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International Developments

Conventions and Agreements

Treaty between France, and the United States, Australia, New Zealand and the small South Pacific Islands for a Pacific Zone Free from Nuclear Contamination, Noumea, Caledonia, 25 November 1986.

The Treaty aims at eradicating nuclear and all other pollution from the region. It also paves the way for strict independent monitoring of French tests.

Convention on Early Notification of a Nuclear Accident 1986

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency 1986

The two Conventions, adopted on 26 September 1986 at a special session to the General Conference of the International Atomic Energy Agency (IAEA) in Vienna, will provide for early notification of nuclear accident and assistance in case of emergency.

The Conventions have been signed (as of October 1986) by 51 States including the United Kingdom. The Convention on early notification has entered into force on 27 October 1986 as the required minimum of three governments have signed it without reservations as to notification. It commits States Parties to provide early notification and information about nuclear accidents with possible transboundary effects. The other would commit parties to endeavour to provide assistance in the event of a nuclear accident. The Conventions would not apply to accidents involving nuclear weapons.

Australia

1977 Protocols Additional to the Geneva Conventions of 1949 and relating to the Protection of Victims of Armed Conflicts

The Acting Australian Minister for Foreign Affairs and the Deputy Prime Minister and Attorney-General have announced Australia's decision to ratify the 1977 Geneva Protocols additional to the 1949 Geneva Conventions on the Protection of War Victims.

The Ministers said that Australia had been a party to the Geneva Conventions, which deal with the treatment of the sick and wounded, prisoners of war and civilians in time of war, since 1958. They pointed out that the Geneva Protocols extended the protections spelt out in the Conventions to non-international conflicts; dealt in greater detail with matters such as civil defence; and tackled questions of the means and methods of warfare which the framers of the Conventions had not felt themselves able to do. In particular the Protocols prohibited indiscriminate attacks on civilians and civilian targets and required the selection of weapons to limit the effects as far as possible to the military target they were directed at.

The Ministers said that Australia had participated actively in the drafting of the Protocols and had signed them in December 1978. Since that time, the full ramifications of Australia's becoming party to them for the Australian Defence Force and for civil defence arrangements, had been exhaustively examined by the

relevant authorities. That examination had revealed no reason for Australia not to proceed to ratification. Indeed, insofar as he Protocols would improve the level of international legal protections available to Australian defence personnel and civilians in any future conflict with another party to them, there was every reason to ratify and encourage other nations to do likewise. Ratification would be arranged as soon as legislation necessary to implement certain of the provisions of Protocol I in domestic law, had been passed through Parliament.

Canada – Saskatchewan

Convention on the Civil Aspects of International Child Abduction 1980

On 11 August 1986 Canada declared, in accordance with Article 40, the extension of the Convention to the Province of Saskatchewan. Accordingly, the Convention entered into force for Saskatchewan on 1 November 1986.

The declaration of extension contains the following declarations and reservations—

Central Authority

In accordance with the provisions of Article 6, paragraph 2, the Minister of Justice of Saskatchewan is designated as the Central Authority for the Province of Saskatchewan.

Reservation

In accordance with the provisions of Article 42, and pursuant to Article 26, paragraph 3, the Government of Canada declares that, with respect to applications submitted under the Convention concerning the Province of Saskatchewan, Canada will assume the costs referred to in paragraph 2 of Article 26 only insofar as these costs are covered by the system of legal aid of the Province of Saskatchewan.

Other declarations and reservations

The Government of Canada further declares that it may at any time submit other declarations or reservations, pursuant to Articles 6, 40 and 42 of the Convention, with respect to other territorial units.

Turks and Caicos Islands

Agreement between the United Kingdom and Korea on the Promotion and Protection of Investments of 4 March 1976 has been extended to the Turks and Caicos Islands with effect from 8 February 1986 (Cmnd. 9894).

Agreement between the United Kingdom and Singapore on the Protection and Promotion of Investments of 22 July 1975 has been extended to the Turks and Caicos Islands with effect from 7 March 1986.

Tuvalu

Convention relating to the Status of Refugees 1951

Protocol relating to the Status of Refugees 1967

On 7 March 1986 Tuvalu succeeded to the Convention and Protocol. It also confirmed that as between the Parties to the Convention and Tuvalu, the Convention and the Protocol entered into force in October 1978 when Tuvalu assumed responsibilities for its international relations.

The declaration of succession also confirmed that the Convention continues to be in force subject to the reservations entered into by the United Kingdom for the colony of the Gilbert and Ellice Islands.

United Kingdom

Convention on the Civil Aspects of International Child Abduction 1980

On 25 June 1986 the United Kingdom accepted the accession of Hungarian People's Republic to the Convention. Accordingly, the Convention entered into force between the United Kingdom and the Hungarian People's Republic on 1 September 1986.

In accordance with Article 6(2) the United Kingdom has designated as Central Authority to which applications may be addressed for transmission to the appropriate Central authority—

The Lord Chancellor,
The Lord Chancellor's Department,
House of Lords,
London SW1A 0PW

Memorandum of understanding between the United Kingdom and the United States regulatory authorities on International Fraud and Malpractice in Financial Markets, 23 September 1986

A formal treaty on mutual assistance will be negotiated within 12 months and the memorandum will be amended when the UK's Financial Services Bill comes into force.

The agreement sets up a framework, within strict limits, for the obligatory exchange of information by the relevant agencies (UK: Department of Trade and Industry; US: SEC and Commodity Futures Trading Commission). The information requested must be precisely identified and it must be treated as confidential except when the violation specified in the request comes to be prosecuted. This means that the information must not be passed on to other government departments, or other unspecified recipients.

The information held by the regulator must be held for investment regulation or company law purposes if it is to be passed on under the agreement. The information must be returned to its source when the requesting authority has finished the proceedings for which it was needed.

The agreement covers investment businesses, including investment and merchant banks, brokers and market-makers, investment managers and advisers, securities clearing corporations, transfer agents, futures businesses, commodity trading advisers and pool operators, future and options brokers and dealers, and the staff of all these businesses.

The UK did not agree to the US suggestions that the agreement should allow for extraterritorial subpoenas and discovery orders. Powers of search and seizure of evidence which the authorities have for domestic investigations may not be used solely for the benefit of the foreign authority, but an authority may supply information if evidence seized in a domestic investigation suggests a breach of the foreign regulations.

The agreement provides a consultation process by which it may be adapted to changes in market or business conditions or regulations, or if one authority refuses to comply with a request on grounds of public interest or otherwise.

The memorandum of understanding will cease to have effect if any of the authorities give 30 days' advance notice in writing.

Legislation

Canada—Alberta

International Child Abduction Act 1986

This Act implements the Convention on the Civil Aspects of International Child Abduction signed at the Hague on 25 October 1980. The Attorney-General or his designate is to be the Central Authority for the purposes of the Convention.

International Commercial Arbitration Act 1986

This Act implements the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration in New York on 10 June 1958, as well as the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985.

The Convention applies to arbitral awards and arbitration agreements whether made before or after the coming into force of Part 1 of the Act, but applies only in respect of differences arising out of commercial legal relationships, whether contractual or not.

The Model Law (or the "International Law" as defined in the Act) applies to international commercial arbitration agreements and awards, whether made before or after the coming into force of Part 2 of the Act.

Canada—Manitoba

International Commercial Arbitration Act 1986

This Act implements the Convention on the Recognition and Enforcement on Foreign Arbitral Awards adopted by the United Nations in June 1958 and the Model Law on International Commercial Arbitration adopted by the United Nations in June 1985 as part of the law of Manitoba.

Montserrat

Reciprocal Enforcement of Judgments (Australian Territories) Order 1986

The Order, which entered into force on 1 September 1986 enables the reciprocal enforcement of judgments.

At the request of the Australian Government and in accordance with s. 6(1) of its Reciprocal Enforcement of Judgments Act (Cap. 67) has provided for the reciprocal enforcement of judgments with the following Australian Territories—

1. Australia Antarctic Territory
2. Heard and Mc Donald Island Territory
3. Coral Sea Island Territory
4. Territory of Ashmore and Cartier Islands
5. Territory of Cocos (Keeling) Island
6. Christmas Island

St Vincent and The Grenadines

Civil Aviation (Tokyo Convention) Act 1986

This Act enables the ratification of the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft 1963.

The Act also gives effect to certain provisions relating to piracy of the Geneva Convention on the High Seas 1958.

United Kingdom

Civil Jurisdiction and Judgments Act 1982

The United Kingdom ratified the 1978 Accession Convention to the 1968 Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters on 7 October 1986. The Convention therefore entered into force for the United Kingdom on 1 January 1987 and the Lord Chancellor and the Lord Advocate proposed to bring the Civil Jurisdiction and Judgments Act 1982 into force on that day.

The Convention will have a considerable effect on cases with an international element since it provides detailed rules on the founding of jurisdiction. It will also provide for "free movement of judgments" between those members of the European Community who have ratified the Convention. The Convention will enter into force on 1 January 1987 between the UK and Belgium, Denmark, France, Germany, Italy, Luxembourg, and the Netherlands.

In other words, there will be certainty as to which country's courts have jurisdiction over a given case and when a judgment in one country needs to be enforced in another country. This can be done by a simple registration procedure which will equate the 'foreign' judgment with a judgment of that country's own courts for enforcement purposes. For example a UK citizen injured in England by a French motorist can sue (under Article 5(3) of the Convention) in the English courts; if he obtains a judgment for damages this is simply transmitted to and registered in the French courts and enforcement will take place as if it were a French judgment.

Background

Some sections of the Civil Jurisdiction and Judgments Act 1982 are already in force but the prime purpose of the Act is to enable the UK to ratify the 1978 Accession Convention to the 1968 Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (The Judgments Convention). The Convention unifies the rules of jurisdiction applicable in the Member States over a wide range of civil proceedings where the defendant is domiciled in any of those States. Domicile, for the purposes of the 1982 Act, means ordinary or habitual residence or, in the case of a company, its place of incorporation or of central management and control.

Where the defendant is domiciled outside the contracting States to the Convention, the Convention does not generally apply and existing provisions on jurisdiction can therefore be continued. The Convention further provides that judgments given in one contracting State will be recognised and enforced throughout the contracting States under simplified conditions.

The main rule of the Convention is that a defendant domiciled in a contracting State should be sued in that State. But the Convention does not specify in which particular part of that State the defendant must be sued. For the United Kingdom, with its three separate legal jurisdictions the Act provides that each jurisdiction will be treated as if it were a separate contracting State to the Convention so that a person domiciled in, say, Scotland should be sued there unless an alternative ground of jurisdiction exists in England and Wales or Northern Ireland.

Entry into Force

By Article 39 of the 1978 Accession Convention the Convention enters into force on the first day of the third month following the deposit of the last Instrument of ratification by the original Member States of the community and one new Member State. Belgium deposited its Instrument of ratification on 21 August 1986 and Denmark deposited its Instrument on 28 August 1986 so that the Convention enters into force as between the six original Member States and Denmark on 1 November 1986. Since, however, entry into force for the UK will represent a fairly major upheaval, the Lord Chancellor and the Lord Advocate decided that it would not be appropriate for the Convention to enter into force in the course of a legal term. The date of 1 January 1987 is a date which will not cause confusion.

Recognition of Trusts Bill 1986

This Bill would enable the United Kingdom to implement the recent Hague Convention on the Law Applicable to Trusts and on their Recognition.

At the instigation of the United Kingdom, the Hague Conference on Private International Law has negotiated a Convention on the Law applicable to trusts and on their recognition. It was adopted in draft by contracting States (including the United Kingdom) in 1984 and was signed on behalf of the United Kingdom in January 1986.

The Convention establishes common principles on the law governing trusts, analogous to existing United Kingdom principles. It provides that trusts to which the Convention applies will be recognised by States adopting the Convention. This will enable United Kingdom trusts to be recognised in States which, until now, have not recognised the concept of trust in their own systems of law.

One advantage of the Convention for the United Kingdom is that trusts (including commercial trusts) can invest overseas without risk that the trust moneys (which, although held by trustees, belong to the beneficiaries of the trust) will be seized in payment of the trustees' personal debts and liabilities.

Judicial Decisions

International Court of Justice**Special Chamber to deal with frontier dispute and legal regime in islands and maritime areas**

On 11 December 1986 El Salvador and Honduras notified the Court, by means of a joint letter, of a Special Agreement which was signed between them on 24 May 1986 and entered into force on 1 October 1986. This Special Agreement refers the following two matters to a Chamber to be constituted by the Court—

1. the delimitation of parts of the land frontier between the two States; and
2. the determination of the legal situation in islands and maritime areas.

Delimitation of part of common frontier—whether decolonization boundaries to apply

By a special agreement dated 16 September 1983 the Republic of Upper Volta (known as Burkina Faso since 4 August 1984) and the Republic of Mali agreed to submit to a chamber of the Court a dispute relating to the delimitation of part of their common frontier.

The Court acceded to the request by the two Governments to form a Special Chamber of five judges. The Chamber, whose judgment has the effect of that of the full Court and which was accepted as binding and to be effected within a year by the parties, was also asked to nominate three experts to assist in the demarcation.

The Court has held that—

1. Both states derived their existence from the process of decolonization which had been unfolding in Africa during the past 30 years. Their territories and that of Niger were formerly part of French West Africa.

Burkina Faso corresponded to the colony of Upper Volta and Mali to Sudan (formerly French Sudan). Both parties stated the settlement should be based on respect for the principle of the intangibility of frontiers inherited from colonization.

2. *The Principle*

In those circumstances, the Court could not disregard the principle of *uti possidetis juris*. It emphasised the general scope of the principle in matters of decolonization and its exceptional importance for the African continent. Although invoked for the first time in Spanish America, the principle was not a rule pertaining solely to one specific system of international law.

It was a general principle logically connected with the phenomenon of the obtaining of independence and its obvious purpose was to prevent the independence and stability of new states being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power.

The principle accorded pre-eminence to legal title over effective possession as a basis of sovereignty. Its primary aim was to secure respect for the territorial boundaries which existed when independence was achieved.

When those boundaries were delimitations between different administrative divisions or colonies subject to the same sovereign the application of the principle resulted in their being transformed into international boundaries, as in the instant case.

The principle appeared to conflict with the right of peoples to self-determination; however, the maintenance of territorial *status quo* in Africa was often seen as the wisest course. The essential requirement of stability in order to survive and develop had induced African states to consent to the maintenance of colonial frontiers.

3. *Equity*

The chamber could not decide *ex aequo et bono* since the parties had not asked it to do so; but it would have regard to equity *infra legem*, that form of equity which constituted a method of interpretation of the law in force and which was based on law

4. *French colonial law*

The parties agreed that the delimitation of the frontier had to be appraised in the light of the French colonial law. The line to be determined as that which existed in 1959–60 was originally no more than an administrative boundary dividing two former French overseas territories and as such was defined at that time not according to international law but according to the relevant French legislation.

International law, and therefore the principle of *uti possidetis*, applied as from the accession of independence but had no retroactive effect. The principle froze the territorial title; it stopped the clock but it did not put back the hands.

International law did not effect any return to the law of the colonizing state, which was but one factual element among others, evidence indicative of the colonial heritage at the critical date.

5. *Administrative heritage*

French West Africa was headed by a Governor-General and divided into colonies, headed by a Lieutenant-Governor. Colonies were subdivided into *cercles* headed by a Commandant.

Mali gained its independence in 1960 succeeding the Sudanese Republic which had emerged from the French Sudan.

Upper Volta came into being in 1919, was abolished in 1932 and reconstituted in 1947, with the 1932 boundaries, and gained independence in 1960.

The problem for the Court was to ascertain what in the disputed area was the frontier which existed in 1959–60 between Sudan and Upper Volta.

Both parties agreed that when they became independent there was a definite frontier and both accepted that no modification had taken place since.

6. *Tripoint problem*

The easternmost point of the disputed frontier, the tripoint Niger-Mali-Burkina Faso, gave rise to conflict between the parties. Mali claimed that it could not be determined without Niger's agreement, and Burkina Faso considered that the Court had to reach a decision.

The Court held that its jurisdiction was not restricted merely because the end-point of the disputed frontier lay on the frontier of a third state not a party to the proceedings.

The rights of Niger were in any event safeguarded by Article 59 of the Statute of the Court which provided that the decision of the Court had no binding force except between the parties and in respect of that particular case.

In any event, the Court was not required to fix a tripoint, which would require the consent of all three states, but to ascertain in the light of the evidence which the parties had made available how far the frontier they had inherited from the colonial power extended.

Such a finding implied that the territory of a third state lay beyond the end-point and that the parties had exclusive sovereign rights up to that point. However, since the parties had contended that they possessed a common frontier with the other as far as a specific point, neither could change its position to rely on sovereignty of a third state.

The Court would merely define the end-point where the frontier ceased to divide the territories of Burkina Faso and Mali but that would not amount to a decision that that was a tripoint which affected Niger.

7. *Evidence*

The parties relied on different types of evidence—

(1) They referred to legislative and regulative texts or administrative documents. However, as those contained no complete description of the disputed area they were limited in scope and the correct interpretation of them was a matter of dispute between the parties.

(2) Maps: Both produced an abundant collection of cartographic materials. But the Court noted that in frontier delimitations maps merely constituted information and never constituted territorial titles in themselves. They were merely extrinsic evidence which might be used along with other evidence to establish the real facts. Their value depended on their technical reliability and their neutrality to the parties in the dispute.

None of the maps available could provide an official illustration of any of

the texts produced although it was clear from their wording that two of the texts were intended to be accompanied by maps.

Further, no indisputable boundary line could be discerned from the documents.

One map, issued between 1958 and 1960 by the French *Institute géographique nationale* was drawn up by a body neutral towards the parties. Although it did not possess the status of a legal title it was a visual portrayal both of the available texts and of information available on the ground.

Where other evidence was lacking or not sufficient to show an exact line, the probative force of the IGN map had to be viewed as compelling.

(3) The parties also invoked the conduct of the administrative authorities as proof of the effective exercise of territorial jurisdiction in the region during the colonial period. The role played by such conduct was complex and the Court had to make a careful evaluation of their legal force in each particular instance.

The Court emphasised that the present case was decidedly unusual as concerned the facts to be proved or the evidence to be produced. Although the parties had produced as complete a case file as possible the Court could not be certain of deciding the case on a basis of full knowledge of facts. The case file showed inconsistencies and shortcomings.

The court considered what relationship could be established among the pieces of information provided by the various texts of which it had to make use and reached a number of conclusions. In certain points the sources agreed and bore one another out, but in some respects, in view of the shortcomings of some of the older maps, they tended to conflict.

The western end-point was already agreed between the parties and the court drew in a series of straight lines between co-ordinates the boundary from there to the frontier of Niger.

At one place, the pool of In Abao, the co-ordinates were not specified but left to the three experts who are to be appointed to be drawn.

The Court considered it inappropriate to appoint those experts in the judgment, but said they would be appointed later by an order of the Court.

The Court noted with satisfaction the agreement in January 1986 of the Heads of State of Burkina Faso and Mali to withdraw all their armed forces from either side of the disputed area and to effect their return to their respective territories. [see (1986) 12 CLB 539]

The Court finally noted that the parties had declared they would accept the judgment as binding upon them and was happy to record the attachment of both parties to the international judicial process and to the peaceful settlement of disputes.

Frontier Dispute (Burkina Faso/Mali) International Court of Justice, 22 December 1986 (*The Times*: 23 December 1986)

European Court of Human Rights

Social justice—whether employment health benefits and pensions are “civil rights” protected by the European Convention on Human Rights

In two unprecedented decisions announced in May 1986 the European Court of Human Rights ruled that employment health benefits in the Netherlands and pensions in West Germany are “civil rights” protected by the European Convention on Human Rights.

This is the first time in its 27-year history that the Court has applied the Convention to social security issues, and, in both cases, the sharp division of the Court portrayed the difficulty of this move.

The legal question in the Netherlands case (the *Feldbrugge* case) was: did the Employee Benefits Appeals Board, set up by the Appeals Act 1955, deny Gezeina Feldbrugge a fair trial by barring her from presenting her case?

But to reach that question, the Court had to decide whether the Convention applied to what the Dutch Government claimed is a "public-law right" and, therefore, whether Article 6 (1) offered the applicant the right to a fair trial.

Balancing the public law and private features of Holland's employee health insurance, a majority of the Court concluded that the latter prevailed. To begin with, the ten judges of the Court wrote that the right to health benefits is "often of crucial importance", especially if the employee is unable to work and has no other source of income. "In short, the right in question was a personal, economic and individual right, a factor that brought it close to the civil sphere", the majority said.

What tipped the scale and brought the right squarely within the "civil" sphere is the fact that the health insurance policy is a part of the employee's private contract with the employer and that it bears many features of private insurance "under the ordinary law". The Court concluded that the private law features, taken together "confer on the asserted entitlement the character of a civil right within the meaning of Article 6 para. 1 of the Convention, which was thus applicable". Consequently, the Board's refusal to let Mrs. Feldbrugge present her own case in the dispute amounted to a violation of Article 6.

A seven-judge dissent, in which the Norwegian President of the Court, Rolv Ryssdal, joined, warned that the decision "will give rise to uncertainty as to the obligation undertaken by the Contracting States in the field of social security".

The Court's lawyers close to the case agreed that the impact of the ruling may well reverberate beyond the Netherlands, affecting employment health schemes in France, Belgium, Luxembourg and Switzerland.

The Court, in a nine to eight decision, followed the same reasoning in the West German proceeding (the *Deumeland* case) in condemning the government for taking more than a decade to decide whether a widow of a worker who died in an industrial accident was entitled to a supplementary pension. Whatever might have been the value of the benefit claimed, the majority concluded, an interval of almost 11 years "is abnormal for the circumstances, especially having regard to the particular diligence required in social security cases".

As in the Netherlands case, the majority of the Court found that the civil features of the entitlement to industrial accident insurance benefits outweighed the public law features and brought the right within the Convention.

The two decisions also mark a rare event inasmuch as the Court disagreed with the European Commission on Human Rights and overturned its initial findings.

United Kingdom

Recognition of states—Republic of Ciskei granted independence by Republic of South Africa—Ciskei not recognised as independent state by United Kingdom Government—defendant in English action seeking to join Ciskei as third parties—whether Ciskei having locus standi to sue or be sued

In 1981 the Republic of South Africa declared, by s. 1 of the Status of Ciskei Act 1981, that the territory of Ciskei constituted a sovereign and independent

state. By s. 3 of that Act the Legislative Assembly of Ciskei was given power to make laws, and in reliance on that power it passed the Republic of Ciskei Constitution Act 1981 which, by s. 34(1) authorised the President to establish necessary departments of state. The Department of Public Works was created pursuant to that power.

In 1983 the plaintiffs, a Panamanian company, contracted with the Department of Public Works to build a hospital and two schools in Ciskei, in connection with which they obtained a guarantee of limited duration in favour of Ciskei from the defendant bank in return for a deposit of US \$300,000. In due course Ciskei demanded payment under the guarantee. The bank refused on the ground that the demand was not made before the expiry of the guarantee. The plaintiffs claimed the return of the security, and the bank sought to join Ciskei as third parties. When the matter came before Steyn J he raised the preliminary question whether Ciskei had *locus standi* to sue or be sued in the English courts. In reply to letters from the bank's solicitors the Foreign and Commonwealth Office certified, *inter alia*, that it was not current practice for the United Kingdom Government to accord recognition to Governments, that the Republic of Ciskei was not recognised as an independent sovereign state, either *de jure* or *de facto*, and that, although the UK Government did not have a formal position regarding the exercise of governing authority over the territory of Ciskei, it had made representations to the South African Government in relation to matters occurring in Ciskei, but had not in general received any positive response. Steyn J held on the preliminary issue that there was no material to warrant the inference that the Republic of South Africa still exercised governing authority in Ciskei and that Ciskei accordingly had no *locus standi*.

On appeal by the bank and Ciskei the Court of Appeal, in allowing the appeal, held that—

1. the Foreign Office certificates were conclusive that the Republic of Ciskei was not recognised as an independent state and it was not open to the courts to hold that at the relevant time it was in law capable of an executive, legal or administrative act unless enabled by some superior authority;
2. although the court had to disregard declarations or legislation of the Republic of South Africa or the Republic of Ciskei which conflicted with the certificates, it could, and should, take cognizance of such declarations and legislation as were not in conflict with the certificates;
3. section 3(1) of the Status of Ciskei Act 1981 was a straightforward, revocable delegation of legislative power, and since the Republic of South Africa was clearly entitled to exercise sovereignty over the territory of the Republic of Ciskei, the latter had *locus standi* in the English courts as being a subordinate body set up by the former to act on its behalf

Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2) [1967] 1 AC 853 (HL) applied.

Gur Corporation v Trust Bank of Africa Ltd [1986] 3 WLR 583 (CA)

Other Developments

Security Council: membership

As from 1 January 1987, Zambia and four other countries (Argentina, Italy, the Federal Republic of Germany and Japan) have been elected as non-permanent members of the Security Council, to replace Australia, Denmark, Madagascar, Thailand, and Trinidad and Tobago whose terms expired on 31 December 1986. The other non-permanent members are: Bulgaria, Congo, Ghana, United Arab Emirates and Venezuela.

ESCAP: membership

With the admission of four new Pacific Island nations, Northern Mariana Islands, the Federated States of Micronesia, Palau and Marshall Islands, as associate Members, ESCAP's membership has increased to 47 Member Governments.

International Environment Bureau

Several large multinational firms have set up an International Environment Bureau (IEB) whose headquarters will be in Geneva. Its purpose will be to publicise experience in environment-friendly waste management techniques acquired by the member firms in both developed and developing countries.

African Natural Resources Institute

The Council of the UN University has decided to establish an Institute for Natural Resources in Africa (INRA) as a research and training centre of the University. The main headquarters of the Institute will be in Yamoussoukro, the capital of Cote d'Ivoire. It is expected that the Institute will become operational by early 1988. One of its major objectives is to strengthen scientific and technological capacities in Africa and assemble the researchers and facilities needed to achieve a sustained scientific effort with a continent-wide focus on natural resources problems.

Committee on Economic, Social and Cultural Rights

Beginning in 1987, the task of monitoring with the 1966 Covenant of Economic, Social and Cultural Rights is to be undertaken by the new Committee on Economic, Social and Cultural Rights, consisting of 18 non-governmental experts serving in their individual capacities.

The Committee, which is to replace the Sessional Working Group on the Implementation of the International Covenant on Economic, Social and Cultural Rights, will have its first meeting in March 1987. (See also page 225).

International Law Commission: membership

The International Law Commission (ILC) established in 1947, consists of 34 members from all regions of the world who are elected and sit in their personal capacity as experts. The members are persons of recognised competence in international law and they have a mandate to encourage "the progressive development of international law and its codification".

The UN General Assembly, on 4 November 1986, elected 34 members to the International Law Commission. The members elected include eight from African States, seven from Asian States, four from Eastern European States, seven from

Latin American States and eight from Western European and other States. The members who are to serve five-year terms starting on 1 January 1987 include—

1. Canada: Mr J Alan Beesley
2. Cyprus: Andreas J Jacovides
3. India: P S Rao
4. Jamaica: Laurel B Francis
5. Kenya: Frank X Njenga
6. Nigeria: Boa Adesumbo Ajibola
7. Sierra Leone: Abdul G Koroma

1977 Mandatory arms embargo of South Africa

The Special Session of the General Assembly on the Question of Namibia, which began on 17 September 1986, concluded its work on 20 September by demanding that South Africa “immediately and unconditionally withdraw” its illegal administration, occupation army and police force from Namibia. The Assembly also called on the Security Council to convene urgently to take action for the immediate and unconditional implementation of the United Nations plan for Namibian independence. (Res. A/Res/S-14/1 of 20 September: The Resolution was adopted by a vote of 126 in favour to none against; Ireland and the United Kingdom were among the 24 countries who abstained.)

Also under the resolution, the Assembly urged the Security Council to adopt comprehensive mandatory sanctions as the most effective peaceful measures to ensure the compliance of South Africa with the decisions of the United Nations and urged states that had not yet done so to cease all dealings with South Africa.

The UN Security Council, on 28 November 1986, has urged States to take steps to ensure that materials falling under the scope of its 1977 mandatory arms embargo of South Africa do not reach the South African military establishment through third countries and to refrain from any co-operation in the nuclear field with South Africa which would contribute to the manufacture and development by South Africa of nuclear weapons or nuclear explosive devices.

The Council also called upon States to prohibit the export of spare parts for embargoed aircraft and other military equipment belonging to South Africa and any official involvement in maintenance and service of such equipment. It was further indicated that the embargo should include all nuclear, strategic and conventional weapons, and all military or paramilitary police vehicles and equipment. The Council requested all States to ensure that their national legislation or comparable policy directives guarantee that specific provisions to implement the arms embargo include penalties to deter violations.

Law of the Sea Convention 1982

The UN General Assembly, by a Resolution adopted on 5 November 1986 (vote of 145 in favour two against (United States and Turkey) 5 abstentions (Israel, Federal Republic of Germany, United Kingdom, Venezuela and Peru) has urged all States that have not yet done so to consider becoming parties to the United Nations Convention on the Law of the Sea. It also urged States to observe provisions of the Convention when enacting national legislation and to desist from taking actions which would undermine the Convention or defeat its object and purpose.

Deep sea-bed mining

The Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea at its second 1986 Session

(12 August–5 September; New York) has agreed on a formula for registering the first group of potential investors in deep sea-bed mining.

The understanding marked another step towards implementing resolution II of the 1982 United Nations Conference on the Law of the Sea, which established a special régime for protecting investments in future deep sea-bed mining.

The agreement ended a two-year effort to resolve overlapping claims of France, Japan and the Soviet Union, three of the four potential "pioneer investors" identified in resolution II. The "pioneer investor" category gives a State or group of States exclusive rights to explore an ocean area and priority in authorisation for commercial production. Under the agreement, specific portions of the north-east Pacific Ocean would be reserved upon registration for France, Japan and the Soviet Union, while India, the fourth pioneer applicant, which had no conflicting claims, would be given exclusive rights to an area in the Indian Ocean.

France, Japan and the Soviet Union agreed that, upon registering as pioneer investors, parts of their application areas which overlap with potential applicants would be relinquished for possible future applications by four consortia whose components come from Belgium, Canada, the Federal Republic of Germany, Italy, Japan, the Netherlands, the United Kingdom and the United States.

The understanding provided time-tables and mechanisms for registering the first group of pioneers, and allowed for similar treatment to be given other potential applicants. The right to apply for registration as a pioneer investor was ensured for any developing country that has signed the United Nations Convention on the Law of the Sea and satisfies the registration requirements. (Sixty ratifications or accessions are required for entry into force; as of September 1986, the Convention had received 32 ratifications from a total of 159 signatories.)

Under Resolution II, to qualify as a pioneer investor, an applicant must have spent at least \$30 million on seabed activities as of 1 January 1983; developing countries were given until 1 January 1985 to qualify.

According to the agreement, a group of all or several socialist States of Eastern Europe have the right to apply for one pioneer area until the Convention enters into force.

The formula resulted from extensive consultations under Preparatory Commission Chairman Joseph S Warioba (Tanzania) and Acting Chairman I G Jhingran (India). Mr Jhingran told the Commission on 5 September that by recognising the rights of pioneer investors, the agreement would give "practical effect" to the new régime for deep seabed mining under the Convention. "The Preparatory Commission is of the view that there can only be one régime for deep sea-bed mining and that is the régime contained in the Convention", he said. "It is the hope and expectation of all of us here that everyone will eventually work within that régime for the sake of peace and good order in the oceans and the security of the rights of all those who are interested in deep sea-bed mining."

In a closing statement on behalf of the Group of 77 developing countries, Jose Luis Jesus (*Cape Verde*) said the Group had made "painful" concessions that "two or three years ago would have been unthinkable", in the belief that such action would remove the obstacles to implementing the pioneer system. "It is in the interest of all nations not to undermine the Law of the Sea Convention", he stressed. "We all have national interests, and the interests of all nations deserve equal protection. We are better off with the Convention whatever its shortcomings, than without it."

Draft regulations dealing with the financial terms of mining contracts and draft rules of procedure for the Tribunal are being examined by Special Commission 3

(Mining Code) and Special Commission 4 (Law of the Sea Tribunal). [see also (1986) 12 CLB 208]

South Atlantic declared a zone of peace and co-operation

The UN General Assembly has declared the establishment of a zone of peace and co-operation in the Atlantic Ocean in the region situated between Africa and South America. By a Resolution of 6 November 1986 (Res A/41/L 11 and Add 1 adopted by a vote of 124 in favour to one against: United States with 8 abstentions: Belgium, France, Federal Republic of Germany, Italy, Japan, Luxembourg, Netherlands and Portugal) the Assembly has called upon all States of the region to respect the political independence, sovereignty and territorial integrity of the States of the south Atlantic region and to strictly observe the Charter principles proscribing the threat or use of force and the military occupation and acquisition of the territory of other nations.

By other provisions of the resolution, the Assembly, *inter alia*,

1. requested the States of other regions, particularly the militarily significant powers, to respect that zone by reducing and eventually eliminating their military presence in the South Atlantic, by not introducing nuclear weapons into the region and by refraining from the extension of rivalries and conflicts into the area;
2. reaffirmed that the elimination of apartheid and the attainment of self-determination and independence by the people of Namibia, as well as the cessation of all acts of aggression and subversion against States in the zone, are essential for peace and security in the South Atlantic region, and urged the implementation of all United Nations resolutions pertaining to colonialism, racism and apartheid.

Draft Principles Relating to Remote Sensing of the Earth from Space

A set of 15 draft principles relating to the remote sensing of the Earth by satellite, the product of 12 years' work, was endorsed by the Committee on the Peaceful Uses of Outer Space at its 1986 session (2-13 June 1986, New York). They are intended to encourage the appropriate use of remote sensing and to promote the sharing, particularly with developing countries, of the possibilities offered by the technology.

The Committee's Scientific and Technical Sub-Committee at its 1986 session (10-21 February 1986, New York), reiterated its view that remote sensing should take into account the "fundamental urgent need to provide appropriate and non-discriminatory assistance" to developing countries, and emphasised the need to make remote sensing data available at reasonable cost. Because many countries had become dependent on data from operational meteorological satellites, it was necessary to guarantee continuation and further development of services, that Sub-Committee said.

The draft Principles are as follows

Principle 1

For the purpose of these principles with respect to remote sensing activities—

(a) The term "remote sensing" means the sensing of the Earth's surface from space by making use of the properties of electromagnetic waves emitted, reflected or diffracted by the sensed objects, for the purpose of improving natural resources management, land use and the protection of the environment;

(b) The term "primary data" means those raw data that are acquired by remote sensors borne by a space object and that are transmitted or delivered to the ground from space by telemetry in the form of electromagnetic signals, by photographic film, magnetic tape or any other means;

(c) The term “processed data” means the products resulting from the processing of the primary data, needed in order to make such data usable;

(d) The term “analysed information” means the information resulting from the interpretation of processed data, inputs of data and knowledge from other sources;

(e) The term “remote sensing activities” means the operation of remote sensing space systems, primary data collection and storage stations, and activities in processing, interpreting and disseminating the processed data.

Principle II

Remote sensing activities shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic, social or scientific and technological development, and taking into particular consideration the needs of the developing countries.

Principle III

Remote sensing activities shall be conducted in accordance with international law, including the Charter of the United Nations, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, and the relevant instruments of the International Telecommunication Union.

Principle IV

Remote sensing activities shall be conducted in accordance with the principles contained in Article I of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, which, in particular provides that the exploration and use of outer space shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and stipulates the principle of freedom of exploration and use of outer space on a basis of equality. These activities shall be conducted on the basis of respect for the principle of full and permanent sovereignty of all States and peoples over their own wealth and natural resources, with due regard to the rights and interests, in accordance with international law, of other States and entities under their jurisdiction. Such activities shall not be conducted in a manner detrimental to the legitimate rights and interests of the sensed State.

Principle V

States carrying out remote sensing activities shall promote international co-operation in these activities. To this end, they shall make available to other States opportunities for participation therein. Such participation shall be based in each case on equitable and mutually acceptable terms.

Principle VI

In order to maximise the availability of benefits from remote sensing activities, States are encouraged through agreements or other arrangements to provide for the establishment and operation of data collecting and storage stations and processing and interpretation facilities, in particular within the framework of regional agreements or arrangements wherever feasible.

Principle VII

States participating in remote sensing activities shall make available technical assistance to other interested States on mutually agreed terms.

Principle VIII

The United Nations and the relevant agencies within the United Nations system shall promote international co-operation, including technical assistance and co-ordination in the area of remote sensing.

Principle IX

In accordance with Article IV of the Convention on Registration of Objects Launched into Outer Space and Article XI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, a State carrying out a programme of remote sensing shall inform the Secretary-General of the United Nations. It shall, moreover, make available any other relevant information to the greatest extent feasible and practicable to any other State, particularly any developing country that is affected by the programme, at its request.

Principle X

Remote sensing shall promote the protection of the Earth's natural environment.

To this end, States participating in remote sensing activities that have identified information in their possession that is capable of averting any phenomenon harmful to the Earth's natural environment shall disclose such information to States concerned.

Principle XI

Remote sensing shall promote the protection of mankind from natural disasters.

To this end, States participating in remote sensing activities that have identified processed data and analysed information in their possession that may be useful to States affected by natural disasters, or likely to be affected by impending natural disasters, shall transmit such data and information to States concerned as promptly as possible.

Principle XII

As soon as the primary data and the processed data concerning the territory under its jurisdiction are produced, the sensed State shall have access to them on a non-discriminatory basis and on reasonable cost terms. The sensed State shall also have access to the available analysed information concerning the territory under its jurisdiction in the possession of any State participating in remote sensing activities on the same basis and terms, taking particularly into account the needs and interests of the developing countries.

Principle XIII

To promote and intensify international co-operation, especially with regard to the needs of developing countries, a State carrying out remote sensing of the Earth from outer space shall, upon request, enter into consultations with a State whose territory is sensed in order to make available opportunities for participation and enhance the mutual benefits to be derived therefrom.

Principle XIV

In compliance with Article VI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, States operating remote sensing satellites shall bear international responsibility for their activities and assure that such activities are conducted in accordance with these principles and the norms of international law, irrespective of whether such activities are carried out by governmental or non-governmental entities or through international organisations to which such States are parties. This principle is without prejudice to the applicability of the norms of international law on State responsibility for remote sensing activities.

Principle XV

Any dispute resulting from the application of these principles shall be resolved through the established procedures for the peaceful settlement of disputes.

ILO: focus on child labour

An ILO study on child labour: *Child Labour: A Briefing Manual* 1986 estimates that 50 to 200 million children under 15 are in world's work force: many children in the third world can be found working in dangerous industries such as mining or fireworks manufacturing; many others are used as cheap labour in pesticide-soaked fields and in street trades in urban areas. In some Asian countries, child workers under 15 years of age represent as much as 11 per cent of the entire labour force. In parts of Africa, the proportion is as high as 17 per cent; in some Latin American countries, an estimated 12 to 26 per cent of the children may be working.

The Study notes that since the early 1960s considerable progress has been made in reducing child labour, due largely to the sometimes dramatic expansion of primary education in developing countries which helps keep the youngest and most vulnerable away from the labour market.

School enrollment rates for children aged 6 to 11 doubled in Africa between 1960 and 1985—from 32.7 per cent to 65.9 per cent. In Asia enrollment rose from

54.4 per cent to 73.6 per cent during the same period, while in Latin America and the Caribbean it increased from 57.7 per cent to 83.5 per cent.

But this progress has been uneven and far from universal, and in many parts of the Third World a large number of children can still be found working in dangerous industries such as mining and fireworks manufacturing, where many are maimed and many more contract fatal or disabling diseases. They are used as cheap labour in pesticide-soaked fields and in workshops, service establishments and street trades in the informal sector of urban areas. This, and not activities such as helping on the family farm or earning pocket money after school, is child labour, "where children are forced to lead prematurely adult lives, condemned to a cruel present and to a bleak future," the study observes.

The situation is most disturbing in the low-income developing countries, both in the size of the problem and in the limited scope for action. But even they can take measures to protect working children from hazardous conditions, the study states. It recommends that as a matter of urgency they focus on areas where there is relatively serious exploitation of child labour and gradually extend action to other sectors.

In order to eliminate child labour there must be an attempt to cure the social ills that spawn it: poverty and unemployment.

Although education plays an important role in the fight against child labour, its cost may be too high for very poor families to pay. Some studies show that children's earnings can constitute 30 per cent or more of a family's income. To relinquish these wages by sending children to school could spell disaster for households already living at subsistence level.

Moreover, if poverty is a basic cause of child labour, poverty may also be one of its consequences. "Where large numbers of children must go to work, they take the place of older workers who are often paid higher wages and whose work is more likely to be subject to legal supervision," the study says.

Such circumstances call not only for appropriate legislation and effective enforcement but also for the provision of income and employment-generating schemes for adults and other ways to lighten the burden of poor families, especially in areas characterised by a high incidence of child labour.

In the final analysis the degree to which social goals are taken into account, including efforts to reduce child labour and protect working children, depends on political commitment. The relevant ministries within the government—labour, education, health and welfare—must make a strong case for social programmes.

Child labour has always been a major concern of the ILO. Director-General Francis Blanchard maintains that the protection of children at work and the ultimate abolition of child labour—the ILO's chief objectives in this field—require concerted action by governments as well as the active co-operation of employers' and workers' organisations.

The most extensive international standards on child labour have been produced by the ILO in more than 20 conventions and recommendations adopted by the International Labour Conference. These instruments define the conditions, terms and areas of employment, allowing enough flexibility to cover the needs of countries in different stages of development.

The study, which is directed particularly at policy makers in governmental and non-governmental organisations, gives a detailed account of the regulations of child labour by ILO standards and national laws as well as the full texts of the Minimum Age Convention of 1973 (No. 138), the Minimum Age Recommendation of 1973 (No. 146) and the United Nations' Declaration of the Rights of the Child.

The 1973 convention is cited as a particularly helpful source of guidelines on when, where and under what circumstances children may or may not work and what policies a country may follow to promote the welfare of children. And, in effect, give them back their childhood.

Drug law enforcement agencies recommend measures for governments

The First Interregional Meeting of Heads of Drug Law Enforcement Agencies (28 July—1 August 1986, Vienna) has recommended that Governments take measures providing for the “tracing, freezing, seizing, forfeiture and confiscation” of assets derived from illicit drug trafficking; improve extradition procedures; and develop and use active investigative techniques directed at organised crime.

Organised by the United Nations Division of Narcotic Drugs, the meeting was the first to be held at the global level. Operational heads of national narcotics law enforcement agencies of the Asia and Far East region have been meeting annually for the last 12 years. The meeting, which was attended by drug law enforcement and other government officials from 82 States as well as by representatives of ten intergovernmental and three non-governmental organisations, was one of a number of intergovernmental preparatory meetings leading up to the International Conference on Drug Abuse and Illicit Trafficking (Vienna, June 1987).

The officials recommended that States: improve strategies to identify and destroy organised drug-trafficking groups; encourage the development of national drug intelligence systems and the exchange of intelligence and sharing of information with respect to the identity, movement, criminal activity, *modus operandi* and associates of criminals and criminal organisations involved in drug trafficking; and encourage law enforcement officers and other competent authorities to use financial and other types of investigation to determine the source of income of criminal organisations.

They said measures must be taken to investigate and prevent the diversion of chemicals, solvents, precursors and other such substances and equipment for the illicit production of narcotic drugs and psychotropic substances. Co-operation among States should be encouraged for combating illicit drug traffic on the high seas by establishing appropriate means through timely and effective action by co-operating States. Drug law enforcement officials also encouraged co-operation between their agencies and international carriers to minimise the risks of international aircraft, vessels and other means of international transportation being used to facilitate the delivery of illicit drugs from one country to another.

F Ramos-Galino, Deputy Director and Officer-in-Charge of the Division of Narcotic Drugs, said bilateral and regional agreements, as well as bilateral and regional co-ordination mechanisms, had been generated at the meeting, and he hoped it would be possible to reverse current trends of drug abuse and illicit trafficking. If all necessary resources were forthcoming at the national, regional and interregional levels, there might one day be a world less poisoned by the threat of drugs.

NGOs involvement in combating drug use

An Interregional Conference on the involvement of non-governmental organisations (NGOs) in the prevention and reduction of the demand for drugs (Stockholm, 15–19 September) urged NGOs to be involved in developing national policies as partners with Governments in dealing with the growing world-wide effort to control the demand for drugs.

The meeting was organised by the United Nations, the Government of Sweden and the Vienna and New York NGO Committees on Drug Abuse Control. More

than 200 representatives of 80 international NGOs and representatives of 23 Swedish NGOs attended.

The conference, in other recommendations, called on the media to be aware of their extensive role and responsibility and of their sometimes detrimental influence in communications related to drug abuse. It urged the media to use their power to help create awareness of the danger, but not an over-awareness which only "frightens or even fascinates".

It is also stressed that a broad-based effort to formulate counter-measures to deal with high-risk groups in any society must include strategies which deal with people's problems and needs, reduce illicit supplies, and regulate licit distribution, but simultaneously improve the social environment and influence community attitudes against drug abuse and trafficking.

The family, it stated, should be regarded as a central natural resource involved in all education and information activities aimed at prevention of drug use. Greater global attention should be given to the role of the family.

Development efforts, especially those in which the United Nations, the host Government, and NGOs co-operated, represented the only long-term hope for a large-scale reduction in organic drug supply, the Conference stated. Such programmes in drug-producing regions, to be effective and just, must be based on local-level popular participation in both planning and implementation.

The Conference recommended that Governments should be encouraged to designate national focal points for the effort to combat drug abuse and illicit trafficking, and mechanisms for close co-operation between them and concerned NGOs should be created. (As at 24 October 1986, 33 States have set up national focal points). There should be improved mechanisms for dissemination to NGOs of materials on drug control, and for wider dissemination by NGOs to their constituencies.

The Conference stated that the central role of NGOs should be recognised, and that adequate financial support, both public and private, should be provided to enable them to perform their role adequately.

Puerto Vallarta Declaration on the international campaign against traffic in drugs

A Regional Meeting of Ministers of Justice and Attorney's-General from Belize, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Jamaica, Mexico, Panama, Peru, the United States of America and Venezuela (Puerto Vallarta, Jalisco, Mexico: 8-10 October 1986) examined the problems of drug trafficking and drug dependency in their respective countries and made the following declaration by consensus

1. The firm political will to continue vigorously combating the crimes that endanger the health of the peoples represented at the meeting, and the abiding determination to prevent and alleviate phenomena of drug dependency, are reiterated. The seriousness and complexity of these problems, which cause severe damage to society and its institutions, were clearly brought out. The need to take action at the different stages of offences against health from the planning and financing of drug trafficking activities to the consumption of narcotics and psychotropic substances, was stressed.

2. Emphasis was placed on the inescapable need to ascertain the factors that give rise to drug trafficking and drug dependency in an objective and thorough manner. It was stated that effectively combating these problems entails a determined and vigorous effort to achieve social, economic and cultural development, without neglecting police and judicial measures, bearing in mind that factors of this kind have a decisive influence on the appearance and development of drug trafficking and drug dependency.

3. The advisability of promoting the legitimate co-ordination of tasks between the countries of the region was recognised, bearing in mind that drug trafficking is a crime that

has international consequences. To that end, the participating countries should take measures, as they see fit, conducive to an effective supply of information and appropriate assistance in penal matters, within their respective constitutional and legal frameworks.

4. Bearing in mind the current features of crimes against the health of individuals, families, and particularly of children and young people, note was taken of the legislative and institutional reforms being undertaken by various countries, and of the advisability of updating or modernising, in the terms considered appropriate by each country, national laws and the means and instruments for their application.

5. It was noted that several countries have limited financial resources with which to combat these crimes and remedy their causes. Accordingly, the desirability of encouraging the use of resources seized or confiscated from individuals or corporations involved to support national and international campaigns against drug trafficking and drug dependency was pointed out. Every participant would study how and under what conditions that approach could be promoted.

6. Emphasis was placed on the desirability of improving both technical training and equipment in national campaigns against drug trafficking and drug dependency. The participants in the meeting therefore expressed their willingness to provide each other with assistance, in accordance with the provisions of their national legislation.

7. Information was given about the noteworthy efforts being made by many countries in the field of prevention and cure of drug dependency. In that context, observations were made about the need to support a broadly based mobilisation of the community in the participating countries, with respect for their norms and traditions, and in the way they decide on internally, in order to create an awareness of the gravity of the problems examined, and of the need to prevent and eradicate them through the concerted action of the different sectors of society. In activities of this kind, an awareness of these problems in the family, educational and working environments plays a particularly important role.

8. Some participants put forward the possibility of creating a working group or committee in charge of planning measures aimed at fostering great regional co-operation with a view to effectively reducing the production, trafficking and illicit consumption of narcotics and psychotropic substances. That possibility was left open, and its implementation should be decided upon as soon as possible at a future meeting of Ministers of Justice and Attorneys-General from the area represented at the Puerto Vallarta meeting.

9. The usefulness of meetings such as the one held in Puerto Vallarta was also pointed out. These meetings encourage an open and effective exchange of viewpoints in an atmosphere of friendship, harmony and mutual respect. Suggestions were therefore voiced about holding future meetings of this nature, to be convened by interested countries after prior consultations with the other nations represented at Puerto Vallarta and, where appropriate, with other countries of the Americas whose attendance is deemed useful, in accordance with the nature of the problems of drug trafficking and drug dependency in those countries.

10. The participants expressed their appreciation of the effort made by all in attending the Puerto Vallarta meeting, presenting the views they considered pertinent and reaffirming their united and determined participation in a common front against drug trafficking and drug dependency.

European judicial action to combat drugs

The European Ministers of Justice at their 15th Conference (Oslo, Norway: 17-19 June 1986), *inter alia*, reached a large measure of agreement on judicial action to combat drugs. They unanimously adopted a resolution outlining a common crime policy to deal with drug abuse and drug trafficking.

In addition to the "21" Finland also participated in the conference and Canada and the Holy See attended as observers.

The gravity and complexity of drug-related crime, and above all the fact that drug dealers operate worldwide, have in a relatively short time brought about receptive attitudes to new forms of co-operation in Europe. This is borne out by the resolution on the penal aspects of drug abuse and drug control, in which the

Ministers declare that they are convinced of the need to establish between the member states common bases for a crime policy to deal with drug trafficking. This is to be pursued in the context of the Pompidou Group, in which 16 of the member states co-ordinate their social and judicial policies on drugs.

In practical terms, the resolution calls for international guarantees of effective co-operation across frontiers between judicial authorities, and, if necessary, police forces, in the detection, freezing and forfeiture of the proceeds of drug trafficking. On this point, the resolution makes the reservation that such international rules should be formulated in the light of the general principles of criminal law and individual rights and freedoms.

According to the resolution, those principles and freedoms also provide the yardstick for the use of "active" methods of investigation, which the ministers expect to be more effective in exposing international drug traffic than the orthodox methods whereby the police keep away from the criminal scene. One example of active investigation methods mentioned by the resolution is the technique of "controlled delivery", whereby police forces in different countries work together to seize both the financial proceeds and the drug dealers themselves.

For example, under this arrangement, a consignment of heroin from Bangkok intended for Amsterdam will not be intercepted as soon as it arrives in Frankfurt for transhipment, but only at the place of destination when the money changes hands. Mr Ninn-Hansen's report also refers to other active investigation methods such as the use of undercover agents, telephone tapping and anonymity of witnesses in criminal prosecutions.

However, opinions at the conference proved somewhat divergent as to the desirability of these methods. The Norwegian minister, Helen Bøsterud, hosting the conference, declared when it was over that she took a "sceptical" view of active methods of this kind, and she believed that Finland and Sweden shared that scepticism. In most countries, however, especially those where the drug problem is most acute, the judicial authorities are increasingly having to employ unorthodox methods.

Drugs in general are nonetheless regarded as the greatest problem next to terrorism. The link which often exists between terrorism and drug trafficking was once again referred to in the opening address by Marcelino Oreja, Secretary General of the Council of Europe; indeed the Parliamentary Assembly of the Council expressed its concern about that connection in a resolution adopted as long ago as September 1984.

According to another resolution, a convention ought to be drawn up in which the existing European instruments of interstate co-operation are streamlined and integrated—not only on drugs, but covering the whole field of criminal law. It would have the effect of promoting the exchange of experience and ideas and thus enhancing mutual confidence and respect among the member states with regard to each other's legislation and court practice.

EEC plan to combat terrorism and drug trafficking

The interior ministers of the European communities have agreed on a series of joint steps to combat terrorism and drug trafficking (20 October 1986). They adopted a plan on drug abuse controls, which involves, *inter alia*, mutual enforcement of orders to confiscate drug traffickers' assets and steps to ensure that legislation takes account of the need to control trafficking especially at the EC's external frontiers.

SAARC: war on drug trade

At a meeting held in Bangalore India (15–17 November 1986) the seven leaders of South Asian Association of Regional Co-operation (SAARC) agreed to find ways of fighting drug abuse and trafficking; a growing problem in the Indian subcontinent.

Civil Liability and compensation for environmental damage

The 15th Conference of the European Ministers of Justice (Oslo, 17–19 June 1986) discussed, *inter alia*, the problem of ecological damage. The desirability of extending the possibilities open under private law to enable adequate compensation to be paid for environmental pollution was a central issue. The conference unanimously adopted a resolution recommending that—

1. studies be done on the introduction of a civil liability regime or reversal of the burden of proof, in order to make it easier to force polluters to pay compensation;
2. the possibility of a collective system of insurances or funds in order to guarantee financial compensation or restoration of the damaged environment to be made compulsory, especially where the general interest was affected.

The Fifth European Ministerial Conference on the Environment is due to be held in Lisbon from 11 to 13 June 1987. Themes to be covered by final reports are protection and management of the natural heritage in rural areas (Mediterranean, mountain, Nordic and central European regions) and European strategy for nature conservation.

The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights

A group of distinguished experts in international law, convened by the International Commission of Jurists, the Faculty of Law of the University of Limburg (Maastricht, the Netherlands) and the Urban Morgan Institute for Human Rights, University of Cincinnati (Ohio, USA), met in Maastricht (2–6 June 1986) to consider the nature and scope of the obligations of States parties to the International Covenant on Economic, Social and Cultural Rights, the consideration of States parties Reports by the newly constituted ECOSOC Committee on Economic, Social and Cultural Rights, and international co-operation under Part IV of the Covenant. (See page 214)

The 29 participants came from Australia, the Federal Republic of Germany, Hungary, Ireland, Mexico, Netherlands, Norway, Senegal, Spain, United Kingdom, USA, Yugoslavia, the United Nations Centre for Human Rights, the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the World Health Organisation (WHO), the Commonwealth Secretariat, and the sponsoring organisations. Four of the participants were members of the ECOSOC Committee on Economic, Social and Cultural Rights.

The participants agreed unanimously upon the following principles which they believe reflect the present state of international law, with the exception of certain recommendations indicated by the use of the verb “should” instead of “shall”—

PART I: *The Nature and Scope of States Parties' Obligations*

A. *General Observations*

1. Economic, social and cultural rights are an integral part of international human rights law. They are the subject of specific treaty obligations in various international instruments, notably the International Covenant on Economic, Social and Cultural Rights.

2. The International Covenant on Economic, Social and Cultural Rights, together with the International Covenant on Civil and Political Rights and the Optional Protocol, entered into force in 1976. The Covenants serve to elaborate the Universal Declaration of Human Rights: these instruments constitute the International Bill of Human Rights.

3. As human rights and fundamental freedoms are indivisible and interdependent, equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights.

4. The International Covenant on Economic, Social and Cultural Rights (here-after the Covenant) should, in accordance with the Vienna Convention on the Law of Treaties (Vienna, 1969), be interpreted in good faith, taking into account the object and purpose, the ordinary meaning, the preparatory work and the relevant practice.

5. The experience of the relevant specialised agencies as well as of United Nations bodies and intergovernmental organisations, including the United Nations working groups and special rapporteurs in the field of human rights, should be taken into account in the implementation of the Covenant and in monitoring States parties' achievements.

6. The achievement of economic, social and cultural rights may be realised in a variety of political settings. There is no single road to their full realisation. Successes and failures have been registered in both market and non-market economies, in both centralised and decentralised political structures.

7. States parties must at all times act in good faith to fulfil the obligations they have accepted under the Covenant.

8. Although the full realisation of the rights recognised in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately while other rights can become justiciable over time.

9. Non-governmental organisations can play an important role in promoting the implementation of the Covenant. This role should accordingly be facilitated at the national as well as the international level.

10. States parties are accountable both to the international community and to their own people for their compliance with the obligations under the Covenant.

11. A concerted national effort to invoke the full participation of all sectors of society is, therefore, indispensable to achieving progress in realising economic, social and cultural rights. Popular participation is required at all stages, including the formulation, application and review of national policies.

12. The supervision of compliance with the Covenant should be approached in a spirit of co-operation and dialogue. To this end, in considering the reports of States parties, the Committee on Economic, Social and Cultural Rights, hereinafter called "the Committee", should analyse the causes and factors impeding the realisation of the rights covered under the Covenant and, where possible indicate solutions. This approach should not preclude a finding, where the information available warrants such a conclusion, that a State party has failed to comply with its obligations under the Covenant.

13. All organs monitoring the covenant should pay special attention to the principles of non-discrimination and equality before the law when assessing States parties' compliance with the Covenant.

14. Given the significance for development of the progressive realisation of the rights set forth in the Covenant, particular attention should be given to measures to improve the standard of living of the poor and other disadvantaged groups, taking into account that special measures may be required to protect cultural rights of indigenous peoples and minorities.

15. Trends in international economic relations should be taken into account in assessing the efforts of the international community to achieve the Covenant's objectives.

B. Interpretative Principles specifically relating to Part II of the Covenant.

Article 2(1): "to take steps . . . by all appropriate means, including particularly the adoption of legislation"

16. All States parties have an obligation to begin immediately to take steps towards full realisation of the rights contained in the Covenant.

17. At the national level States parties shall use all appropriate means, including legislative, administrative, judicial, economic, social and education measures, consistent with the nature of the rights in order to fulfil their obligations under the Covenant.

18. Legislative measures alone are not sufficient to fulfil the obligations of the Covenant. It should be noted, however, that article 2(1) would often require legislative action to be taken in cases where existing legislation is in violation of the obligations assumed under the Covenant.

19. States parties shall provide for effective remedies including, where appropriate, judicial remedies.

20. The appropriateness of the means to be applied in a particular state shall be determined by that State party, and shall be subject to review by the United Nations Economic and Social Council, with the assistance of the Committee. Such review shall be without prejudice to the competence of the other organs established pursuant to the Charter of the United Nations.

“to achieve progressively the full realisation of the rights”

21. The obligation “to achieve progressively the full realisation of the rights” requires States parties to move as expeditiously as possible towards the realisation of the rights. Under no circumstances shall this be interpreted as implying for States the right to defer indefinitely efforts to ensure full realisation. On the contrary all States parties have the obligation to begin immediately to take steps to fulfil their obligations under the Covenant.

22. Some obligations under the Covenant require immediate implementation in full by all States parties, such as the prohibition of discrimination in article 2(2) of the Covenant.

23. The obligation of progressive achievement exists independently of the increase in resources; it requires effective use of resources available.

24. Progressive implementation can be effected not only by increasing resources, but also by the development of societal resources necessary for the realisation by everyone of the rights recognised in the Covenant.

“to the maximum of its available resources”

25. States parties are obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all.

26. “Its available resources” refers to both the resources within a State and those available from the international community through international co-operation and assistance.

27. In determining whether adequate measures have been taken for the realisation of the rights recognised in the Covenant attention shall be paid to equitable and effective use of and access to the available resources.

28. In the use of the available resources due priority shall be given to the realisation of the rights recognised in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements as well as the provision of essential services.

“individually and through international assistance and co-operation, especially economic and technical”

29. International co-operation and assistance pursuant to the Charter of the United Nations (Articles 55 and 56) and the Covenant shall have in view as a matter of priority the realisation of all human rights and fundamental freedoms, economic, social and cultural as well as civil and political.

30. International co-operation and assistance must be directed towards the establishment of a social and international order in which the rights and freedoms set forth in the Covenant can be fully realised (cf. Article 28 Universal Declaration of Human Rights).

31. Irrespective of differences in their political, economic and social systems, States shall co-operate with one another to promote international social, economic and cultural progress, in particular the economic growth of developing countries, free from discrimination based on such differences.

32. States parties shall take steps by international means to assist and co-operate in the realisation of the rights recognised by the Covenant.

33. International co-operation and assistance shall be based on the sovereign equality of states and be aimed at the realisation of the rights contained in the Covenant.

34. In undertaking international co-operation and assistance pursuant to article 2(1) the role of international organisations and the contribution of non-governmental organisations shall be kept in mind.

Article 2(2): Non-discrimination

35. Article 2(2) calls for immediate application and involves an explicit guarantee on behalf of the States parties. It should, therefore, be made subject to judicial review and other recourse procedures.

36. The grounds of discrimination mentioned in article 2(2) are not exhaustive.

37. Upon becoming a party to the Covenant states shall eliminate *de jure* discrimination by abolishing without delay any discriminatory laws, regulations and practices (including acts of omission as well as commission) affecting the enjoyment of economic, social and cultural rights.

38. *De facto* discrimination occurring as a result of the unequal enjoyment of economic, social and cultural rights, on account of a lack of resources or otherwise, should be brought to an end as speedily as possible.

39. Special measures taken for the sole purpose of securing adequate advancement of certain groups or individuals requiring such protection as may be necessary in order to ensure to such groups or individuals equal enjoyment of economic, social and cultural rights shall not be deemed discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different groups and that such measures shall not be continued after their intended objectives have been achieved.

40. Article 2(2) demands from States parties that they prohibit private persons and bodies from practising discrimination in any field of public life.

41. In the application of article 2(2) due regard should be paid to all relevant international instruments including the Declaration and Convention on the Elimination of all Forms of Racial Discrimination as well as to the activities of the supervisory committee (CERD) under the said Convention.

Article 2(3): Non-nationals in developing countries

42. As a general rule the Covenant applies equally to nationals and non-nationals.

43. The purpose of article 2(3) was to end the domination of certain economic groups of non-nationals during colonial times. In the light of this the exception in article 2(3) should be interpreted narrowly.

44. This narrow interpretation of article 2(3) refers in particular to the notion of economic rights and to the notion of developing countries. The latter notion refers to those countries which have gained independence and which fall within the appropriate United Nations classifications of developing countries.

Article 3: Equal rights for men and women

45. In the application of article 3 due regard should be paid to the Declaration and Convention on the Elimination of All Forms of Discrimination against Women and other relevant instruments and the activities of the supervisory committee (CEDAW) under the said Convention.

Article 4: Limitations

46. Article 4 was primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the state.

47. The article was not meant to introduce limitations on rights affecting the subsistence or survival of the individual or integrity of the person.

"determined by law"

48. No limitation on the exercise of economic, social and cultural rights shall be made unless provided for by national law of general application which is consistent with the Covenant and is in force at the time the limitation is applied.

49. Laws imposing limitations on the exercise of economic, social and cultural rights shall not be arbitrary or unreasonable or discriminatory.

50. Legal rules limiting the exercise of economic, social and cultural rights shall be clear and accessible to everyone.

51. Adequate safeguards and effective remedies shall be provided by law against illegal or abusive imposition of application of limitations on economic, social and cultural rights.

"promoting the general welfare"

52. This term shall be construed to mean furthering the wellbeing of the people as a whole.

"in a democratic society"

53. The expression "in a democratic society" shall be interpreted as imposing a further restriction on the application of limitations.

54. The burden is upon a state imposing limitations to demonstrate that the limitations do not impair the democratic functioning of the society.

55. While there is no single model of a democratic society, a society which recognises and respects the human rights set forth in the United Nations Charter and the Universal Declaration of Human Rights may be viewed as meeting this definition.

"compatible with the nature of these rights"

56. The restriction "compatible with the nature of these rights" requires that a limitation shall not be interpreted or applied so as to jeopardise the essence of the right concerned.

Article 5

57. Article 5(1) underlines the fact that there is no general, implied or residual right for a state to impose limitations beyond those which are specifically provided for in the law. None of the provisions in the law may be interpreted in such a way as to destroy "any of the rights or freedoms recognised". In addition article 5 is intended to ensure that nothing in the Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilise fully and freely their natural wealth and resources.

58. The purpose of article 5(2) is to ensure that no provision in the Covenant shall be interpreted to prejudice the provisions of domestic law or any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected. Neither shall article 5(2) be interpreted to restrict the exercise of any human right protected to a greater extent by national or international obligations accepted by the State party.

C. Interpretative Principles specifically relating to Part III of the Covenant

Article 8: "prescribed by law"

59. See the interpretative principles under the synonymous term "determined by law" in article 4.

"necessary in a democratic society"

60. In addition to the interpretative principles listed under article 4 concerning the phrase "in a democratic society", article 8 imposes a greater restraint upon a State party which is exercising limitations on trade union rights. It requires that such a limitation is indeed necessary. The term "necessary" implies that the limitation—

- (a) responds to a pressing public or social need,
- (b) pursues a legitimate aim, and
- (c) is proportional to that aim.

61. Any assessment as to the necessity of a limitation shall be based upon objective considerations.

"national security"

62. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.

63. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

64. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may be invoked only when there exist adequate safeguards and effective remedies against abuse.

65. The systematic violation of economic, social and cultural rights undermines true national security and may jeopardise international peace and security. A state responsible

for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.

"public order (ordre public)"

66. The expression "public order (*ordre public*)" as used in the Covenant may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which a society is founded. Respect for economic, social and cultural rights is part of public order (*ordre public*).

67. Public order (*ordre public*) shall be interpreted in the context of the purpose of the particular economic, social and cultural rights which are limited on this ground.

68. State organs or agents responsible for the maintenance of public order (*ordre public*) shall be subject to controls in the exercise of their power through the Parliament, courts, or other competent independent bodies.

"rights and freedoms of others"

69. The scope of the rights and freedoms of others that may act as a limitation upon rights in the Covenant extends beyond the rights and freedoms recognised in the Covenant.

D. Violations of Economic, Social and Cultural Rights

70. A failure by a State party to comply with an obligation contained in the Covenant is, under international law, a violation of the Covenant.

71. In determining what amounts to a failure to comply, it must be borne in mind that the Covenant affords to a State party a margin or discretion in selecting the means for carrying out its objects, and that factors beyond its reasonable control may adversely affect its capacity to implement particular rights.

72. A State party will be in violation of the Covenant, *inter alia*, if—

- (a) it fails to take a step which it is required to take by the Covenant;
- (b) it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfillment of a right;
- (c) it fails to implement without delay a right which it is required by the Covenant to provide immediately;
- (d) it wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- (e) it applies a limitation to a right recognised in the Covenant other than in accordance with the Covenant;
- (f) it deliberately retards or halts the progressive realisation of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*;
- (g) it fails to submit reports as required under the Covenant.

73. In accordance with international law each State party to the Covenant has the right to express the view that another State party is not complying with its obligations under the Covenant and to bring this to the attention of that State party. Any dispute that may thus arise shall be settled in accordance with the relevant rules of international law relating to the peaceful settlement of disputes.

PART II. Consideration of States Parties' Reports and International Co-operation under Part IV of the Covenant

A. Preparation and submission of reports by State parties

74. The effectiveness of the supervisory machinery provided in Part IV of the Covenant depends largely upon the quality and timeliness of reports by States parties. Governments are therefore urged to make their reports as meaningful as possible. For this purpose they should develop adequate internal procedures for consultations with the competent government departments and agencies, compilation of relevant data, training of staff, acquisition of background documentation, and consultation with relevant non-governmental and international institutions.

75. The preparation of reports under article 16 of the Covenant could be facilitated by the implementation of elements of the programme of advisory services and technical

assistance as proposed by the chairmen of the main human rights supervisory organs in their 1984 report to the General Assembly.

76. States parties should view their reporting obligations as an opportunity for broad public discussion on goals and policies designed to realise economic, social and cultural rights. For this purpose wide publicity should be given to the reports, if possible in draft. The preparation of reports should also be an occasion to review the extent to which relevant national policies adequately reflect the scope and content of each right, and to specify the means by which it is to be realised.

77. States parties are encouraged to examine the possibility of involving non-governmental organisations in the preparation of their reports.

78. In reporting on legal steps taken to give effect to the Covenant, States parties should not merely describe any relevant legislative provisions. They should specify, as appropriate, the judicial remedies, administrative procedures and other measures they have adopted for enforcing those rights and the practice under those remedies and procedures.

79. Quantitative information should be included in the reports of States parties in order to indicate the extent to which the rights are protected in fact. Statistical information and information on budgetary allocations and expenditures should be presented in such a way as to facilitate the assessment of the compliance with Covenant obligations. States parties should, where possible, adopt clearly defined targets and indicators in implementing the Covenant. Such targets and indicators should, as appropriate, be based on criteria established through international co-operation in order to increase the relevance and comparability of data submitted by States parties in their reports.

80. Where necessary, governments should conduct or commission studies to enable them to fill gaps in information regarding progress made and difficulties encountered in achieving the observance of the Covenant rights.

81. Reports by States parties should indicate the areas where more progress could be achieved through international co-operation and suggest economic and technical co-operation programmes that might be helpful toward that end.

82. In order to ensure a meaningful dialogue between the States parties and the organs assessing their compliance with the provisions of the Covenant, States parties should designate representatives who are fully familiar with the issues raised in the report.

B. Role of the Committee on Economic, Social and Cultural Rights

83. The Committee has been entrusted with assisting the Economic and Social Council in the substantive tasks assigned to it by the Covenant. In particular, its role is to consider States parties reports and to make suggestions and recommendations of a general nature, including suggestions and recommendations as to fuller compliance with the Covenant by States parties. The decision of the Economic and Social Council to replace its sessional Working Group by a Committee of independent experts should lead to a more effective supervision of the implementation by States parties.

84. In order to enable it to discharge fully its responsibilities the Economic and Social Council should ensure that sufficient sessions are provided to the Committee. It is imperative that the necessary staff and facilities for the effective performance of the Committee's functions be provided, in accordance with ECOSOC Resolution 1985/17.

85. In order to address the complexity of the substantive issues covered by the Covenant, the Committee might consider delegating certain tasks to its members. For example, drafting groups could be established to prepare preliminary formulations or recommendations of a general nature or summaries of the information received. Rapporteurs could be appointed to assist the work of the Committee in particular to prepare reports on specific topics and for that purpose consult States parties, specialised agencies and relevant experts and to draw up proposals regarding economic and technical assistance projects that could help overcome difficulties States parties have encountered in fulfilling their Covenant obligations.

86. The Committee should, pursuant to article 22 and 23 of the Covenant, explore with other organs of the United Nations, specialised agencies and other concerned organisations, the possibilities of taking additional international measures likely to contribute to the progressive implementation of the Covenant.

87. The Committee should reconsider the current six-year cycle of reporting in view of the delays which have led to simultaneous consideration of reports submitted under different phases of the cycle. The Committee should also review the guidelines for States parties to assist them in preparing reports and propose any necessary modifications.

88. The Committee should consider inviting States parties to comment on selected topics leading to a direct and sustained dialogue with the Committee.

89. The Committee should devote adequate attention to the methodological issues involved in assessing compliance with the obligations contained in the Covenant. Reference to indicators, in so far as they may help measure progress made in the achievement of certain rights, may be useful in evaluating reports submitted under the Covenant. The Committee should take due account of the indicators selected by or in the framework of the specialised agencies and draw upon or promote additional research, in consultation with the specialised agencies concerned, where gaps have been identified.

90. Whenever the Committee is not satisfied that the information provided by a State party is adequate for a meaningful assessment of progress achieved and difficulties encountered it should request supplementary information, specifying as necessary the precise issues or questions it would like the State party to address.

91. In preparing its reports under ECOSOC-resolution 1985/17, the Committee should consider, in addition to the "summary of its consideration of the reports", highlighting thematic issues raised during its deliberations.

C. Relations between the Committee and Specialised Agencies, and other international organs

92. The establishment of the Committee should be seen as an opportunity to develop a positive and mutually beneficial relationship between the Committee and the specialised agencies and other international organs.

93. New arrangements under article 18 of the Covenant should be considered where they could enhance the contribution of the specialised agencies to the work of the Committee. Given that the working methods with regard to the implementation of economic, social and cultural rights vary from one specialised agency to another, flexibility is appropriate in making such arrangements under article 18.

94. It is essential for the proper supervision of the implementation of the Covenant under Part IV that a dialogue be developed between the specialised agencies and the Committee with respect to matters of common interest. In particular consultations should address the need for developing indicators for assessing compliance with the Covenant; drafting guidelines for the submission of reports by States parties; making arrangements for submission of reports by the specialised agencies under article 18. Consideration should also be given to any relevant procedures adopted in the agencies. Participation of their representatives in meetings of the Committee would be very valuable.

95. It would be useful if Committee members could visit specialised agencies concerned, learn through personal contact about programmes of the agencies relevant to the realisation of the rights contained in the Covenant and discuss the possible areas of collaboration with those agencies.

96. Consultations should be initiated between the Committee and international financial institutions and development agencies to exchange information and share ideas on the distribution of available resources in relation to the realisation of the rights recognised in the Covenant. These exchanges should consider the impact of international economic assistance on efforts by States parties to implement the Covenant and possibilities of technical and economic co-operation under article 22 of the Covenant.

97. The Commission on Human Rights, in addition to its responsibilities under article 19 of the Covenant, should take into account the work of the Committee in its consideration of items on its agenda relating to economic, social and cultural rights.

98. The Covenant on Economic, Social and Cultural Rights is related to the Covenant on Civil and Political Rights. Although most rights can clearly be delineated as falling within the framework of one or other Covenant, there are several rights and provisions referred to in both instruments which are not susceptible to clear differentiation. Both Covenants moreover share common provisions and articles. It is important that consultative

arrangements be established between the Economic, Social and Cultural Rights Committee and the Human Rights Committee.

99. Given the relevance of other international legal instruments to the Covenant, early consideration should be given by the Economic and Social Council to the need for developing effective consultative arrangements between the various supervisory bodies.

100. International and regional intergovernmental organisations concerned with the realisation of economic, social and cultural rights are urged to develop measures, as appropriate, to promote the implementation of the Covenant.

101. As the Committee is a subsidiary organ of the Economic and Social Council, non-governmental organisations enjoying consultative status with the Economic and Social Council are urged to attend and follow the meetings of the Committee and, when appropriate, to submit information in accordance with ECOSOC resolution 1296 (XLIV).

102. The Committee should develop, in co-operation with intergovernmental organisations and non-governmental organisations as well as research institutes an agreed system for recording, storing and making accessible case law and other interpretative material relating to international instruments on economic, social and cultural rights.

103. As one of the measures recommended in article 23 it is recommended that seminars be held periodically to review the work of the Committee and the progress made in the realisation of economic, social and cultural rights by States parties.

The UN General Assembly, in a Resolution adopted on 3 November 1986, has invited all states to commemorate the 20th anniversary of the adoption of international covenants on human rights by continuing and strengthening measures aimed at the implementation, promotion and protection of their provisions. The Assembly also noted that only half of the Organisation's Member States had acceded to the Covenants and appealed to all nations that had not done so to adhere to those instruments so that they would acquire genuine universality.

Australia

War criminals: review of material relating to persons alleged or suspected of having committed war crimes

The Australian Government has authorised a Review to be undertaken of material related to the entry into Australia of persons alleged or suspected of being "war criminals", which is defined in the terms of the reference to mean persons who committed war crimes related to the activities of Germany during World War II.

The Review will examine materials held by Federal Departments and agencies, as well as records held by the United Nations and other relevant material supplied to it, and will report on—

- (a) whether war criminals are now or have been resident in Australia and, if so, when and how they obtained entry to Australia;
- (b) whether the material reveals any breach of law, breach of duty or impropriety by any person or persons in relation to the entry into Australia of any person mentioned in paragraph (a); and
- (c) whether there was any policy by any Government of Australia to allow or assist the entry of known or suspected war criminals into Australia.

In particular, the Review will consider and report on whether that material is such as to require further investigations. The Review is being conducted by Mr A C C Menzies, OBE, a former Deputy Secretary of the Federal Attorney-General's Department.

United Kingdom**Combating international child kidnapping**

On 1 August 1986 reciprocal arrangements came into force between the UK and ten other countries to help secure the return of children abducted to or from the UK. Legal aid for parents whose children have been abducted is a feature of the new scheme. The new arrangements have been made under two international Conventions on Child Abduction—the Hague Convention and the European Convention—and the necessary changes to UK law have been made by the Child Abduction and Custody Act 1985. The effect of both Conventions is to enable a parent who has rights of custody of a child under 16 to enforce those rights in any Convention country. Where a child has been abducted from the UK to another Convention country the courts in that country will be required to order the return of the child. The UK has undertaken the same obligations in relation to children abducted to this country from another Convention country. [See also (1986) 12 CLB 1051]

A major aspect of the Conventions is the setting up of “Central Authorities” in each Convention country to administer the new arrangements; their job is to discover the whereabouts of the child, prevent further harm to the child and to secure his or her voluntary return, by initiating judicial proceedings where necessary. The Central Authority for England and Wales and Northern Ireland is the Lord Chancellor’s Department, Trevelyan House, 30 Great Peter Street, London SW1P 2BY. Telephone 01-210 8705 or 8700.

On 1 August this year when the Conventions came into force in the UK the following countries had ratified one or both Conventions: Austria; Belgium; Canada (Canada has extended the Convention to Saskatchewan, bringing the Convention’s coverage to all Province’s except Alberta: see also page 204); Cyprus; France; Hungary; Luxembourg; Portugal; Spain; Switzerland. It is expected that many more countries will ratify in the near future. The Lord Chancellor, Lord Hailsham of St Marylebone, on 2 November 1986, announced the first success for the international arrangements to help secure the return of children abducted to or from the United Kingdom. As the Central Authority for England and Wales and Northern Ireland in administering the new arrangements, the Lord Chancellor’s Department—working closely with the Canadian Central Authority—has recently secured the return to Canada of three children under the age of six who had been abducted by their father to England.

The second success for the new child abduction measures was announced by the Lord Chancellor on 16 December 1986: the safe return to her mother in Austria of a four-year old girl who had been abducted to England.

Lord Hailsham also announced that his Department is in touch with the Central Authorities in Spain and Portugal to secure the return of nine children abducted from the UK.

In a speech to the National Society for the Prevention of Cruelty to Children in Bath (2 November 1986), Lord Hailsham said—

One form of child abuse with which the NSPCC is familiar and which has sadly increased in recent years is the evil of child abduction, and especially international child abduction. But my purpose in raising this subject with you today is not to dwell on the anguish and the trauma that this despicable and often ruthless practice brings to children unlawfully snatched from their homes and taken to live among strange people in an alien environment, but rather to offer some good news. I am pleased to be able to say that the United Kingdom has had its first success in securing the safe return to their

mothers of three abducted children, through the new reciprocal arrangements for dealing with this problem on an international level which came into force in August this year between the UK and ten other countries.

The three children, who were subject to custody proceedings in Canada following the separation of their parents, were taken by their father from Canada and brought to this country. The mother came to England and with the assistance of my Department, which acts as the Central Authority in these matters, commenced Hague Convention proceedings and secured the return of the children within a week.

My Department is also involved in a number of cases covering children abducted from the UK to other Convention countries. At present we are endeavouring to secure the return of nine children from Spain and Portugal.

I hope that this early evidence of the efficacy of the Child Abduction Conventions will serve both as a message of hope to those who may fear the threat of abduction and as a deterrent to would-be abductors. I hope too that it will encourage many more countries to follow our example and ratify the Conventions so that before long there will be few "safe" countries for the child abductor to turn to.

Vanuatu

IMO: membership

On 21 October 1986 Vanuatu accepted the IMO Convention thus becoming the 130th Member of the International Maritime Organisation, the specialised agency of the United Nations concerned with shipping safety and the prevention of marine pollution from ships.