25

1. This Convention shall be open for signature by all States from 10 January 2000 to 31 December 2001 at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 26

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 27

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 28

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 10 January 2000.

ANNEX 3

CHARTER OF THE UNITED NATIONS

*Chapter VII***Action with respect to threats to the peace, breaches of the peace, and acts of aggression***Article 39*

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

Article 40

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

Article 41

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

Article 42

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

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.
2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.
3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

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

Article 45

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

Article 46

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

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.
2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.
3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.
4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.
2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

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

Article 50

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

Article 51

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

ANNEX 4

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

ANNEX 5

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Adopted and opened for signature, ratification and accession by
General Assembly resolution 2200A (XXI) of 16 December 1966
entry into force 23 March 1976, in accordance with Article 49

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

Part II*Article 1*

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Part II*Article 2*

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:

(a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) to ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Part III*Article 6*

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes

in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) no one shall be required to perform forced or compulsory labour;

(b) paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) for the purpose of this paragraph the term "forced or compulsory labour" shall not include:

- i. any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
- ii. any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- iii. any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- iv. any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage

of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the

interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) to be tried without undue delay;

(d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) for respect of the rights or reputations of others;

(b) for the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concern-

ing Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Part IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any

cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) twelve members shall constitute a quorum;

(b) decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) if a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) if the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) the Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) the Committee shall hold closed meetings when examining communications under this article;

(e) subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) in any matter referred to it, the Committee may call upon

the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) the States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) the Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

- i. if a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- ii. if a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) the Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized

of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) if the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) if an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) if a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) if the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

Part V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

Part VI*Article 48*

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) signatures, ratifications and accessions under article 48;
- (b) the date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

ANNEX 6

REMARKS ON THE CONVENTION ON THE SAFETY OF UNITED NATIONS
AND ASSOCIATED PERSONNEL,
New York, 9 December 1994²⁵⁴*Objectives*

The 1994 Convention on the Safety of United Nations and Associated Personnel was adopted against a background of a dramatic increase in the number of fatalities of United Nations and associated personnel participating in United Nations operations. It is aimed at strengthening the legal protection afforded to such United Nations and associated personnel, preventing attacks committed against them and punishing those who have committed such attacks.

— The Convention on the Safety of United Nations and Associated Personnel has been prompted by the considerable increase in the number and scope of peacekeeping and peace-making operations.

— It is therefore from that point of view that its provisions should be analysed, as should technical assistance missions to States so requesting.

Key Provisions

The Convention prohibits any attack against United Nations and Associated Personnel and premises, and imposes upon the parties the responsibility for taking the appropriate measures to ensure their safety and security.

The Convention criminalizes any of the following acts: murder, kidnapping or other attacks upon the person or liberty of the United Nations and associated personnel, the official premises, private accommodation or the means of transportation of such personnel, or a threat or an attempt to commit any such act. States parties are bound to make these acts punishable by law with appropriate penalties, taking into account their grave nature.

The Convention establishes the principle of “prosecute or extradite”. Accordingly, each State party is bound to either prosecute the offender present in its territory or extradite him to any other State party having jurisdiction over the offender.

The Convention is applicable in respect of United Nations operations and United Nations and Associated Personnel. A “United Nations operation” is defined as an operation established

by the competent organ of the United Nations in accordance with the Charter of the United Nations, and conducted under United Nations authority and control for the purpose of maintaining or restoring international peace and security; or where the Security Council or the General Assembly has declared that there exists an exceptional risk to the safety of the personnel participating in the operation.

The term “United Nations personnel” is defined as persons engaged or deployed by the Secretary-General of the United Nations as members of the United Nations operation, and other officials and experts on mission for the United Nations or its specialized agencies who are present in an official capacity in the area where a United Nations operation is being conducted. The term “United Nations Associated Personnel” is defined as persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations; those engaged by the Secretary-General of the United Nations or by a specialized agency; and those deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency to carry out activities in support of the fulfilment of the mandate of a United Nations operation.

United Nations operations excluded from the scope of the Convention are those authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations, in which any of the personnel are engaged as combatants against armed forces and to which the law of international armed conflict applies. Enforcement actions carried out in situations of internal armed conflict are thus included within the scope of the Convention and are subject to its protective regime.

Members of United Nations operations excluded under article 2 from the scope of application of the Convention are not for all of that denied protection. Rather, in times of armed conflict they are protected and bound by the principles and rules of international humanitarian law applicable to such conflicts. Article 20(a) provides in this connection that nothing in the Convention shall affect the applicability of international humanitarian law in relation to protection of United Nations operations and United Nations and Associated Personnel, or the responsibility of such personnel to respect such law and standards.

²⁵⁴See the text of the Convention on the website: www.un.org

ANNEX 7

MODEL TREATY ON EXTRADITION, AS AMENDED BY GENERAL ASSEMBLY RESOLUTION 52/88 (1997):
INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

A/RES/45/116

45/116. Model Treaty on Extradition

The General Assembly,

Bearing in mind the Milan Plan of Action, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in mind also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, principle 37 of which stipulates that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling resolution 1 of the Seventh Congress, on organized crime, in which Member States were urged, inter alia, to increase their activity at the international level in order to combat organized crime, including, as appropriate, entering into bilateral treaties on extradition and mutual legal assistance,

Recalling also resolution 23 of the Seventh Congress, on criminal acts of a terrorist character, in which all States were called upon to take steps to strengthen cooperation, inter alia, in the area of extradition,

Calling attention to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,

Acknowledging the valuable contributions of Governments, non-governmental organizations and individual experts, in particular the Government of Australia and the International Association of Penal Law,

Gravely concerned by the escalation of crime, both national and transnational,

Convinced that the establishment of bilateral and multilateral arrangements for extradition will greatly contribute to the development of more effective international cooperation for the control of crime,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Conscious that in many cases existing bilateral extradition arrangements are outdated and should be replaced by modern arrangements which take into account recent developments in international criminal law,

Recognizing the importance of a model treaty on extradition as an effective way of dealing with the complex aspects and serious consequences of crime, especially in its new forms and dimensions,

1. *Adopts* the Model Treaty on Extradition contained in the annex to the present resolution as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving cooperation in matters of crime prevention and criminal justice;

2. *Invites* Member States, if they have not yet established treaty relations with other States in the area of extradition, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Treaty on Extradition;

3. *Urges* all States to strengthen further international cooperation in criminal justice;

4. *Requests* the Secretary-General to bring the present resolution, with the Model Treaty, to the attention of Member States;

5. *Urges* Member States to inform the Secretary-General periodically of efforts undertaken to establish extradition arrangements;

6. *Requests* the Committee on Crime Prevention and Control to review periodically the progress attained in this field;

7. *Also requests* the Committee on Crime Prevention and Control, where requested, to provide guidance and assistance to Member States in the development of legislation that would enable giving effect to the obligations in such treaties as are to be negotiated on the basis of the Model Treaty on Extradition;

8. *Invites* Member States, on request, to make available to the Secretary-General the provisions of their extradition legislation so that these may be made available to those Member States desiring to enact or further develop legislation in this field.

*68th plenary meeting
14 December 1990*

ANNEX

Model Treaty on Extradition

The and the

Desirous of making more effective the cooperation of the two countries in the control of crime by concluding a treaty on extradition,

Have agreed as follows:

Article 1

OBLIGATION TO EXTRADITE

Each Party agrees to extradite to the other, upon request and subject to the provisions of the present Treaty, any person who is wanted in the requesting State for prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence.

Article 2

EXTRADITABLE OFFENCES

1. For the purposes of the present Treaty, extraditable offences are offences that are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least one/two year(s), or by a more severe penalty. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least four/six months of such sentence remains to be served.

2. In determining whether an offence is an offence punishable under the laws of both Parties, it shall not matter whether:

(a) the laws of the Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

(b) under the laws of the Parties the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting State shall be taken into account.

3. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters, extradition may not be refused on the ground that the law of the requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the requesting State.

4. If the request for extradition includes several separate offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in paragraph 1 of the present article, the requested Party may grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

Article 3

MANDATORY GROUNDS FOR REFUSAL

Extradition shall not be granted in any of the following circumstances:

(a) if the offence for which extradition is requested is regarded by the requested State as an offence of a political nature;

(b) if the requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;

(c) if the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law;

(d) if there has been a final judgement rendered against the person in the requested State in respect of the offence for which the person's extradition is requested;

(e) if the person whose extradition is requested has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;

(f) if the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights, article 14;

(g) if the judgement of the requesting State has been rendered in absentia, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and he has not had or will not have the opportunity to have the case retried in his or her presence.

Article 4

OPTIONAL GROUNDS FOR REFUSAL

Extradition may be refused in any of the following circumstances:

(a) if the person whose extradition is requested is a national of the requested State. Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person in respect of the offence for which extradition had been requested;

(b) if the competent authorities of the requested State have decided either not to institute or to terminate proceedings against

the person for the offence in respect of which extradition is requested;

(c) if a prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is requested;

(d) if the offence for which extradition is requested carries the death penalty under the law of the requesting State, unless that State gives such assurance as the requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out;

(e) if the offence for which extradition is requested has been committed outside the territory of either Party and the law of the requested State does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances;

(f) if the offence for which extradition is requested is regarded under the law of the requested State as having been committed in whole or in part within that State. Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;

(g) if the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting State by an extraordinary or ad hoc court or tribunal;

(h) if the requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

Article 5

CHANNELS OF COMMUNICATION AND REQUIRED DOCUMENTS

1. A request for extradition shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through the diplomatic channel, directly between the ministries of justice or any other authorities designated by the Parties.

2. A request for extradition shall be accompanied by the following:

(a) in all cases,

i. as accurate a description as possible of the person sought, together with any other information that may help to establish that person's identity, nationality and location;

ii. the text of the relevant provision of the law creating the offence or, where necessary, a statement of the law relevant to the offence and a statement of the penalty that can be imposed for the offence;

(b) if the person is accused of an offence, by a warrant issued by a court or other competent judicial authority for the arrest of the person or a certified copy of that warrant, a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the alleged offence, including an indication of the time and place of its commission;

(c) if the person has been convicted of an offence, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by the original or certified copy of the judgement or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served;

(d) if the person has been convicted of an offence in his or her absence, in addition to the documents set out in paragraph 2(c) of the present article, by a statement as to the legal means available to the person to prepare his or her defence or to have the case retried in his or her presence;

(e) if the person has been convicted of an offence but no sentence has been imposed, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by a document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

3. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the requested State or in another language acceptable to that State.

Article 6

SIMPLIFIED EXTRADITION PROCEDURE

The requested State, if not precluded by its law, may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly consents before a competent authority.

Article 7

CERTIFICATION AND AUTHENTICATION

Except as provided by the present Treaty, a request for extradition and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

Article 8

ADDITIONAL INFORMATION

If the requested State considers that the information provided in support of a request for extradition is not sufficient, it may request that additional information be furnished within such reasonable time as it specifies.

Article 9

PROVISIONAL ARREST

1. In case of urgency the requesting State may apply for the provisional arrest of the person sought pending the presentation of the request for extradition. The application shall be transmitted by means of the facilities of the International Criminal Police Organization, by post or telegraph or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested, a statement of the existence of one of the documents mentioned in paragraph 2 of article 5 of the present Treaty, authorizing the apprehension of the person, a statement of the punishment that can be or has been imposed for the offence, including the time left to be served and a concise statement of the facts of the case, and a statement of the location, where known, of the person.

3. The requested State shall decide on the application in accordance with its law and communicate its decision to the requesting State without delay.

4. The person arrested upon such an application shall be set at liberty upon the expiration of 40 days from the date of arrest if a request for extradition, supported by the relevant documents specified in paragraph 2 of article 5 of the present Treaty, has not been received. The present paragraph does not preclude the possibility of conditional release of the person prior to the expiration of the 40 days.

5. The release of the person pursuant to paragraph 4 of the present article shall not prevent rearrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

Article 10

DECISION ON THE REQUEST

1. The requested State shall deal with the request for extradition pursuant to procedures provided by its own law, and shall promptly communicate its decision to the requesting State.

2. Reasons shall be given for any complete or partial refusal of the request.

Article 11

SURRENDER OF THE PERSON

1. Upon being informed that extradition has been granted, the Parties shall, without undue delay, arrange for the surrender of the person sought and the requested State shall inform the requesting State of the length of time for which the person sought was detained with a view to surrender.

2. The person shall be removed from the territory of the requested State within such reasonable period as the requested State specifies and, if the person is not removed within that period, the requested State may release the person and may refuse to extradite that person for the same offence.

3. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party. The two Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 2 of the present article shall apply.

Article 12

POSTPONED OR CONDITIONAL SURRENDER

1. The requested State may, after making its decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such a case the requested State shall advise the requesting State accordingly.

2. The requested State may, instead of postponing surrender, temporarily surrender the person sought to the requesting State in accordance with conditions to be determined between the Parties.

Article 13

SURRENDER OF PROPERTY

1. To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all property found in the requested State that has been acquired as a result of the offence or that may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.

2. The said property may, if the requesting State so requests, be surrendered to the requesting State even if the extradition agreed to cannot be carried out.

3. When the said property is liable to seizure or confiscation in the requested State, it may retain it or temporarily hand it over.

4. Where the law of the requested State or the protection of the rights of third parties so require, any property so surrendered shall be returned to the requested State free of charge after the completion of the proceedings, if that State so requests.

Article 14

RULE OF SPECIALITY

1. A person extradited under the present Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State, or subjected to any other restriction of personal liberty in the territory of the requesting State for any offence committed before surrender other than:

(a) an offence for which extradition was granted;
 (b) any other offence in respect of which the requested State consents. Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with the present Treaty.

2. A request for the consent of the requested State under the present article shall be accompanied by the documents mentioned in paragraph 2 of article 5 of the present Treaty and a legal record of any statement made by the extradited person with respect to the offence.

3. Paragraph 1 of the present article shall not apply if the person has had an opportunity to leave the requesting State and has not done so within 30/45 days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the requesting State after leaving it.

Article 15

TRANSIT

1. Where a person is to be extradited to a Party from a third State through the territory of the other Party, the Party to which the person is to be extradited shall request the other Party to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other Party is scheduled.

2. Upon receipt of such a request, which shall contain relevant information, the requested State shall deal with this request pursuant to procedures provided by its own law. The requested State shall grant the request expeditiously unless its essential interests would be prejudiced thereby.

3. The State of transit shall ensure that legal provisions exist that would enable detaining the person in custody during transit.

4. In the event of an unscheduled landing, the Party to be requested to permit transit may, at the request of the escorting officer, hold the person in custody for 48 hours, pending receipt of the transit request to be made in accordance with paragraph 1 of the present article.

Article 16

CONCURRENT REQUESTS

If a Party receives requests for extradition for the same person from both the other Party and a third State it shall, at its discretion, determine to which of those States the person is to be extradited.

Article 17

COSTS

1. The requested State shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.

2. The requested State shall also bear the costs incurred in its territory in connection with the seizure and handing over of property, or the arrest and detention of the person whose extradition is sought.

3. The requesting State shall bear the costs incurred in conveying the person from the territory of the requested State, including transit costs.

Article 18

FINAL PROVISIONS

1. The present Treaty is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of ratification, acceptance or approval are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which such notice is received by the other Party.

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

Done at *on* *in*
 the and languages, both/all
 texts being equally authentic.

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY
 [on the report of the Third Commission (A/52/635)]

52/88. International cooperation in criminal matters

The General Assembly,

Acknowledging the benefits of the enactment of national laws providing the most flexible basis for extradition, and bearing in mind that some developing countries and countries with economies in transition may lack the resources for developing and implementing treaty relations on extradition, as well as appropriate national legislation,

Bearing in mind that United Nations model treaties on international cooperation in criminal matters provide important tools for the development of international cooperation,

Convinced that existing arrangements governing international cooperation in law enforcement must be continuously reviewed and revised to ensure that the specific contemporary problems of fighting crime are being effectively addressed at all times,

Convinced also that reviewing and revising the United Nations model treaties will contribute to increased efficiency in combating criminality,

Commending the work of the Intergovernmental Expert Group Meeting on Extradition, held at Siracusa, Italy, from 10 to 13 December 1996, to implement, in part, Economic and Social Council resolution 1995/27 of 24 July 1995 by reviewing the Model Treaty on Extradition and by proposing complementary provisions for it, elements for model legislation in the field of extradition and training and technical assistance for national officials engaged in the field of extradition,

Commending also the International Association of Penal Law and the International Institute of Higher Studies in Criminal Sciences for providing support for the Expert Group

Meeting and the Governments of Finland, Germany and the United States of America and the United Nations Interregional Crime and Justice Research Institute for their cooperation in its organization,

Recognizing that the work of the Intergovernmental Expert Group could not be fully completed given the limited amount of time available and that its work was therefore ultimately limited to the field of extradition,

Determined to implement section I of Economic and Social Council resolution 1995/27, in which the Council requested the Secretary-General to convene a meeting of an intergovernmental expert group to explore ways of increasing the efficiency of extradition and related mechanisms of international cooperation,

I MUTUAL ASSISTANCE

1. *Requests* the Secretary-General to convene, using extrabudgetary funds already offered for this purpose, a meeting of an intergovernmental expert group to examine practical recommendations for the further development and promotion of mutual assistance in criminal matters;
2. *Recommends* that the expert group should, in accordance with section I of Economic and Social Council resolution 1995/27, explore ways and means of increasing the efficiency of this type of international cooperation, having due regard for the rule of law and the protection of human rights, including by drafting alternative or complementary articles for the Model Treaty on Mutual Assistance in Criminal Matters, developing model legislation and providing technical assistance in the development of agreements;
3. *Also recommends* that the expert group submit a report on the implementation of the present resolution to the Commission on Crime Prevention and Criminal Justice no later than at its eighth session;

II EXTRADITION

1. *Welcomes* the report of the Intergovernmental Expert Group Meeting on Extradition, held at Siracusa, Italy, from 10 to 13 December 1996;
2. *Decides* that the Model Treaty on Extradition should be complemented by the provisions set forth in the annex to the present resolution;
3. *Encourages* Member States, within the framework of their national legal systems, to enact effective extradition legislation, and calls upon the international community to give all possible assistance in achieving that goal;
4. *Requests* the Secretary-General to elaborate, in consultation with Member States and subject to extrabudgetary resources, for submission to the Commission on Crime Prevention and Criminal Justice, model legislation to assist Member States in giving effect to the Model Treaty on Extradition in order to enhance effective cooperation between States, taking into account the contents of model legislation recommended by the Intergovernmental Expert Group Meeting;
5. *Invites* States to consider taking steps, within the framework of national legal systems, to conclude extradition and surrender or transfer agreements;
6. *Urges* States to revise bilateral and multilateral law enforcement cooperation arrangements as an integral part of the effort to effectively combat constantly changing methods of individuals and groups engaging in organized transnational crime;
7. *Urges* Member States to use the Model Treaty on Extradition as a basis in developing treaty relations at the bilateral, regional or multilateral level, as appropriate;
8. *Also urges* Member States to continue to acknowledge that the protection of human rights should not be considered inconsistent with effective international cooperation in criminal matters, while

recognizing the need for fully effective mechanisms for extraditing fugitives;

9. *Invites* Member States to consider, where applicable and within the framework of national legal systems, the following measures in the context of the use and application of extradition treaties or other arrangements:

- (a) establishing and designating a national central authority to process requests for extradition;
- (b) undertaking regular reviews of their treaty or other extradition arrangements and implementing legislation, as well as taking other necessary measures for the purpose of rendering such arrangements and legislation more efficient and effective in combating new and complex forms of crime;
- (c) simplifying and streamlining procedures necessary to execute and initiate requests for extradition, including the provision to requested States of information sufficient to enable extradition;
- (d) reducing the technical requirements, including documentation, necessary to satisfy the tests for extradition in cases where a person is accused of an offence;
- (e) providing for extraditable offences to extend to all acts and omissions that would be criminal offences in both States carrying a prescribed minimum penalty and not to be individually listed in treaties or other agreements, particularly with respect to organized transnational crime;
- (f) ensuring effective application of the principle of *aut dedere, aut judicare*;
- (g) paying adequate attention, when considering and implementing the measures mentioned in subparagraphs 9(b) to (f) above, to furthering the protection of human rights and the maintenance of the rule of law;

10. *Encourages* Member States to promote, on a bilateral, regional or worldwide basis, measures to improve the skills of officials in order to facilitate extradition, such as specialized training and, whenever possible, secondment and exchanges of personnel, as well as the appointment in other States of representatives of prosecuting agencies or of judicial authorities, in accordance with national legislation or bilateral agreements;

11. *Reiterates* its invitation to Member States to provide the Secretary-General with copies of relevant laws and information on practices related to international cooperation in criminal matters and in particular to extradition, as well as updated information on central authorities designated to deal with requests;

12. *Requests* the Secretary-General:

- (a) Subject to extrabudgetary resources, to regularly update and disseminate the information mentioned in paragraph 11 above;
- (b) To continue to provide advisory and technical cooperation services to Member States requesting assistance in the development, negotiation and implementation of bilateral, subregional, regional or international treaties on extradition, as well as in the drafting and application of appropriate national legislation, as necessary;
- (c) To promote regular communication and exchanges of information between central authorities of Member States dealing with requests for extradition and to promote meetings of such authorities on a regional basis for Member States wishing to attend;

(d) To provide, taking into account the recommendations for a training programme contained in the report of the Intergovernmental Expert Group Meeting, in cooperation with relevant intergovernmental organizations, with the participation of interested Member States at the intergovernmental organizational meeting referred to in the recommendations and subject to extrabudgetary resources, training for personnel in appropriate governmental agencies and central authorities of requesting Member States on extradition law and practice designed to develop necessary skills and to improve communications and cooperation aimed at enhancing the effectiveness of extradition and related practices;

13. *Also requests* the Secretary-General, subject to extrabud-

getary resources and in cooperation with other relevant intergovernmental organizations, the United Nations Interregional Crime and Justice Research Institute and the other institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, to develop appropriate training materials for use in providing to requesting Member States the technical assistance referred to above;

14. *Commends* the International Institute of Higher Studies in Criminal Sciences for its offer to organize and host a coordination meeting for the purpose of developing the training material referred to in paragraph 13 above, as well as training courses on extradition law and practice;

15. *Requests* the Secretary-General to ensure the full implementation of the provisions of the present resolution, and urges Member States and funding agencies to assist the Secretary-General in implementing the present resolution through voluntary contributions to the United Nations Crime Prevention and Criminal Justice Fund;

16. *Also requests* the Secretary-General to submit the report of the Intergovernmental Expert Group Meeting on Extradition together with the present resolution to the Preparatory Committee on the Establishment of an International Criminal Court for consideration.

70th plenary meeting
12 December 1997

ANNEX

Complementary provisions for the Model Treaty on Extradition

Article 3

1. Move the text of footnote 96 to the end of subparagraph (a) and add a new footnote reading: "Countries may wish to exclude certain conduct, e.g. acts of violence, such as serious offences involving an act of violence against the life, physical integrity or liberty of a person, from the concept of political offence".

2. Add the following sentence to footnote 97: "Countries may also wish to restrict consideration of the issue of lapse of time to the law of the requesting State only or to provide that acts of interruption in the requesting State should be recognized in the requested State".

Article 4

3. Add the following footnote to subparagraph (a): "Some countries may also wish to consider, within the framework of national legal systems, other means to ensure that those responsible for crimes do not escape punishment on the basis of nationality, such as, inter alia, provisions that would permit surrender for serious offences or permit temporary transfer of the person for trial and return of the person to the requested State for service of sentence".

4. Add to subparagraph (d) the same *aut dedere, aut judicare* (either extradite or prosecute) provisions as are found in subparagraphs (a) and (f).

Article 5

5. Add the following footnote to the title of article 5: "Countries may wish to consider including the most advanced techniques for the communication of requests and means which could establish the authenticity of the documents as emanating from the requesting State".

6. Replace existing footnote 101 with the following text: "Countries requiring evidence in support of a request for extra-

dition may wish to define the evidentiary requirements necessary to satisfy the test for extradition and in doing so should take into account the need to facilitate effective international cooperation".

Article 6

7. Add the following footnote to the title of article 6: "Countries may wish to provide for the waiver of speciality in the case of simplified extradition".

Article 14

8. Add the following footnote to subparagraph 1 (a): "Countries may also wish to provide that the rule of speciality is not applicable to extraditable offences provable on the same facts and carrying the same or a lesser penalty as the original offence for which extradition was requested".

9. Delete footnote 103.

10. Add the following footnote to paragraph 2: "Countries may wish to waive the requirement for the provision of some or all of these documents".

Article 15

11. Add the following sentence to footnote 105: "However, countries may wish to provide that transit should not be denied on the basis of nationality".

Article 17

12. Add the following sentence to footnote 106: "There may also be cases for consultation between the requesting and requested States for the payment by the requesting State of extraordinary costs, particularly in complex cases where there is a significant disparity in the resources available to the two States".

ANNEX 8

MODEL TREATY ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS,
AS AMENDED BY GENERAL ASSEMBLY RESOLUTION 53/112 (1998):
INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

*The and the ,
Desirous of extending to each other the widest measure of
cooperation to combat crime,
Have agreed as follows:*

Article 1

SCOPE OF APPLICATION

1. The Parties shall, in accordance with the present Treaty, afford to each other the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the punishment of which at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.
2. Mutual assistance to be afforded in accordance with the present Treaty may include:
 - (a) taking evidence or statements from persons;
 - (b) assisting in the availability of detained persons or others to give evidence or assist in investigations;
 - (c) effecting service of judicial documents;
 - (d) executing searches and seizures;
 - (e) examining objects and sites;
 - (f) providing information and evidentiary items;
 - (g) providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.
3. The present Treaty does not apply to:
 - (a) the arrest or detention of any person with a view to the extradition of that person;
 - (b) the enforcement in the requested State of criminal judgments imposed in the requesting State except to the extent permitted by the law of the requested State and the Optional Protocol to the present Treaty;
 - (c) the transfer of persons in custody to serve sentences;
 - (d) the transfer of proceedings in criminal matters.

Article 2

OTHER ARRANGEMENTS

Unless the Parties decide otherwise, the present Treaty shall not affect obligations subsisting between them whether pursuant to other treaties or arrangements or otherwise.

Article 3

DESIGNATION OF COMPETENT AUTHORITIES

Each Party shall designate and indicate to the other Party an authority or authorities by or through which requests for the purpose of the present Treaty should be made or received.

Article 4

REFUSAL OF ASSISTANCE

1. Assistance may be refused if:
 - (a) the requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order (ordre public) or other essential public interests;
 - (b) the offence is regarded by the requested State as being of a political nature;
 - (c) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, national-

ity, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;

(d) the request relates to an offence that is subject to investigation or prosecution in the requested State or the prosecution of which in the requesting State would be incompatible with the requested State's law on double jeopardy (ne bis in idem);

(e) the assistance requested requires the requested State to carry out compulsory measures that would be inconsistent with its law and practice had the offence been the subject of investigation or prosecution under its own jurisdiction;

(f) the act is an offence under military law, which is not also an offence under ordinary criminal law.

2. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions.

3. The requested State may postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the requested State.

4. Before refusing a request or postponing its execution, the requested State shall consider whether assistance may be granted subject to certain conditions. If the requesting State accepts assistance subject to these conditions, it shall comply with them.

5. Reasons shall be given for any refusal or postponement of mutual assistance.

Article 5

CONTENTS OF REQUESTS

1. Requests for assistance shall include:
 - (a) the name of the requesting office and the competent authority conducting the investigation or court proceedings to which the request relates;
 - (b) the purpose of the request and a brief description of the assistance sought;
 - (c) a description of the facts alleged to constitute the offence and a statement or text of the relevant laws, except in cases of a request for service of documents;
 - (d) the name and address of the person to be served, where necessary;
 - (e) the reasons for and details of any particular procedure or requirement that the requesting State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;
 - (f) specification of any time-limit within which compliance with the request is desired;
 - (g) such other information as is necessary for the proper execution of the request.

2. Requests, supporting documents and other communications made pursuant to the present Treaty shall be accompanied by a translation into the language of the requested State or another language acceptable to that State.

3. If the requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

*Article 6**Execution of requests*

Subject to article 19 of the present Treaty, requests for assistance shall be carried out promptly, in the manner provided for by the law and practice of the requested State. To the extent consistent with its law and practice, the requested State shall carry out the request in the manner specified by the requesting State.

Article 7

RETURN OF MATERIAL TO THE REQUESTED STATE

Any property, as well as original records or documents, handed over to the requesting State under the present Treaty shall be returned to the requested State as soon as possible unless the latter waives its right of return thereof.

Article 8

LIMITATION ON USE

The requesting State shall not, without the consent of the requested State, use or transfer information or evidence provided by the requested State for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.

Article 9

PROTECTION OF CONFIDENTIALITY

Upon request:

(a) The requested State shall use its best endeavours to keep confidential the request for assistance, its contents and its supporting documents as well as the fact of granting of such assistance. If the request cannot be executed without breaching confidentiality, the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed;

(b) The requesting State shall keep confidential evidence and information provided by the requested State, except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

Article 10

SERVICE OF DOCUMENTS

1. The requested State shall effect service of documents that are transmitted to it for this purpose by the requesting State.
2. A request to effect service of summonses shall be made to a requested State not less than ... days before the date on which the appearance of a person is required. In urgent cases, the requested State may waive the time requirement.

Article 11

OBTAINING OF EVIDENCE

1. The requested State shall, in conformity with its law and upon request, take the sworn or affirmed testimony, or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the requesting State.
2. Upon the request of the requesting State, the parties to the relevant proceedings in the requesting State, their legal representatives and representatives of the requesting State may, subject to the laws and procedures of the requested State, be present at the proceedings.

Article 12

RIGHT OR OBLIGATION TO DECLINE TO GIVE EVIDENCE

1. A person who is required to give evidence in the requested or requesting State may decline to give evidence where either:

(a) the law of the requested State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requested State; or

(b) the law of the requesting State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requesting State.

2. If a person claims that there is a right or obligation to decline to give evidence under the law of the other State, the State where that person is present shall, with respect thereto, rely on a certificate of the competent authority of the other State as evidence of the existence or non-existence of that right or obligation.

*Article 13*AVAILABILITY OF PERSONS IN CUSTODY TO GIVE EVIDENCE
OR TO ASSIST IN INVESTIGATIONS

1. Upon the request of the requesting State, and if the requested State agrees and its law so permits, a person in custody in the latter State may, subject to his or her consent, be temporarily transferred to the requesting State to give evidence or to assist in the investigations.

2. While the person transferred is required to be held in custody under the law of the requested State, the requesting State shall hold that person in custody and shall return that person in custody to the requested State at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.

3. Where the requested State advises the requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in article 14 of the present Treaty.

*Article 14*AVAILABILITY OF OTHER PERSONS TO GIVE EVIDENCE
OR ASSIST IN INVESTIGATIONS

1. The requesting State may request the assistance of the requested State in inviting a person:

(a) to appear in proceedings in relation to a criminal matter in the requesting State unless that person is the person charged; or

(b) to assist in the investigations in relation to a criminal matter in the requesting State.

2. The requested State shall invite the person to appear as a witness or expert in proceedings or to assist in the investigations. Where appropriate, the requested State shall satisfy itself that satisfactory arrangements have been made for the person's safety.

3. The request or the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the requesting State.

4. Upon request, the requested State may grant the person an advance, which shall be refunded by the requesting State.

Article 15

SAFE CONDUCT

1. Subject to paragraph 2 of the present article, where a person is in the requesting State pursuant to a request made under article 13 or 14 of the present Treaty:

(a) that person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the requesting State in respect of any acts or omissions or convictions that preceded the person's departure from the requested State;

(b) that person shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any

investigation other than the proceeding or investigation to which the request relates.

2. Paragraph 1 of the present article shall cease to apply if that person, being free to leave, has not left the requesting State within a period of 15 consecutive days, or any longer period otherwise agreed on by the Parties, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to article 13 or accept an invitation pursuant to article 14 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

Article 16

PROVISION OF PUBLICLY AVAILABLE DOCUMENTS AND OTHER RECORDS

1. The requested State shall provide copies of documents and records in so far as they are open to public access as part of a public register or otherwise, or in so far as they are available for purchase or inspection by the public.

2. The requested State may provide copies of any other document or record under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

Article 17

SEARCH AND SEIZURE

The requested State shall, in so far as its law permits, carry out requests for search and seizure and delivery of any material to the requesting State for evidentiary purposes, provided that the rights of bona fide third parties are protected.

Article 18

CERTIFICATION AND AUTHENTICATION

A request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

Optional Protocol to the Model Treaty on Mutual Assistance in Criminal Matters concerning the proceeds of crime

1. In the present Protocol "proceeds of crime" means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.

2. The requested State shall, upon request, endeavour to ascertain whether any proceeds of the alleged crime are located within its jurisdiction and shall notify the requesting State of the results of its inquiries. In making the request, the requesting State shall notify the requested State of the basis of its belief that such proceeds may be located within its jurisdiction.

3. In pursuance of a request made under paragraph 2 of the present Protocol, the requested State shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.

4. Where, pursuant to paragraph 2 of the present Protocol, suspected proceeds of crime are found, the requested State shall upon

Article 19

COSTS

The ordinary costs of executing a request shall be borne by the requested State, unless otherwise determined by the Parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.

Article 20

CONSULTATION

The Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of the present Treaty either generally or in relation to a particular case.

Article 21

FINAL PROVISIONS

1. The present Treaty is subject to (ratification, acceptance or approval). The instruments of ratification, acceptance or approval shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of ratification, acceptance or approval are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

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

Done at on in the
and languages, both/all texts being equally authentic.

request take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the requesting State.

5. The requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds of crime made by a court of the requesting State or take other appropriate action to secure the proceeds following a request by the requesting State.

6. The Parties shall ensure that the rights of bona fide third parties shall be respected in the application of the present Protocol.

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

Done at on in the
and languages, both/all texts being equally authentic.

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY
[on the report of the Third Committee (A/53/616)]

53/112. Mutual assistance and international cooperation in criminal matters

The General Assembly,

Bearing in mind that the United Nations model treaties on international cooperation in criminal matters provide important tools for the development of international cooperation,

Convinced that existing arrangements governing international cooperation in criminal justice must be regularly reviewed and revised to ensure that the specific contemporary problems of fighting crime are effectively addressed,

Bearing in mind that developing countries and countries with economies in transition may lack the resources for developing and implementing treaties on mutual assistance in criminal matters,

Convinced that complementing and supplementing the United Nations model treaties will contribute to increased efficiency in combating criminality,

Recalling its resolution 45/117 of 14 December 1990, by which it adopted the Model Treaty on Mutual Assistance in Criminal Matters, annexed to that resolution,

Recalling also its resolution 52/88 of 12 December 1997,

Commending the work of the Intergovernmental Expert Group Meeting on Mutual Assistance in Criminal Matters, held at Arlington, Virginia, United States of America, from 23 to 26 February 1998, to implement in part resolution 52/88 by proposing complementary provisions for the Model Treaty, elements for inclusion in model legislation on mutual assistance in criminal matters, and training and technical assistance for national officials engaged in that field,

Commending also the Government of the United States of America for hosting the Intergovernmental Expert Group Meeting, for its substantial contribution to the organization of the Meeting and for the support given by the National Institute of Justice of the United States Department of Justice through the programme of the United Nations On-line Crime and Justice Clearing House,

1. *Welcomes* the report of the Intergovernmental Expert Group Meeting on Mutual Assistance in Criminal Matters, held at Arlington, Virginia, United States of America, from 23 to 26 February 1998;

2. *Decides* that the Model Treaty on Mutual Assistance in Criminal Matters should be complemented by the provisions set forth in annex I to the present resolution;

3. *Encourages* Member States, within the framework of national legal systems, to enact effective legislation on mutual assistance, and calls upon the international community to give all possible assistance in order to contribute to the achievement of that goal;

4. *Requests* the Secretary-General to elaborate, in consultation with Member States, for submission to the Commission on Crime Prevention and Criminal Justice, model legislation on mutual assistance in criminal matters, in order to enhance effective cooperation between States, taking into account the elements recommended by the Intergovernmental Expert Group for inclusion in such model legislation, which are set forth in annex II to the present resolution;

5. *Invites* Member States to take into account the Model Treaty in negotiating treaties at the bilateral, regional or multilateral level, as appropriate;

6. *Also invites* Member States to consider, where applicable and within the framework of national legal systems, the following measures in the context of the application of treaties on mutual assistance in criminal matters or other arrangements for such mutual assistance:

(a) establishing or designating a national central authority or authorities to process requests for assistance;

(b) undertaking regular reviews of their treaties on mutual assistance in criminal matters or other arrangements and implementing legislation, as well as taking other necessary measures for the purpose of rendering such arrangements and legislation

more efficient and effective in combating established and emerging forms of crime;

(c) concluding asset-sharing arrangements as a means of enabling forfeited proceeds of crime to be used to strengthen the capacity of national criminal justice systems and contributing a part of such proceeds to programmes such as those aimed at enhancing national capacities for fighting crime in developing countries and in countries with economies in transition, paying due consideration to the rights of bona fide third parties;

(d) making use of videoconferencing and other modern means of communication for, inter alia, the transmission of requests, consultation between central authorities, the taking of testimony and statements, and training;

7. *Encourages* Member States to promote, on a bilateral, regional or worldwide basis, measures to improve the skills of officials in order to strengthen mutual assistance mechanisms, such as specialized training and, whenever possible, secondment and exchanges of relevant personnel, and to consider the use of videoconferencing and other modern means of communication for training purposes;

8. *Reiterates* its invitation to Member States to provide to the Secretary-General copies of relevant laws and information on practices related to international cooperation in criminal matters and, in particular, to mutual assistance in criminal matters, as well as updated information on central authorities designated to deal with requests;

9. *Requests* the Secretary-General:

(a) to update and disseminate regularly the information mentioned in paragraph 8 above and, in particular, to prepare, for use by Member States, a directory of central authorities responsible for mutual legal assistance, drawing on the information already collected during the Intergovernmental Expert Group Meeting;

(b) to continue to provide advisory and technical cooperation services to Member States requesting assistance in drafting and implementing appropriate national legislation and in developing and implementing bilateral, subregional, regional or international treaties on mutual assistance in criminal matters, drawing on the expertise of Member States as appropriate;

(c) to provide, in cooperation with interested Member States and relevant intergovernmental organizations, training in mutual assistance law and practice for personnel in appropriate governmental agencies and for central authorities of requesting Member States in an effort to develop the necessary skills and to improve communication and cooperation aimed at enhancing the effectiveness of mutual assistance mechanisms;

10. *Also requests* the Secretary-General, in cooperation with interested Member States, relevant intergovernmental organizations and the institutes constituting the United Nations Crime Prevention and Criminal Justice Programme network, to develop appropriate training materials for use in providing to requesting Member States the technical assistance referred to above;

11. *Commends* the International Institute of Higher Studies in Criminal Sciences of Siracusa, Italy, for its offer to organize and host up to two training seminars for mutual assistance officials, and invites interested Member States to provide voluntary contributions to offset the travel costs of officials from developing countries and from countries with economies in transition and to make substantive contributions to the seminars;

12. *Urges* Member States and funding agencies to assist the Secretary-General in implementing the present resolution through voluntary contributions to the United Nations Crime Prevention and Criminal Justice Fund;

13. *Requests* the Secretary-General to ensure the full implementation of the provisions of the present resolution.

85th plenary meeting
9 December 1998

ANNEX I

Complementary provisions for the Model Treaty on Mutual Assistance in Criminal Matters*Article 1*

1. In paragraph 3(b), replace the words “Optional Protocol to” with the words “article 18 of”.

Article 3

2. In the title, replace the word “competent” with the word “central”.
3. Insert the word “central” before the word “authority”.
4. Add the following footnote to the end of the article:
“Countries may wish to consider providing for direct communications between central authorities and for the central authorities to play an active role in ensuring the speedy execution of requests, controlling quality and setting priorities. Countries may also wish to agree that the central authorities are not the exclusive channel for assistance between the Parties and that the direct exchange of information should be encouraged to the extent permitted by domestic law or arrangements.”

Article 4

5. In the footnote to paragraph 1, replace the last sentence with the following:

“Countries may wish, where feasible, to render assistance, even if the act on which the request is based is not an offence in the requested State (absence of dual criminality). Countries may also consider restricting the requirement of dual criminality to certain types of assistance, such as search and seizure.”

6. In paragraph 1(d) delete the words “that is subject to investigation or prosecution in the requested State or”.

7. Add the following footnote to the end of paragraph 4:
“States should consult, in accordance with article 20, before assistance is refused or postponed.”

Article 5

8. Add the following footnote to the end of paragraph 2:
“Countries may wish to provide that the request may be made by modern means of communication, including, in particularly urgent cases, verbal requests that are confirmed in writing forthwith.”

Article 6

9. Add the following footnote to the end of the article:
“The requested State should secure such orders, including judicial orders, as may be necessary for the execution of the request. Countries may also wish to agree, in accordance with national legislation, to represent or act on behalf or for the benefit of the requesting State in legal proceedings necessary to secure such orders.”

Article 8

10. Add the following words to the end of the footnote to the article:

“; or restrict use of evidence only where the requested State makes an express request to that effect.”

11. Add the following words to the beginning of the article:
“Unless otherwise agreed,”.

Article 11

12. Add the following footnote to the end of paragraph 2:
“Wherever possible and consistent with the fundamental principles of domestic law, the Parties should permit testimony, statements or other forms of assistance to be given via video link or other modern means of communication and should ensure that perjury committed under such circumstances is a criminal offence.”

Article 12

13. In the English version of paragraph 1, replace the word “required” with the words “called upon”.

14. Add the following footnote to the end of the article:
“Some countries may wish to provide that a witness who is testifying in the requesting State may not refuse to testify on the basis of a privilege applicable in the requested State.”

New article 18

15. Insert as new article 18, entitled “Proceeds of crime”, paragraphs 1 to 6 of the Optional Protocol to the Model Treaty on Mutual Assistance in Criminal Matters concerning the proceeds of crime and delete the remaining text of the Protocol, including the footnotes.

16. Replace the word “Protocol” with the word “article” throughout the new article.

17. Add the following footnote to the end of the title of the new article:

“Assistance in forfeiting the proceeds of crime has emerged as an important instrument in international cooperation. Provisions similar to those outlined in the present article appear in many bilateral assistance treaties. Further details can be provided in bilateral arrangements. One matter that could be considered is the need for other provisions dealing with issues related to bank secrecy. Provision could be made for the equitable sharing of the proceeds of crime between the Contracting States or for consideration of the disposal of the proceeds on a case-by-case basis.”

18. Add the following footnote to the end of paragraph 5:

“The Parties might consider widening the scope of the present article by the inclusion of references to victims’ restitution and the recovery of fines imposed as a sentence in a criminal prosecution.”

Articles 18–21

19. Renumber former article 18 as article 19 and renumber all subsequent articles accordingly.

ANNEX 9

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Foreword

In its *Millennium Declaration*, the General Assembly of the United Nations emphasized the need to strengthen the international rule of law and respect for all internationally recognized human rights and fundamental freedoms, thus clearly highlighting a key area of focus for the United Nations in the new millennium.

The Secretary-General of the United Nations has reaffirmed his commitment to advancing the international rule of law. Treaties are the primary source of international law, and the Secretary-General is the main depositary of multilateral treaties in the world. At present, over 500 multilateral treaties are deposited with him. In his endeavours to enhance respect for the international rule of law, the Secretary-General has encouraged Member States that have not done so already to become parties to those treaties. The United Nations has undertaken a number of initiatives to assist States to become party to multilateral treaties and thereby contribute to strengthening the international rule of law.

This *Handbook*, prepared by the Treaty Section of the United Nations Office of Legal Affairs as a practical guide to the depositary practice of the Secretary-General and the registration practice of the Secretariat, is intended as a contribution to the United Nations efforts to assist States in becoming party to the international treaty framework. It is written in simple language and, with the aid of diagrams and step-by-step instructions, touches upon many aspects of treaty law and practice. This *Handbook* is designed for use by States, international organizations and other entities. In particular, it is intended to assist States with scarce resources and limited technical proficiency in treaty law and practice to participate fully in the multilateral treaty framework.

In the past the Treaty Section of the Office of Legal Affairs has received representatives from foreign ministries to provide them with the opportunity to familiarize themselves with the Secretary-General's depositary practice and the Secretariat's registration practice. In the future the

Treaty Section hopes to offer this opportunity to other Member State representatives. This *Handbook* is intended to facilitate such visits and will also be the basis for a pilot training programme that the Treaty Section, Office of Legal Affairs, and the United Nations Institute for Training and Research (UNITAR) will be offering permanent missions: *Deposit of Treaty Actions with the Secretary-General and the Registration of Treaties*.

Of course, aside from paper copies of this *Handbook* and face-to-face training, there are various resources available on the United Nations website in relation to the depositary and registration practices applied within the United Nations. The website at <http://untreaty.un.org> contains, among many other things, an electronic copy of this *Handbook*, a technical assistance site which directs users to relevant United Nations agencies and the United Nations *Treaty Collection* which contains the multilateral treaties deposited with the Secretary-General and the United Nations *Treaty Series*.

States are encouraged to make full use of the wealth of information contained in these pages and to contact the Treaty Section of the Office of Legal Affairs by e-mail at treaty@un.org with any comments or questions.

Abbreviations

This Handbook uses the following abbreviations:

Regulations: Regulations to give effect to Article 102 of the *Charter of the United Nations*, United Nations *Treaty Series*, volume 859/860, p.VIII (see General Assembly resolution 97(I) of 14 December 1946, as amended by resolutions 364 B (IV) of 1 December 1949; 482 (V) of 12 December 1950; 33/141 of 19 December 1978; and 52/153 of 15 December 1997)

Repertory of practice: *Repertory of Practice of United Nations Organs* (Volume V, New York, 1955) (see also Supplement No. 1, Volume II; Supplement No. 2, Volume III; Supplement No. 4, Volume II; Supplement No.5, Volume V; and Supplement No. 6, Volume VI)

Secretary-General: Secretary-General of the United Nations

Summary of practice: *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties* (ST/LEG/7/Rev.1)

Treaty Section: Treaty Section, Office of Legal Affairs of the United Nations

Vienna Convention 1969: Vienna Convention on the Law of Treaties, 1969

Vienna Convention 1986: Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986

1. Introduction

In his *Millennium Report* (A/54/2000), the Secretary-General of the United Nations noted that “[s]upport for the rule of law would be enhanced if countries signed and ratified international treaties and conventions”. He further noted that many countries are unable to participate fully in the international treaty framework due to “the lack of the necessary expertise and resources, especially when national legislation is needed to give force to international instruments”. In the same report, the Secretary-General called upon “... all relevant United Nations entities to provide the necessary technical assistance that will make it possible for every willing State to participate fully in the emerging global legal order”.

The Millennium Summit was held at United Nations Headquarters, in New York, from 6 to 8 September 2000. Further to his commitment to the rule of law expressed in the *Millennium Report*, the Secretary-General invited all Heads of State and Government attending the Millennium Summit to sign and ratify treaties deposited with him. The response to the Secretary-General’s invitation was positive. The Treaty Signature/Ratification Event was held during the Millennium Summit and a total of 84 countries, of which 59 were represented at the level of Head of State or Government, undertook 274 treaty actions (signature, ratification, accession, etc.) in relation to over 40 treaties deposited with the Secretary-General.

The Secretary-General is the depositary for over 500 multilateral treaties. The depositary functions relating to multilateral treaties deposited with the Secretary-General are discharged by the Treaty Section of the Office of Legal Affairs of the United Nations. The Section is also responsible for the registration and publication of treaties submitted to the Secretariat pursuant to Article 102 of the *Charter of the United Nations*. Article 102 provides that every treaty and every international agreement entered into by a Member of the United Nations, after entry into force of the Charter, shall be registered with and published by the Secretariat.

Further to the Secretary-General's commitment to advancing the international rule of law, this *Handbook* has been prepared as a guide to the Secretary-General's practice as a depositary of multilateral treaties, and to treaty law and practice in relation to the registration function. This *Handbook* is mainly designed for the use of Member States, secretariats of international organizations, and others involved in assisting governments on the technical aspects of participation in the multilateral treaties deposited with the Secretary-General, and the registration of treaties with the Secretariat under Article 102. It is intended to promote wider State participation in the multilateral treaty framework.

This *Handbook* commences with a description of the depositary function, followed by an overview of the steps involved in a State becoming a party to a treaty. The following section highlights the key events of a multilateral treaty, from deposit with the Secretary-General to termination. Section 5 outlines the registration and filing and recording functions of the Secretariat, and how a party may go about submitting a treaty for registration or filing and recording. The final substantive section, section 6, contains practical hints on contacting the Treaty Section on treaty matters, and flow charts for carrying out various common treaty actions. Several annexes appear towards the end of this *Handbook*, containing various sample instruments for reference in concluding treaties or performing treaty actions. A glossary listing common terms and phrases of treaty law and practice, many of which are used in this *Handbook*, is also included.

Treaty law and its practice are highly specialized. Nevertheless, this publication attempts to avoid extensive legal analyses of the more complex areas of the depositary and registration practices. Many of the complexities involving the depositary practice are addressed in the *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties* (ST/LEG/7/Rev.1). The *Repertory of Practice of United Nations Organs* (volume V, New York, 1955, and Supplements 1-6) is also a valuable guide to the two practices. This *Handbook* is not intended to replace the *Summary of Practice* or the *Repertory of Practice*.

Readers are encouraged to contact the Treaty Section of the Office of Legal Affairs of the United Nations with questions or comments about this *Handbook*. This publication may need further elaboration and clarification in certain areas, and the views of readers will be invaluable for future revisions.

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2 Depositing multilateral treaties

(See the *Summary of Practice*, paras. 9-37.)

2.1 Secretary-General as depositary

The Secretary-General of the United Nations, at present, is the depositary for over 500 multilateral treaties. The Secretary-General derives this authority from:

- (a) Article 98 of the *Charter of the United Nations*;
- (b) Provisions of the treaties themselves;
- (c) General Assembly resolution 24(1) of 12 February 1946; and
- (d) League of Nations resolution of 18 April 1946.

2.2 Depositary functions of the Secretary-General

The depositary of a treaty is responsible for ensuring the proper execution of all treaty actions relating to that treaty. The depositary's duties are international in character, and the depositary is under an obligation to act impartially in the performance of those duties.

The Secretary-General is guided in the performance of depositary functions by:

- (a) Provisions of the relevant treaty;
- (b) Resolutions of the General Assembly and other United Nations organs;
- (c) Customary international law; and
- (d) Article 77 of the Vienna Convention 1969.

In practice, the Treaty Section of the United Nations Office of Legal Affairs carries out depositary functions on behalf of the Secretary-General.

2.3 Designation of depositary

(See section 6.5, which explains how to arrange with the Treaty Section for deposit of a multilateral treaty with the Secretary-General.)

The negotiating parties to a multilateral treaty may designate the depositary for that treaty either in the treaty itself or in some other manner, e.g. through a separate decision adopted by the negotiating parties. When a treaty is adopted within the framework of the United Nations or at a conference convened by the United Nations, the treaty normally includes a provision designating the Secretary-General as the depositary for that treaty. If a multilateral treaty has not been adopted within the framework of an international organization or at a conference convened by such an organization, it is customary for the treaty to be deposited with the State that hosted the negotiating conference.

When a treaty is not adopted within the framework of the United Nations or at a conference convened by the United Nations, it is necessary for parties to seek the concurrence of the Secretary-General to be the depositary for the treaty before designating the Secretary-General as such. In view of the nature of the Secretary-General's role, being both political and legal, the Secretary-General gives careful consideration to the request. In general, the Secretary-General's policy is to assume depositary functions only for:

(a) Multilateral treaties of worldwide interest adopted by the General Assembly or concluded by plenipotentiary conferences convened by the appropriate organs of the United Nations that are open to wide participation; and

(b) Regional treaties adopted within the framework of the regional commissions of the United Nations that are open to participation by the entire membership of the relevant commissions.

Since final clauses are critical in providing guidance to the depositary and in discharging the depositary function effectively, it is important that the depositary be consulted in drafting them. Unclear final clauses may create difficulties in interpretation and implementation both for States parties and for the depositary.

3. Participating in multilateral treaties*

3.1 Signature

3.1.1 Introduction

(See section 6.2, which illustrates how to arrange with the Treaty Section to sign a multilateral treaty.)

One of the most commonly used steps in the process of becoming party to a treaty is signing that treaty. Multilateral treaties contain signature provisions indicating the place of signature, date of opening for signature, period of signature, etc. Such treaties also list the methods by which a signatory State can become party to them, e.g. by ratification, acceptance, approval or accession.

3.1.2 Open for signature

(See the *Summary of Practice*, paras. 116-119.)

Multilateral treaties often provide that they will be open for signature only until a specified date, after which signature will no longer be possible. Once a treaty is closed for signature, a State may generally become a party to it by means of accession. Some multilateral treaties are open for signature indefinitely. Most multilateral treaties on human rights issues fall into this category, e.g. the *Convention on the Elimination of All Forms of Discrimination against Women, 1979*; *International Covenant on Civil and Political Rights, 1966*; and *International Convention on the Elimination of All Forms of Racial Discrimination, 1966*. Generally, multilateral treaties deposited with the Secretary-General of the United Nations make provision for signature by all States Members of the United Nations, or of the specialized agencies, or of the International Atomic Energy Agency, or parties to the *Statute of the International Court of Justice*. However, some multilateral treaties contain specific limitations on participation due to circumstances specific to them. For example:

Article 2 of the *Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles, 1998*, limits participation to “[c]ountries that are members of the Economic Commission for Europe (UN/ECE), regional economic integration organizations that are set up by ECE member countries and countries that are admitted to the ECE in a consultative capacity”.

*For the sake of editorial convenience, the term “State”, as used in this *Handbook*, may include other entities competent at international law to enter into treaties.

3.1.3 Simple signature

Multilateral treaties usually provide for signature subject to ratification, acceptance or approval – also called simple signature. In such cases, a signing State does not undertake positive legal obligations under the treaty upon signature. However, signature indicates the State's intention to take steps to express its consent to be bound by the treaty at a later date. Signature also creates an obligation, in the period between signature and ratification, acceptance or approval, to refrain in good faith from acts that would defeat the object and purpose of the treaty (see article 18 of the Vienna Convention 1969).

See e.g. article 125(2) of the *Rome Statute of the International Criminal Court, 1998*: "This Statute is subject to ratification, acceptance or approval by signatory States. ..."

3.1.4 Definitive signature

Some treaties provide that States can express their consent to be legally bound solely upon signature. This method is most commonly used in bilateral treaties and rarely used for multilateral treaties. In the latter case, the entry into force provision of the treaty expressly provides that the treaty will enter into force upon signature by a given number of States.

Of the treaties deposited with the Secretary-General, this method is most commonly used in certain treaties negotiated under the auspices of the Economic Commission for Europe, e.g. article 4(3) of the *Agreement concerning the Adoption of Uniform Conditions for Periodical Technical Inspections of Wheeled Vehicles and the Reciprocal Recognition of Such Inspections, 1997*:

Countries under paragraphs 1 and 2 of this article may become Contracting Parties to the Agreement:

- (a) By signing it without reservation to a ratification;
- (b) By ratifying it after signing it subject to ratification;
- (c) By acceding to it.

3.2 Full powers

(See the *Summary of Practice*, paras. 101-115.)

3.2.1 Signature of a treaty without an instrument of full powers

(See section 6.2, which details how to arrange with the Treaty Section to sign a treaty.)

The Head of State, Head of Government or Minister for Foreign Affairs may sign a treaty or undertake any other treaty action on behalf of the State without an instrument of full powers.

3.2.2 Requirement of instrument of full powers

A person other than the Head of State, Head of Government or Minister for Foreign Affairs may sign a treaty only if that person possesses a valid instrument of full powers. This instrument empowers the specified representative to undertake given treaty actions. This is a legal requirement reflected in article 7 of the Vienna Convention 1969. It is designed to protect the interests of all States parties to a treaty as well as the integrity of the depositary. Typically, full powers are issued for the signature of a specified treaty.

Some countries have deposited general full powers with the Secretary-General. General full powers do not specify the treaty to be signed, but rather authorize a specified representative to sign all treaties of a certain kind.

3.2.3 Form of instrument of full powers

(See the model instrument of full powers in annex 3.)

As depositary, the Secretary-General insists on proper full powers for the person (other than a Head of State, Head of Government or Minister for Foreign Affairs) seeking to sign a treaty. Documents not containing a legible signature from one of the above-mentioned authorities are not acceptable (e.g. a telexed message). Signature of a treaty without proper full powers is not acceptable.

There is no specific form for an instrument of full powers, but it must include the following information:

1. The instrument of full powers must be signed by one of the three above-mentioned authorities and must unambiguously empower a specified person to sign the treaty. Full powers may also be issued by a person exercising the power of one of the above-mentioned three authorities of State ad interim. This should be stated clearly on the instrument.
2. Full powers are usually limited to one specific treaty and must indicate the title of the treaty. If the title of the treaty is not yet agreed, the full powers must indicate the subject matter and the name of the conference or the international organization where the negotiations are taking place.

3. Full powers must state the full name and title of the representative authorized to sign. They are individual and cannot be transferred to the “permanent representative ...”. Due to the individual character of the full powers, it is prudent to name at least two representatives, in case one is hindered by some unforeseen circumstance from performing the designated act.
4. *Date and place of signature* must be indicated.
5. *Official seal*. This is optional and it cannot replace the signature of one of the three authorities of State.

(See Note Verbale from the Legal Counsel of the United Nations of 30 September 1998, LA 41 TR/221/1 (extracted in annex 1)).

The following is an example of an instrument of full powers:

I have the honour to inform you that I (name), President of the Republic of (name of State), have given full powers to the Honourable Ms (name), Secretary of State for the Interior and Religious Affairs, to sign on behalf of (name of State) the United Nations Convention against Transnational Organized Crime and the following two Protocols to be opened for signature in Palermo, Italy, from 12 to 15 December 2000:

- i. Protocol against the smuggling of migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime.
- ii. Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime.

This note constitutes the full powers empowering the Honourable (name) to sign the above-stated Convention and Protocols.

The Hon. (name), President of the Republic of (name of State)
[Signature]

Full powers are legally distinct from credentials, which authorize representatives of a State to participate in a conference and sign the Final Act of the conference.

3.2.4 *Appointment with the depositary for affixing signature*

(See section 6.2, which details how to arrange with the Treaty Section to sign a multilateral treaty and to have an instrument of full powers reviewed.)

As custodian of the original version of the treaty, the depositary verifies all full powers prior to signature. If the Secretary-General of the United Nations is the depositary for the treaty in question, the State wishing to sign the treaty should make an appointment for signature with the Treaty Section and submit to the Treaty Section for verification a copy of the instrument of full powers well in advance of signature (facsimiles are acceptable for this purpose). The State should present the original instrument of full powers at the time of signature. Full powers may be submitted by hand or mail to the Treaty Section.

3.3 *Consent to be bound*

(See the Summary of Practice, paras. 120-143.)

3.3.1 *Introduction*

(See section 6.3, which details how to arrange with the Treaty Section to ratify, accept, approve or accede to a treaty.)

In order to become a party to a multilateral treaty, a State must demonstrate, through a concrete act, its willingness to undertake the legal rights and obligations contained in the treaty. In other words it must express its consent to be bound by the treaty. A State can express its consent to be bound in several ways, in accordance with the final clauses of the relevant treaty. The most common ways, as discussed below, are:

- (a) Definitive signature (see section 3.1.4);
- (b) Ratification;
- (c) Acceptance or approval; and
- (d) Accession.

The act by which a State expresses its consent to be bound by a treaty is distinct from the treaty's entry into force (see section 4.2). Consent to be bound is the act whereby a State demonstrates its willingness to undertake the legal rights and obligations under a treaty through definitive signature or the deposit of an instrument of ratification, acceptance, approval or accession. Entry into force of a treaty with regard to a State is the moment the treaty becomes legally binding for the State that is party to the treaty. Each treaty contains provisions dealing with both aspects.

3.3.2 Ratification

Most multilateral treaties expressly provide for States to express their consent to be bound by signature subject to ratification, acceptance or approval.

Providing for signature subject to ratification allows States time to seek approval for the treaty at the domestic level and to enact any legislation necessary to implement the treaty domestically, prior to undertaking the legal obligations under the treaty at the international level. Once a State has ratified a treaty at the international level, it must give effect to the treaty domestically. This is the responsibility of the State. Generally, there is no time limit within which a State is requested to ratify a treaty which it has signed. Upon ratification, the State becomes legally bound under the treaty.

Ratification at the international level, which indicates to the international community a State's commitment to undertake the obligations under a treaty, should not be confused with ratification at the national level, which a State may be required to undertake in accordance with its own constitutional provisions before it expresses consent to be bound internationally. Ratification at the national level is inadequate to establish a State's intention to be legally bound at the international level. The required actions at the international level shall also be undertaken.

Some multilateral treaties impose specific limitations or conditions on ratification. For example, when a State deposits with the Secretary-General an instrument of ratification, acceptance or approval of, or accession to the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 1980*, it must at the same time notify the Secretary-General of its consent to be bound by any two or more of the protocols related to the Convention. The relevant protocols are: Protocols I, II and III of 10 October 1980; Protocol IV of 13 October 1995; and Protocol II, as amended, of 3 May 1996. Any State that expresses its consent to be bound by Protocol II after the amended Protocol II entered into force on 3 December 1998 is considered to have consented to be bound by Protocol II, as amended, unless it expresses a contrary intention. Such a State is also considered to have consented to be bound by the unamended Protocol II in relation to any State that is not bound by Protocol II, as amended, pursuant to article 40 of the Vienna Convention 1969.

3.3.3 Acceptance or approval

Acceptance or approval of a treaty following signature has the same legal effect as ratification, and the same rules apply, unless the treaty provides otherwise (see article 14(2) of the Vienna Convention 1969). If the treaty provides for acceptance or approval without prior signature, such acceptance or approval is treated as an accession, and the rules relating to accession would apply.

Certain treaties deposited with the Secretary-General permit acceptance or approval with prior signature, e.g. the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to Have Indiscriminate Effects, 1980*, and the *Food Aid Convention, 1999*. The European Union uses the mechanism of acceptance or approval frequently (depository notification C.N.514.2000.TREATIES-6):

[T]he Convention entered into force on 1 July 1999 among the Governments and the inter-governmental organization which, by 30 June 1999 had deposited their instruments of ratification, acceptance, approval or accession, or provisional application of the Convention, including the European Community. ...

3.3.4 Accession

A State may generally express its consent to be bound by a treaty by depositing an instrument of accession with the depositary (see article 15 of the Vienna Convention 1969). Accession has the same legal effect as ratification. However, unlike ratification, which must be preceded by signature to create binding legal obligations under international law, accession requires only one step, namely, the deposit of an instrument of accession. The Secretary-General, as depositary, has tended to treat instruments of ratification that have not been preceded by signature as instruments of accession, and the States concerned have been advised accordingly.

Most multilateral treaties today provide for accession as, for example, article 16 of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*. Some treaties provide for States to accede even before the treaty enters into force. Thus, many environmental treaties are open for accession from the day after the treaty closes for signature, as, for example, article 24(1) of the *Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997*.

3.3.5 Practical considerations

Form of instrument of ratification, acceptance, approval or accession

(See the model instrument of ratification, acceptance or approval in annex 4 and the model instrument of accession in annex 5.)

When a State wishes to ratify, accept, approve or accede to a treaty, it must execute an instrument of ratification, acceptance, approval or accession, signed by one of three specified authorities, namely the Head of State, Head of Government or Minister for Foreign Affairs. There is no mandated form for the instrument, but it must include the following:

1. Title, date and place of conclusion of the treaty concerned;
2. Full name and title of the person signing the instrument, i.e. the Head of State, Head of Government or Minister for Foreign Affairs or any other person acting in such a position for the time being or with full powers for that purpose issued by one of the above authorities;
3. An unambiguous expression of the intent of the Government, on behalf of the State, to consider itself bound by the treaty and to undertake faithfully to observe and implement its provisions;
4. Date and place where the instrument was issued; and
5. Signature of the Head of State, Head of Government or Minister for Foreign Affairs (the official seal is not adequate) or any other person acting in such a position for the time being or with full powers for that purpose issued by one of the above authorities.

Delivery to the Secretary-General

An instrument of ratification, acceptance, approval or accession becomes effective only when it is deposited with the Secretary-General of the United Nations at United Nations Headquarters in New York. The date of deposit is normally recorded as that on which the instrument is received at Headquarters.

States are advised to deliver such instruments to the Treaty Section of the United Nations directly to ensure the action is promptly processed. The individual who delivers the instrument of ratification does not require full powers. In addition to delivery by hand, instruments may also be mailed or faxed to the Treaty Section. If a State initially faxes an instrument, it must also provide the original as soon as possible thereafter to the Treaty Section.

Translations

It is recommended that, where feasible, States provide courtesy translations in English and/or French of instruments in other languages submitted for deposit with the Secretary-General. This facilitates the prompt processing of the relevant actions.

3.4 Provisional application

(See the *Summary of Practice*, para. 240.)

Some treaties provide for provisional application, either before or after their entry into force. For example, article 7(1) of the *Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994*, provides “If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force”. The *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995*, also provides for provisional application, ceasing upon its entry into force.

A State provisionally applies a treaty that has entered into force when it unilaterally undertakes, in accordance with its provisions, to give effect to the treaty obligations provisionally, even though its domestic procedural requirements for international ratification, approval, acceptance or accession have not yet been completed. The intention of the State would generally be to ratify, approve, accept or accede to the treaty once its domestic procedural requirements have been met. The State may unilaterally terminate such provisional application at any time unless the treaty provides otherwise (see article 25 of the Vienna Convention 1969). In contrast, a State that has consented to be bound by a treaty through ratification, approval, acceptance, accession or definitive signature is governed by the rules on withdrawal and denunciation specified in the treaty as discussed in section 4.5 (see articles 54 and 56 of the Vienna Convention 1969).

3.5 Reservations

(See section 6.4, which shows how to arrange with the Treaty Section to make a reservation or declaration. See also the *Summary of Practice*, paras. 161-216.)

3.5.1 *What are reservations?*

In certain cases, States make statements upon signature, ratification, acceptance, approval of or accession to a treaty. Such statements may be entitled “reservation”, “declaration”, “understanding”, “interpretative declaration” or “interpretative statement”. However phrased or named, any such statement purporting to exclude or modify the legal effect of a treaty provision with regard to the declarant is, in fact, a reservation (see article 2(1)(d) of the Vienna Convention 1969). A reservation may enable a State to participate in a multilateral treaty that the State would otherwise be unwilling or unable to participate in.

3.5.2 *Vienna Convention 1969*

Article 19 of the Vienna Convention 1969 specifies that a State may, when signing, ratifying, accepting, approving or acceding to a treaty, make a reservation unless:

- (a) The reservation is prohibited by the treaty;
- (b) The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- (c) In cases not falling under the above two categories, the reservation is incompatible with the object and purpose of the treaty.

In some cases, treaties specifically prohibit reservations. For example, article 120 of the *Rome Statute of the International Criminal Court, 1998*, provides: “No reservations may be made to this Statute”. Similarly, no entity may make a reservation or exception to the *Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994*, except where expressly permitted elsewhere in the agreement.

3.5.3 *Time for formulating reservations*

Formulating reservations upon signature, ratification, acceptance, approval or accession

Article 19 of the Vienna Convention 1969 provides for reservations to be made at the time of signature or when depositing an instrument of ratification, acceptance, approval or accession. If a reservation is made upon simple signature (i.e. signature subject to ratification, acceptance or approval), it is merely declaratory and must be formally confirmed in writing when the State expresses its consent to be bound.

Formulating reservations after ratification, acceptance, approval or accession

Where the Secretary-General, as depositary, receives a reservation after the deposit of the instrument of ratification, acceptance, approval or accession that meets all the necessary requirements, the Secretary-General circulates the reservation to all the States concerned. The Secretary-General accepts the reservation in deposit only if no such State informs him that it does not wish him to consider it to have accepted that reservation. This is a situation where the Secretary-General’s practice deviates from the strict requirements of the Vienna Convention 1969. On 4 April 2000, in a letter addressed to the Permanent Representatives to the United Nations, the Legal Counsel advised that the time limit for objecting to such a reservation would be 12 months from the date of the depositary notification. The same principle has been applied by the Secretary-General, as depositary, where a reserving State to a treaty has withdrawn an initial reservation but has substituted it with a new or modified reservation (LA 41TR/221 (23-1) (extracted in annex 2)).

3.5.4 *Form of reservations*

Normally, when a reservation is formulated, it must be included in the instrument of ratification, acceptance, approval or accession or be annexed to it and (if annexed) must be separately signed by the Head of State, Head of Government or Minister for Foreign Affairs or a person having full powers for that purpose issued by one of the above authorities.

3.5.5 *Notification of reservations by the depositary*

Where a treaty expressly prohibits reservations

Where a treaty expressly prohibits reservations, the Secretary-General, as depositary, may have to make a preliminary legal assessment as to whether a given statement constitutes a reservation. If the statement has no bearing on the State’s legal obligations, the Secretary-General circulates the statement to the States concerned.

If a statement on its face, however phrased or named (see article 2(1)(d) of the Vienna Convention 1969), unambiguously purports to exclude or modify the legal effects of provisions of the treaty in their application to the State concerned, contrary to the provisions of the treaty, the Secretary-General will refuse to accept that State’s signature, ratification, acceptance, approval or

accession in conjunction with the statement. The Secretary-General will draw the attention of the State concerned to the issue and will not circulate the unauthorized reservation. This practice is followed only in instances where, prima facie, there is no doubt that the reservation is unauthorized and that the statement constitutes a reservation.

Where such a prima facie determination is not possible, and doubts remain, the Secretary-General may request a clarification from the declarant on the real nature of the statement. If the declarant formally clarifies that the statement is not a reservation but only a declaration, the Secretary-General will formally receive the instrument in deposit and notify all States concerned accordingly.

The Secretary-General, as depositary, is not required to request such clarifications automatically; rather, it is for the States concerned to raise any objections they may have to statements they consider to be unauthorized reservations.

For example, articles 309 and 310 of the *United Nations Convention on the Law of the Sea, 1982*, provide that States may not make reservations to the Convention (unless expressly permitted elsewhere in the Convention) and that declarations or statements, however phrased or named, may only be made if they do not purport to exclude or modify the legal effect of the provisions of the Convention in their application to the reserving State.

Where a treaty expressly authorizes reservations

Where a State formulates a reservation that is expressly authorized by the relevant treaty, the Secretary-General, as depositary, informs the States concerned by depositary notification. Unless a translation or an in-depth analysis is required, such a notification is processed and transmitted by e-mail to the States concerned on the date of formulation. A reservation of this nature does not require any subsequent acceptance by the States concerned, unless the treaty so provides (see article 20(1) of the Vienna Convention 1969).

Where a treaty is silent on reservations

Where a treaty is silent on reservations and a State formulates a reservation consistent with article 19 of the Vienna Convention 1969, the Secretary-General, as depositary, informs the States concerned of the reservation by depositary notification, including by e-mail. Generally, human rights treaties do not contain provisions relating to reservations.

3.5.6 Objections to reservations

Time for making objections to reservations

Where a treaty is silent on reservations and a reservation is formulated and subsequently circulated, States concerned have 12 months to object to the reservation, beginning on the date of the depositary notification or the date on which the State expressed its consent to be bound by the treaty, whichever is later (see article 20(5) of the Vienna Convention 1969).

Where a State concerned lodges an objection to a treaty with the Secretary-General after the end of the 12-month period, the Secretary-General circulates it as a “communication”. See e.g. the objection dated 27 April 2000 by a State to a reservation that another State made upon its accession on 22 January 1999 to the *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989* (depositary notification C.N.276.2000.TREATIES-7):

The Government of (name of State) has examined the reservation made by the Government of (name of State) to the Second Optional Protocol to the International Covenant on Civil and Political Rights. The Government of (name of State) recalls that reservations other than the kind referred to in article 2 of the Protocol are not permitted. The reservation made by the Government of (name of State) goes beyond the limit of article 2 of the Protocol, as it does not limit the application of the death penalty to the most serious crimes of a military nature committed during the time of war.

The Government of (name of State) therefore objects to the aforesaid reservation made by the Government of (name of State) to the Second Optional Protocol to the International Covenant on Civil and Political Rights.

This shall not preclude the entry into force of the Second Optional Protocol to the International Covenant on Civil and Political Rights between (name of State) and (name of State), without (name of State) benefiting from the reservation.

Many States have formulated reservations to the *International Covenant on Civil and Political Rights, 1966*, and the *Convention on the Elimination of All Forms of Discrimination against Women, 1979*, subjecting their obligations under the treaty to domestic legal requirements. These reservations, in turn, have attracted a wide range of objections from States parties (see *Multilateral Treaties Deposited with the Secretary-General, ST/LEG/SER.E/19*, volume I, part I, chapter IV).

Effect of objection on entry into force of reservations

An objection to a reservation "... does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State" (article 20(4)(b) of the Vienna Convention 1969). Normally, to avoid uncertainty, an objecting State specifies whether its objection to the reservation precludes the entry into force of the treaty between itself and the reserving State. The Secretary-General circulates such objections.

See e.g. the objection by a State to a reservation that another State made upon its accession to the *Convention on the Elimination of All Forms of Discrimination against Women, 1979* (depository notification C.N.204.1998.TREATIES-6):

The Government of (name of State) considers the reservations made by (name of State) regarding article 9, paragraph 2, and article 16 first paragraph (c), (d), (f) and (g), of the Convention on the Elimination of All Forms of Discrimination against Women incompatible with the object and purpose of the Convention (article 28, paragraph 2). This objection shall not preclude the entry into force of the Convention between (name of State) and (name of State).

If a State does not object to a reservation made by another State, the first State is deemed to have tacitly accepted the reservation (article 21(1) of the Vienna Convention 1969).

3.5.7 Withdrawal of reservations

A State may, unless the treaty provides otherwise, withdraw its reservation or objection to a reservation completely or partially at any time. In such a case, the consent of the States concerned is not necessary for the validity of the withdrawal (articles 22-23 of the Vienna Convention 1969). The withdrawal must be formulated in writing and signed by the Head of State, Head of Government or Minister for Foreign Affairs or a person having full powers for that purpose issued by one of the above authorities. The Secretary-General, as depositary, circulates a notification of a withdrawal to all States concerned, as, for example, depository notification C.N.899.2000.TREATIES-7:

The reservation submitted by (name of State) with regard to article 7(b) on the occasion of the ratification of the *Convention on the Elimination of All Forms of Discrimination against Women* is withdrawn.

Article 22(3) of the Vienna Convention 1969 provides that the withdrawal of a reservation becomes operative in relation to another State only when that State has been notified of the withdrawal. Similarly, the withdrawal of an objection to a reservation becomes operative when the reserving State is notified of the withdrawal.

3.5.8 Modifications to reservations

An existing reservation may be modified so as to result in a partial withdrawal or to create new exemptions from, or modifications of, the legal effects of certain provisions of a treaty. A modification of the latter kind has the nature of a new reservation. The Secretary-General, as depositary, circulates such modifications and grants the States concerned a specific period within which to object to them. In the absence of objections, the Secretary-General accepts the modification in deposit.

In the past, the Secretary-General's practice as depositary had been to stipulate 90 days as the period within which the States concerned could object to such a modification. However, since the modification of a reservation could involve complex issues of law and policy, the Secretary-General decided that this time period was inadequate. Therefore, on 4 April 2000, the Secretary-General advised that the time provided for objections to modifications would be 12 months from the date of the depository notification containing the modification (LA 41 TR/221 (23-1) (extracted in annex 2)).

See e.g. the modification of a reservation made by a State upon its accession to the *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989* (depository notification C.N.934.2000.TREATIES-15):

In keeping with the depositary practice followed in similar cases, the Secretary-General proposes to receive the modification in question for deposit in the absence of any objection on the part of any of the Contracting States, either to the deposit itself or to the procedure envisaged, within a period of 12 months from the date of the present depository notification. In the absence of any such objection, the above modification will be accepted for deposit upon the expiration of the above-stipulated 12-month period, that is on 5 October 2001.

3.6 Declarations

(See the *Summary of Practice*, paras. 217-220.)

3.6.1 Interpretative declarations

A State may make a declaration about its understanding of a matter contained in or the interpretation of a particular provision in a treaty. Interpretative declarations of this kind, unlike reservations, do not purport to exclude or modify the legal effects of a treaty. The purpose of an interpretative declaration is to clarify the meaning of certain provisions or of the entire treaty.

Some treaties specifically provide for interpretative declarations. For example, when signing, ratifying or acceding to the *United Nations Convention on the Law of the Sea, 1982*, a State may make declarations with a view to harmonizing its laws and regulations with the provisions of that convention, provided that such declarations or statements do not purport to exclude or modify the legal effect of the provisions of the convention in their application to that State.

3.6.2 Optional and mandatory declarations

Treaties may provide for States to make optional and/or mandatory declarations. These declarations are legally binding on the declarants.

Optional declarations

Many human rights treaties provide for States to make optional declarations that are legally binding upon them. In most cases, these declarations relate to the competence of human rights commissions or committees (see section 4.3). See e.g. article 41 of the *International Covenant on Civil and Political Rights, 1966*:

A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. ...

Mandatory declarations

Where a treaty requires States becoming party to it to make a mandatory declaration, the Secretary-General, as depositary, seeks to ensure that they make such declarations. Some disarmament and human rights treaties provide for mandatory declarations, as, for example, article 3 of the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992*. article 3(2) of the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000*, provides:

Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

Mandatory declarations also appear in some treaties on the law of the sea. For example, when an international organization signs the *United Nations Convention on the Law of the Sea, 1982 (UNCLOS)*, or the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995* (1995 Agreement), it must make a declaration specifying the matters governed by UNCLOS in respect of which the organization's member States have conferred competence on the organization, and the nature and extent of that competence. The States conferring such competence must be signatories to UNCLOS. Where an international organization has competence over all matters governed by the 1995 Agreement, it must make a declaration to that effect upon signature or accession, and its member States may not become States parties to the 1995 Agreement except in respect of any of their territories for which the international organization has no responsibility.

3.6.3 Time for formulating declarations

Declarations are usually deposited at the time of signature or at the time of deposit of the instrument of ratification, acceptance, approval or accession. Sometimes, a declaration may be lodged subsequently.

3.6.4 Form of declarations

Since an interpretative declaration does not have a legal effect similar to that of a reservation, it need not be signed by a formal authority as long as it clearly emanates from the State concerned. Nevertheless, such a declaration should preferably be signed by the Head of State, Head of Government or Minister for Foreign Affairs or a person having full powers for that purpose issued by one of the above authorities. This practice avoids complications in the event of a doubt whether the declaration in fact constitutes a reservation.

Optional and mandatory declarations impose legal obligations on the declarant and therefore must be signed by the Head of State, Head of Government or Minister for Foreign Affairs or by a person having full powers for that purpose issued by one of the above authorities.

3.6.5 Notification of declarations by the depositary

The Secretary-General, as depositary, reviews all declarations to treaties that prohibit reservations to ensure that they are prima facie not reservations (see the discussion on prohibited reservations in section 3.5.5). Where a treaty is silent on or authorizes reservations, the Secretary-General makes no determination about the legal status of declarations relating to that treaty. The Secretary-General simply communicates the text of the declaration to all States concerned by depositary notification, including by e-mail, allowing those States to draw their own legal conclusions as to its status.

3.6.6 Objections to declarations

Objections to declarations where the treaty is silent on reservations

States sometimes object to declarations relating to a treaty that is silent on reservations. The Secretary-General, as depositary, circulates any such objection. For example, the Federal Republic of Germany made declarations to certain treaties with the effect of extending the provisions of those treaties to West Berlin. The Union of Soviet Socialist Republics objected to these declarations (see e.g. notes 3 and 4 to the *Convention on the prohibition of military or any other hostile use of environmental modification techniques, 1976*, in *Multilateral Treaties Deposited with the Secretary-General*, ST/LEG/SER.E/19, volume II, part I, chapter XXVI.1).

Objections generally focus on whether the statement is merely an interpretative declaration or is in fact a true reservation sufficient to modify the legal effects of the treaty. If the objecting State concludes that the declaration is a reservation and/or incompatible with the object and purpose of the treaty, the objecting State may prevent the treaty from entering into force between itself and the reserving State. However, if the objecting State intends this result, it should specify it in the objection.

See e.g. the objection by a State to a declaration made by another State upon its accession to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984* (depositary notification C.N.910.1999.TREATIES-13):

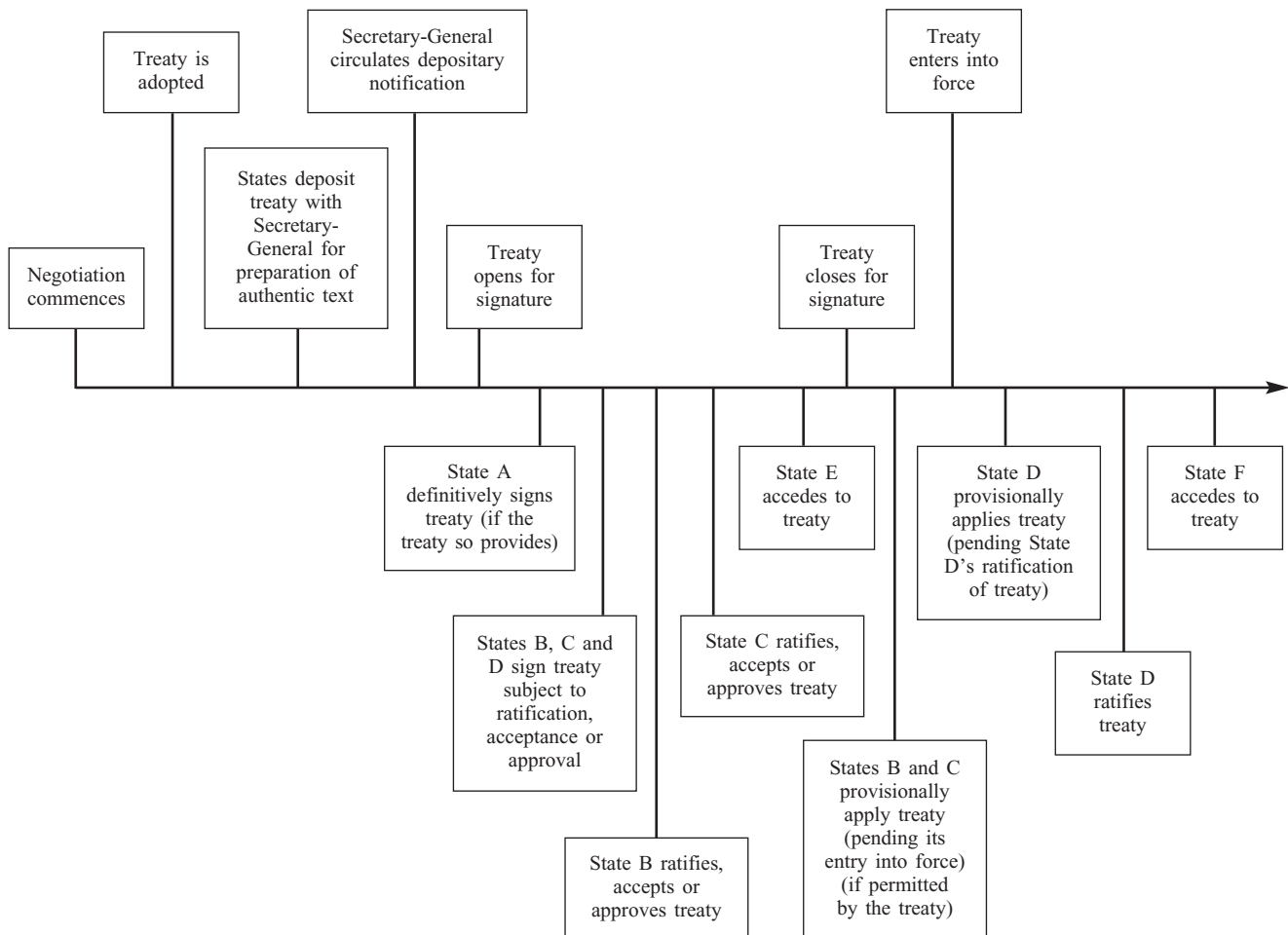
The Government of (name of State) notes that the declaration made by (name of State) in fact constitutes a reservation since it is aimed at precluding or modifying the legal effect of certain provisions of the treaty. A reservation which consists in a general reference to domestic law without specifying its contents does not clearly indicate to the other parties to what extent the State which issued the reservation commits itself when acceding to the Convention. The Government of (name of State) considers the reservation of (name of State) incompatible with the objective and purpose of the treaty, in respect of which the provisions relating to the right of victims of acts of torture to obtain redress and compensation, which ensure the effectiveness and tangible realization of obligations under the Convention, are essential, and consequently lodges an objection to the reservation entered by (name of State) regarding article 14, paragraph 1. This objection does not prevent the entry into force of the Convention between (name of State) and (name of State).

An objecting State sometimes requests that the declarant “clarify” its intention. In such a situation, if the declarant agrees that it has formulated a reservation, it may either withdraw its reservation or confirm that its statement is only a declaration.

4. Key events in a multilateral treaty

4.1 Overview

This section outlines what happens to a treaty after it is adopted. The time-line below shows a possible sequence of events as a treaty enters into force and States become parties to it.



4.2 Entry into force

(See the *Summary of Practice*, paras. 221-247.)

4.2.1 Definitive entry into force

Typically, the provisions of a multilateral treaty determine the date upon which the treaty enters into force. Where a treaty does not specify a date or provide another method for its entry into force, the treaty is presumed to be intended to come into force as soon as all negotiating States have consented to be bound by the treaty.

Treaties, in general, may enter into force:

(a) Upon a certain number of States depositing instruments of ratification, approval, acceptance or accession with the depositary;

See e.g. article VIII of the *Protocol relating to the Status of Refugees, 1967*:

The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

(b) Upon a certain percentage, proportion or category of States depositing instruments of ratification, approval, acceptance or accession with the depositary;

See e.g. article XIV of the *Comprehensive Nuclear-Test-Ban Treaty, 1996*:

This Treaty shall enter into force 180 days after the date of deposit of the instruments of ratification by all States listed in Annex 2 to this Treaty, but in no case earlier than two years after its opening for signature.

(c) A specific time after a certain number of States have deposited instruments of ratification, acceptance, approval or accession with the depositary;

See e.g. article 126(1) of the *Rome Statute of the International Criminal Court, 1998*:

This Statute shall enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

(d) On a specific date.

See e.g. article 45(1) of the *International Coffee Agreement 2001, 2000*:

This Agreement shall enter into force definitively on 1 October 2001 if by that date Governments representing at least 15 exporting Members holding at least 70 per cent of the votes of the exporting Members and at least 10 importing Members holding at least 70 per cent of the votes of the importing Members, calculated as at 25 September 2001, without reference to possible suspension under the terms of articles 25 and 42, have deposited instruments of ratification, acceptance or approval. ...

Once a treaty has entered into force, if the number of parties subsequently falls below the minimum number specified for entry into force, the treaty remains in force unless the treaty itself provides otherwise (see article 55 of the Vienna Convention 1969).

4.2.2 Entry into force for a state

Where a State definitively signs or ratifies, accepts, approves or accedes to a treaty that has already entered into force, the treaty enters into force for that State according to the relevant provisions of the treaty. Treaties often provide for entry into force for a State in these circumstances:

(a) At a specific time after the date the State definitively signs or deposits its instrument of ratification, acceptance, approval or accession;

See e.g. article 126(2) of the *Rome Statute of the International Criminal Court, 1998*:

For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.

(b) On the date the State definitively signs or deposits its instrument of ratification, acceptance, approval or accession.

See e.g. article VIII of the *Protocol relating to the Status of Refugees, 1967*:

For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

4.2.3 Provisional entry into force

It is noted, nevertheless, that some treaties include provisions for their provisional entry into force. This enables States that are ready to implement the obligations under a treaty to do so among themselves, without waiting for the minimum number of ratifications necessary for its formal entry into force, if this number is not obtained within a given period. See e.g. the *International Coffee Agreement, 1994, as extended until 30 September 2001, with modifications, by Resolution No. 384 adopted by the International Coffee Council in London on 21 July 1999, 1994*. Once a treaty has entered into force provisionally, it creates obligations for the parties that agreed to bring it into force in that manner.

4.3 Dispute resolution and compliance mechanisms

Many treaties contain detailed dispute resolution provisions, but some contain only elementary provisions. Where a dispute, controversy or claim arises out of a treaty (for example, due to breach, error, fraud, performance issues, etc.) these provisions become extremely important. If a treaty does not provide a dispute resolution mechanism, article 66 of the Vienna Convention 1969 may apply.

Treaties may provide various dispute resolution mechanisms, such as negotiation, consultation, conciliation, use of good offices, panel procedures, arbitration, judicial settlement, reference to the International Court of Justice, etc. See e.g. article 119(2) of the *Rome Statute of the International Criminal Court, 1998*:

Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or may make recommendations on further means of settlement of the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

In some recently concluded treaties, detailed compliance mechanisms are included. Many disarmament treaties and some environmental treaties provide compliance mechanisms, for example, by imposing monitoring and reporting requirements. See e.g. article 8 of the *Montreal Protocol on Substances that Deplete the Ozone Layer, 1987*, which provides that the parties "... shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance". During the Fourth Meeting of the Parties to the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Copenhagen 1992), the parties adopted a detailed non-compliance procedure (*Report of the Fourth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, 1992* (UNEP/OzL.Pro.4/15), decision IV/5, and annexes IV and V; see UNEP Ozone Secretariat's website).

Many human rights treaties provide for independent committees to oversee the implementation of their provisions. For example, the *Convention on the Elimination of All Forms of Discrimination against Women, 1979*; the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999*; and the *International Covenant on Civil and Political Rights, 1966*.

4.4 Amendments

(See the *Summary of Practice*, paras. 248-255.)

4.4.1 Amending treaties that have entered into force

The text of a treaty may be amended in accordance with the amendment provisions in the treaty itself or in accordance with chapter IV of the Vienna Convention 1969. If the treaty does not specify any amendment procedures, the parties may negotiate a new treaty or agreement amending the existing treaty.

An amendment procedure within a treaty may contain provisions governing the following:

(a) Proposal of amendments

See e.g. article 12(1) of the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000*:

Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. ...

(b) Circulation of proposals of amendments

Normally, the relevant treaty secretariat circulates proposals of amendment. The treaty secretariat is in the best position to determine the validity of the amendment proposed and undertake any necessary consultation. The treaty itself may detail the Secretariat's role in this regard. In the absence of circulation of the amendment by the treaty body, the Secretary-General, as depositary, may perform this function.

(c) Adoption of amendments

Amendments may be adopted by States parties at a conference or by an executive body such as the executive arm of the treaty. See e.g. article 13(4) of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*:

Any amendment to this Convention shall be adopted by a majority of two thirds of the States Parties present and voting at the Amendment Conference. The Depositary shall communicate any amendment so adopted to the States Parties.

(d) Parties' consent to be bound by amendments

Treaties normally specify that a party must formally consent to be bound by an amendment, following adoption, by depositing an instrument of ratification, acceptance or approval of the amendment. See e.g. article 39(3) of the *United Nations Convention against Transnational Organized Crime, 2000*:

An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

(e) Entry into force of amendments

An amendment can enter into force in a number of ways, e.g. upon:

- i. Adoption of the amendment;
- ii. Elapse of a specified time period (30 days, three months, etc.);
- iii. Its assumed acceptance by consensus if, within a certain period of time following its circulation, none of the parties to the treaty objects; or
- iv. Deposit of a specified number of instruments of ratification, acceptance or approval, etc.

See e.g. article 20(4) of the *Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997*:

Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to this Protocol.

(f) Effect of amendments: two approaches

Depending on the treaty provisions, an amendment to a treaty may, upon its entry into force, bind:

- i. Only those States that formally accepted the amendment (see paragraph (d) above); or
- ii. In rare cases, all States parties to the treaty.

(g) States that become parties after the entry into force of an amendment

Where a State becomes party to a treaty which has undergone amendment, it becomes party to the treaty as amended, unless otherwise indicated (see article 40(5)(a) of the Vienna Convention 1969). The provisions of the treaty determine which States are bound by the amendment. See e.g. article 13(5) of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997*:

An amendment to this Convention shall enter into force for all States Parties to this Convention, which have accepted it, upon the deposit with the Depositary of instruments of acceptance by a majority of States Parties. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

4.4.2 Amending treaties that have not entered into force

Where a treaty has not entered into force, it is not possible to amend the treaty pursuant to its own provisions. Where States agree that the text of a treaty needs to be revised, subsequent to the treaty's adoption, but prior to its entry into force, signatories and contracting parties may meet to adopt additional agreements or protocols to address the problem. While contracting parties and signatories play an essential role in such negotiations, it is not unusual for all interested countries to participate. See e.g. the *Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994*.

4.4.3 Determining the date on which an amendment enters into force

The Secretary-General, as depositary, is guided by the amendment provisions of a treaty in determining when an amendment to the treaty enters into force. Many treaties specify that an amendment enters into force when a specified number of ratifications, acceptances or approvals are received by the depositary. However, where the amendment provision specifies that entry into force occurs when a certain proportion of the parties to a treaty have ratified, accepted or approved the amendment, then the determination of the time of entry into force becomes less certain. For example, if an amendment is to enter into force after two-thirds of the parties have expressed their

consent to be bound by it, does this mean two thirds of the parties to the treaty at the time the amendment is adopted or two thirds of the parties to the treaty at any given point in time following such adoption?

In these cases, it is the Secretary-General's practice to apply the latter approach, sometimes called the current time approach. Under this approach, the Secretary-General, as depositary, counts all parties at any given time in determining the time an amendment enters into force. Accordingly, States that become parties to a treaty after the adoption of an amendment but before its entry into force are also counted. As far back as 1973, the Secretary-General, as depositary, applied the current time approach to the amendment of Article 61 of the *Charter of the United Nations*.

4.5 *Withdrawal and denunciation*

(See the *Summary of Practice*, paras. 157-160.)

In general terms, a party may withdraw from or denounce a treaty:

(a) In accordance with any provisions of the treaty enabling withdrawal or denunciation (see article 54(a) of the Vienna Convention 1969);

(b) With the consent of all parties after consultation with all contracting States (see article 54(b) of the Vienna Convention 1969); or

(c) In the case of a treaty that is silent on withdrawal or denunciation, by giving at least 12 months' notice, and provided that:

- i. It is established that the parties intended to admit the possibility of denunciation or withdrawal; or
- ii. A right of denunciation or withdrawal may be implied by the nature of the treaty (see article 56 of the Vienna Convention 1969).

States wishing to invoke article 56 of the Vienna Convention 1969 ((c)(i) and (ii) above) carry the burden of proof.

Some treaties, including human rights treaties, do not contain withdrawal provisions. See e.g. the *International Covenant on Civil and Political Rights, 1966*. The Secretary-General, as depositary, has taken the view that it would not appear possible for a party to withdraw from such a treaty except in accordance with article 54 or 56 of the Vienna Convention 1969 (see depositary notification C.N.467.1997.TREATIES-10).

Where a treaty contains provisions on withdrawal, the Secretary-General is guided by those provisions. For example, article 12(1) of the *Optional Protocol to the International Covenant on Civil and Political Rights, 1966*, provides for denunciation by States parties as follows:

Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

This provision has been used by a State to notify the Secretary-General of its intention to denounce the Protocol.

4.6 *Termination*

(See the *Summary of Practice*, paras. 256-262.)

Treaties may include a provision regarding their termination. Article 42(2) of the Vienna Convention 1969 states that a treaty may only be terminated as a result of the application of the provisions of the treaty itself or of the Vienna Convention 1969 (e.g. articles 54, 56, 59-62 and 64). A treaty can be terminated by a subsequent treaty to which all the parties of the former treaty are also party.

5. *Registering or filing and recording treaties*

5.1 *Article 102 of the Charter of the United Nations*

(See the *Repertory of Practice*, Article 102, para. 1).

Article 102 of the *Charter of the United Nations* provides that:

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.
2. No party to any such treaty or international agreement, which has not been registered in accordance with the provisions of paragraph 1 of this Article, may invoke that treaty or agreement before any organ of the United Nations.

Thus, States Members of the United Nations have a legal obligation to register treaties and international agreements with the Secretariat, and the Secretariat is mandated to publish registered treaties and international agreements. Within the Secretariat, the Treaty Section is responsible for these functions.

Registration, not publication, is the prerequisite for a treaty or international agreement to be capable of being invoked before the International Court of Justice or any other organ of the United Nations.

The objective of article 102, which can be traced back to article 18 of the *Covenant of the League of Nations*, is to ensure that all treaties and international agreements remain in the public domain and thus assist in eliminating secret diplomacy. The *Charter of the United Nations* was drafted in the aftermath of the Second World War. At that time, secret diplomacy was believed to be a major cause of international instability.

5.2 Regulations to give effect to Article 102

(See the *Repertory of Practice*, Article 102, para. 2, and the annex to the General Survey.)

Recognizing the need for the Secretariat to have uniform guidelines for implementing article 102, the General Assembly adopted certain Regulations to give effect to article 102 (see the Abbreviations section for the source of the Regulations). The Regulations treat the act of registration and the act of publication as two distinct operations. Parts one and two of the Regulations (articles 1-11) deal with registration and filing and recording. Part three of the Regulations (articles 12-14) relates to publication.

5.3 Meaning of treaty and international agreement under Article 102

5.3.1 Role of the Secretariat

(See the *Repertory of Practice*, Article 102, para. 15.)

When the Secretariat receives instruments for the purpose of registration, the Treaty Section examines the instruments to determine whether they are capable of being registered. The Secretariat generally respects the view of a party submitting an instrument for registration that, in so far as that party is concerned, the instrument is a treaty or an international agreement within the meaning of Article 102. However, the Secretariat examines each instrument to satisfy itself that it, *prima facie*, constitutes a treaty. The Secretariat has the discretion to refrain from taking action if, in its view, an instrument submitted for registration does not constitute a treaty or an international agreement or does not meet all the requirements for registration stipulated by the Regulations (see section 5.6).

Where an instrument submitted fails to comply with the requirements under the Regulations or is unclear, the Secretariat places it in a “pending” file. The Secretariat then requests clarification, in writing, from the submitting party. The Secretariat will not process the instrument until it receives such clarification.

Where an instrument is registered with the Secretariat, this does not imply a judgement by the Secretariat of the nature of the instrument, the status of a party, or any similar question. Thus, the Secretariat’s acceptance for registration of an instrument does not confer on the instrument the status of a treaty or an international agreement if it does not already possess that status. Similarly, registration does not confer on a party to a treaty or international agreement a status that it would not otherwise have.

5.3.2 Form

(See the *Repertory of Practice*, Article 102, paras. 18-30.)

The *Charter of the United Nations* does not define the terms treaty or international agreement. Article 1 of the Regulations provides guidance on what comprises a treaty or international agreement by adding the phrase “whatever its form and descriptive name”. Therefore, the title and form of a document submitted to the Secretariat for registration are less important than its content in determining whether it is a treaty or international agreement. An exchange of notes or letters, a protocol, an accord, a memorandum of understanding and even a unilateral declaration may be registrable under Article 102.

5.3.3 Parties

A treaty or international agreement under Article 102 (other than a unilateral declaration) must be concluded between at least two parties possessing treaty-making capacity. Thus, a sovereign State or an international organization with treaty-making capacity can be a party to a treaty or international agreement.

Many international organizations established by treaty or international agreement have been specifically or implicitly conferred treaty-making capacity. Similarly, some treaties recognize the treaty-making capacity of certain international organizations such as the European Community.

However, an international entity established by treaty or international agreement may not necessarily have the capacity to conclude treaties.

5.3.4 *Intention to create legal obligations under international law*

A treaty or international agreement must impose on the parties legal obligations binding under international law, as opposed to mere political commitments. It must be clear on the face of the instrument, whatever its form, that the parties intend to be legally bound under international law.

In one instance, the Secretariat concluded that an instrument submitted for registration, which contained a framework for creating an association of parliamentarians, was not registrable under Article 102. Accordingly, the instrument was not registered. The Secretariat determined that the document submitted was not a treaty or international agreement among international legal entities to create rights and obligations enforceable under international law.

5.4 *Types of registration, filing and recording*

5.4.1 *Registration with the Secretariat*

(See the *Repertory of Practice*, Article 102, paras. 43-44, 55-57 and 67-70, and article 1 of the Regulations in the annex to the General Survey.)

Under Article 102 of the *Charter of the United Nations* (see section 5.1), treaties and international agreements of which at least one party is a Member of the United Nations may be registered with the Secretariat, provided that the treaty or international agreement has entered into force between at least two of the parties and the other requirements for registration are met (article 1 of the Regulations) (see section 5.6).

As mentioned above, Members of the United Nations are obliged to register, under Article 102, all treaties and international agreements concluded after the coming into force of the *Charter of the United Nations*. Thus, the onus to register rests with States Members of the United Nations. Although this obligation is mandatory for States Members of the United Nations, it does not preclude international organizations with treaty-making capacity or non-member States from submitting for registration under Article 102 treaties or international agreements entered into with a State Member.

A specialized agency is permitted to register with the Secretariat a treaty or international agreement that is subject to registration in the following cases (article 4(2) of the Regulations):

- (a) Where the constituent instrument of the specialized agency provides for such registration;
- (b) Where the treaty or agreement has been registered with the specialized agency pursuant to the terms of its constituent instrument;
- (c) Where the specialized agency has been authorized by the treaty or agreement to effect registration.

In accordance with article 1(3) of the Regulations, which provides for registration to be effected "... by any party ..." to a treaty or international agreement, the specialized agency may also register those treaties and international agreements to which it itself is a party.

5.4.2 *Filing and recording by the Secretariat*

(See the *Repertory of Practice*, Article 102, paras. 71-81, and article 10 of the Regulations in the annex to the General Survey.)

The Secretariat files and records treaties or international agreements voluntarily submitted to the Secretariat and not subject to registration under Article 102 of the *Charter of the United Nations* or the Regulations. The requirements for registration outlined in section 5.6 in relation to submission of treaties and international agreements for registration apply equally to submission of treaties and international agreements for filing and recording.

Article 10 of the Regulations provides for the Secretariat to file and record the following categories of treaties and international agreements where they are not subject to registration under Article 102:

- (a) Treaties or international agreements entered into by the United Nations or by one or more of the specialized agencies. This covers treaties and international agreements between:
 - i. The United Nations and non-member States;
 - ii. The United Nations and specialized agencies or international organizations;
 - iii. Specialized agencies and non-member States;
 - iv. Two or more specialized agencies; and
 - v. Specialized agencies and international organizations.

Although not expressly provided for in the Regulations, it is also the practice of the Secretariat to file and record treaties or international agreements between two or more international organizations other than the United Nations or a specialized agency.

(b) Treaties or international agreements transmitted by a Member of the United Nations which were entered into before the coming into force of the Charter of the United Nations, but which were not included in the treaty series of the League of Nations; and

(c) Treaties or international agreements transmitted by a party not a member of the United Nations, which were entered into before or after the coming into force of the Charter of the United Nations and which were not included in the treaty series of the League of Nations.

5.4.3 *Ex officio registration by the United Nations*

(See the *Repertory of Practice*, Article 102, paras. 45-54, and article 4(1) of the Regulations in the annex to the General Survey.)

Article 4(a) of the Regulations provides that every treaty or international agreement that is subject to registration and to which the United Nations is a party shall be registered ex officio. Ex officio registration is the act whereby the United Nations unilaterally registers all treaties or international agreements to which it is a party. Although not expressly provided for in the Regulations, it is the practice of the Secretariat to register ex officio subsequent actions relating to a treaty or international agreement that the United Nations has previously registered ex officio.

Where the Secretary-General is the depositary of a multilateral treaty or agreement, the United Nations also registers ex officio the treaty or international agreement and subsequent actions to it after the relevant treaty or international agreement has entered into force (see article 4(c) of the Regulations).

5.5 *Types of agreements registered or filed and recorded*

5.5.1 *Multilateral treaties*

A multilateral treaty is an international agreement concluded between three or more parties, each possessing treaty-making capacity (see section 5.3.3).

5.5.2 *Bilateral treaties*

The majority of treaties registered pursuant to Article 102 of the *Charter of the United Nations* are bilateral treaties. A bilateral treaty is an international agreement concluded between two parties, each possessing treaty-making capacity (see section 5.3.3). In some situations, several States or organizations may join together to form one party. There is no standard form for a bilateral treaty.

An essential element of a bilateral treaty is that both parties have reached agreement on its content. Accordingly, reservations and declarations are generally inapplicable to bilateral agreements. However, where the parties to a bilateral treaty have made reservations or declarations, or agreed on some other interpretative document, such instrument must be registered together with the treaty submitted for registration under Article 102 of the *Charter of the United Nations* (see article 5 of the Regulations).

5.5.3 *Unilateral declarations*

(See the *Repertory of Practice*, Article 102, para. 24.)

Unilateral declarations that constitute interpretative, optional or mandatory declarations (see sections 3.6.1 and 3.6.2) may be registered with the Secretariat by virtue of their relation to a previously or simultaneously registered treaty or international agreement.

Unlike interpretative, optional and mandatory declarations, some unilateral declarations may be regarded as having the character of international agreements in their own right and are registered as such. An example is a unilateral declaration made under Article 36(2) of the *Statute of the International Court of Justice*, recognizing as compulsory the jurisdiction of the International Court of Justice. These declarations are registered ex officio (see section 5.4.3) when deposited with the Secretary-General.

A political statement lacking legal content and not expressing an understanding relating to the legal scope of a provision of a treaty or international agreement cannot be registered with the Secretariat.

5.5.4 *Subsequent actions, modifications and agreements*

(See the *Repertory of Practice*, Article 102, and article 2 of the Regulations in the annex to the General Survey.)

Subsequent actions effecting a change in the parties to, or the terms, scope or application of, a treaty or international agreement previously registered can be registered with the Secretariat. For example, such actions may involve ratifications, accessions, prolongations, extensions to territories, or denunciations. In the case of bilateral treaties, it is generally the party responsible for

the subsequent action that registers it with the Secretariat. However, any other party to such agreement may assume this role. In the case of a multilateral treaty or agreement, the entity performing the depositary functions usually effects registration of such actions (see section 5.4.3 in relation to treaties or international agreements deposited with the Secretary-General).

Where a new instrument modifies the scope or application of a parent agreement, such new instrument must also be registered with the Secretariat. It is clear from article 2 of the Regulations that for the subsequent treaty or international agreement to be registered, the prior treaty or international agreement to which it relates must first be registered. In order to maintain organizational continuity, the registration number that has been assigned for the registration of the parent treaty or international agreement is also assigned to the subsequent treaty or international agreement.

5.6 Requirements for registration

(See the *Repertory of Practice*, Article 102, and article 5 of the Regulations in the annex to the General Survey.)

An instrument submitted for registration must meet the following general requirements:

1. Treaty or international agreement within the meaning of Article 102

As mentioned above, the Secretariat reviews each document submitted for registration to ensure that it falls within the meaning of a treaty or international agreement under Article 102 (see section 5.3).

2. Certifying statement

(See the model certifying statement in annex 7.)

Article 5 of the Regulations requires that a party or specialized agency registering a treaty or international agreement certify that “the text is a true and complete copy thereof and includes all reservations made by parties thereto”. The certified copy must include:

- (a) The title of the agreement;
- (b) The place and date of conclusion;
- (c) The date and method of entry into force for each party; and
- (d) The authentic languages in which the agreement was drawn up.

When reviewing the certifying statement, the Secretariat requires that all enclosures such as protocols, exchanges of notes, authentic texts, annexes, etc. mentioned in the text of the treaty or international agreement as forming a part thereof, are appended to the copy transmitted for registration. The Secretariat brings the omission of any such enclosures to the attention of the registering party and defers action on the treaty or international agreement until the material is complete.

3. Copy of treaty or international agreement

Parties must submit ONE certified true and complete copy of all authentic text(s), and TWO additional copies or ONE electronic copy to the Secretariat for registration purposes. The hard copy version(s) should be capable of being reproduced in the United Nations *Treaty Series*.

Further to General Assembly Resolution 53/100, the Secretariat strongly encourages parties to submit, in addition to a certified true copy on paper, an electronic copy, i.e. on computer diskette, CD or as an attachment by e-mail, of the submitted documentation. This assists greatly in the registration and publication process. The preferred format for a treaty or international agreement submitted on diskette is *Word Perfect 6.1 for Windows*, as this is the system that is used in the publication of the United Nations *Treaty Series*. Treaties may also be submitted in *Microsoft Word for Windows* or as a text file (the generic ASCII text format for saving documents). The preferred formats for a treaty or international agreement submitted by e-mail are *Word*, *WordPerfect*, or image (tiff) format. All electronic submissions by e-mail should be directed to TreatyRegistration@un.org.

Member States and international organizations are also reminded of the resolutions of the General Assembly, initially adopted on 12 December 1950 (A/RES/482 (V)) and most recently repeated on 21 January 2000 (A/RES/54/28), urging States to provide English and/or French translations of treaties submitted for registration with the Secretariat of the United Nations where feasible. Courtesy translations in English and French, or any of the other official languages of the United Nations, greatly assist in the timely and cost-effective publication of the United Nations *Treaty Series*.

4. Date of entry into force

The documentation submitted must specify the date of entry into force of the treaty or international agreement. A treaty or international agreement will only be registered after it has entered into force.

5. Method of entry into force

The documentation submitted must specify the method of entry into force of the treaty or international agreement. This is normally provided in the text of the treaty or international agreement.

6. Place and date of conclusion

The documentation submitted must specify the place and date of conclusion of the treaty or international agreement. This is generally inserted on the last page immediately above the signature. The names of the signatories should be specified unless they are in typed form as part of the signature block.

5.7 Outcome of registration or filing and recording

5.7.1 Database and record

(See the *Repertory of Practice*, Article 102, and article 8 of the Regulations in the annex to the General Survey.)

The database of instruments registered and the record of instruments filed and recorded are kept in English and French. The database and record contain the following information, in respect of each treaty or international agreement:

- (a) Date of receipt of the instrument by the Secretariat of the United Nations;
- (b) Registration number or filing and recording number;
- (c) Title of the instrument;
- (d) Names of the parties;
- (e) Date and place of conclusion;
- (f) Date of entry into force;
- (g) Existence of any attachments, including reservations and declarations;
- (h) Languages in which it was drawn up;
- (i) Name of the party or specialized agency registering the instrument or submitting it for filing and recording; and
- (j) Date of registration or filing and recording.

5.7.2 Date of effect of registration

(See the *Repertory of Practice*, Article 102, and article 6 of the Regulations in the annex to the General Survey.)

Under article 6 of the Regulations, the date the Secretariat of the United Nations receives all the specified information relating to the treaty or international agreement is deemed to be the date of registration. A treaty or international agreement registered ex officio by the United Nations is deemed to be registered on the date on which the treaty or international agreement comes into force between two or more of the parties thereto. However, if the Secretariat receives the treaty or international agreement after the date of its entry into force, the date of registration is the first available date of the month of receipt.

In accordance with article 1 of the Regulations, registration is effected by a party and not by the Secretariat. The Secretariat makes every effort to complete registration on the date of submission. However, due to certain factors including volume of instruments deposited, need for translations, etc. a certain amount of time may elapse between the receipt of a treaty or international agreement and its inscription in the database.

Registering parties have an important obligation to ensure that documents submitted for registration are complete and accurate in order to avoid delays in the registration and publication processes. In cases where submissions are incomplete or defective, the date of registration of the treaty or international agreement is deemed to be the date of receipt of all of the required documentation and information and not the date of the original submission.

5.7.3 Certificate of registration

(See the *Repertory of Practice*, Article 102, and article 7 of the Regulations in the annex to the General Survey.)

Once a treaty or international agreement is registered, the Secretariat issues to the registering party a certificate of registration signed by the Secretary-General or a representative of the Secretary-General. Upon request, the Secretariat will provide such a certificate to all signatories and parties to the treaty or international agreement. According to established practice, the Secretariat does not issue certificates of registration in respect of treaties or international agreements that are registered ex officio (see section 5.4.3) or filed and recorded (see section 5.4.2).

5.7.4 Publication

(See the *Repertory of Practice*, Article 102, paras. 82-107, and articles 12-14 of the Regulations in the annex to the General Survey.)

Monthly Statement

(See the *Repertory of Practice*, Article 102, and articles 13-14 of the Regulations in the annex to the General Survey.)

Each month, the Secretariat publishes a statement of the treaties and international agreements registered, or filed and recorded, during the preceding month (see article 13 of the Regulations). The Monthly Statement does not contain the texts of treaties or international agreements, but provides certain attributes, in English and French, of the treaties or international agreements registered or filed and recorded, such as the:

- (a) Registration number or filing and recording number;
- (b) Title of the instrument;
- (c) Names of the parties between whom it was concluded;
- (d) Date and place of conclusion;
- (e) Date and method of entry into force;
- (f) Existence of any attachments, including reservations and declarations;
- (g) Languages in which it was drawn up;
- (h) Name of the party or specialized agency registering the instrument or submitting it for filing and recording; and
- (i) Date of registration or filing and recording.

The Monthly Statement is divided into two parts. Part I lists the treaties registered. Part II lists the treaties filed and recorded. In addition, the Monthly Statement contains annexes A, B, and C. Annexes A and B are devoted to certified statements (e.g. ratifications or accessions) and subsequent agreements relating to treaties or international agreements registered or filed and recorded. Annex C lists subsequent actions relating to treaties or international agreements registered with the League of Nations.

United Nations Treaty Series

Article 12 of the Regulations provides that the Secretariat shall publish as soon as possible, in a single series every treaty or international agreement that is registered, or filed and recorded. Treaties are published in the United Nations *Treaty Series* in their authentic languages, followed by translations in English and French, as required. Subsequent actions are published in the same manner. The Secretariat requires clear copies of treaties and international agreements for publication purposes.

Limited publication

Originally, article 12 of the Regulations required the Secretariat to publish in full all treaties and international agreements registered or filed and recorded with the Secretariat. The General Assembly modified this framework in its resolution 33/141 of 19 December 1978 in light of the substantial increase in treaty making on the international plane and the publication backlog that existed at that time (*Report of the Secretary-General*, document A/33/258, 2 October 1978, paras. 3 to 7).

In accordance with article 12(2) of the Regulations, as amended in 1978, the Secretariat is no longer required to publish in extenso, i.e. in full, bilateral treaties falling within one of the following categories:

- (a) Assistance and cooperation agreements of limited scope concerning financial, commercial, administrative or technical matters;
- (b) Agreements relating to the organization of conferences, seminars or meetings;
- (c) Agreements that are to be published otherwise than in the [United Nations *Treaty Series*] by the Secretariat of the United Nations or by a specialized or related agency.

The publication backlog continued to grow, however, and in 1996 stood at 11 years, i.e. an instrument registered in 1987 was scheduled to be published by 1998 (this backlog has been reduced to approximately 2.5 years as at 2001). As a result, in 1997, the General Assembly extended the limited publication policy to multilateral treaties, so that the Secretariat now has discretion not to publish in extenso bilateral and multilateral treaties or agreements falling within one of the categories listed under article 12(2)(a) to (c) (General Assembly resolution A/RES/52/153 of 15 December 1997):

The General Assembly

7. Invites the Secretary-General to apply the provisions of article 12, paragraph 2, of the Regulations to give effect to Article 102 of the Charter of the United Nations to multilateral treaties falling within the terms of article 12, paragraph 2(a) to (c);

Lengthy lists of products attached to bilateral or multilateral trade agreements also fall within the limited publication policy. In addition, agreements of the European Union are published only in English and French.

Today, approximately 25 per cent of the treaties registered are subject to the limited publication policy. An example of a multilateral treaty or agreement falling under the extended scope of article 12(2) is the *Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions, 1958*. Due to the highly technical nature of this agreement, which contains over 100 annexed regulations, all of which are subject to amendments on a regular basis, the Secretariat does not publish this agreement in full. However, it is available on the United Nations Optical Disk System and is published by the United Nations Economic Commission for Europe (document E/ECE/324 - E/ECE/TRANS/505; see UNECE website).

In determining whether or not a treaty or international agreement should be published in extenso, the Secretariat is guided by the letter and spirit of the *Charter of the United Nations* and article 12(3) of the Regulations. The primary criterion in making this determination is the requirement that the Secretariat shall:

... duly take into account, inter alia, the practical value that might accrue from in extenso publication.

Under article 12(3) of the Regulations, the Secretariat may reverse a decision not to publish in extenso at any time.

Where the Secretariat exercises the limited publication option in relation to treaties or international agreements registered or filed and recorded, their publication is limited to the following information in accordance with article 12(5) of the Regulations:

- (a) Registration number or filing and recording number;
- (b) Title of the instrument;
- (c) Names of the parties between whom it was concluded;
- (d) Date and place of conclusion;
- (e) Date and method of entry into force;
- (f) Duration of the treaty or international agreement (where appropriate);
- (g) Languages in which it was concluded;
- (h) Name of the party or specialized agency registering the instrument or submitting it for filing and recording;
- (i) Date of registration or filing and recording; and
- (j) Where appropriate, reference to publications in which the complete text of the treaty or international agreement is reproduced.

Treaties and international agreements that the Secretariat does not publish in extenso are identified as such in the Monthly Statement with an asterisk.

6. Contacts with the Treaty Section

6.1 General information

6.1.1 Contacting the Treaty Section

Treaty Section
Office of Legal Affairs
United Nations
New York, NY 10017, USA
Telephone: +1 212 963 5047
Facsimile: +1 212 963 3693
E-mail (general): treaty@un.org
(registration): TreatyRegistration@un.org
Website: <http://untreaty.un.org>

6.1.2 Functions of the Treaty Section

As mentioned in the Introduction to this *Handbook*, the Treaty Section of the Office of Legal Affairs of the United Nations discharges the responsibility for the depositary functions of the Secretary-General of the United Nations and the registration and publication of treaties submitted to the Secretariat. This section sets out some steps to follow in contacting the Treaty Section in relation to certain treaty actions.

6.1.3 Delivery of documents

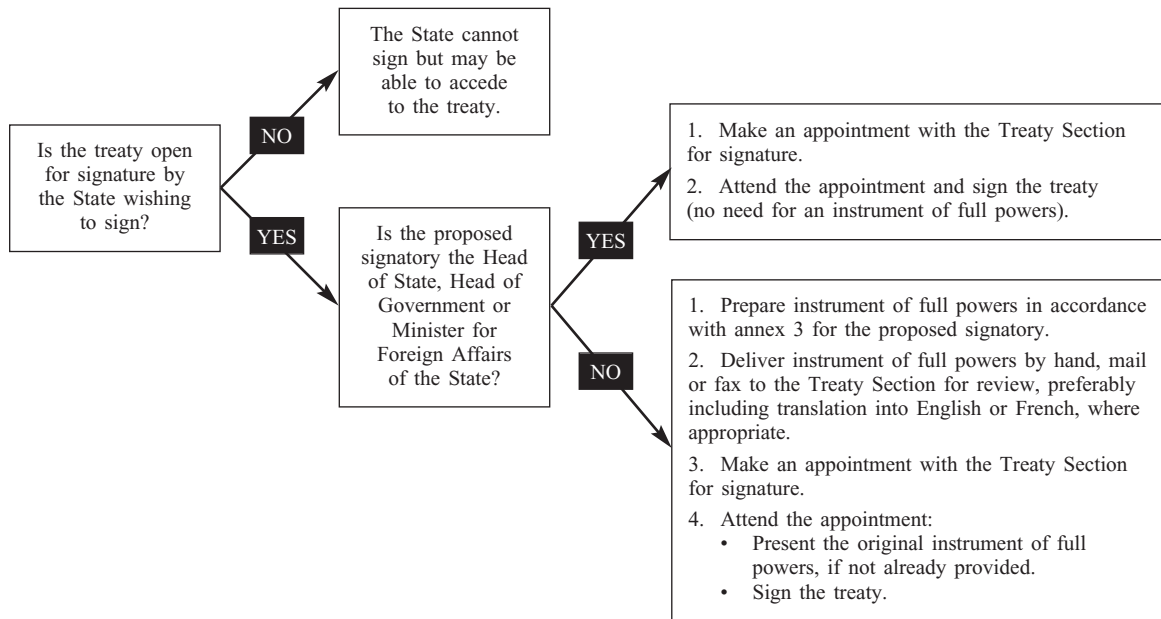
Most treaty actions become effective only upon deposit of the relevant instrument with the Treaty Section. States are advised to deliver instruments directly to the Treaty Section to ensure

they are promptly processed. The date of deposit is normally recorded as that on which the instrument is received at Headquarters, unless the instrument is subsequently deemed unacceptable. Persons who are merely delivering instruments (rather than, for example, signing a treaty) do not require full powers.

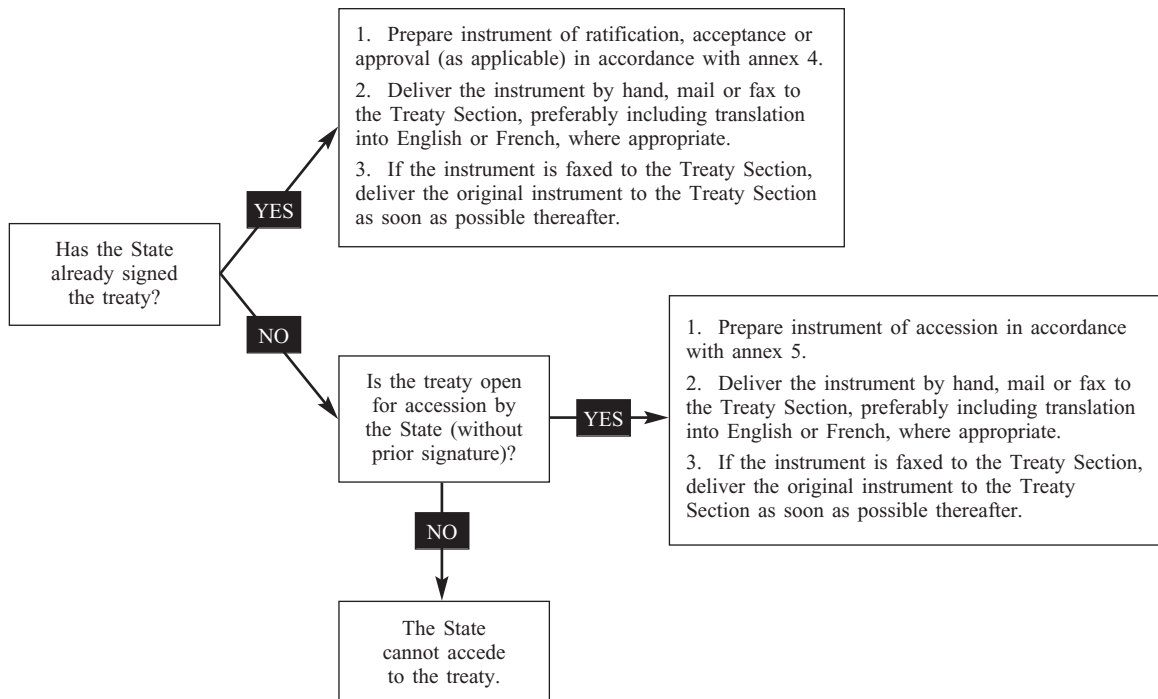
6.1.4 Translations

States are encouraged to provide courtesy translations, where feasible, in English and/or French of any instruments in other languages that are submitted to the Treaty Section. This facilitates the prompt processing of the relevant actions.

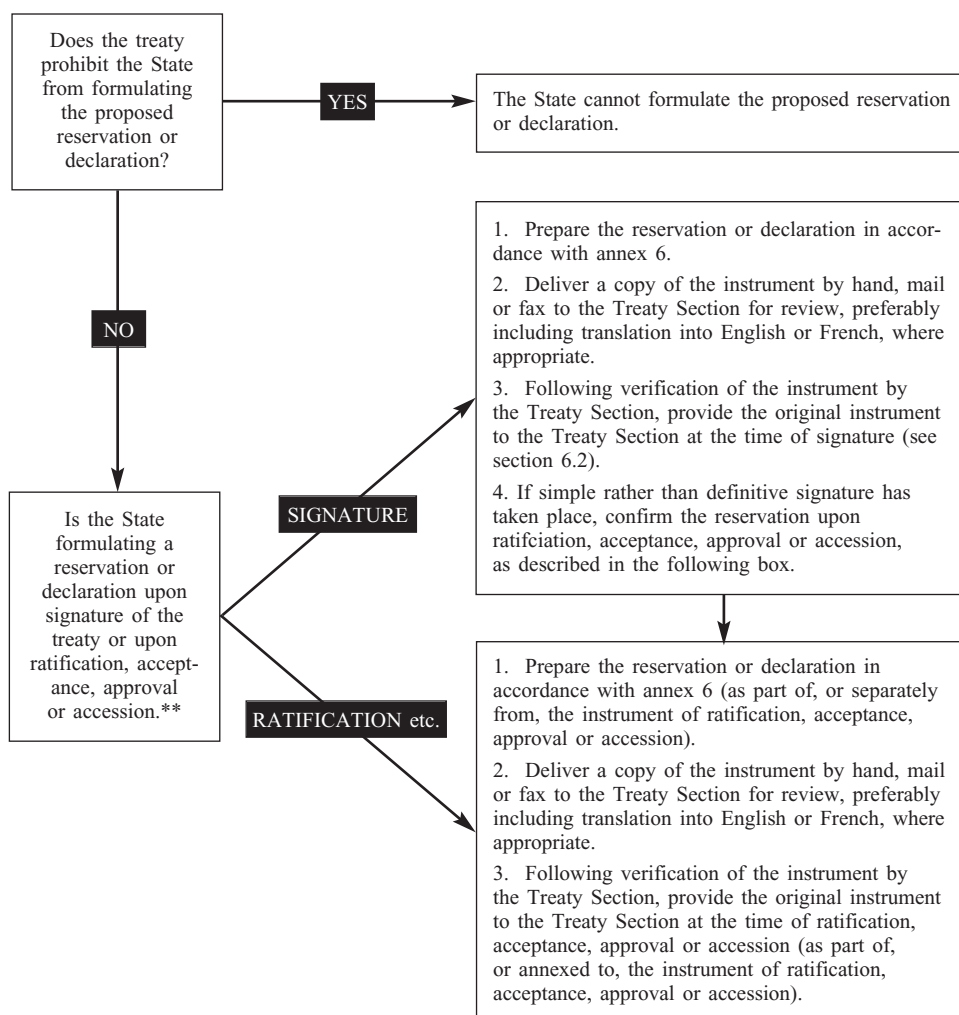
6.2 Signing a multilateral treaty



6.3 Ratifying, accepting, approving or acceding to a multilateral treaty



6.4 Making a reservation or declaration to a multilateral treaty

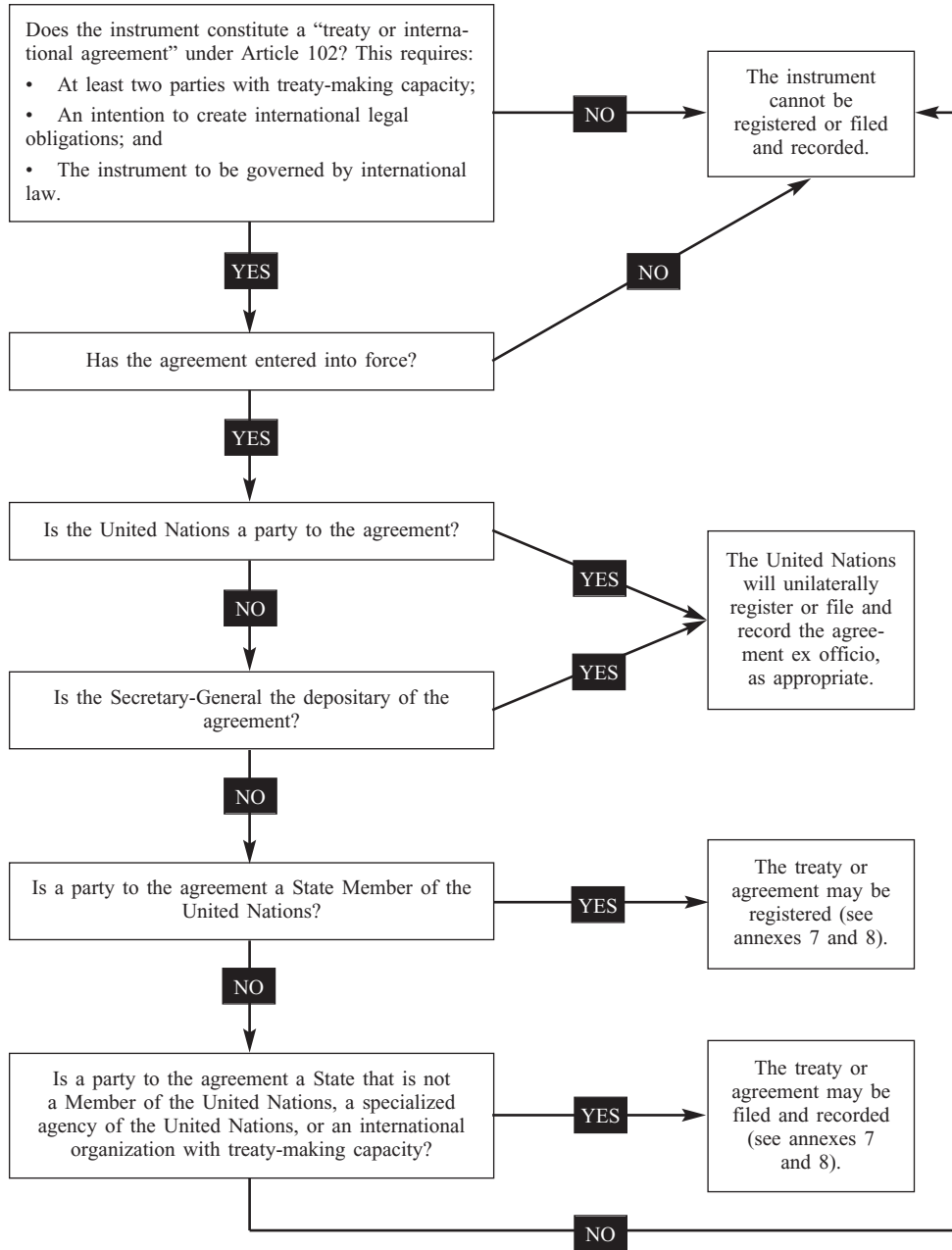


6.5 Depositing a multilateral treaty with the Secretary-General

1. Well before the treaty is adopted, contact the Treaty Section, including on the question of the Secretary-General acting as depositary and on the final clauses.
2. Deliver a copy of the treaty (in particular, the draft final clauses of the treaty) to the Treaty Section for review, in the authentic languages of the treaty.
3. Following adoption, deposit the original treaty in all authentic languages with the Treaty Section. In order for the Treaty Section to prepare authentic texts and certified true copies in time for signature, provide camera-ready copies of the treaty as adopted (hard copy and electronic format – Microsoft Word 2000).

**The Secretary-General may accept reservations or declarations other than upon signature, ratification, acceptance, approval or accession on exceptional occasions.

6.6 Registering or filing and recording a treaty with the Secretariat



Glossary

This section provides a guide to terms commonly used in relation to treaties and employed in the practice of the Secretary-General as depositary of multilateral treaties, as well as in the Secretariat's registration function. Where applicable, a reference to relevant provisions of the Vienna Convention 1969 is included.

acceptance See *ratification*.

accession Accession is the act whereby a State that has not signed a treaty expresses its consent to become a party to that treaty by depositing an "instrument of accession" (see annex 5). Accession has the same legal effect as ratification, acceptance or approval. The conditions under which accession may occur and the procedure involved depend on the provisions of the relevant treaty. Accession is generally employed by States wishing to express their consent to be bound by a treaty where the deadline for signature has passed. However, many modern multilateral treaties provide for accession even during the period that the treaty is open for signature. See articles 2(b) and 15 of the Vienna Convention 1969.

adoption Adoption is the formal act by which negotiating parties establish the form and content of a treaty. The treaty is adopted through a specific act expressing the will of the States and the international organizations participating in the negotiation of that treaty, e.g. by voting on the text, initialling, signing, etc. Adoption may also be the mechanism used to establish the form and content of amendments to a treaty, or regulations under a treaty.

Treaties that are negotiated within an international organization are usually adopted by resolution of the representative organ of that organization. For example, treaties negotiated under the auspices of the United Nations, or any of its bodies, are adopted by a resolution of the General Assembly of the United Nations.

Where an international conference is specifically convened for the purpose of adopting a treaty, the treaty can be adopted by a vote of two thirds of the States present and voting, unless they have decided by the same majority to apply a different rule.

See article 9 of the Vienna Convention 1969.

amendment Amendment, in the context of treaty law, means the formal alteration of the provisions of a treaty by its parties. Such alterations must be effected with the same formalities that attended the original formation of the treaty. Multilateral treaties typically provide specifically for their amendment. In the absence of such provisions, the adoption and entry into force of amendments require the consent of all the parties. See articles 39 and 40 of the Vienna Convention 1969.

approval See *ratification*.

authentication Authentication is the procedure whereby the text of a treaty is established as authentic and definitive. Once a treaty has been authenticated, its provisions cannot be modified except by formal amendment. If procedures for authentication have not been specifically agreed, the treaty will usually be authenticated by signature, or initialling, by the representatives of those States. It is this authenticated text that the depositary uses to establish the original text. See article 10 of the Vienna Convention 1969.

Authentic language: A treaty typically specifies its authentic languages – the languages in which the meaning of its provisions is to be determined.

Authentic or authenticated text: The authentic or authenticated text of a treaty is the version of the treaty that has been authenticated by the parties.

bilateral treaty See *treaty*.

certified true copy

Certified true copy for depositary purposes: A certified true copy for depositary purposes means an accurate duplication of an original treaty, prepared in all authentic languages, and certified as such by the depositary of the treaty. The Secretary-General of the United Nations circulates certified true copies of each treaty deposited with the Secretary-General to all States and entities that may become parties to the treaty. For reasons of economy, the Secretary-General, as depositary, normally provides only two certified true copies to each prospective participant in the treaty. States are expected to make any additional copies required to fulfil their domestic needs. See article 77(1)(b) of the Vienna Convention 1969.

Certified true copy for registration purposes: A certified true copy for registration purposes means an accurate duplication of a treaty submitted to the Secretariat of the United Nations for registration. The registering party must certify that the text submitted is a true and complete copy of the treaty and that it includes all reservations made by the parties. The date and place of adoption, the date and the method whereby the treaty has come into force, and the authentic languages must be included. See article 5 of the Regulations.

certifying statement A certified true copy for registration purposes means an accurate duplication of a treaty submitted to the Secretariat of the United Nations for registration. The registering party must certify that the text submitted is a true and complete copy of the treaty and that it includes all reservations made by the parties. The date and place of adoption, the date and the method whereby the treaty has come into force, and the authentic languages must be included. See article 5 of the Regulations.

C.N. See *depository notification*.

consent to be bound A State expresses its consent to be bound by a treaty under international law by some formal act, i.e. definitive signature, ratification, acceptance, approval or accession. The treaty normally specifies the act or acts by which a State may express its consent to be bound. See articles 11-18 of the Vienna Convention 1969.

contracting State A contracting State is a State that has expressed its consent to be bound by a treaty where the treaty has not yet entered into force or where it has not entered into force for that State. See article 2(1)(f) of the Vienna Convention 1969.

convention Whereas in the last century the term “convention” was regularly employed for bilateral agreements, it is now generally used for formal multilateral treaties with a broad number of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of States. Usually instruments negotiated under the auspices of an international organization are entitled conventions. The same holds true for instruments adopted by an organ of an international organization.

correction Correction of a treaty is the remedying of an error in its text. If, after the authentication of a text, the signatory and contracting States agree that an error exists, those States can correct the error by:

- (a) Initialling the corrected treaty text;
- (b) Executing or exchanging an instrument containing the correction; or
- (c) Executing the corrected text of the whole treaty by the same procedure by which the original text was executed.

If there is a depository, the depository must communicate the proposed corrections to all signatory and contracting States and States parties. In the practice of the United Nations, the Secretary-General, as depository, informs all States of the error and the proposal to correct it. If, on the expiry of a specified time limit, no signatory or contracting State or State party objects, the Secretary-General circulates a *procès-verbal* of rectification and causes the corrections to be effected in the authentic text(s) *ab initio*. States have 90 days to object to a proposed correction. This period can be shortened if necessary.

See article 79 of the Vienna Convention 1969.

credentials Credentials take the form of a document issued by a State authorizing a delegate or delegation of that State to attend a conference, including, where necessary, for the purpose of negotiating and adopting the text of a treaty. A State may also issue credentials to enable signature of the Final Act of a conference. Credentials are distinct from full powers. Credentials permit a delegate or delegation to adopt the text of a treaty and/or sign the Final Act, while full powers permit a person to undertake any given treaty action (in particular, signature of treaties).

date of effect The date of effect of a treaty action (such as signature, ratification, acceptance of an amendment, etc.), in the depository practice of the Secretary-General of the United Nations, is the time when the action is undertaken with the depository. For example, the date of effect of an instrument of ratification is the date on which the relevant instrument is deposited with the Secretary-General.

The date of effect of a treaty action by a State or an international organization is not necessarily the date that action enters into force for that State or international organization. Multilateral agreements often provide for their entry into force for a State or international organization after the lapse of a certain period of time following the date of effect.

declaration (See annex 6.)

Interpretative declaration: An interpretative declaration is a declaration by a State as to its understanding of some matter covered by a treaty or its interpretation of a particular provision. Unlike reservations, declarations merely clarify a State’s position and do not purport to exclude or modify the legal effect of a treaty.

The Secretary-General, as depository, pays specific attention to declarations to ensure that they do not amount to reservations. Usually, declarations are made at the time of signature or at the time of deposit of an instrument of ratification, acceptance, approval or accession. Political declarations usually do not fall into this category as they contain only political sentiments and do not seek to express a view on legal rights and obligations under a treaty.

Mandatory declaration: A mandatory declaration is a declaration specifically required by the treaty itself. Unlike an interpretative declaration, a mandatory declaration is binding on the State making it.

Optional declaration: An optional declaration is a declaration that a treaty specifically provides for, but does not require. Unlike an interpretative declaration, an optional declaration is binding on the State making it.

depository The depository of a treaty is the custodian of the treaty and is entrusted with the functions specified in article 77 of the Vienna Convention 1969. The Secretary-General, as depository, accepts notifications and documents related to treaties deposited with the Secretary-General, examines whether all formal requirements are met, deposits them, registers them subject to Article 102 of the *Charter of the United Nations* and notifies all relevant acts to the parties concerned. Some treaties describe depository functions. This is considered unnecessary in view of the detailed provision of article 77 of the Vienna Convention 1969.

A depository can be one or more States, an international organization, or the chief administrative officer of the organization, such as the Secretary-General of the United Nations. The Secretary-General does not share depository functions with any other depository. In certain areas, such as dealing with reservations, amendments and interpretation, the Secretary-General's depository practice, which has developed since the establishment of the United Nations, has evolved further since the conclusion of the Vienna Convention 1969. The Secretary-General is not obliged to accept the role of depository, especially for treaties negotiated outside the auspices of the United Nations. It is the usual practice to consult the Treaty Section prior to designating the Secretary-General as depository. The Secretary-General, at present, is the depository for over 500 multilateral treaties.

See articles 76 and 77 of the Vienna Convention 1969.

depository notification (C.N.) A depository notification (sometimes referred to as a C.N. – an abbreviation for circular notification) is a formal notice that the Secretary-General sends to all Member States, non-member States, the specialized agencies of the United Nations, and the relevant secretariats, organizations and United Nations offices, as depository of a particular treaty. The notification provides information on that treaty, including actions undertaken. Such notifications are typically distributed by e-mail on the day that they are processed. Notifications with bulky attachments are transmitted in paper form.

entry into force

Definitive entry into force: Entry into force of a treaty is the moment in time when a treaty becomes legally binding on the parties to the treaty. The provisions of the treaty determine the moment of its entry into force. This may be a date specified in the treaty or a date on which a specified number of ratifications, approvals, acceptances or accessions have been deposited with the depository. The date when a treaty deposited with the Secretary-General enters into force is determined in accordance with the treaty provisions.

Entry into force for a State: A treaty that has already entered into force may enter into force in a manner specified in it for a State or international organization that expresses its consent to be bound by it after its entry into force. See article 24 of the Vienna Convention 1969.

Provisional entry into force: Provisional entry into force may be allowed by the terms of a treaty, for example, in commodity agreements. Provisional entry into force of a treaty may also occur when a number of parties to a treaty that has not yet entered into force decide to apply the treaty as if it had entered into force. Once a treaty has entered into force provisionally, it creates obligations for the parties that agreed to bring it into force in that manner. See article 25(1) of the Vienna Convention 1969.

exchange of letters or notes An exchange of letters or notes may embody a bilateral treaty commitment. The basic characteristic of this procedure is that the signatures of both parties appear not on one letter or note but on two separate letters or notes. The agreement therefore lies in the exchange of these letters or notes, each of the parties retaining one letter or note signed by the representative of the other party. In practice, the second letter or note (usually the letter or note in response) will reproduce the text of the first. In a bilateral treaty, the parties may also exchange letters or notes to indicate that they have completed all domestic procedures necessary to implement the treaty. See article 13 of the Vienna Convention 1969.

filing and recording Filing and recording is the procedure by which the Secretariat records certain treaties that are not subject to registration under Article 102 of the Charter of the United Nations.

Final Act A Final Act is a document summarizing the proceedings of a diplomatic conference. It is normally the formal act by which the negotiating parties bring the conference to a conclusion. It is usually part of the documentation arising from the conference, including the

treaty, the resolutions and interpretative declarations made by participating States. There is no obligation to sign the Final Act, but signature may permit participation in subsequent mechanisms arising from the conference, such as preparatory committees. Signing the Final Act does not normally create legal obligations or bind the signatory State to sign or ratify the treaty attached to it.

final clauses Final clauses are provisions typically found at the end of a treaty, dealing with such topics as signature, ratification, acceptance, approval, accession, denunciation, amendment, reservation, entry into force, settlement of disputes, depositary matters and authentic texts.

In the case of multilateral treaties to be deposited with the Secretary-General, parties should submit for review draft final clauses to the Treaty Section well in advance of the adoption of the treaty (see section 6.5).

full powers

Instrument of full powers: Full powers take the form of a solemn instrument issued by the Head of State, Head of Government or Minister for Foreign Affairs, empowering a named representative to undertake given treaty actions (see annex 3).

The Secretary-General's practice in relation to full powers may differ in certain respects from that of other depositaries. The Secretary-General does not accept full powers transmitted by telex or powers that are not signed.

The Head of State, Head of Government and Minister for Foreign Affairs are considered as representing their State for the purpose of all acts relating to the signature of, and the consent to be bound by, a treaty. Accordingly, they need not present full powers for those purposes.

See articles 2(1)(c) and 7 of the Vienna Convention 1969.

Instrument of general full powers: An instrument of general full powers authorizes a named representative to execute certain treaty actions, such as signatures, relating to treaties of a certain kind (for example, all treaties adopted under the auspices of a particular organization).

interpretative declaration See *declaration*.

mandatory declaration See *declaration*.

memorandum of understanding (M.O.U.) The term memorandum of understanding (M.O.U.) is often used to denote a less formal international instrument than a typical treaty or international agreement. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. An M.O.U. typically consists of a single instrument and is entered into among States and/or international organizations. The United Nations usually concludes M.O.U.s with Member States in order to organize its peacekeeping operations or to arrange United Nations conferences. The United Nations also concludes M.O.U.s regarding cooperation with other international organizations. The United Nations considers M.O.U.s to be binding and registers them if submitted by a party or if the United Nations is a party.

modification Modification, in the context of treaty law, refers to the variation of certain provisions of a treaty only as between particular parties to that treaty. As between other parties, the original provisions apply. If a treaty is silent as to modifications, they are allowed only to the extent that they do not affect the rights or obligations of the other parties to the treaty and do not contravene the object and purpose of the treaty. See article 41 of the Vienna Convention 1969.

Monthly Statement The Monthly Statement is the statement published by the Secretariat of the United Nations on a monthly basis detailing the treaties and international agreements registered or filed and recorded during the preceding month (see section 5.7.4).

multilateral treaty See *treaty*.

optional declaration See *declaration*.

party A party to a treaty is a State or other entity with treaty-making capacity that has expressed its consent to be bound by that treaty by an act of ratification, acceptance, approval or accession, etc. where that treaty has entered into force for that particular State. This means that the State is bound by the treaty under international law. See article 2(1)(g) of the Vienna Convention 1969.

plenipotentiary A plenipotentiary, in the context of full powers, is the person authorized by an instrument of full powers to undertake a specific treaty action.

protocol A protocol, in the context of treaty law and practice, has the same legal characteristics as a treaty. The term protocol is often used to describe agreements of a less formal nature than those entitled treaty or convention. Generally, a protocol amends, supplements or clarifies a multilateral treaty. A protocol is normally open to participation by the parties to the parent agreement. However, in recent times States have negotiated a number of protocols that do not follow this principle. The advantage of a protocol is that, while it is linked to the parent agreement, it can focus on a specific aspect of that agreement in greater detail.

provisional application

Provisional application of a treaty that has entered into force: Provisional application of a treaty that has entered into force may occur when a State unilaterally undertakes to give legal effect to the obligations under a treaty on a provisional and voluntary basis. The State would generally intend to ratify, accept, approve or accede to the treaty once its domestic procedural requirements for international ratification have been satisfied. The State may terminate this provisional application at any time. In contrast, a State that has consented to be bound by a treaty through ratification, acceptance, approval, accession or definitive signature generally can only withdraw its consent in accordance with the provisions of the treaty or, in the absence of such provisions, other rules of treaty law. See article 24 of the Vienna Convention 1969.

Provisional application of a treaty that has not entered into force: Provisional application of a treaty that has not entered into force may occur when a State notifies the signatory States to a treaty that has not yet entered into force that it will give effect to the legal obligations specified in that treaty on a provisional and unilateral basis. Since this is a unilateral act by the State, subject to its domestic legal framework, it may terminate this provisional application at any time.

A State may continue to apply a treaty provisionally, even after the treaty has entered into force, until the State has ratified, approved, accepted or acceded to the treaty. A State's provisional application terminates if that State notifies the other States among which the treaty is being applied provisionally of its intention not to become a party to the treaty.

See article 25 of the Vienna Convention 1969.

provisional entry into force See *entry into force*.

ratification, acceptance, approval Ratification, acceptance and approval all refer to the act undertaken on the international plane, whereby a State establishes its consent to be bound by a treaty. Ratification, acceptance and approval all require two steps:

(a) The execution of an instrument of ratification, acceptance or approval by the Head of State, Head of Government or Minister for Foreign Affairs, expressing the intent of the State to be bound by the relevant treaty; and

(b) For multilateral treaties, the deposit of the instrument with the depositary; and for bilateral treaties, the exchange of the instruments between parties.

The instrument of ratification, acceptance or approval must comply with certain international legal requirements (see section 3.3.5 and annex 4).

Ratification, acceptance or approval at the international level indicates to the international community a State's commitment to undertake the obligations under a treaty. This should not be confused with the act of ratification at the national level, which a State may be required to undertake in accordance with its own constitutional provisions, before it consents to be bound internationally. Ratification at the national level is inadequate to establish the State's consent to be bound at the international level.

See articles 2(1)(b), 11, 14 and 16 of the Vienna Convention 1969.

registration Registration, in the context of treaty law and practice, refers to the function of the Secretariat of the United Nations in effecting the registration of treaties and international agreements under Article 102 of the *Charter of the United Nations* (see section 5).

reservation A reservation is a statement made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State. A reservation may enable a State to participate in a multilateral treaty that it would otherwise be unable or unwilling to participate in. States can make reservations to a treaty when they sign, ratify, accept, approve or accede to it. When a State makes a reservation upon signing, it must confirm the reservation upon ratification, acceptance or approval. Since a reservation purports to modify the legal obligations of a State, it must be signed by the Head of State, Head of Government or Minister for Foreign Affairs (see annex 6). Reservations cannot be contrary to the object and purpose of the treaty. Some treaties prohibit reservations or only permit specified reservations. See articles 2(1)(d) and 19-23 of the Vienna Convention 1969.

revision/review Revision/review basically means amendment. However, some treaties provide for revisions/reviews separately from amendments (see, e.g. Article 109 of the Charter of the United Nations). In that case, revision/ review typically refers to an overriding adaptation

of a treaty to changed circumstances, whereas the term amendment refers to changes to specific provisions.

signature

Definitive signature (signature not subject to ratification): Definitive signature occurs where a State expresses its consent to be bound by a treaty by signing the treaty without the need for ratification, acceptance or approval. A State may definitively sign a treaty only when the treaty so permits. A number of treaties deposited with the Secretary-General permit definitive signature. See article 12 of the Vienna Convention 1969.

Simple signature (signature subject to ratification): Simple signature applies to most multilateral treaties. This means that when a State signs the treaty, the signature is subject to ratification, acceptance or approval. The State has not expressed its consent to be bound by the treaty until it ratifies, accepts or approves it. In that case, a State that signs a treaty is obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty. Signature alone does not impose on the State obligations under the treaty. See articles 14 and 18 of the Vienna Convention 1969.

treaty Treaty is a generic term embracing all instruments binding under international law, regardless of their formal designation, concluded between two or more international legal entities. Thus, treaties may be concluded between:

- (a) States;
- (b) International organizations with treaty-making capacity and States; or
- (c) International organizations with treaty-making capacity.

The application of the term treaty, in the generic sense, signifies that the parties intend to create rights and obligations enforceable under international law.

The Vienna Convention 1969 defines a treaty as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation” (article 2(1)(a)). Accordingly, conventions, agreements, protocols, and exchange of letters or notes may all constitute treaties. A treaty must be governed by international law and is normally in written form. Although the Vienna Convention 1969 does not apply to non-written agreements, its definition of a treaty states that the absence of writing does not affect the legal force of international agreements.

No international rules exist as to when an international instrument should be entitled a treaty. However, usually the term treaty is employed for instruments of some gravity and solemnity.

See article 2(1)(a) of the Vienna Convention 1969. See generally Vienna Convention 1969 and Vienna Convention 1986.

Bilateral treaty: A bilateral treaty is a treaty between two parties.

Multilateral treaty: A multilateral treaty is a treaty between more than two parties.

ANNEX 10

ANNEX RELATING TO THE DEPOSIT OF THE INSTRUMENTS OF
RATIFICATION OR ACCESSION

The instruments of ratification or accession have to be transmitted to the depositaries for which details can be found below. These instruments must be signed by the Head of State. In this way, States really accede to the conventions and protocols mentioned hereunder.

Universal instruments against terrorism depositaries• ***United Nations Secretary-General Depositary***

UN Headquarters, First Avenue at 46th Street, New York, NY 10017, USA

1. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. Adopted by the United Nations General Assembly on 14 December 1973
2. International Convention against the Taking of Hostages. Adopted by the United Nations General Assembly on 17 December 1979
3. International Convention for the Suppression of Terrorist Bombing. Adopted by the United Nations General Assembly on 15 December 1997
4. International Convention for the Suppression of the Financing of Terrorism. Adopted by the United Nations General Assembly on 9 December 1999

• ***International Maritime Organization Secretary-General Depositary***

4 Albert Embankment, London SE1 7SR, United Kingdom
Tel: +44 (0) 20 7735 7611; Fax: +44 (0) 20 7587 3210

5. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. Signed at Rome on 10 March 1988
6. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. Signed at Rome on 10 March 1988

• ***International Civil Aviation Organization Depositary***

ICAO, External Relations and Public Information Office
999 University Street, Montreal, Quebec H3C 5H7, Canada
Tel: +1 (514) 954-8219; Fax: +1 (514) 954-6077; SITATEX: YULCAYA
Internet e-mail: icaoHQ@icao.int
Internet home page : <http://www.icao.int>

7. Convention on Offences and Certain Other Acts Committed On Board Aircraft. Signed at Tokyo on 14 September 1963
8. Convention for the Suppression of Unlawful Seizure of Aircraft. Signed at The Hague on 16 December 1970
9. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Signed at Montreal on 23 September 1971
10. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Signed at Montreal on 24 February 1988
11. Convention on the Marking of Plastic Explosives for the Purpose of Detection. Signed at Montreal on 1 March 1991

• ***International Atomic Energy Agency Depositary***

International Atomic Energy Agency
P.O Box 100
Wagramer Strasse 5
A-1400 Vienna, Austria
Tel: (+431) 2600-0
Fax: (+431) 2600-7
E-mail: Official.Mail@iaea.org
Website: www.iaea.org

12. Convention on the Physical Protection of Nuclear Material. Signed at Vienna on 3 March 1980

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