Chapter V

Other legal questions

The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization continued in 2001 to consider, among its other standing agenda items, proposals relating to the maintenance of international peace and security in order to strengthen the Organization and, as a priority, the implementation of Charter provisions on assistance to third States affected by the application of sanctions under Chapter VII. In that connection, the Security Council, in October, discussed general issues relating to sanctions aimed at, not only improving the effectiveness of UN sanctions, but also reducing their negative effects on civilian populations and on third States.

The Committee on Relations with the Host Country continued to address complaints raised by permanent missions to the United Nations relating to the maintenance of conditions for the proper functioning of those missions. The General Assembly requested the host country (the United States) to consider, among other measures, removing travel controls on permanent mission and Secretariat staff of certain nationalities, issuing entry visas in a timely manner to representatives of Member States for the purpose of attending UN official meetings and taking steps to resolve the problem relating to the parking of diplomatic vehicles.

During the year, two instruments emanated from the continuing work of the United Nations Commission on International Trade Law (UNCITRAL) aimed at the global unification and harmonization of international trade law: the draft Convention on the Assignment of Receivables in International Trade; and the UNCITRAL Model Law on Electronic Signatures, together with the Guide to Enactment of the Model Law. On 12 December, the Assembly took note of UNCITRAL's completion and adoption of those instruments, recommended that all States give favourable consideration to the Model Law and Guide to Enactment when enacting or revising their laws, and adopted and opened the Convention for signature or accession.

In other action, the Assembly, concerned at the recently disclosed information on ongoing research into the reproductive cloning of human beings, established an ad hoc committee to consider the elaboration of an international convention against such cloning.

International organizations and international law

Strengthening the role of the United Nations

Special Committee on UN Charter

In accordance with General Assembly resolution 55/156 [YUN 2000, p. 1268], the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, during its meetings in New York from 2 to 12 April 2001 [A/56/33], continued to consider proposals relating to: the maintenance of international peace and security, according priority to the implementation of the provisions of the Charter of the United Nations on assistance to third States affected by the application of sanctions; the peaceful settlement of disputes between States; the future of the Trusteeship Council; the improvement of the Committee's working methods; and the publications *Repertory of Practice of United Nations Organs* and *Repertoire of the Practice of the Security Council*.

Under the first item, the working group of the whole, established by the Committee, completed the first paragraph-by-paragraph reading of the proposed revised basic conditions and standard criteria for the imposition of sanctions and other coercive measures submitted by the Russian Federation (2000), requested a recasting of five paragraphs and indicated that the text might require further readings. A paper on strengthening principles concerning the impact and application of sanctions was presented by the Libyan Arab Jamahiriya (2001), which addressed sanctions as a last resort, the financial or economic burdens sustained by the target State beyond those resulting from direct sanctions application, and that State's right to claim for damages resulting from sanctions imposed or applied illegally. The sponsor raised specific problems with regard to current sanctions regimes, which it said

were not immutable, and was interested in answers to those problems.

Debate continued on the Russian Federation's working paper (1998), aimed at the elaboration of legal parameters for peacekeeping operations in the context of Chapter VI (pacific settlement of disputes) of the Charter. It was pointed out that the issues raised in the proposal, for years on the Committee's agenda, could be addressed by other more competent bodies that had already covered those issues thoroughly. The sponsor could therefore withdraw the proposal and submit it to another body; or, if it had acquired the status of a Committee document, the Committee could request the Assembly, through the Sixth (Legal) Committee, to submit it to another body.

Cuba reiterated the viability of its proposal for strengthening the role and effectiveness of the United Nations (1998), which was concerned with the revitalization of the Assembly's role in terms not only of efficiency but also of democratization, stating that the Assembly was the only body with universal membership and no veto power. While that proposal and a Libyan revised proposal (2001) were aimed at enhancing coordination between the Assembly and the Security Council and focused on issues on which both bodies had a common responsibility, the Libyan proposal was more concerned with improving the Council's working methods to ensure objectivity, effectiveness and transparency. The view was expressed that double standards in the application of the Charter provisions in Chapter VII (action with respect to threats to the peace, breaches of the peace and acts of aggression), particularly with regard to sanctions imposition and implementation, undermined the Council's credibility. The need to restore balance between the Council and the Assembly, which could be achieved only through structural reforms of the Council, was pointed out, as was the fact that some of the proposal's aspects had been subsumed in the work of the body currently considering the Council's reform (see p. 1287).

Discussion of the joint Belarus and Russian Federation working paper requesting an advisory opinion from the International Court of Justice (ICJ) (1999) on the legal consequences of the resort to the use of force by States, either without prior Council authorization or outside the context of self-defence, resulted in a revised draft text by the sponsors reiterating the importance of an ICJ advisory opinion. The point was made that, if consensus could not be reached in the Committee, the request could be submitted directly to the Assembly, which would, however, require explicit Council authorization. On the other hand, the Assembly was empowered by Article 96 of the Charter to request an advisory opinion from ICJ on any legal question.

As to the item on the peaceful settlement of disputes, a working paper, jointly submitted by Sierra Leone and the United Kingdom (2000) containing a revised draft resolution on dispute prevention and settlement, was further revised and submitted (2001) by the sponsors. The working group undertook a paragraph-by-paragraph reading of the preambular section; the operative paragraphs were not taken up, however, due to lack of time.

On the future of the Trusteeship Council, Malta reiterated its proposal (1995) that a revised Trusteeship Council would act in trust to safeguard the environment, protect the global commons and monitor the governance of the oceans, providing impetus for international environmental governance and coordination. Such a change, it was pointed out, would entail an amendment to the Charter, which should be considered in the context of the Charter's revision and reform of the Organization. One view held that serious consideration should be given to removing the Trusteeship Council from the UN books.

The Special Committee's working methods were debated on the basis of a revised working paper submitted by Japan (2000), which included proposals for making the best use of the Committee's conference resources; the advance submission of action-oriented proposals; avoiding duplication of discussions that were ongoing in other forums; a preliminary evaluation of new proposals; a mechanism to enable the Committee to decide whether to continue discussion of proposals already debated; and the duration of the Committee's meetings, the periodic review of its working methods, including the consideration of proposals on a biennial basis, and procedural improvements for the adoption of its reports. Following an exchange of views on the paper, Japan said it would consult with the Bureau and interested delegations on the working paper's future, taking account of the suggestions made.

With respect to the identification of new subjects for the Committee's consideration, the following topics were proposed for inclusion in a possible middle-term work programme: basic conditions of "provisional measures" employed by the Council under Article 40 of the Charter; clarification of the term "threat to international peace and security"; ways to overcome the negative consequences of globalization and ensure the supremacy of law in international relations; and applicability of the Charter provisions to the concept of "humanitarian intervention".

As to the *Repertory of Practice of United Nations Organs* and *Repertoire of the Practice of the Security Council*, the Secretary-General's ongoing efforts to reduce the backlog in their publication were commended. According to one view, the Assembly should consider further ways of providing financial and other assistance to the Secretariat to enable the speedy updating of those publications.

Report of Secretary-General. As called for by General Assembly resolution 55/156 [YUN 2000, p. 1268], the Secretary-General reported in September [A/56/330] on steps taken by the Secretariat to expedite the preparation of the Supplements to the *Repertory* and *Repertoire*, on the up-to-date status of those publications and on ongoing action to eliminate the existing production backlogs. The report indicated that a pilot project, begun in 2000, to place the *Repertory* on the Internet continued and a web site for it would be established during the 2002-2003 biennium; the *Repertoire* was available on the Internet on the UN Department of Political Affairs web site. In addition, contributions in the amount of $364,181 to the trust fund for the updating of the *Repertoire* were received from six Member States and one Permanent Observer.

GENERAL ASSEMBLY ACTION

On 12 December [meeting 85], the General Assembly, on the recommendation of the Sixth Committee [A/56/592], adopted **resolution 56/86** without vote [agenda item 165].

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

The General Assembly,

Recalling its resolution 3499(XXX) of 15 December 1975, by which it established the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and its relevant resolutions adopted at subsequent sessions,

Recalling also its resolution 47/233 of 17 August 1993 on the revitalization of the work of the General Assembly,

Recalling further its resolution 47/62 of 11 December 1992 on the question of equitable representation on and increase in the membership of the Security Council,

Taking note of the report of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council,

Recalling the elements relevant to the work of the Special Committee contained in its resolution 47/120 B of 20 September 1993,

Recalling also its resolution 51/241 of 31 July 1997 on the strengthening of the United Nations system and its resolution 51/242 of 15 September 1997, entitled "Supplement to an Agenda for Peace", by which it adopted the texts on coordination and the question of sanctions imposed by the United Nations, which are annexed to that resolution,

Recalling further that the International Court of Justice is the principal judicial organ of the United Nations, and reaffirming its authority and independence,

Considering the desirability of finding practical ways and means to strengthen the Court, taking into consideration, in particular, the needs resulting from its increased workload,

Taking note of the report of the Secretary-General on the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*,

Recalling its resolution 55/156 of 12 December 2000,

Having considered the report of the Special Committee on the work of its session held in 2001,

1. *Takes note* of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization;

2. *Decides* that the Special Committee shall hold its next session from 18 to 28 March 2002;

3. *Requests* the Special Committee, at its session in 2002, in accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995:

(a) To continue its consideration of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations and, in this context, to consider other proposals relating to the maintenance of international peace and security already submitted or which may be submitted to the Special Committee at its session in 2002;

(b) To continue to consider on a priority basis the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter by commencing a substantive debate on all of the related reports of the Secretary-General, the proposals submitted on this subject, taking into consideration the debate on the question held by the Sixth Committee at the fifty-sixth session of the General Assembly and the text on the question of sanctions imposed by the United Nations contained in annex II to Assembly resolution 51/242, and also the implementation of the provisions of Assembly resolutions 50/51 of 11 December 1995, 51/208 of 17 December 1996, 52/162 of 15 December 1997, 53/107 of 8 December 1998, 54/107 of 9 December 1999 and 55/157 of 12 December 2000;

(c) To continue its work on the question of the peaceful settlement of disputes between States and, in this context, to continue its consideration of proposals relating thereto, including the proposal on the establishment of a dispute settlement service offering or responding with its services early in disputes and those proposals relating to the enhancement of the role of the International Court of Justice, with a view to completing, if possible, its consideration of these proposals;

(d) To continue to consider proposals concerning the Trusteeship Council in the light of the report of the Secretary-General submitted in accordance with General Assembly resolution 50/55 of 11 December 1995, the report of the Secretary-General entitled "Renewing the United Nations: a programme for reform" and the views expressed by States on this subject at previous sessions of the General Assembly;

(e) To continue to consider, on a priority basis, ways and means of improving its working methods and enhancing its efficiency with a view to identifying widely acceptable measures for future implementation;

4. *Takes note* of paragraph 47 of the report of the Secretary-General, commends the Secretary-General for his continued efforts to reduce the backlog in the publication of the *Repertory of Practice of United Nations Organs*, and endorses the efforts of the Secretary-General to eliminate the backlog in the publication of the *Repertoire of the Practice of the Security Council*;

5. *Invites* the Special Committee at its session in 2002 to continue to identify new subjects for consideration in its future work with a view to contributing to the revitalization of the work of the United Nations;

6. *Takes note* of the readiness of the Special Committee, in the context of its consideration of the subject of assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization, to provide, within its mandate, such assistance as may be sought at the request of other subsidiary bodies of the General Assembly in relation to any issues before them;

7. *Requests* the Special Committee to submit a report on its work to the General Assembly at its fifty-seventh session;

8. *Decides* to include in the provisional agenda of its fifty-seventh session the item entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization".

Charter provisions relating to sanctions

Special Committee consideration. At the Special Committee's discussion on the implementation of the Charter provisions related to assistance to third States affected by the application of sanctions [A/56/33], it was noted that little headway had been made on the item despite its having been on the agenda for several years. In view of the great hardship endured by those States, it was emphasized that an urgent and permanent solution had to be found. In that regard, support was voiced for the proposals to establish a trust fund and a permanent consultation mechanism.

Attention was again drawn to the 1998 ad hoc expert group proposals [YUN 1998, p. 1235] on developing a methodology for assessing the impact on third States of preventive or enforcement measures and on exploring innovative and practical measures of international assistance to those States. It was suggested that in 2002 the Committee should establish which of those recommendations had overall support, which ones required additional clarification and which ones drew divergent views, thereby allowing the Committee to endorse some of the recommendations and submit them for the General Assembly's consideration.

The Committee recommended that the Assembly, at its 2001 session, should continue to consider the results of the ad hoc expert group meeting, taking account of, among other information, the Committee's current debate; the related views presented by the Secretary-General in his 1999 [YUN 1999, p. 1252] and 2000 [YUN 2000, p. 1270] reports; his views on the expert group's deliberations and main findings to be submitted pursuant to Assembly resolutions 54/107 [YUN 1999, p. 1252] and 55/157 [YUN 2000, p. 1271]; and information he was also to submit on the follow-up to the 1999 Security Council note [YUN 1999, p. 1252], proposing improvements to the work of the sanctions committees related to assistance to third States affected by the application of sanctions. The Committee encouraged the Secretary-General to expedite his report as requested by the resolutions named above for consideration by the Sixth Committee at the 2001 Assembly session.

Reports of Secretary-General (August and September). The Secretary-General, in his August report [A/56/303], prepared in response to General Assembly resolution 55/157 [YUN 2000, p. 1271], noted that the informal working group established by the Security Council in 2000 to examine issues from which to develop general recommendations on how to improve the effectiveness of UN sanctions [ibid., p. 1270] had yet to reach consensus on all of the recommendations put forward. Those issues, which related to the development of adequate capacity and appropriate modalities by the competent units of the Secretariat to coordinate information about international assistance available to third States affected by sanctions, to develop a methodology for assessing adverse consequences actually incurred by those States and to explore practical measures of assistance to them, were being reviewed by several intergovernmental bodies. The Secretary-General would continue to support that review process to ensure the timely and efficient implementation of relevant intergovernmental mandates.

The Secretary-General also reported on action taken by the General Assembly, the Economic and Social Council and the Committee for Programme and Coordination to assist third States affected by sanctions imposition and enforcement.

In his September report [A/56/326] on the road map towards the implementation of the UN Millennium Declaration [YUN 2000, p. 49], the Secretary-General addressed each of the Declaration's goals and commitments, including the goal to minimize the adverse effects of UN economic sanctions on innocent populations, to sub-

ject such sanctions regimes to regular reviews and to eliminate the adverse effects of sanctions on third parties. He noted that, although sanctions were an important tool in maintaining or restoring international peace and security, further progress had to be made in developing targeted sanctions and improving their effectiveness, while seeking to minimize their humanitarian impact on civilian populations and on affected third States. Moreover, such sanctions had to be integrated into a comprehensive conflict resolution or prevention strategy and complemented by inducement measures. A permanent sanctions-monitoring mechanism needed to be developed to ensure better targeting and enforcement of smart sanctions and to draw to the Council's attention information on non-cooperation and non-compliance.

Security Council consideration (October). The Security Council met on 22 and 25 October [meeting 4394] to discuss general issues relating to sanctions. At their request, Germany, Sweden and the Permanent Observer of Switzerland were invited to participate; the Secretariat's Assistant Secretary-General for Political Affairs was also invited.

The Permanent Observer stated that, in cooperation with the United Nations, Switzerland had organized a series of international expert meetings (Interlaken, Switzerland; and New York, 1998-1999) to examine the feasibility of targeted financial sanctions. Referred to as the Interlaken process, the key recommendations called for a better understanding of the specific technical requirements of targeted financial sanctions and the preconditions necessary for them to be effective; standardized language for Council resolutions on sanctions; identification of the basic legal and administrative requirements for national implementation of financial sanctions; and development of greater UN capabilities for administering and monitoring financial sanctions. The Permanent Observer said the Interlaken process showed that the conceptual, technical and practical elements to make targeted financial sanctions effective were available, but required political will to translate them into reality. He presented to the Council a handbook on the results of the process, which would also be distributed to all permanent missions to the United Nations.

Germany also presented a handbook containing the results of the Bonn-Berlin process, a series of conferences, seminars and workshops (Bonn and Berlin, 1999-2000) organized by the Bonn International Center for Conversion, an organization with considerable sanctions expertise, which addressed two types of sanctions: arms embargoes and travel restrictions. The handbook, which would be sent to all UN Member States, set out model resolutions on arms embargoes and travel-related sanctions, with extensive commentary. It also reflected national implementation of those types of sanctions and offered suggestions for monitoring and enforcement.

Sweden announced that it was ready to continue the work accomplished by Switzerland and Germany through what it called the Stockholm process, to take place in 2002 and to which would be invited a broad range of government representatives, NGOs, regional organizations, academics and UN actors. It would focus on the implementation and monitoring of targeted sanctions and on finding a clearer understanding of their scope and limitations.

The UN Assistant Secretary-General for Political Affairs, Ibrahima Fall, stated that efforts to develop the concept of smart sanctions, pressuring regimes rather than peoples and thereby reducing their humanitarian costs, were to be welcomed in view of concerns over the negative effects that comprehensive sanctions regimes could have on civilian populations and on neighbouring and other affected States. Sanctions needed continual refining to strengthen their effectiveness and to ease their negative impact, thus consolidating support by the international community. He noted that some of the Interlaken recommendations were being put into practice and hoped the knowledge gained there could be successfully put to use within the Counter-Terrorism Committee established by Security Council resolution 1373(2001) (see p. 61). Many of the suggestions of the Bonn-Berlin process, also discussed in the Council's working group on general issues on sanctions [YUN 2000, p. 1371], had contributed to the improvement of sanctions resolutions.

Mr. Fall advanced a number of suggestions for effective sanctions implementation and monitoring so that sanctions might continue to be a useful tool in the maintenance of international peace and security. Pointing out that monitoring was the primary responsibility of Member States, he suggested that assistance could be provided to help them carry out that responsibility by a duly augmented sanctions secretariat and competent regional organizations. State compliance could be encouraged by greater Council attention to mitigating the negative effects of sanctions on civilian populations and third States, as well as providing support and inducements for neighbouring States. The Council could also consider assisting Member States to develop greater legal authority and administrative capacity for implementing sanctions. Model legislation could be provided to enable interested Member States to

make adjustments in their domestic laws and regulations to permit compliance with sanctions.

As to the suggested establishment of a permanent sanctions-monitoring mechanism to ensure better targeting and implementation of smart sanctions, such a framework, in addition to allowing a systematic follow-up of violations or non-cooperation, would provide a point of contact between the Council and relevant regional and international organizations. The Council could make more frequent use of humanitarian assessments before imposing sanctions and, once they had been imposed, continue to monitor their humanitarian impact.

Mr. Fall said that targeted sanctions could have important deterrent and preventive roles and urged the Council to consider using sanctions in that context. Stating that making sanctions smarter was not enough, he reiterated that it was imperative to provide the sanctions committees and the Secretariat with the means necessary for the effective administration of sanctions regimes and of a credible monitoring system: technical expertise, enhanced analytical capacity and commitment of adequate resources.

GENERAL ASSEMBLY ACTION

On 12 December [meeting 85], the General Assembly, on the recommendation of the Sixth Committee [A/56/592], adopted **resolution 56/87** without vote [agenda item 165].

Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

The General Assembly,

Concerned about the special economic problems confronting certain States arising from the carrying out of preventive or enforcement measures taken by the Security Council against other States, and taking into account the obligation of Members of the United Nations under Article 49 of the Charter of the United Nations to join in affording mutual assistance in carrying out the measures decided upon by the Security Council,

Recalling the right of third States confronted with special economic problems of that nature to consult the Security Council with regard to a solution of those problems, in accordance with Article 50 of the Charter,

Recognizing the desirability of the consideration of further appropriate procedures for consultations to deal in a more effective manner with the problems referred to in Article 50 of the Charter,

Recalling:

(a) The report of the Secretary-General entitled "An Agenda for Peace", in particular paragraph 41 thereof,

(b) Its resolution 47/120 A of 18 December 1992 entitled "An Agenda for Peace: preventive diplomacy and related matters", its resolution 47/120 B of 20 September 1993, entitled "An Agenda for Peace", in particular section IV thereof, entitled "Special economic problems arising from the implementation of preventive or enforcement measures", and its resolution 51/242 of 15 September 1997, entitled "Supplement to an Agenda for Peace", in particular annex II thereto, entitled "Question of sanctions imposed by the United Nations",

(c) The position paper of the Secretary-General entitled "Supplement to an Agenda for Peace",

(d) The statement by the President of the Security Council of 22 February 1995,

(e) The report of the Secretary-General prepared pursuant to the statement by the President of the Security Council regarding the question of special economic problems of States as a result of sanctions imposed under Chapter VII of the Charter,

(f) The annual overview reports of the Administrative Committee on Coordination for the period from 1992 to 2000, in particular the sections therein on assistance to countries invoking Article 50 of the Charter,

(g) The reports of the Secretary-General on economic assistance to States affected by the implementation of the Security Council resolutions imposing sanctions against the Federal Republic of Yugoslavia and General Assembly resolutions 48/210 of 21 December 1993, 49/21 A of 2 December 1994, 50/58 E of 12 December 1995, 51/30 A of 5 December 1996, 52/169 H of 16 December 1997, 54/96 G of 15 December 1999 and 55/170 of 14 December 2000,

(h) The reports of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization on the work of its sessions held in the years 1994 to 2001,

(i) The reports of the Secretary-General on the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter,

(j) The report of the Secretary-General to the Millennium Assembly of the United Nations, in particular section IV.E thereof, entitled "Targeting sanctions",

(k) The United Nations Millennium Declaration, in particular paragraph 9 thereof,

(l) The report of the Secretary-General entitled "Road map towards implementation of the United Nations Millennium Declaration", in particular paragraphs 56 to 61 thereof,

Taking note of the most recent report of the Secretary-General, submitted in accordance with General Assembly resolution 55/157 of 12 December 2000,

Taking note also of the report of the Office of Internal Oversight Services on the in-depth evaluation of United Nations programmes relating to global development trends, issues and policies and global approaches to social and microeconomic issues and policies, and the corresponding subprogrammes in the regional commissions, in particular recommendation 3 contained therein, as approved by the Committee for Programme and Coordination at its fortieth session,

Recalling that the question of assistance to third States affected by the application of sanctions has been addressed recently in several forums, including the General Assembly, the Security Council, the Economic and Social Council and their subsidiary organs,

Recalling also the measures taken by the Security Council, in accordance with the statement by the President of the Security Council of 16 December 1994, that,

as part of the effort of the Council to improve the flow of information and the exchange of ideas between members of the Council and other States Members of the United Nations, there should be increased recourse to open meetings, in particular at an early stage in its consideration of a subject,

Recalling further the measures taken by the Security Council in accordance with the note by the President of the Security Council of 29 January 1999 aimed at improving the work of the sanctions committees, including increasing the effectiveness and transparency of those committees,

Stressing that, in the formulation of sanctions regimes, due account should be taken of the potential effects of sanctions on third States,

Stressing also, in this context, the powers of the Security Council under Chapter VII of the Charter and the primary responsibility of the Council under Article 24 of the Charter for the maintenance of international peace and security in order to ensure prompt and effective action by the United Nations,

Recalling that, under Article 31 of the Charter, any Member of the United Nations that is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Council whenever the latter considers that the interests of that Member are specially affected,

Recognizing that the imposition of sanctions under Chapter VII of the Charter has been causing special economic problems in third States and that it is necessary to intensify efforts to address those problems effectively,

Taking into consideration the views of third States which could be affected by the imposition of sanctions,

Recognizing that assistance to third States affected by the application of sanctions would further contribute to an effective and comprehensive approach by the international community to sanctions imposed by the Security Council,

Recognizing also that the international community at large and, in particular, international institutions involved in providing economic and financial assistance should continue to take into account and address in a more effective manner the special economic problems of affected third States arising from the carrying out of preventive or enforcement measures taken by the Security Council under Chapter VII of the Charter, in view of their magnitude and of the adverse impact on the economies of those States,

Recalling the provisions of its resolutions 50/51 of 11 December 1995, 51/208 of 17 December 1996, 52/162 of 15 December 1997, 53/107 of 8 December 1998, 54/107 of 9 December 1999 and 55/157 of 12 December 2000,

1. *Renews its invitation* to the Security Council to consider the establishment of further mechanisms or procedures, as appropriate, for consultations as early as possible under Article 50 of the Charter of the United Nations with third States which are or may be confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Council under Chapter VII of the Charter, with regard to a solution of those problems, including appropriate ways and means for increasing the effectiveness of its methods and procedures applied in the consideration of requests by the affected States for assistance;

2. *Welcomes* the measures taken by the Security Council since the adoption of General Assembly resolution 50/51, most recently the note by the President of the Security Council of 17 April 2000, whereby the members of the Security Council decided to establish an informal working group of the Council to develop general recommendations on how to improve the effectiveness of United Nations sanctions, looks forward to the adoption of the Chairman's proposed outcome of the working group, in particular those provisions thereof regarding the issues of the unintended impact of sanctions and assistance to States in implementing sanctions, and strongly recommends that the Council continue its efforts to enhance further the effectiveness and transparency of the sanctions committees, to streamline their working procedures and to facilitate access to them by representatives of States that find themselves confronted with special economic problems arising from the carrying out of sanctions;

3. *Invites* the Security Council, its sanctions committees and the Secretariat to continue to ensure, as appropriate, that:

(a) Both pre-assessment reports and ongoing assessment reports include as part of their analysis the likely and actual unintended impact of the sanctions on third States and recommend ways in which the negative impact of sanctions can be mitigated;

(b) Sanctions committees provide opportunities for third States affected by sanctions to brief them on the unintended impact of sanctions they are experiencing and on assistance needed by them to mitigate the negative impact of sanctions;

(c) The Secretariat continues to provide, upon request, advice and information to third States to help them to pursue means to mitigate the unintended impact of sanctions, for example, on invoking Article 50 of the Charter for consultation with the Security Council;

(d) Where economic sanctions have had severe effects on third States, the Security Council is able to request the Secretary-General to consider appointing a special representative or dispatching, as necessary, fact-finding missions on the ground to undertake necessary assessments and to identify, as appropriate, possible means of assistance;

(e) The Security Council is able, in the context of situations referred to in subparagraph *(d)* above, to consider establishing working groups to consider such situations;

4. *Requests* the Secretary-General to pursue the implementation of General Assembly resolutions 50/51, 51/208, 52/162, 53/107, 54/107 and 55/157 and to ensure that the competent units within the Secretariat develop the adequate capacity and appropriate modalities, technical procedures and guidelines to continue, on a regular basis, to collate and coordinate information about international assistance available to third States affected by the implementation of sanctions, to continue developing a possible methodology for assessing the adverse consequences actually incurred by third States and to explore innovative and practical measures of assistance to the affected third States;

5. *Welcomes* the report of the Secretary-General containing a summary of the deliberations and main findings of the ad hoc expert group meeting on developing

a methodology for assessing the consequences incurred by third States as a result of preventive or enforcement measures and on exploring innovative and practical measures of international assistance to the affected third States, and renews its invitation to States and relevant international organizations within and outside the United Nations system which have not yet done so to provide their views regarding the report of the ad hoc expert group meeting;

6. *Requests* the Secretary-General to expedite the preparation of a report to the General Assembly containing his views on the deliberations and main findings, including the recommendations, of the ad hoc expert group on the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions, taking into account the views of States, the organizations of the United Nations system, international financial institutions and other international organizations, as well as the Chairman's proposed outcome of the informal working group of the Security Council on general issues relating to sanctions;

7. *Reaffirms* the important role of the General Assembly, the Economic and Social Council and the Committee for Programme and Coordination in mobilizing and monitoring, as appropriate, the economic assistance efforts of the international community and the United Nations system on behalf of States confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Security Council and, as appropriate, in identifying solutions to the special economic problems of those States;

8. *Takes note* of the decision of the Economic and Social Council, in its resolution 2000/32 of 28 July 2000, to continue its consideration of the question of assistance to third States affected by the application of sanctions, invites the Council, at its organizational session for 2002, to make appropriate arrangements for this purpose within its programme of work for 2002, and decides to transmit the most recent report of the Secretary-General on the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions, together with the relevant background materials, to the Council at its substantive session of 2002;

9. *Invites* the organizations of the United Nations system, international financial institutions, other international organizations, regional organizations and Member States to address more specifically and directly, where appropriate, the special economic problems of third States affected by sanctions imposed under Chapter VII of the Charter and, for this purpose, to consider improving procedures for consultations to maintain a constructive dialogue with such States, including through regular and frequent meetings as well as, where appropriate, special meetings between the affected third States and the donor community, with the participation of United Nations agencies and other international organizations;

10. *Requests* the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, at its session in 2002, to continue to consider on a priority basis the question of the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter by commencing a substantive debate on all of the related reports of the Secretary-General, in particular the 1998 report containing a summary of the deliberations and main findings of the ad hoc expert group meeting convened pursuant to paragraph 4 of General Assembly resolution 52/162, together with the most recent report of the Secretary-General on this question, taking into consideration the forthcoming report of the informal working group of the Security Council on general issues relating to sanctions, the proposals submitted on the question, the debate on the question in the Sixth Committee during the fifty-sixth session of the Assembly and the text on the question of sanctions imposed by the United Nations contained in annex II to Assembly resolution 51/242, as well as the implementation of the provisions of Assembly resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157 and the present resolution;

11. *Decides* to consider, within the Sixth Committee or a working group of the Committee, at the fifty-seventh session of the General Assembly, further progress in the elaboration of effective measures aimed at the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter;

12. *Requests* the Secretary-General to submit a report on the implementation of the present resolution to the General Assembly at its fifty-seventh session, under the agenda item entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization".

UN Programme for the teaching and study of international law

In response to General Assembly resolution 54/102 [YUN 1999, p. 1258], the Secretary-General submitted an October report [A/56/484] on the implementation of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law during 2000 and 2001. The report gave an account of UN activities and described contributions made by the United Nations Institute for Training and Research (UNITAR) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). The Advisory Committee on the Programme held its thirty-fifth and thirty-sixth sessions on 22 November 2000 and 17 October 2001, respectively.

During the biennium, the UN Office of Legal Affairs (OLA) continued to perform various functions connected with the Programme's goals. The United Nations Audio-Visual Library in International Law established a web site on the UN home page. OLA's Codification Division continued to catalogue the tapes received for the Library and to assist in disseminating information regarding UN work on the codification and progressive development of international law, as well as on some aspects regarding its application.

UN fellowship programmes for the study of international law included the Fellowship Programme in International Law, provided by OLA in cooperation with UNITAR. Under the Programme, lectures and courses on private and public international law were given at The Hague Academy of International Law. Special lectures and seminars were also organized by OLA and UNITAR. Twenty-one international law fellowships were awarded in 2000 and 18 in 2001. Other programmes included the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea (see p. 1241), awarded annually by OLA, and the Fellowship Programme on the International Civil Service, organized by UNITAR in cooperation with other organizations.

The International Law Seminar, designed for advanced students specializing in international law and young professors or government officials dealing with that subject, held its thirty-sixth and thirty-seventh sessions (Geneva, 10-28 July 2000 and 2-20 July 2001). Funded by voluntary contributions from Member States and through national fellowships, the Seminars were organized by OLA through the United Nations Office at Geneva in conjunction with the annual sessions of the International Law Commission to allow seminar participants to observe its plenary meetings, attend specially arranged lectures and participate in working groups on specific topics.

UNESCO continued to disseminate international standards on human rights through its publications and partners. The network of UNESCO Chairs on Human Rights, Democracy, Peace and Tolerance was further expanded in 2001 with the establishment of new Chairs in Germany and the United States.

The report also provided guidelines and recommendations for the execution of the Programme in the 2002-2003 biennium, formulated to take account of the fact that the Assembly provided no new budgetary resources for it.

GENERAL ASSEMBLY ACTION

On 12 December [meeting 85], the General Assembly, on the recommendation of the Sixth Committee [A/56/586], adopted **resolution 56/77** without vote [agenda item 159].

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The General Assembly,

Taking note with appreciation of the report of the Secretary-General on the implementation of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law and the guidelines and recommendations on future implementation of the Programme which were adopted by the Advisory Committee on the Programme and are contained in section III of the report,

Considering that international law should occupy an appropriate place in the teaching of legal disciplines at all universities,

Noting with appreciation the efforts made by States at the bilateral level to provide assistance in the teaching and study of international law,

Convinced, nevertheless, that States and international organizations and institutions should be encouraged to give further support to the Programme and increase their activities to promote the teaching, study, dissemination and wider appreciation of international law, in particular those activities which are of special benefit to persons from developing countries,

Reaffirming its resolutions 2464(XXIII) of 20 December 1968, 2550(XXIV) of 12 December 1969, 2838 (XXVI) of 18 December 1971, 3106(XXVIII) of 12 December 1973, 3502(XXX) of 15 December 1975, 32/146 of 16 December 1977, 36/108 of 10 December 1981 and 38/129 of 19 December 1983, in which it stated or recalled that in the conduct of the Programme it was desirable to use as far as possible the resources and facilities made available by Member States, international organizations and others, as well as its resolutions 34/144 of 17 December 1979, 40/66 of 11 December 1985, 42/148 of 7 December 1987, 44/28 of 4 December 1989, 46/50 of 9 December 1991 and 48/29 of 9 December 1993, in which, in addition, it expressed or reaffirmed the hope that, in appointing lecturers for the seminars to be held within the framework of the fellowship programme in international law, account would be taken of the need to secure the representation of major legal systems and balance among various geographical regions,

Welcoming the establishment of the United Nations Audio-Visual Library in International Law,

1. *Approves* the guidelines and recommendations contained in section III of the report of the Secretary-General and adopted by the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, in particular those designed to achieve the best possible results in the administration of the Programme within a policy of maximum financial restraint;

2. *Authorizes* the Secretary-General to carry out in 2002 and 2003 the activities specified in his report, including the provision of:

(a) A number of international law fellowships in both 2002 and 2003, to be determined in the light of the overall resources for the Programme and to be awarded at the request of Governments of developing countries;

(b) A minimum of one scholarship in both 2002 and 2003 under the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea, subject to the availability of new voluntary contributions made specifically to the fellowship fund;

(c) Subject to the overall resources for the Programme, assistance in the form of a travel grant for one participant from each developing country, who would be invited to possible regional courses to be organized in 2002 and 2003;

and to finance the above activities from provisions in the regular budget, when appropriate, as well as from voluntary financial contributions earmarked for each

of the activities concerned, which would be received as a result of the requests set out in paragraphs 12 to 14 below;

3. *Expresses its appreciation* to the Secretary-General for his constructive efforts to promote training and assistance in international law within the framework of the Programme in 2000 and 2001, in particular for the organization of the thirty-sixth and thirty-seventh sessions of the International Law Seminar, held at Geneva in 2000 and 2001, respectively, and for the activities of the Office of Legal Affairs of the Secretariat related to the fellowship programme in international law and to the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea, carried out, respectively, through its Codification Division and its Division for Ocean Affairs and the Law of the Sea;

4. *Requests* the Secretary-General to consider the possibility of admitting, for participation in the various components of the Programme, candidates from countries willing to bear the entire cost of such participation;

5. *Also requests* the Secretary-General to consider the relative advantages of using available resources and voluntary contributions for regional, subregional or national courses, as against courses organized within the United Nations system;

6. *Further requests* the Secretary-General to continue to provide the necessary resources to the programme budget for the Programme for the next and the future bienniums with a view to maintaining the effectiveness of the Programme;

7. *Welcomes* the efforts undertaken by the Office of Legal Affairs to bring up to date the United Nations *Treaty Series* and the *United Nations Juridical Yearbook*, as well as efforts made to place on the Internet the *Treaty Series* and other legal information;

8. *Expresses its appreciation* to the United Nations Institute for Training and Research for its participation in the Programme through the activities described in the report of the Secretary-General;

9. *Also expresses its appreciation* to the United Nations Educational, Scientific and Cultural Organization for its participation in the Programme through the activities described in the report of the Secretary-General;

10. *Further expresses its appreciation* to The Hague Academy of International Law for the valuable contribution it continues to make to the Programme, which has enabled candidates under the fellowship programmes in international law to attend and participate in the Programme in conjunction with the Academy courses;

11. *Notes with appreciation* the contributions of The Hague Academy to the teaching, study, dissemination and wider appreciation of international law, and calls upon Member States and interested organizations to give favourable consideration to the appeal of the Academy for a continuation of support and a possible increase in their financial contributions, to enable the Academy to carry out its activities, particularly those relating to the summer courses, regional courses and programmes of the Centre for Studies and Research in International Law and International Relations;

12. *Requests* the Secretary-General to continue to publicize the Programme and periodically to invite Member States, universities, philanthropic foundations and other interested national and international institutions and organizations, as well as individuals, to make voluntary contributions towards the financing of the Programme or otherwise to assist in its implementation and possible expansion;

13. *Reiterates its request* to Member States and to interested organizations and individuals to make voluntary contributions, inter alia, for the International Law Seminar, the fellowship programme in international law, the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea and the United Nations Audio-Visual Library in International Law, and expresses its appreciation to those Member States, institutions and individuals which have made voluntary contributions for this purpose;

14. *Urges* in particular all Governments to make voluntary contributions for the organization of regional refresher courses in international law by the United Nations Institute for Training and Research, especially with a view to covering the amount needed for the financing of the daily subsistence allowance for up to twenty-five participants in each regional course, thus alleviating the burden on prospective host countries and making it possible for the Institute to continue to organize the regional courses;

15. *Requests* the Secretary-General to report to the General Assembly at its fifty-eighth session on the implementation of the Programme during 2002 and 2003 and, following consultations with the Advisory Committee on the Programme, to submit recommendations regarding the execution of the Programme in subsequent years;

16. *Decides* to include in the provisional agenda of its fifty-eighth session the item entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law".

Host country relations

At four meetings held in New York between 22 February and 26 October, the Committee on Relations with the Host Country continued to consider the following aspects of relations between the UN diplomatic community and the United States, the host country: exemption from taxation; housing for diplomatic personnel; host country travel regulations; acceleration of immigration and customs procedures; transportation issues; and a letter from the Permanent Mission of Cuba to the United Nations concerning an order to seize the Mission's bank accounts and the United States response. The recommendations and conclusions on those items, approved by the Committee at its 26 October meeting, were incorporated in its report [A/56/26].

The working group established in 1997 [YUN 1997, p. 1376] on the use of diplomatic motor vehicles, parking and related matters and the working group on indebtedness did not meet in 2001.

Exemption from taxation

On 22 February, the United States clarified the regime governing the payment of property tax by permanent missions in New York. It said permanent missions that owned their buildings and rented, leased or otherwise made available additional space therein to other entities were engaging in commercial transactions and were therefore responsible for the property tax on that portion of the building so used even if the tenant was another diplomatic mission. Buildings occupied by permanent missions that were owned by their Governments and used by various organizations affiliated with those Governments were considered mixed-use buildings. The Governments of such properties were advised to discuss their tax status through normal bilateral channels. The United States also clarified that water, sewage and frontage taxes were not in fact taxes but charges for public utility services provided by the local government; therefore, permanent missions were obligated to pay for those services. The United States would communicate the foregoing information to all diplomatic missions.

Housing for diplomatic personnel

On 22 February, Iraq drew attention to the difficulty facing its Mission staff in obtaining housing due to the refusal of many landlords to rent to diplomats. It requested the United States Mission's assistance in resolving that problem. Acknowledging the host country's position that it could not interfere with personal and commercial transactions in a free market, Iraq nonetheless maintained that the problem had to be considered in the light of the host country's obligations vis-à-vis the permanent missions and their staff, including their housing. Cuba expressed support for Iraq's concerns and suggested that the New York City Commissioner for the United Nations might consider measures to improve the housing situation for diplomats accredited to the United Nations.

Host country travel regulations

On 22 February, the Committee heard complaints from Cuba, Iraq and the Russian Federation regarding the host country's policy of restricting the movement and travel of mission personnel and Secretariat officials of certain nationalities. They said that policy, in addition to hampering the work of the affected missions, was unfair, arbitrary, discriminatory and politically motivated. It violated not only human rights, the Charter and international law, but also the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, contained in General Assembly resolution 169(II) [YUN 1947-48, p. 199]. Referring to the denial of its travel authorization requests beyond the 25-mile zone on behalf of its Mission officials, Cuba called on the host country to put an end to such unjustified practice.

The United States responded that such politically motivated allegations, which had not been legally supported, were undermining the Committee's effectiveness. It said the host country had continuously acted within its treaty obligations to the United Nations and challenged Member States to provide evidence to substantiate their allegations in writing to facilitate an appropriate response. As to Cuba's travel-related complaints, the United States recalled its position set out in a letter (that it had no obligation to permit unrestricted travel outside the UN Headquarters district for personal reasons or for travel not related to the sending State at the United Nations). It questioned Cuba's definition of what constituted official UN business and doubted that a personal recreational tourist trip could be defined as UN official business.

The Committee continued to urge the host country to remove the remaining travel restrictions as soon as possible.

Acceleration of immigration and customs procedures

On 1 June, Iraq raised the issue of the host country's three-week requirement for processing visa applications of accredited Iraqi diplomats, which caused official and personal difficulties for them. It drew attention to the inability of the Permanent Representative of Iraq to obtain a re-entry visa in connection with his departure to his country to visit his ailing mother. Cuba said its Mission also had suffered under the same visa regime, complaining that, often, entry visas would be issued to its delegates after the UN meetings they had to attend had ended or were about to end. It claimed that, despite its cooperative approach, it continued to suffer from the host country's selective and discriminatory treatment.

The United States reiterated that the host country's obligations under the Headquarters Agreement related to access to official meetings; it had always constructively responded to cases involving specific problems. Regarding Iraq's complaint, the Permanent Representative's passport had been returned to him to allow his immediate departure, which could not have been prevented by United States policy dealing with re-entry visas. As for delays in the issuance of visas to Cuban representatives, the host country recalled that UN meetings and conferences were sched-

uled months, sometimes years, in advance and questioned Cuba's tendency to wait for the last minute to apply for visas for those purposes.

Cuba commented that if submitting a visa application 21 days in advance constituted "waiting for the last minute", there was clearly a problem of definition. Iraq acknowledged that, while the host country did not prevent its Permanent Representative's departure, it was not advisable for him to leave without ensuring his ability to return. Since the accreditation of permanent mission representatives had been formally accepted by the United States, there appeared no compelling reason to restrict and/or delay issuance of their return visas.

The Committee anticipated that the host country would continue to ensure the issuance, in a timely manner, of entry visas to representatives of Member States pursuant to article IV, section 11, of the Headquarters Agreement, including to attend official UN meetings.

Transportation

On 1 June, Cuba raised the subject of diplomatic parking and stated that the number of reserved parking spaces had been reduced in the area of the Permanent Mission of Cuba to the United Nations. The diplomatic parking sign had been removed without prior notification and fines had been imposed on the Mission's personnel who had parked where they had always parked. The United States replied that Cuba should have brought the matter to its attention so that remedial action, if warranted, could have been taken.

The Committee requested the host country to continue to take steps, in conjunction with the City of New York, to resolve that problem in order to maintain appropriate conditions for the functioning of the delegations and missions accredited to the United Nations in a manner that was fair, non-discriminatory, efficient and consistent with international law.

Bank accounts

On 17 August, Cuba reported that notice of a restraining order had been served on Chase Manhattan Bank on 7 August in respect to two accounts maintained by its Permanent Mission to the United Nations. That was a serious violation of Cuba's diplomatic immunity and hence of its bank accounts, which were immune from attachment and execution under international law; the notice was therefore in and of itself illegal. Following an exchange of letters between Cuba's lawyers and Chase Manhattan Bank, the bank decided on 8 August not to implement the restraining notice and to continue the operation of the accounts. On 9 August, Cuba notified the United States about the matter and, on 10 August, Cuban and United States representatives met in Washington, D.C. On 14 August, the United States, acknowledging that the situation was clearly a violation of diplomatic immunity, said it wished to remove any misunderstanding on Cuba's part. Cuba said that a restraining order by a private plaintiff had the same practical and legal effect as a court ruling and, although the bank had not given effect to the notice, the notice itself was a violation of Cuba's immunity. Cuba was satisfied with the United States recognition that diplomatic accounts were immune from attachment and execution; it was not pleased that the host country would intervene only if the operation of such accounts were interfered with. It did not address the heart of Cuba's position: that the restraining notice was illegal and should not be enforced.

Cuba said it had requested the meeting of the Committee to elicit a more detailed statement of the host country's position; to clarify the misunderstanding to which it had referred; to conduct a debate in the proper exercise of the Committee's competence; and to seek guarantees against the recurrence of such violations. Cuba also sought clarification regarding measures to be taken in the event the restraining notice was not rescinded and compensation for its legal expenses and interruption of its Mission's normal functioning.

The United States explained that the restraining notice was issued by an individual lawyer on behalf of a private plaintiff. Chase Manhattan Bank, realizing it was not a court order, never honoured the notice. Such notices were issued all the time, and while the United States could not prevent private individuals from taking such actions, it had done and would continue to do whatever was necessary to protect permanent mission assets and accounts.

On 26 October, Cuba said it had informed the United States on 23 August that the restraining notice was still in place. On 15 October, it set out its legal position in response to the arguments advanced by the United States at the Committee's 17 August meeting. The only acceptable solution, Cuba asserted, was for the restraining notice to be withdrawn; it would not deem the matter settled until its accounts were under full and normal operation.

Although the host country said it was not obliged to respond to the questions of the law firm representing the Permanent Mission of Cuba, it gave the following clarifications. With regard to a court action to vacate the restraining notice, efforts under United States law were not

relevant as long as the host country had fulfilled its obligations under international law. To the assertion that the restraining notice was a form of legal process, it emphasized that it was for the host country authorities to uphold the immunity and to determine the manner in which they did so. It recalled that the notice had been issued to Chase Manhattan Bank, not to the Permanent Mission of Cuba. The bank had been advised, and was well aware, of the invalidity of the notice. Cuba might of course raise its legal concerns in the Sixth Committee; in the meantime, the host country maintained that the Cuban accounts had been fully protected.

As to the Libyan Arab Jamahiriya's reference to unwarranted ceilings and restrictions imposed on its Mission's bank accounts, the host country explained that the licence permitting the Libyan Mission to maintain a United States–based account was an exception to the United States law precluding Libyan accounts in the country. The exception had been granted in recognition of the host country's obligations under the Headquarters Agreement. It invited the Libyan representative to discuss bilaterally the question of the ceiling imposed on such accounts.

GENERAL ASSEMBLY ACTION

On 12 December [meeting 85], the General Assembly, on the recommendation of the Sixth Committee [A/56/590 & Corr.1], adopted **resolution 56/84** without vote [agenda item 163].

Report of the Committee on Relations with the Host Country

The General Assembly,

Having considered the report of the Committee on Relations with the Host Country,

Expressing deep condolences to the families of the victims of the heinous acts of terrorism of 11 September 2001, as well as solidarity with the Government and people of the host country,

Recalling Article 105 of the Charter of the United Nations, the Convention on the Privileges and Immunities of the United Nations, the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations and the responsibilities of the host country,

Recalling also that, in accordance with paragraph 7 of General Assembly resolution 2819(XXVI) of 15 December 1971, the Committee should consider, and advise the host country on, issues arising in connection with the implementation of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations,

Recognizing that effective measures should continue to be taken by the competent authorities of the host country, in particular to prevent any acts violating the security of missions and the safety of their personnel,

1. *Endorses* the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 37 of its report;

2. *Considers* that the maintenance of appropriate conditions for the normal work of the delegations and the missions accredited to the United Nations and the observance of their privileges and immunities, which is an issue of great importance to them, are in the interest of the United Nations and all Member States, and requests the host country to continue to take all measures necessary to prevent any interference with the functioning of missions;

3. *Expresses its appreciation* for the efforts made by the host country, and hopes that the issues raised at the meetings of the Committee will continue to be resolved in a spirit of cooperation and in accordance with international law;

4. *Notes* that during the reporting period the travel controls previously imposed by the host country on staff of certain missions and staff members of the Secretariat of certain nationalities remained in effect, and requests the host country to consider removing such travel controls, and in this regard notes the positions of affected States, of the Secretary-General and of the host country;

5. *Notes also* that the Committee anticipates that the host country will continue to ensure the issuance, in a timely manner, of entry visas to representatives of Member States, pursuant to article IV, section 11, of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, inter alia, for the purpose of their attending official United Nations meetings;

6. *Requests* the host country to continue to take steps to resolve the problem relating to the parking of diplomatic vehicles in a fair, balanced and non-discriminatory way, with a view to responding to the growing needs of the diplomatic community, and to continue to consult with the Committee on this important issue;

7. *Requests* the Secretary-General to remain actively engaged in all aspects of the relations of the United Nations with the host country;

8. *Requests* the Committee to continue its work in conformity with General Assembly resolution 2819 (XXVI);

9. *Decides* to include in the provisional agenda of its fifty-seventh session the item entitled "Report of the Committee on Relations with the Host Country".

International law

International bioethics law

Convention against cloning of human beings

In view of the latest technological advances regarding the human genome, the Commission on Human Rights adopted a resolution in April on human rights and bioethics (see p. 674). In November, the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), as a follow-up to its resolutions calling on UNESCO to promote a pro-

gramme of bioethics based on respect for human rights, adopted a resolution on bioethics, by which it invited the UNESCO Director-General to submit to it in 2002 the technical and legal studies undertaken regarding the possibility of elaborating universal norms on bioethics.

GENERAL ASSEMBLY ACTION

On 12 December [meeting 85], the General Assembly, on the recommendation of the Sixth Committee [A/56/599], adopted **resolution 56/93** without vote [agenda item 174].

International convention against the reproductive cloning of human beings

The General Assembly,

Recalling the Universal Declaration on the Human Genome and Human Rights, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 11 November 1997, in particular article 11 thereof, in which the Conference specified that practices which are contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted and invited States and international organizations to cooperate in taking, at the national or international level, the measures necessary in that regard,

Recalling also its resolution 53/152 of 9 December 1998, by which it endorsed the Universal Declaration on the Human Genome and Human Rights,

Bearing in mind Commission on Human Rights resolution 2001/71 of 25 April 2001, entitled "Human rights and bioethics", adopted at the fifty-seventh session of the Commission,

Noting the resolution on bioethics adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 2 November 2001, in which the Conference approved the recommendations by the Intergovernmental Bioethics Committee towards the possible elaboration, within the United Nations Educational, Scientific and Cultural Organization, of universal norms on bioethics,

Aware that the rapid development of the life sciences opens up tremendous prospects for the improvement of the health of individuals and mankind as a whole, but also that certain practices pose potential dangers to the integrity and dignity of the individual,

Particularly concerned, in the context of practices which are contrary to human dignity, at recently disclosed information on the research being conducted with a view to the reproductive cloning of human beings,

Determined to prevent such an attack on the human dignity of the individual,

Aware of the need for a multidisciplinary approach to the elaboration by the international community of an appropriate response to this problem,

1. *Decides* to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of considering the elaboration of an international convention against the reproductive cloning of human beings;

2. *Requests* the Secretary-General to invite the specialized agencies that work and have substantial interest in the field of bioethics, including, in particular, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, to participate as observers in the work of the Ad Hoc Committee;

3. *Decides* that the Ad Hoc Committee shall meet from 25 February to 1 March 2002 to consider the elaboration of a mandate for the negotiation of such an international convention, including a list of the existing international instruments to be taken into consideration and a list of legal issues to be addressed in the convention, with the understanding that the Ad Hoc Committee will open with an exchange of information and technical assessments provided by experts on genetics and bioethics, and recommends that the work continue during the fifty-seventh session of the General Assembly from 23 to 27 September 2002, within the framework of a working group of the Sixth Committee;

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

5. *Requests* the Ad Hoc Committee to report on its work to the General Assembly at its fifty-seventh session;

6. *Recommends* that, upon the adoption of a negotiation mandate by the General Assembly, it may decide, taking into account the acute nature of the problem, to reconvene the Ad Hoc Committee, in order to open negotiations on the international convention referred to in paragraph 1 above;

7. *Decides* to include in the provisional agenda of its fifty-seventh session the item entitled "International convention against the reproductive cloning of human beings".

International economic law

In 2001, legal aspects of international economic law continued to be considered by the United Nations Commission on International Trade Law (UNCITRAL) and by the Sixth Committee of the General Assembly.

International trade law

At its thirty-fourth session (Vienna, 25 June–13 July), UNCITRAL considered and adopted a draft Convention on the Assignment of Receivables in International Trade and a draft UNCITRAL Model Law on Electronic Signatures, together with a draft Guide to Enactment of the Model Law. In addition, it considered its future work in electronic commerce, several aspects of international commercial arbitration, insolvency law, security interests, training and technical assistance, the enlargement of UNCITRAL's membership and its working methods, and coordination and cooperation with other legal bodies. The report on the session [A/56/17 & Corr.3]

described action taken on those topics and annexed a list of related documents.

GENERAL ASSEMBLY ACTION

On 12 December [meeting 85], the General Assembly, on the recommendation of the Sixth Committee [A/56/588 & Corr.1], adopted **resolution 56/79** without vote [agenda item 161].

Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session

The General Assembly,

Recalling its resolution 2205(XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Reaffirming its conviction that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would contribute significantly to universal economic cooperation among all States on a basis of equality, equity and common interest and to the elimination of discrimination in international trade and, thereby, to the well-being of all peoples,

Emphasizing the need for higher priority to be given to the work of the Commission in view of the increasing value of the modernization of international trade law for global economic development and thus for the maintenance of friendly relations among States,

Stressing the value of the participation by States at all levels of economic development and from different legal systems in the process of harmonizing and unifying international trade law,

Having considered the report of the Commission on the work of its thirty-fourth session,

Concerned that activities undertaken by other bodies of the United Nations system in the field of international trade law without coordination with the Commission might lead to undesirable duplication of efforts and would not be in keeping with the aim of promoting efficiency, consistency and coherence in the unification and harmonization of international trade law, as stated in its resolution 37/106 of 16 December 1982,

Stressing the importance of the further development of case law on United Nations Commission on International Trade Law texts in promoting the uniform application of the legal texts of the Commission and its value for government officials, practitioners and academics,

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session;

2. *Takes note with satisfaction* of the completion and adoption by the Commission of the draft Convention on the Assignment of Receivables in International Trade and of the United Nations Commission on International Trade Law Model Law on Electronic Signatures;

3. *Takes note* of the progress made in the work of the Commission on arbitration and insolvency law and of its decision to commence work on electronic contracting, privately financed infrastructure projects, security interests and transport law, and expresses its appreciation to the Commission for its decision to adjust its working methods in order to accommodate its increased workload without endangering the high quality of its work;

4. *Expresses its appreciation* to the secretariat of the Commission for the publication and distribution of the *Legislative Guide on Privately Financed Infrastructure Projects*, calls upon the secretariat to ensure, in a joint effort with intergovernmental organizations such as the regional commissions of the United Nations, the United Nations Development Programme, the United Nations Industrial Development Organization, organizations of the World Bank Group and regional development banks, wide dissemination of the *Legislative Guide*, and invites States to give favourable consideration to its provisions when revising or adopting legislation in that area;

5. *Appeals* to Governments that have not yet done so to reply to the questionnaire circulated by the Secretariat in relation to the legal regime governing the recognition and enforcement of foreign arbitral awards and, in particular, to the legislative implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958;

6. *Invites* States to nominate persons to work with the private foundation established to encourage assistance to the Commission from the private sector;

7. *Reaffirms* the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field and, in this connection:

(a) Calls upon all bodies of the United Nations system and invites other international organizations to bear in mind the mandate of the Commission and the need to avoid duplication of effort and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law;

(b) Recommends that the Commission, through its secretariat, continue to maintain close cooperation with the other international organs and organizations, including regional organizations, active in the field of international trade law;

8. *Also reaffirms* the importance, in particular for developing countries, of the work of the Commission concerned with training and technical assistance in the field of international trade law, such as assistance in the preparation of national legislation based on legal texts of the Commission;

9. *Expresses the desirability* of increased efforts by the Commission, in sponsoring seminars and symposia, to provide such training and technical assistance, and in this connection:

(a) Expresses its appreciation to the Commission for organizing seminars and briefing missions in Belarus, Burkina Faso, China, Colombia, Croatia, Cuba, the Dominican Republic, Egypt, Kenya, Lithuania, Peru, the Republic of Korea, Tunisia, Ukraine and Uzbekistan;

(b) Expresses its appreciation to the Governments whose contributions enabled the seminars and briefing

missions to take place, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the United Nations Commission on International Trade Law Trust Fund for Symposia and, where appropriate, to the financing of special projects, and otherwise to assist the secretariat of the Commission in financing and organizing seminars and symposia, in particular in developing countries, and in the award of fellowships to candidates from developing countries to enable them to participate in such seminars and symposia;

10. *Appeals* to the United Nations Development Programme and other bodies responsible for development assistance, such as the International Bank for Reconstruction and Development and the European Bank for Reconstruction and Development, as well as to Governments in their bilateral aid programmes, to support the training and technical assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission;

11. *Appeals* to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to make voluntary contributions to the trust fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General;

12. *Decides*, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to continue, in the competent Main Committee during the fifty-sixth session of the General Assembly, its consideration of granting travel assistance to the least developed countries that are members of the Commission, at their request and in consultation with the Secretary-General;

13. *Reiterates*, in view of the increased work programme of the Commission, its request to the Secretary-General to strengthen the secretariat of the Commission within the bounds of the resources available in the Organization so as to ensure and enhance the effective implementation of the programme of the Commission;

14. *Requests* the Secretary-General to adjust the terms of reference of the United Nations Commission on International Trade Law Trust Fund for Symposia so as to make it possible for the resources in the Trust Fund to be used also for the financing of training and technical assistance activities undertaken by the Secretariat;

15. *Stresses* the importance of bringing into effect the conventions emanating from the work of the Commission for the global unification and harmonization of international trade law, and to this end urges States that have not yet done so to consider signing, ratifying or acceding to those conventions.

Electronic commerce

Model law on electronic signatures and draft guide

UNCITRAL, at its June/July session, had for its consideration the draft model law on electronic signatures, which the Working Group on Electronic Commerce had completed at its thirty-seventh session (18-19 September 2000); the comments received from Governments and international organizations on that draft; and the revised draft guide to the enactment of the UNCITRAL model law, prepared by the Secretariat based on the Working Group's deliberations and decisions during its thirty-eighth session (12-23 March 2001).

Having debated the proposals for amending draft articles 2, 5 and 7-12 of the draft model law in the light of the comments submitted by Governments and international organizations, UNCITRAL conducted a systematic review of the entire set of draft model law articles, as well as of the draft guide to enactment, which, it found, adequately implemented its intent to assist States in enacting and applying the model law. UNCITRAL requested the Secretariat to prepare the definitive version of the guide and to publish it, together with the text of the draft model law.

On 5 July, having completed consideration of the revised text of the draft model law and the definitive draft guide to enactment, UNCITRAL adopted the UNCITRAL Model Law on Electronic Signatures as it appeared in annex II to its report [A/56/17], together with the Guide to Enactment of the Model Law; requested the Secretary-General to transmit the texts to Governments and other interested bodies; and recommended that all States give favourable consideration to them, as well as to the 1996 Model Law on Electronic Commerce [YUN 1996, p. 1236], when enacting or revising their relevant laws.

Future work

For its discussion of possible future work on electronic commerce, UNCITRAL considered its Working Group's recommendations arrived at following the Group's 2001 review of proposals based on notes dealing with a possible convention to remove obstacles to electronic commerce in existing international conventions, dematerialization of documents of title and electronic contracting.

Those recommendations called for the preparation, on a priority basis, of an international instrument dealing with selected issues on electronics contracting and for the Secretariat to prepare studies on three other topics: a comprehensive survey of possible legal barriers to the development of electronic commerce in international instruments; a further study of the issues related to transfer of rights, in particular rights in tangible goods, by electronic means and mechanisms for publicizing and keeping a record of acts of transfer or the creation of security inter-

ests in such goods; and a study of the UNCITRAL Model Law on International Commercial Arbitration (1985) [YUN 1985, p. 1192] and the UNCITRAL Arbitration Rules [YUN 1976, p. 823], to assess their appropriateness for meeting the specific needs of online arbitration.

Taking note of the exchange of views on those recommendations, UNCITRAL decided that they should be reconsidered during deliberations on its overall work programme by the Working Group in 2002.

GENERAL ASSEMBLY ACTION

On 12 December [meeting 85], the General Assembly, on the recommendation of the Sixth Committee [A/56/588 & Corr.1], adopted **resolution 56/80** without vote [agenda item 161].

Model Law on Electronic Signatures of the United Nations Commission on International Trade Law

The General Assembly,

Recalling its resolution 2205(XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law, with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, particularly those of developing countries, in the extensive development of international trade,

Noting that an increasing number of transactions in international trade are carried out by means of communication commonly referred to as electronic commerce, which involves the use of alternatives to paper-based forms of communication, storage and authentication of information,

Recalling the recommendation on the legal value of computer records adopted by the Commission at its eighteenth session, in 1985, and paragraph 5 *(b)* of General Assembly resolution 40/71 of 11 December 1985, in which the Assembly called upon Governments and international organizations to take action, where appropriate, in conformity with the recommendation of the Commission, so as to ensure legal security in the context of the widest possible use of automated data processing in international trade,

Recalling also that the Model Law on Electronic Commerce was adopted by the Commission at its twenty-ninth session, in 1996, and complemented by an additional article, 5 bis, adopted by the Commission at its thirty-first session, in 1998, and recalling paragraph 2 of General Assembly resolution 51/162 of 16 December 1996, in which the Assembly recommended that all States should give favourable consideration to the Model Law when enacting or revising their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information,

Convinced that the Model Law on Electronic Commerce is of significant assistance to States in enabling or facilitating the use of electronic commerce, as demonstrated by the enactment of the Model Law in a number of countries and its universal recognition as an essential reference in the field of electronic commerce legislation,

Mindful of the great utility of new technologies used for personal identification in electronic commerce and commonly referred to as electronic signatures,

Desiring to build on the fundamental principles underlying article 7 of the Model Law on Electronic Commerce with respect to the fulfilment of the signature function in an electronic environment, with a view to promoting reliance on electronic signatures for producing legal effect where such electronic signatures are functionally equivalent to handwritten signatures,

Convinced that legal certainty in electronic commerce will be enhanced by the harmonization of certain rules on the legal recognition of electronic signatures on a technologically neutral basis and by the establishment of a method to assess in a technologically neutral manner the practical reliability and the commercial adequacy of electronic signature techniques,

Believing that the Model Law on Electronic Signatures will constitute a useful addition to the Model Law on Electronic Commerce and significantly assist States in enhancing their legislation governing the use of modern authentication techniques and in formulating such legislation where none currently exists,

Being of the opinion that the establishment of model legislation to facilitate the use of electronic signatures in a manner acceptable to States with different legal, social and economic systems could contribute to the development of harmonious international economic relations,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for completing and adopting the Model Law on Electronic Signatures contained in the annex to the present resolution, and for preparing the Guide to Enactment of the Model Law;

2. *Recommends* that all States give favourable consideration to the Model Law on Electronic Signatures, together with the Model Law on Electronic Commerce adopted in 1996 and complemented in 1998, when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based forms of communication, storage and authentication of information;

3. *Recommends also* that all efforts be made to ensure that the Model Law on Electronic Commerce and the Model Law on Electronic Signatures, together with their respective Guides to Enactment, become generally known and available.

ANNEX

Model Law on Electronic Signatures of the United Nations Commission on International Trade Law

Article 1
Sphere of application

This Law applies where electronic signatures are used in the context of commercial activities. It does not override any rule of law intended for the protection of consumers.

Article 2
Definitions

For the purposes of this Law:

(a) "Electronic signature" means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in

relation to the data message and to indicate the signatory's approval of the information contained in the data message;

(b) "Certificate" means a data message or other record confirming the link between a signatory and signature creation data;

(c) "Data message" means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

(d) "Signatory" means a person that holds signature creation data and acts either on its own behalf or on behalf of the person it represents;

(e) "Certification service provider" means a person that issues certificates and may provide other services related to electronic signatures;

(f) "Relying party" means a person that may act on the basis of a certificate or an electronic signature.

Article 3
Equal treatment of signature technologies

Nothing in this Law, except article 5, shall be applied so as to exclude, restrict or deprive of legal effect any method of creating an electronic signature that satisfies the requirements referred to in article 6, paragraph 1, or otherwise meets the requirements of applicable law.

Article 4
Interpretation

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 5
Variation by agreement

The provisions of this Law may be derogated from or their effect may be varied by agreement, unless that agreement would not be valid or effective under applicable law.

Article 6
Compliance with a requirement for a signature

1. Where the law requires a signature of a person, that requirement is met in relation to a data message if an electronic signature is used that is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.

2. Paragraph 1 applies whether the requirement referred to therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.

3. An electronic signature is considered to be reliable for the purpose of satisfying the requirement referred to in paragraph 1 if:

(a) The signature creation data are, within the context in which they are used, linked to the signatory and to no other person;

(b) The signature creation data were, at the time of signing, under the control of the signatory and of no other person;

(c) Any alteration to the electronic signature, made after the time of signing, is detectable; and

(d) Where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.

4. Paragraph 3 does not limit the ability of any person:

(a) To establish in any other way, for the purpose of satisfying the requirement referred to in paragraph 1, the reliability of an electronic signature; or

(b) To adduce evidence of the non-reliability of an electronic signature.

5. The provisions of this article do not apply to the following: [. . .].

Article 7
Satisfaction of article 6

1. [*Any person, organ or authority, whether public or private, specified by the enacting State as competent*] may determine which electronic signatures satisfy the provisions of article 6 of this Law.

2. Any determination made under paragraph 1 shall be consistent with recognized international standards.

3. Nothing in this article affects the operation of the rules of private international law.

Article 8
Conduct of the signatory

1. Where signature creation data can be used to create a signature that has legal effect, each signatory shall:

(a) Exercise reasonable care to avoid unauthorized use of its signature creation data;

(b) Without undue delay, utilize means made available by the certification service provider pursuant to article 9 of this Law, or otherwise use reasonable efforts, to notify any person that may reasonably be expected by the signatory to rely on or to provide services in support of the electronic signature if:

(i) The signatory knows that the signature creation data have been compromised; or

(ii) The circumstances known to the signatory give rise to a substantial risk that the signature creation data may have been compromised;

(c) Where a certificate is used to support the electronic signature, exercise reasonable care to ensure the accuracy and completeness of all material representations made by the signatory that are relevant to the certificate throughout its life cycle or that are to be included in the certificate.

2. A signatory shall bear the legal consequences of its failure to satisfy the requirements of paragraph 1.

Article 9
Conduct of the certification service provider

1. Where a certification service provider provides services to support an electronic signature that may be used for legal effect as a signature, that certification service provider shall:

(a) Act in accordance with representations made by it with respect to its policies and practices;

(b) Exercise reasonable care to ensure the accuracy and completeness of all material representations made by it that are relevant to the certificate throughout its life cycle or that are included in the certificate;

(c) Provide reasonably accessible means that enable a relying party to ascertain from the certificate:

(i) The identity of the certification service provider;

(ii) That the signatory that is identified in the certificate had control of the signature creation data at the time when the certificate was issued;

(iii) That signature creation data were valid at or before the time when the certificate was issued;

(d) Provide reasonably accessible means that enable a relying party to ascertain, where relevant, from the certificate or otherwise:

(i) The method used to identify the signatory;

(ii) Any limitation on the purpose or value for which the signature creation data or the certificate may be used;

(iii) That the signature creation data are valid and have not been compromised;

(iv) Any limitation on the scope or extent of liability stipulated by the certification service provider;

(v) Whether means exist for the signatory to give notice pursuant to article 8, paragraph 1 *(b)*, of this Law;

(vi) Whether a timely revocation service is offered;

(e) Where services under subparagraph *(d)* (v) are offered, provide a means for a signatory to give notice pursuant to article 8, paragraph 1 *(b)*, of this Law and, where services under subparagraph *(d)* (vi) are offered, ensure the availability of a timely revocation service;

(f) Utilize trustworthy systems, procedures and human resources in performing its services.

2. A certification service provider shall bear the legal consequences of its failure to satisfy the requirements of paragraph 1.

Article 10

Trustworthiness

For the purposes of article 9, paragraph 1 *(f)*, of this Law in determining whether, or to what extent, any systems, procedures and human resources utilized by a certification service provider are trustworthy, regard may be had to the following factors:

(a) Financial and human resources, including existence of assets;

(b) Quality of hardware and software systems;

(c) Procedures for processing of certificates and applications for certificates and retention of records;

(d) Availability of information to signatories identified in certificates and to potential relying parties;

(e) Regularity and extent of audit by an independent body;

(f) The existence of a declaration by the State, an accreditation body or the certification service provider regarding compliance with or existence of the foregoing; or

(g) Any other relevant factor.

Article 11

Conduct of the relying party

A relying party shall bear the legal consequences of its failure:

(a) To take reasonable steps to verify the reliability of an electronic signature; or

(b) Where an electronic signature is supported by a certificate, to take reasonable steps:

(i) To verify the validity, suspension or revocation of the certificate; and

(ii) To observe any limitation with respect to the certificate.

Article 12

Recognition of foreign certificates and electronic signatures

1. In determining whether, or to what extent, a certificate or an electronic signature is legally effective, no regard shall be had:

(a) To the geographic location where the certificate is issued or the electronic signature created or used; or

(b) To the geographic location of the place of business of the issuer or signatory.

2. A certificate issued outside [*the enacting State*] shall have the same legal effect in [*the enacting State*] as a certificate issued in [*the enacting State*] if it offers a substantially equivalent level of reliability.

3. An electronic signature created or used outside [*the enacting State*] shall have the same legal effect in [*the enacting State*] as an electronic signature created or used in [*the enacting State*] if it offers a substantially equivalent level of reliability.

4. In determining whether a certificate or an electronic signature offers a substantially equivalent level of reliability for the purposes of paragraph 2 or 3, regard shall be had to recognized international standards and to any other relevant factors.

5. Where, notwithstanding paragraphs 2, 3 and 4, parties agree, as between themselves, to the use of certain types of electronic signatures or certificates, that agreement shall be recognized as sufficient for the purposes of cross-border recognition, unless that agreement would not be valid or effective under applicable law.

Convention on assignment of receivables

In continuation of its work on uniform legislation on assignment in receivables financing, UNCITRAL had before it the consolidated version of the draft convention on assignment of receivables in international trade [A/CN.9/486], a revised version of the analytical commentary on the draft convention prepared by the Secretariat, comments by Governments and international organizations, and a Secretariat report on pending and other issues.

UNCITRAL reviewed the draft convention texts of articles 18-47, the annex to the draft convention comprising articles 1-9, the title and preamble; and reconsidered articles 1-17, which had been adopted in 2000 [YUN 2000, p. 1278], as well as articles 37 and 38. UNCITRAL subsequently referred the revised draft texts to a Secretariat drafting group for review so as to ensure consistency among the various language versions and requested the Secretariat to prepare a revised version of the commentary.

On 2 July, following its adoption of the draft Convention and annex as a whole, as contained in the drafting group's report, UNCITRAL adopted a decision, submitting to the General Assembly the draft Convention, as set forth in annex I to its report [A/56/17], with a recommendation that the

Assembly consider it with a view to concluding a UN Convention on the Assignment of Receivables in International Trade.

GENERAL ASSEMBLY ACTION

On 12 December [meeting 85], the General Assembly, on the recommendation of the Sixth Committee [A/56/588 & Corr.1], adopted **resolution 56/81** without vote [agenda item 161].

United Nations Convention on the Assignment of Receivables in International Trade

The General Assembly,

Recalling its resolution 2205(XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Considering that problems created by uncertainties as to the content and the choice of the legal regime applicable to the assignment of receivables constitute an obstacle to international trade,

Convinced that the adoption of a convention on the assignment of receivables in international trade will enhance transparency, contribute to overcoming the problems of uncertainties in this field and promote the availability of capital and credit at more affordable rates, while protecting existing assignment practices and facilitating the development of new practices, as well as ensuring adequate protection of the interests of debtors in assignments of receivables,

Recalling that, at its twenty-eighth session in 1995, the Commission decided to prepare uniform legislation on assignment in receivables financing and entrusted the Working Group on International Contract Practices with the preparation of a draft,

Noting that the Working Group on International Contract Practices devoted nine sessions, from 1995 to 2000, to the preparation of the draft Convention on the Assignment of Receivables in International Trade, and that the Commission considered the draft Convention at its thirty-third session in 2000 and at its thirty-fourth session in 2001,

Being aware that all States and interested international organizations were invited to participate in the preparation of the draft Convention at all the sessions of the Working Group and at the thirty-third and thirty-fourth sessions of the Commission, either as members or as observers, with a full opportunity to speak and make proposals,

Noting with satisfaction that the text of the draft Convention was circulated for comments once before the thirty-third session of the Commission and a second time in its revised version before the thirty-fourth session of the Commission to all Governments and international organizations invited to attend the meetings of the Commission and the Working Group as observers, and that the comments received were before the Commission at its thirty-third and thirty-fourth sessions,

Taking note with satisfaction of the decision of the Commission at its thirty-fourth session to submit the draft Convention to the General Assembly for its consideration,

Taking note of the draft Convention adopted by the Commission,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for preparing the draft Convention on the Assignment of Receivables in International Trade;

2. *Adopts and opens for signature or accession* the United Nations Convention on the Assignment of Receivables in International Trade, contained in the annex to the present resolution;

3. *Calls upon* all Governments to consider becoming party to the Convention.

ANNEX

United Nations Convention on the Assignment of Receivables in International Trade

Preamble

The Contracting States,

Reaffirming their conviction that international trade on the basis of equality and mutual benefit is an important element in the promotion of friendly relations among States,

Considering that problems created by uncertainties as to the content and the choice of legal regime applicable to the assignment of receivables constitute an obstacle to international trade,

Desiring to establish principles and to adopt rules relating to the assignment of receivables that would create certainty and transparency and promote the modernization of the law relating to assignments of receivables, while protecting existing assignment practices and facilitating the development of new practices,

Desiring also to ensure adequate protection of the interests of debtors in assignments of receivables,

Being of the opinion that the adoption of uniform rules governing the assignment of receivables would promote the availability of capital and credit at more affordable rates and thus facilitate the development of international trade,

Have agreed as follows:

Chapter I
Scope of application

Article 1
Scope of application

1. This Convention applies to:

(a) Assignments of international receivables and to international assignments of receivables as defined in this chapter, if, at the time of conclusion of the contract of assignment, the assignor is located in a Contracting State; and

(b) Subsequent assignments, provided that any prior assignment is governed by this Convention.

2. This Convention applies to subsequent assignments that satisfy the criteria set forth in paragraph 1 *(a)* of this article, even if it did not apply to any prior assignment of the same receivable.

3. This Convention does not affect the rights and obligations of the debtor unless, at the time of conclusion of the original contract, the debtor is located in a Contracting State or the law governing the original contract is the law of a Contracting State.

4. The provisions of chapter V apply to assignments of international receivables and to international as-

signments of receivables as defined in this chapter independently of paragraphs 1 to 3 of this article. However, those provisions do not apply if a State makes a declaration under article 39.

5. The provisions of the annex to this Convention apply as provided in article 42.

Article 2

Assignment of receivables

For the purposes of this Convention:

(a) "Assignment" means the transfer by agreement from one person ("assignor") to another person ("assignee") of all or part of or an undivided interest in the assignor's contractual right to payment of a monetary sum ("receivable") from a third person ("the debtor"). The creation of rights in receivables as security for indebtedness or other obligation is deemed to be a transfer;

(b) In the case of an assignment by the initial or any other assignee ("subsequent assignment"), the person who makes that assignment is the assignor and the person to whom that assignment is made is the assignee.

Article 3

Internationality

A receivable is international if, at the time of conclusion of the original contract, the assignor and the debtor are located in different States. An assignment is international if, at the time of conclusion of the contract of assignment, the assignor and the assignee are located in different States.

Article 4

Exclusions and other limitations

1. This Convention does not apply to assignments made:

(a) To an individual for his or her personal, family or household purposes;

(b) As part of the sale or change in the ownership or legal status of the business out of which the assigned receivables arose.

2. This Convention does not apply to assignments of receivables arising under or from:

(a) Transactions on a regulated exchange;

(b) Financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions;

(c) Foreign exchange transactions;

(d) Inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments;

(e) The transfer of security rights in, sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary;

(f) Bank deposits;

(g) A letter of credit or independent guarantee.

3. Nothing in this Convention affects the rights and obligations of any person under the law governing negotiable instruments.

4. Nothing in this Convention affects the rights and obligations of the assignor and the debtor under special laws governing the protection of parties to transactions made for personal, family or household purposes.

5. Nothing in this Convention:

(a) Affects the application of the law of a State in which real property is situated to either:

(i) An interest in that real property to the extent that under that law the assignment of a receivable confers such an interest; or

(ii) The priority of a right in a receivable to the extent that under that law an interest in the real property confers such a right; or

(b) Makes lawful the acquisition of an interest in real property not permitted under the law of the State in which the real property is situated.

Chapter II
General provisions

Article 5

Definitions and rules of interpretation

For the purposes of this Convention:

(a) "Original contract" means the contract between the assignor and the debtor from which the assigned receivable arises;

(b) "Existing receivable" means a receivable that arises upon or before conclusion of the contract of assignment and "future receivable" means a receivable that arises after conclusion of the contract of assignment;

(c) "Writing" means any form of information that is accessible so as to be usable for subsequent reference. Where this Convention requires a writing to be signed, that requirement is met if, by generally accepted means or a procedure agreed to by the person whose signature is required, the writing identifies that person and indicates that person's approval of the information contained in the writing;

(d) "Notification of the assignment" means a communication in writing that reasonably identifies the assigned receivables and the assignee;

(e) "Insolvency administrator" means a person or body, including one appointed on an interim basis, authorized in an insolvency proceeding to administer the reorganization or liquidation of the assignor's assets or affairs;

(f) "Insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, in which the assets and affairs of the assignor are subject to control or supervision by a court or other competent authority for the purpose of reorganization or liquidation;

(g) "Priority" means the right of a person in preference to the right of another person and, to the extent relevant for such purpose, includes the determination whether the right is a personal or a property right, whether or not it is a security right for indebtedness or other obligation and whether any requirements necessary to render the right effective against a competing claimant have been satisfied;

(h) A person is located in the State in which it has its place of business. If the assignor or the assignee has a place of business in more than one State, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one State, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person;

(i) "Law" means the law in force in a State other than its rules of private international law;

(j) "Proceeds" means whatever is received in respect of an assigned receivable, whether in total or partial payment or other satisfaction of the receivable. The term includes whatever is received in respect of proceeds. The term does not include returned goods;

(k) "Financial contract" means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, equities, bonds, indices or any other financial instrument, any repurchase or securities lending transaction, and any other transaction similar to any transaction referred to above entered into in financial markets and any combination of the transactions mentioned above;

(l) "Netting agreement" means an agreement between two or more parties that provides for one or more of the following:

(i) The net settlement of payments due in the same currency on the same date whether by notation or otherwise;

(ii) Upon the insolvency or other default by a party, the termination of all outstanding transactions at their replacement or fair market values, conversion of such sums into a single currency and netting into a single payment by one party to the other; or

(iii) The set-off of amounts calculated as set forth in subparagraph *(l)* (ii) of this article under two or more netting agreements;

(m) "Competing claimant" means:

(i) Another assignee of the same receivable from the same assignor, including a person who, by operation of law, claims a right in the assigned receivable as a result of its right in other property of the assignor, even if that receivable is not an international receivable and the assignment to that assignee is not an international assignment;

(ii) A creditor of the assignor; or

(iii) The insolvency administrator.

Article 6

Party autonomy

Subject to article 19, the assignor, the assignee and the debtor may derogate from or vary by agreement provisions of this Convention relating to their respective rights and obligations. Such an agreement does not affect the rights of any person who is not a party to the agreement.

Article 7

Principles of interpretation

1. In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

2. Questions concerning matters governed by this Convention that are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Chapter III
Effects of assignment

Article 8
Effectiveness of assignments

1. An assignment is not ineffective as between the assignor and the assignee or as against the debtor or as against a competing claimant, and the right of an assignee may not be denied priority, on the ground that it is an assignment of more than one receivable, future receivables or parts of or undivided interests in receivables, provided that the receivables are described:

(a) Individually as receivables to which the assignment relates; or

(b) In any other manner, provided that they can, at the time of the assignment or, in the case of future receivables, at the time of conclusion of the original contract, be identified as receivables to which the assignment relates.

2. Unless otherwise agreed, an assignment of one or more future receivables is effective without a new act of transfer being required to assign each receivable.

3. Except as provided in paragraph 1 of this article, article 9 and article 10, paragraphs 2 and 3, this Convention does not affect any limitations on assignments arising from law.

Article 9
Contractual limitations on assignments

1. An assignment of a receivable is effective notwithstanding any agreement between the initial or any subsequent assignor and the debtor or any subsequent assignee limiting in any way the assignor's right to assign its receivables.

2. Nothing in this article affects any obligation or liability of the assignor for breach of such an agreement, but the other party to such agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

3. This article applies only to assignments of receivables:

(a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of real property;

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

Article 10
Transfer of security rights

1. A personal or property right securing payment of the assigned receivable is transferred to the assignee without a new act of transfer. If such a right, under the law governing it, is transferable only with a new act of transfer, the assignor is obliged to transfer such right and any proceeds to the assignee.

2. A right securing payment of the assigned receivable is transferred under paragraph 1 of this article notwithstanding any agreement between the assignor and the debtor or other person granting that right, lim-

iting in any way the assignor's right to assign the receivable or the right securing payment of the assigned receivable.

3. Nothing in this article affects any obligation or liability of the assignor for breach of any agreement under paragraph 2 of this article, but the other party to that agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not a party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

4. Paragraphs 2 and 3 of this article apply only to assignments of receivables:

(a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of real property;

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

5. The transfer of a possessory property right under paragraph 1 of this article does not affect any obligations of the assignor to the debtor or the person granting the property right with respect to the property transferred existing under the law governing that property right.

6. Paragraph 1 of this article does not affect any requirement under rules of law other than this Convention relating to the form or registration of the transfer of any rights securing payment of the assigned receivable.

Chapter IV
Rights, obligations and defences

Section I
Assignor and assignee

Article 11
Rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are determined by the terms and conditions set forth in that agreement, including any rules or general conditions referred to therein.

2. The assignor and the assignee are bound by any usage to which they have agreed and, unless otherwise agreed, by any practices they have established between themselves.

3. In an international assignment, the assignor and the assignee are considered, unless otherwise agreed, implicitly to have made applicable to the assignment a usage that in international trade is widely known to, and regularly observed by, parties to the particular type of assignment or to the assignment of the particular category of receivables.

Article 12
Representations of the assignor

1. Unless otherwise agreed between the assignor and the assignee, the assignor represents at the time of conclusion of the contract of assignment that:

(a) The assignor has the right to assign the receivable;

(b) The assignor has not previously assigned the receivable to another assignee; and

(c) The debtor does not and will not have any defences or rights of set-off.

2. Unless otherwise agreed between the assignor and the assignee, the assignor does not represent that the debtor has, or will have, the ability to pay.

Article 13
Right to notify the debtor

1. Unless otherwise agreed between the assignor and the assignee, the assignor or the assignee or both may send the debtor notification of the assignment and a payment instruction, but after notification has been sent only the assignee may send such an instruction.

2. Notification of the assignment or a payment instruction sent in breach of any agreement referred to in paragraph 1 of this article is not ineffective for the purposes of article 17 by reason of such breach. However, nothing in this article affects any obligation or liability of the party in breach of such an agreement for any damages arising as a result of the breach.

Article 14
Right to payment

1. As between the assignor and the assignee, unless otherwise agreed and whether or not notification of the assignment has been sent:

(a) If payment in respect of the assigned receivable is made to the assignee, the assignee is entitled to retain the proceeds and goods returned in respect of the assigned receivable;

(b) If payment in respect of the assigned receivable is made to the assignor, the assignee is entitled to payment of the proceeds and also to goods returned to the assignor in respect of the assigned receivable; and

(c) If payment in respect of the assigned receivable is made to another person over whom the assignee has priority, the assignee is entitled to payment of the proceeds and also to goods returned to such person in respect of the assigned receivable.

2. The assignee may not retain more than the value of its right in the receivable.

Section II
Debtor

Article 15
Principle of debtor protection

1. Except as otherwise provided in this Convention, an assignment does not, without the consent of the debtor, affect the rights and obligations of the debtor, including the payment terms contained in the original contract.

2. A payment instruction may change the person, address or account to which the debtor is required to make payment, but may not change:

(a) The currency of payment specified in the original contract; or

(b) The State specified in the original contract in which payment is to be made to a State other than that in which the debtor is located.

Article 16
Notification of the debtor

1. Notification of the assignment or a payment instruction is effective when received by the debtor if it is

in a language that is reasonably expected to inform the debtor about its contents. It is sufficient if notification of the assignment or a payment instruction is in the language of the original contract.

2. Notification of the assignment or a payment instruction may relate to receivables arising after notification.

3. Notification of a subsequent assignment constitutes notification of all prior assignments.

Article 17
Debtor's discharge by payment

1. Until the debtor receives notification of the assignment, the debtor is entitled to be discharged by paying in accordance with the original contract.

2. After the debtor receives notification of the assignment, subject to paragraphs 3 to 8 of this article, the debtor is discharged only by paying the assignee or, if otherwise instructed in the notification of the assignment or subsequently by the assignee in a writing received by the debtor, in accordance with such payment instruction.

3. If the debtor receives more than one payment instruction relating to a single assignment of the same receivable by the same assignor, the debtor is discharged by paying in accordance with the last payment instruction received from the assignee before payment.

4. If the debtor receives notification of more than one assignment of the same receivable made by the same assignor, the debtor is discharged by paying in accordance with the first notification received.

5. If the debtor receives notification of one or more subsequent assignments, the debtor is discharged by paying in accordance with the notification of the last of such subsequent assignments.

6. If the debtor receives notification of the assignment of a part of or an undivided interest in one or more receivables, the debtor is discharged by paying in accordance with the notification or in accordance with this article as if the debtor had not received the notification. If the debtor pays in accordance with the notification, the debtor is discharged only to the extent of the part or undivided interest paid.

7. If the debtor receives notification of the assignment from the assignee, the debtor is entitled to request the assignee to provide within a reasonable period of time adequate proof that the assignment from the initial assignor to the initial assignee and any intermediate assignment have been made and, unless the assignee does so, the debtor is discharged by paying in accordance with this article as if the notification from the assignee had not been received. Adequate proof of an assignment includes but is not limited to any writing emanating from the assignor and indicating that the assignment has taken place.

8. This article does not affect any other ground on which payment by the debtor to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund discharges the debtor.

Article 18
Defences and rights of set-off of the debtor

1. In a claim by the assignee against the debtor for payment of the assigned receivable, the debtor may raise against the assignee all defences and rights of set-off arising from the original contract, or any other contract that was part of the same transaction, of which the debtor could avail itself as if the assignment had not been made and such claim were made by the assignor.

2. The debtor may raise against the assignee any other right of set-off, provided that it was available to the debtor at the time notification of the assignment was received by the debtor.

3. Notwithstanding paragraphs 1 and 2 of this article, defences and rights of set-off that the debtor may raise pursuant to article 9 or 10 against the assignor for breach of an agreement limiting in any way the assignor's right to make the assignment are not available to the debtor against the assignee.

Article 19
Agreement not to raise defences or rights of set-off

1. The debtor may agree with the assignor in a writing signed by the debtor not to raise against the assignee the defences and rights of set-off that it could raise pursuant to article 18. Such an agreement precludes the debtor from raising against the assignee those defences and rights of set-off.

2. The debtor may not waive defences:

(a) Arising from fraudulent acts on the part of the assignee; or

(b) Based on the debtor's incapacity.

3. Such an agreement may be modified only by an agreement in a writing signed by the debtor. The effect of such a modification as against the assignee is determined by article 20, paragraph 2.

Article 20
Modification of the original contract

1. An agreement concluded before notification of the assignment between the assignor and the debtor that affects the assignee's rights is effective as against the assignee, and the assignee acquires corresponding rights.

2. An agreement concluded after notification of the assignment between the assignor and the debtor that affects the assignee's rights is ineffective as against the assignee unless:

(a) The assignee consents to it; or

(b) The receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.

3. Paragraphs 1 and 2 of this article do not affect any right of the assignor or the assignee arising from breach of an agreement between them.

Article 21
Recovery of payments

Failure of the assignor to perform the original contract does not entitle the debtor to recover from the assignee a sum paid by the debtor to the assignor or the assignee.

Section III
Third parties

Article 22
Law applicable to competing rights

With the exception of matters that are settled elsewhere in this Convention and subject to articles 23 and 24, the law of the State in which the assignor is located governs the priority of the right of an assignee in the assigned receivable over the right of a competing claimant.

Article 23
Public policy and mandatory rules

1. The application of a provision of the law of the State in which the assignor is located may be refused only if the application of that provision is manifestly contrary to the public policy of the forum State.

2. The rules of the law of either the forum State or any other State that are mandatory irrespective of the law otherwise applicable may not prevent the application of a provision of the law of the State in which the assignor is located.

3. Notwithstanding paragraph 2 of this article, in an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding article 22. A State may deposit at any time a declaration identifying any such preferential right.

Article 24
Special rules on proceeds

1. If proceeds are received by the assignee, the assignee is entitled to retain those proceeds to the extent that the assignee's right in the assigned receivable had priority over the right of a competing claimant in the assigned receivable.

2. If proceeds are received by the assignor, the right of the assignee in those proceeds has priority over the right of a competing claimant in those proceeds to the same extent as the assignee's right had priority over the right in the assigned receivable of that claimant if:

(a) The assignor has received the proceeds under instructions from the assignee to hold the proceeds for the benefit of the assignee; and

(b) The proceeds are held by the assignor for the benefit of the assignee separately and are reasonably identifiable from the assets of the assignor, such as in the case of a separate deposit or securities account containing only proceeds consisting of cash or securities.

3. Nothing in paragraph 2 of this article affects the priority of a person having against the proceeds a right of set-off or a right created by agreement and not derived from a right in the receivable.

Article 25
Subordination

An assignee entitled to priority may at any time subordinate its priority unilaterally or by agreement in favour of any existing or future assignees.

Chapter V
Autonomous conflict-of-laws rules

Article 26
Application of chapter V

The provisions of this chapter apply to matters that are:

(a) Within the scope of this Convention as provided in article 1, paragraph 4; and

(b) Otherwise within the scope of this Convention but not settled elsewhere in it.

Article 27
Form of a contract of assignment

1. A contract of assignment concluded between persons who are located in the same State is formally valid as between them if it satisfies the requirements of either the law which governs it or the law of the State in which it is concluded.

2. A contract of assignment concluded between persons who are located in different States is formally valid as between them if it satisfies the requirements of either the law which governs it or the law of one of those States.

Article 28
Law applicable to the mutual rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are governed by the law chosen by them.

2. In the absence of a choice of law by the assignor and the assignee, their mutual rights and obligations arising from their agreement are governed by the law of the State with which the contract of assignment is most closely connected.

Article 29
Law applicable to the rights and obligations of the assignee and the debtor

The law governing the original contract determines the effectiveness of contractual limitations on assignment as between the assignee and the debtor, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and whether the debtor's obligations have been discharged.

Article 30
Law applicable to priority

1. The law of the State in which the assignor is located governs the priority of the right of an assignee in the assigned receivable over the right of a competing claimant.

2. The rules of the law of either the forum State or any other State that are mandatory irrespective of the law otherwise applicable may not prevent the application of a provision of the law of the State in which the assignor is located.

3. Notwithstanding paragraph 2 of this article, in an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding paragraph 1 of this article.

Article 31
Mandatory rules

1. Nothing in articles 27 to 29 restricts the application of the rules of the law of the forum State in a situation where they are mandatory irrespective of the law otherwise applicable.

2. Nothing in articles 27 to 29 restricts the application of the mandatory rules of the law of another State with which the matters settled in those articles have a close connection if and insofar as, under the law of that other State, those rules must be applied irrespective of the law otherwise applicable.

Article 32
Public policy

With regard to matters settled in this chapter, the application of a provision of the law specified in this chapter may be refused only if the application of that provi-

sion is manifestly contrary to the public policy of the forum State.

Chapter VI
Final provisions

Article 33
Depositary

The Secretary-General of the United Nations is the depositary of this Convention.

Article 34
Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States at the Headquarters of the United Nations in New York until 31 December 2003.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. This Convention is open to accession by all States that are not signatory States as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 35
Application to territorial units

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may at any time declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.

2. Such declarations are to state expressly the territorial units to which this Convention extends.

3. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the assignor or the debtor is located in a territorial unit to which this Convention does not extend, this location is considered not to be in a Contracting State.

4. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the law governing the original contract is the law in force in a territorial unit to which this Convention does not extend, the law governing the original contract is considered not to be the law of a Contracting State.

5. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 36
Location in a territorial unit

If a person is located in a State which has two or more territorial units, that person is located in the territorial unit in which it has its place of business. If the assignor or the assignee has a place of business in more than one territorial unit, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one territorial unit, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person. A State with two or more territorial units may specify by declaration at any time other rules for determining the location of a person within that State.

Article 37
Applicable law in territorial units

Any reference in this Convention to the law of a State means, in the case of a State which has two or more territorial units, the law in force in the territorial unit. Such a State may specify by declaration at any time other rules for determining the applicable law, including rules that render applicable the law of another territorial unit of that State.

Article 38
Conflicts with other international agreements

1. This Convention does not prevail over any international agreement that has already been or may be entered into and that specifically governs a transaction otherwise governed by this Convention.

2. Notwithstanding paragraph 1 of this article, this Convention prevails over the Unidroit Convention on International Factoring ("the Ottawa Convention"). To the extent that this Convention does not apply to the rights and obligations of a debtor, it does not preclude the application of the Ottawa Convention with respect to the rights and obligations of that debtor.

Article 39
Declaration on application of chapter V

A State may declare at any time that it will not be bound by chapter V.

Article 40
Limitations relating to Governments and other public entities

A State may declare at any time that it will not be bound or the extent to which it will not be bound by articles 9 and 10 if the debtor or any person granting a personal or property right securing payment of the assigned receivable is located in that State at the time of conclusion of the original contract and is a Government, central or local, any subdivision thereof, or an entity constituted for a public purpose. If a State has made such a declaration, articles 9 and 10 do not affect the rights and obligations of that debtor or person. A State may list in a declaration the types of entity that are the subject of a declaration.

Article 41
Other exclusions

1. A State may declare at any time that it will not apply this Convention to specific types of assignment or to the assignment of specific categories of receivables clearly described in a declaration.

2. After a declaration under paragraph 1 of this article takes effect:

(a) This Convention does not apply to such types of assignment or to the assignment of such categories of receivables if the assignor is located at the time of conclusion of the contract of assignment in such a State; and

(b) The provisions of this Convention that affect the rights and obligations of the debtor do not apply if, at the time of conclusion of the original contract, the debtor is located in such a State or the law governing the original contract is the law of such a State.

3. This article does not apply to assignments of receivables listed in article 9, paragraph 3.

Article 42
Application of the annex

1. A State may at any time declare that it will be bound by:

(a) The priority rules set forth in section I of the annex and will participate in the international registration system established pursuant to section II of the annex;

(b) The priority rules set forth in section I of the annex and will effectuate such rules by use of a registration system that fulfils the purposes of such rules, in which case, for the purposes of section I of the annex, registration pursuant to such a system has the same effect as registration pursuant to section II of the annex;

(c) The priority rules set forth in section III of the annex;

(d) The priority rules set forth in section IV of the annex; or

(e) The priority rules set forth in articles 7 and 9 of the annex.

2. For the purposes of article 22:

(a) The law of a State that has made a declaration pursuant to paragraph 1 *(a)* or *(b)* of this article is the set of rules set forth in section I of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;

(b) The law of a State that has made a declaration pursuant to paragraph 1 *(c)* of this article is the set of rules set forth in section III of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;

(c) The law of a State that has made a declaration pursuant to paragraph 1 *(d)* of this article is the set of rules set forth in section IV of the annex, as affected by any declaration made pursuant to paragraph 5 of this article; and

(d) The law of a State that has made a declaration pursuant to paragraph 1 *(e)* of this article is the set of rules set forth in articles 7 and 9 of the annex, as affected by any declaration made pursuant to paragraph 5 of this article.

3. A State that has made a declaration pursuant to paragraph 1 of this article may establish rules pursuant to which contracts of assignment concluded before the declaration takes effect become subject to those rules within a reasonable time.

4. A State that has not made a declaration pursuant to paragraph 1 of this article may, in accordance with priority rules in force in that State, utilize the registration system established pursuant to section II of the annex.

5. At the time a State makes a declaration pursuant to paragraph 1 of this article or thereafter, it may declare that:

(a) It will not apply the priority rules chosen under paragraph 1 of this article to certain types of assignment or to the assignment of certain categories of receivables; or

(b) It will apply those priority rules with modifications specified in that declaration.

6. At the request of Contracting or Signatory States to this Convention comprising not less than one third of the Contracting and Signatory States, the depositary shall convene a conference of the Contracting and Signatory States to designate the supervising authority and the first registrar and to prepare or revise the regulations referred to in section II of the annex.

Article 43
Effect of declaration

1. Declarations made under articles 35, paragraph 1, 36, 37 or 39 to 42 at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

4. A State that makes a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

5. In the case of a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become applicable:

(a) Except as provided in paragraph 5 *(b)* of this article, that rule is applicable only to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 *(a)*;

(b) A rule that deals with the rights and obligations of the debtor applies only in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

6. In the case of a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become inapplicable:

(a) Except as provided in paragraph 6 *(b)* of this article, that rule is inapplicable to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 *(a)*;

(b) A rule that deals with the rights and obligations of the debtor is inapplicable in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

7. If a rule rendered applicable or inapplicable as a result of a declaration or withdrawal referred to in paragraph 5 or 6 of this article is relevant to the determination of priority with respect to a receivable for

which the contract of assignment is concluded before such declaration or withdrawal takes effect or with respect to its proceeds, the right of the assignee has priority over the right of a competing claimant to the extent that, under the law that would determine priority before such declaration or withdrawal takes effect, the right of the assignee would have priority.

Article 44
Reservations

No reservations are permitted except those expressly authorized in this Convention.

Article 45
Entry into force

1. This Convention enters into force on the first day of the month following the expiration of six months from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession with the depositary.

2. For each State that becomes a Contracting State to this Convention after the date of deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the appropriate instrument on behalf of that State.

3. This Convention applies only to assignments if the contract of assignment is concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 *(a)*, provided that the provisions of this Convention that deal with the rights and obligations of the debtor apply only to assignments of receivables arising from original contracts concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 3.

4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 *(a)*, the right of the assignee has priority over the right of a competing claimant with respect to the receivable to the extent that, under the law that would determine priority in the absence of this Convention, the right of the assignee would have priority.

Article 46
Denunciation

1. A Contracting State may denounce this Convention at any time by written notification addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

3. This Convention remains applicable to assignments if the contract of assignment is concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 *(a)*, provided that the provisions of this Convention that deal with the rights and obligations of the debtor remain applicable only to assignments of receivables arising from original contracts concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 *(a)*, the right of the assignee has priority over the right of a competing claimant with respect to the receivable to the extent that, under the law that would determine priority under this Convention, the right of the assignee would have priority.

Article 47
Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States to revise or amend it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Annex to the Convention

Section I
Priority rules based on registration

Article 1
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which data about the assignment are registered under section II of this annex, regardless of the time of transfer of the receivable. If no such data are registered, priority is determined by the order of conclusion of the respective contracts of assignment.

Article 2
Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned, and data about the assignment were registered under section II of this annex, before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Section II
Registration

Article 3
Establishment of a registration system

A registration system will be established for the registration of data about assignments, even if the relevant assignment or receivable is not international, pursuant to the regulations to be promulgated by the registrar and the supervising authority. Regulations promulgated by the registrar and the supervising authority under this annex shall be consistent with this annex. The regulations will prescribe in detail the manner in which the registration system will operate, as well as the procedure for resolving disputes relating to that operation.

Article 4
Registration

1. Any person may register data with regard to an assignment at the registry in accordance with this annex and the regulations. As provided in the regulations, the data registered shall be the identification of the assignor and the assignee and a brief description of the assigned receivables.

2. A single registration may cover one or more assignments by the assignor to the assignee of one or more existing or future receivables, irrespective of whether the receivables exist at the time of registration.

3. A registration may be made in advance of the assignment to which it relates. The regulations will establish the procedure for the cancellation of a registration in the event that the assignment is not made.

4. Registration or its amendment is effective from the time when the data set forth in paragraph 1 of this article are available to searchers. The registering party may specify, from options set forth in the regulations, a period of effectiveness for the registration. In the absence of such a specification, a registration is effective for a period of five years.

5. Regulations will specify the manner in which registration may be renewed, amended or cancelled and regulate such other matters as are necessary for the operation of the registration system.

6. Any defect, irregularity, omission or error with regard to the identification of the assignor that would result in data registered not being found upon a search based on a proper identification of the assignor renders the registration ineffective.

Article 5
Registry searches

1. Any person may search the records of the registry according to identification of the assignor, as set forth in the regulations, and obtain a search result in writing.

2. A search result in writing that purports to be issued by the registry is admissible as evidence and is, in the absence of evidence to the contrary, proof of the registration of the data to which the search relates, including the date and hour of registration.

Section III
Priority rules based on the time of the contract of assignment

Article 6
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order of conclusion of the respective contracts of assignment.

Article 7
Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Article 8
Proof of time of contract of assignment

The time of conclusion of a contract of assignment in respect of articles 6 and 7 of this annex may be proved by any means, including witnesses.

Section IV
Priority rules based on the time of notification of assignment

Article 9
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which notification of the respective assignments is received by the debtor. However, an assignee may not obtain priority over a prior assignment of which the assignee had knowledge at the time of conclusion of the contract of assignment to that assignee by notifying the debtor.

Article 10
Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned and notification was received by the debtor before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

DONE at . . ., this . . . day of . . . two thousand one, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

International commercial arbitration

Privately financed infrastructure projects

UNCITRAL took note of the results of the Colloquium on Privately Financed Infrastructure: Legal Framework and Technical Assistance (Vienna, 2-4 July), organized by the Secretariat with the co-sponsorship of the Public-Private Infrastructure Advisory Facility, a multi-donor technical assistance facility aimed at helping developing countries improve the quality of their infrastructure through private sector involvement. UNCITRAL agreed that the Colloquium's proceedings should be published by the United Nations and endorsed its recommendation that the Secretariat, in coordination with other organizations, should undertake joint initiatives to ensure widespread awareness of the 2000 UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects [YUN 2000, p. 1278].

In the light of the views expressed as to the desirability and feasibility of further work in pri-

vately financed infrastructure projects, UNCITRAL agreed that a working group should be entrusted with the task of drafting core model legislative provisions in that field.

Implementation of the 1958 New York Convention

UNCITRAL noted that, at the beginning of its June/July session, the Secretariat had received replies from 59 States parties (out of the current 125) to its questionnaire relating to the legal regime governing the recognition and enforcement of foreign awards in States parties to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) [YUN 1958, p. 390]. The Commission repeated its appeal to States parties to the Convention that had not replied to the questionnaire to do so as soon as possible, and requested the Secretariat to prepare, for a future UNCITRAL session, a note presenting the findings based on the analysis of the information gathered.

Commercial dispute settlement

UNCITRAL considered the report of the Working Group on Arbitration on its thirty-third (Vienna, 20 November–1 December 2000) and thirty-fourth (New York, 21 May–1 June 2001) sessions. It commended the Working Group for the progress accomplished regarding the three main issues under discussion, namely, the requirement of the written form for the arbitration agreement, interim measures of protection and the preparation of a model law on conciliation.

Regarding the first issue, it was pointed out that, while the Working Group should not lose sight of the importance of providing certainty as to the intent of the parties to arbitrate, it was equally important to work towards facilitating a more flexible interpretation of the strict form requirement contained in the 1958 New York Convention so as not to frustrate the parties' expectations when they agreed to arbitrate. In that respect, UNCITRAL took note of the possibility that the Working Group could examine further the meaning and effect of the more-favourable-right provision of article VII of the New York Convention. As to the second issue, the Working Group was requested to continue its work on the basis of revised draft provisions of the 1985 UNCITRAL Model Law on International Commercial Arbitration to be prepared by the Secretariat. On the third issue, it was requested to complete the examination of articles 1-16 of the draft model legislative provisions on conciliation as a matter of priority, with a view to presenting a draft model law on conciliation for review and adoption by UNCITRAL at its 2002 session.

Case law on UNCITRAL texts

UNCITRAL noted the ongoing work under the established system for the collection and dissemination of case law on UNCITRAL texts (CLOUT). It was noted that CLOUT was an important means of promoting the uniform interpretation and application of UNCITRAL texts by enabling interested persons, such as judges, arbitrators, lawyers or parties to commercial transactions, to take into account decisions and awards of other jurisdictions when rendering their own judgements or opinions or adjusting their actions to the prevailing interpretation of those texts. The Commission expressed appreciation to national correspondents for their work in the collection of relevant decisions and arbitral awards and the preparation of case abstracts, as well as to the Secretariat for compiling, editing, issuing and distributing abstracts.

Transport law

As requested by UNCITRAL, the Secretary-General submitted a report on possible future work in transport law, describing in particular the scope of and issues to be dealt with in a future legislative instrument on the carriage of goods by sea. Those issues included the scope of application of the instrument, the period of responsibility of the carrier, its obligations and liability, obligations of the shipper, transport documents, freight, delivery to the consignee, right of control of parties interested in the cargo during carriage, transfer of rights in goods, the party that had the right to bring an action against the carrier and the time bar for action against the carrier.

To consider the issues outlined in the report, UNCITRAL established a working group for which the Secretariat would prepare a preliminary working document containing drafts on possible solutions for a future instrument, and the International Maritime Committee would prepare alternatives and comments. UNCITRAL decided that the work should include issues of liability and that the working group should initially cover port-to-port transport operations, although it would be free to study the desirability and feasibility of dealing with door-to-door transport operations.

Model law on corporate insolvency

UNCITRAL considered the report on the UNCITRAL-INSOL-IBA Global Insolvency Colloquium (Vienna, 4-6 December 2000), which provided a forum for dialogue among insolvency

practitioners and experts, international organizations and government representatives on the work carried out by other organizations—the World Bank, the International Monetary Fund (IMF), the Asian Development Bank (ADB), the International Federation of Insolvency Professionals (INSOL) and the International Bar Association (IBA)—in the area of insolvency law reform. The report noted the key elements that an insolvency regime should address: eligibility and access criteria; bankruptcy estate; application of automatic stay; role of management; role of creditors/creditor committees; treatment of contractual obligations; avoidance actions; distribution priorities; and additional issues specific to reorganization (relationship between liquidation and reorganization; business operations and financing; and provisions specific to the reorganization plan).

UNCITRAL discussed the Colloquium's recommendations, in particular the form that future work might take and the interpretation of the mandate given to the Working Group in 2000 [YUN 2000, p. 1280]. The recommendations outlined three key areas for organizing the material for future work: the first would reflect the key component of the reports from the World Bank, IMF and ADB, setting out the core elements of an effective insolvency regime and considering alternative policy options and approaches to the different issues identified, including the impact of social and economic factors; the second would be a comparative analysis of some of the provisions and precedents already in existence in national legislation and international instruments; and the third would set forth recommendations or outlines of legislative provisions. UNCITRAL confirmed that the Working Group's mandate should be broadly interpreted to ensure an appropriately flexible work product in the form of a legislative guide.

Security interests

UNCITRAL considered a Secretariat note containing a study on the issue of security interests, requested by UNCITRAL to facilitate its consideration of future work in the area of secured transaction law. The study discussed the relationship between insolvency law and the law on security rights. It addressed issues pertaining to the development of model legislative solutions on security rights in general; the drafting of asset-specific model legislation, in particular securities and intellectual property rights; and private international law.

Following discussion of the foregoing study, UNCITRAL established a Working Group on Security Interests to develop an efficient legal regime for security rights in goods involved in a commercial activity, including inventory; and to identify the issues to be addressed, such as the form of the instrument, the exact scope of the assets that could serve as collateral, the perfection of security, the degree of formalities to be complied with, the need for an efficient and well-balanced enforcement regime, the scope of the debt that might be secured, the means of publicizing the existence of security rights, the limitations, if any, on the creditors entitled to the security right, the effects of bankruptcy on the enforcement of that right and the certainty and predictability of the creditor's priority over competing interests.

Emphasizing the importance of the subject matter and the need to consult with practitioners and organizations with the relevant expertise, UNCITRAL recommended that a two- or three-day colloquium be held before the first session of the Working Group in 2002.

Training and technical assistance

UNCITRAL had before it a Secretariat note indicating training and technical assistance activities undertaken since its 2000 session and the direction of future activities. It reported that five seminars/briefing missions and a symposium were held, and that for the remainder of 2001 only some requests from Africa, Asia, Latin America and Eastern Europe could be met due to insufficient resources.

UNCITRAL recommended that the General Assembly should request the Secretary-General to increase substantially the human and financial resources of its secretariat to enable it to implement fully its training and technical assistance programme. It reiterated its appeal to all States, international organizations and other interested entities for contributions to the UNCITRAL trust funds so as to enable its secretariat to meet the increasing demands in developing countries for training and assistance.

UNCITRAL membership

UNCITRAL consideration. On the question of the enlargement of its membership, UNCITRAL took note of the relevant background information prepared by the Secretariat to enable States to formulate a recommendation to the General Assembly. In that connection, it was observed that an enlarged UNCITRAL would, among other advantages, ensure representation of all legal traditions and economic systems, assist in better implementing its mandate by drawing on a correspondingly larger pool of experts, reflect the increased impor-

tance of international trade law for economic development and foster participation of those States that could not justify the resources for the preparation and attendance of UNCITRAL meetings unless they were members. In addition, no impact was foreseen on conference servicing by an increased membership.

A common theme in the debate on the size of the increase was the need to make UNCITRAL more representative of the Organization's membership without affecting its efficiency or working methods.

On 11 July, UNCITRAL recommended that the Assembly approve an increase in its membership from the current 36 States to 72, with the following distribution among the regional groups of the additional seats: 18 from the Group of African States, 14 from the Group of Asian States, 10 from the Group of Eastern European States, 12 from the Group of Latin American and Caribbean States and 18 from the Group of Western European and Other States; and elect the new members as soon as possible.

Report of Secretary-General. In response to General Assembly resolution 55/151 [YUN 2000, p. 1276], the Secretary-General submitted a report in August [A/56/315] on the implications of increasing UNCITRAL's membership. The report contained comments from 22 States in reply to his request for their views on the question. All supported an enlarged UNCITRAL, citing the need to align it with the increased UN membership so as to preserve its representative character, to make possible the participation of States in its work, the cost of which they could not justify unless they were members, and to promote the acceptability of UNCITRAL's work by broadening the spectrum of representation. The suggested increase ranged from 50 to at least 60 seats, which took into account the need to preserve UNCITRAL's efficiency.

By **decision 56/422** of 12 December, the Assembly deferred further consideration of and a decision on the enlargement of UNCITRAL's membership until its fifty-seventh (2002) session, under the item entitled "Report of the United Nations Commission on International Trade Law on the work of its thirty-fifth session".