

Part 6

Legal Developments

International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. The Court decides cases submitted to it by states and gives advisory opinions on legal questions at the request of international organizations authorized to request such opinions. In recent years, the Court has had more cases on its docket than ever before.

The Court is composed of 15 judges, no two of whom may be nationals of the same state. During 1997 the Court was composed as follows: Stephen M. Schwebel (United States–President), Christopher G. Weeramantry (Sri Lanka–Vice President), Mohammed Bedjaoui (Algeria), Shigeru Oda (Japan), Gilbert Guillaume (France), Raymond Ranjeva (Madagascar), Geza Herczegh (Hungary), Shi Jiuyong (China), Carl-August Fleischhauer (Germany), Abdul G. Koroma (Sierra Leone), Vladlen S. Vereshchetin (Russia), Rosalyn Higgins (United Kingdom), Gonzalo Parra-Aranguren (Venezuela), Pieter H. Kooijmans (Netherlands) and Jose F. Rezak (Brazil).

The UN General Assembly and the Security Council, voting separately, elect the judges from a list of persons nominated by national groups on the Permanent Court of Arbitration. Judges are elected for 9-year terms, with 5 judges elected every 3 years. The most recent round of elections was held on November 6, 1996, when Judges Bedjaoui, Schwebel and Vereshchetin were reelected to the Court and Judges Kooijmans and Rezak were elected for initial terms.

At elections held by the Court on February 6, 1997, Judge Stephen M. Schwebel of the United States was elected President of the Court for a 3-year term.

The United States was involved in the following matters in the Court since the last report.

Oil Platforms

On November 2, 1992, Iran brought a case against the United States charging that U.S. military actions against Iranian oil platforms in the Persian Gulf during the conflict between Iran and Iraq violated the 1955

Treaty of Amity between the two countries. The incidents cited by Iran followed attacks by Iranian military forces against U.S. naval and commercial vessels in the Gulf. The United States filed a Preliminary Objection to the Court's jurisdiction, which was considered at hearings in September 1996. In December 1996 the Court rendered a decision agreeing with the U.S. position that the Court did not have jurisdiction under two of the three treaty articles invoked by Iran, but concluding that it had jurisdiction to consider a third treaty claim. On June 23, 1997, the United States filed its Counter-Memorial and a counter-claim in the case. In a letter dated October 2, Iran's agent objected to the admissibility of the U.S. counter-claim. The Vice President of the Court met with the U.S. and Iranian agents on October 17 to discuss further proceedings in light of Iran's letter. The Court subsequently asked Iran to specify the legal grounds for its opinion by November 18, and the United States to respond within a month. On November 18 Iran filed a document explaining its objections and requesting a hearing. The United States filed its response on December 18.

Libyan Arab Jamahiriya v. United States of America

On March 3, 1992, Libya initiated cases against the United States and the United Kingdom charging violations of the 1971 Montreal (Air Sabotage) Convention, asserting that the United States and the United Kingdom interfered with Libya's alleged right to try individuals suspected of the bombing of Pan Am flight 103 over Lockerbie, Scotland, on December 21, 1988. On June 20, 1995, the United States filed Preliminary Objections to the Court's jurisdiction in the case; the United Kingdom also filed such Preliminary Objections. Libya filed its written response on December 20, 1995. The Court held a hearing on the U.S. and U.K. Preliminary Objections on October 13–22, 1997. A legal team representing the United States participated actively in those hearings.

International Law Commission

The International Law Commission (ILC) was established in 1948 to promote the codification and progressive development of international law. Its 34 members, persons of recognized competence in international law who serve in their individual capacities, are elected by the General Assembly for 5-year terms. Mr. Robert Rosenstock of the United States is serving his second term as a member of the Commission.

The Commission studies international law topics that it determines to be suitable for codification or progressive development or that are referred to it by the General Assembly. It generally selects one of its members (designated a special rapporteur) to prepare reports on each topic and, after discussion, to draft articles for adoption by the Commission. The Commission reports annually on its work to the General Assembly.

At its 1997 session, the Sixth Committee of the General Assembly held a detailed debate on the ILC's report on its 49th session, held May

12–July 18 in Geneva. This debate indicated that the Commission had a productive session in Geneva, and is carrying into effect a set of reforms aimed at improving the relevance, quality and timeliness of its work.

During its 1997 session, the Commission completed its first reading of a draft declaration on questions of nationality relating to succession of states, adopted preliminary conclusions on several key questions relating to reservations to treaties, and appointed new special rapporteurs for its work on four subjects (state responsibility, diplomatic protection, unilateral acts of states, and international liability for injurious consequences of acts not prohibited by international law).

The Commission also established a detailed work program specifying its planned activities for each year of the 5-year term that began in 1997. This plan foresees that each topic now under consideration by the Commission either will be completed or brought to a defined transitional point by the end of the Commission's 2001 session. This should lessen disruptions of the Commission's work such as those that have resulted in the past from retirements of special rapporteurs or other personnel changes.

UN Commission on International Trade Law

The UN Commission on International Trade Law (UNCITRAL), established by General Assembly resolution 2205 (XXI) in 1966, has maintained a technically focused program on harmonizing national laws to promote trade and commerce. It has generally avoided political issues that may arise in the work of other bodies. The Commission, with headquarters in Vienna, Austria, usually holds up to 4 weeks of working group meetings annually on all active topics, which are reviewed at its annual plenary session. The United States was reelected in 1997, along with Austria, Italy and Spain, for the four open WEO (Western European and Other) seats on the 36-member body for another 6-year term.

UN Model Law on Cross-border Insolvency

The UN model law, completed by the Commission at its May plenary session, was endorsed by General Assembly resolution 52/157 in December (adopted without a vote) and had involved government delegations, judicial groups from member states, private sector associations and NGOs in its preparation. The model law sets out international standards for access for foreign representatives to national proceedings; protection of assets to permit rescue of going concerns or distribution, taking into account interests in different countries; procedures for rapid action by courts; authority for judicial cooperation between states; and equalization of benefits for creditors regardless of country origins. These factors are important in restructuring insolvency laws for countries seeking to improve investment and their participation in international commerce. Draft legislation was prepared for introduction of the UN model law as amendments to the U.S. federal bankruptcy code, as a signal of U.S. support for this model law.

Draft Convention on Commercial Finance

Working group meetings narrowed the gap between states with new commercial laws in place, such as the United States and Canada, and states whose laws do not now recognize modern commercial finance methods. The draft convention covers accounts receivable financing, the core method by which most inventory financing takes place in countries such as the United States, and which has become central to many privately financed overseas projects. The U.S. objective is for a convention that creates new commercial credit for developing and emerging countries, rather than simply making more efficient the trade that now exists between the United States and its major trading partners. The United States has proposed a treaty regime by which countries would agree on basic legal principles at the outset, and could then optionally join an internationally linked system of computer registries for providing notice of financing agreements. The U.S. view was that the latter would be necessary to actually create additional credit in world markets, especially in the developing world.

International Electronic Commerce

Following its completion of the UN Model Law on Electronic Commerce in 1996, the Commission began work on uniform rules for electronic signature systems. The United States has maintained that the rules should recognize both market-based solutions and licensed or regulated systems. In addition, the United States has urged that the rules be technology-neutral, and cover both digital signature systems (dual public key) and other methods for assuring message integrity and authentication. Similar U.S. concerns have been voiced at the OECD, the European Commission and other fora where this subject has been raised.

International Project Finance

The Commission began work on a legislative guide for countries to authorize and promote privately financed and privately managed infrastructure projects. The guide will cover necessary changes to national laws, including privatization authority where appropriate; standards for approval of private and public sector mixed companies; assurances for long-term financing, including accounts receivable and secured interests; authority for off-shore project specific corporate entities; procurement and development; and related matters. The United States has recommended that such legislation preserve wide latitude for private sector initiatives and management, while recognizing needs for some regulatory framework to ensure delivery of public services. The World Bank and others have recommended that the text emphasize competition policy. The Commission will seek to complete this work in 1999, in view of the large number of states interested in this rapidly growing technique of providing facilities for power generation, water supply, roadways, communication systems, etc.

UN Training and Assistance

There was broad support from member states, including the United States, for the increase in Secretariat-led assistance programs—primarily in developing and emerging state countries—for implementation of UNCITRAL legal texts. These efforts are consistent with U.S. goals, since the Commission has continued to produce legal standards that are technically focused and sensitive to market economics. The Secretariat continued its distribution of the UN case law series on UNCITRAL texts (known as CLOUT), based on the work of national correspondents appointed by states, including the United States, which have ratified or enacted an UNCITRAL-prepared convention or other text. This process, in addition to providing technical assistance to member states, has enhanced the internationalization of commercial law standards.

International Criminal Court

The United Nations continued in 1997 to review a draft treaty to create an international criminal court which would have jurisdiction to prosecute individuals who commit crimes of serious concern to the international community as a whole, including genocide, war crimes and crimes against humanity.

In 1994 the General Assembly established an *ad hoc* committee to review the major substantive and administrative issues arising out of the draft text, which had been submitted by the International Law Commission. That committee met for 4 weeks in 1995. On the basis of its work, the General Assembly, in resolution 50/46, decided to establish a Preparatory Committee (PrepCom) to study further the issues raised by the ILC text and prepare a widely acceptable draft text of a treaty for consideration at a diplomatic conference.

The PrepCom met for 6 weeks in 1996, and again for a total of 6 weeks in 1997. The United States supports creation of a fair, efficient and effective international criminal court and is playing an active role in the PrepCom. The PrepCom has made substantial progress in isolating issues and compiling proposals. Nevertheless, much work remains to reach agreement on major policy matters, such as,

- Which crimes should fall within the jurisdiction of the court and the definitions of those crimes;
- When the court should have jurisdiction *vis-a-vis* national criminal justice systems;
- How a case should get started and, in particular, what role the Security Council should play in that process; and
- The nature of the overall relationship of the court to the United Nations, particularly in terms of financing and oversight.

Also, important technical work needs to be completed on such matters as the general principles of criminal law that should guide the court, the

court's rules of procedure and elements of the crimes within the court's jurisdiction.

In December 1997 the General Assembly adopted resolution 52/160 by consensus. It recognized the progress of the PrepCom to date, reaffirmed that the PrepCom would meet once more for 3 weeks, March 16–April 3, 1998, and decided that a diplomatic conference would be held in Rome June 15–July 17, 1998, to finalize and adopt the convention establishing an international criminal court. The General Assembly further decided to place the establishment of the proposed court on its agenda for the 53rd session.

Decade of International Law

In resolution 44/23 of November 17, 1989, the General Assembly declared the period 1990–1999 the UN Decade of International Law (UN Decade). The four major goals of the UN decade are: to promote acceptance of and respect for the principles of international law; promote means and methods for the peaceful settlement of disputes between states, including resort to and full respect for the International Court of Justice; encourage progressive development of international law and its codification; and encourage the teaching, study, dissemination and wider appreciation of international law. In 1997 the General Assembly adopted a program of action presented by the Governments of Russia and the Netherlands that is dedicated to the centennial of the first International Peace Conference (held in 1899) and aimed at contributing to the further development of the themes of the first and second International Peace Conferences. This program of action does not entail budgetary implications for the United Nations.

Many of the Decade's activities have been in implementation of the last goal. In particular, recent advances in technology have facilitated the wider dissemination of international law. The International Court of Justice has launched an effective Internet web site, providing immediate access to ICJ judgments and oral pleadings. In 1997 the General Assembly encouraged the UN Secretariat to continue developing a policy of providing Internet access to UN treaty information.

Under its Rule of Law Program, the United States has provided grants to governments and nongovernmental organizations to enable them to gain access to the Internet and computer databases containing treaty texts and other international legal materials. The United States has actively supported the Decade and encouraged U.S. bar associations and other relevant organizations to actively participate.

Host Country Relations

The UN General Assembly established the 15-member Committee on Relations with the Host Country in 1971 to address issues relating to the implementation of the UN Headquarters Agreement and the Convention

on the Privileges and Immunities of the United Nations. The Committee was particularly busy in 1997. There were 10 meetings of the Committee, 3 meetings of a working group on the use of diplomatic motor vehicles and 2 informal consultations on the parking issue.

Committee discussion focused primarily on the following topics: security of missions and the safety of their personnel; privileges and immunities; motor vehicles, parking and related matters; travel restrictions; and indebtedness/health insurance.

The most controversial issues involved the relations of the UN diplomatic community with the host city of New York. The first of the issues was brought to the attention of the Committee by the Representatives of Russia and Belarus. An altercation between New York City police and two diplomats of the Russian and Belarus UN Missions occurred on December 29, 1996, and quickly became a highly charged matter with charges and counter-charges appearing almost daily in the press. The diplomats raised the issue in the Committee because they felt the actions of the police were a “flagrant violation of their diplomatic immunities.” The Committee urged the host country to become involved and investigate the conflicting accounts. The issue was ultimately resolved by the Belarus, Russian and U.S. Missions.

The second of these issues involved the proposed implementation of a new parking program for diplomats based in New York City. The Deputy Mayor of New York introduced the program to Committee members on March 10, with implementation of the program scheduled for April 1. Committee members challenged certain aspects of the program, and, after considerable deliberation, the Committee decided to set up a working group to address the problem, and to seek an opinion from the UN Legal Counsel. Subsequently, the Legal Counsel indicated that, in his opinion, some aspects of the program were not consistent with international law. Further discussions ensued with the City of New York to modify aspects of the program. Committee members, by a vote of 13 to 1 (U.S.) recommended that the issue be moved to the General Assembly. On April 18 the U.S. Delegation advised the Committee that implementation of the program had been deferred. Accordingly, the issue was not moved to the General Assembly. Discussions with the City of New York to develop an improved diplomatic parking program have not yet been concluded.

On December 15 the General Assembly adopted a resolution, “Report of the Committee on Relations with the Host Country,” by consensus. The resolution calls upon the host country to continue its efforts with respect to the parking issue, and to continue to promote compliance of local authorities with international norms concerning diplomatic privileges and immunities. On another matter, the resolution requests that the Committee review its membership and composition. Finally, the resolution expressed the Committee’s appreciation to the host country for its work in maintain-

ing appropriate conditions for the work of the missions accredited to the United Nations. (Resolution 52/159.)

International Terrorism

The General Assembly adopted by consensus on December 15 two resolutions related to terrorism: “Measures to eliminate international terrorism,” (Resolution 52/165) and “International Convention for the Suppression of Terrorist Bombings.” (Resolution 52/164.)

The “Measures to eliminate international terrorism” resolution reaffirmed the “Declaration on Measures to Eliminate International Terrorism” which was initially adopted in 1994, and was supplemented in 1996. The declaration unequivocally condemns all acts, methods and practices of terrorism, and also reaffirms that perpetrators of terrorist acts are excluded from refugee protection. Also included in the resolution was a decision to continue the work of the *ad hoc* committee established by General Assembly resolution 51/210. Meetings are scheduled for February 1998 and during the General Assembly in the fall of 1998, to work on a convention on nuclear terrorism.

The resolution on terrorist bombings adopted the text of the “International Convention for the Suppression of Terrorist Bombings” and will open the instrument for signature at UN Headquarters January 1998–December 1999. The United States plans to sign the convention when it opens for signature in January 1998.

Strengthening the Role of the United Nations

The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization held its 22nd annual session January 27–February 7, 1997. A resolution adopting the report of the Committee’s work, and a resolution on its agenda item concerning “Implementation of Charter provisions related to assistance to third States affected by the application of sanctions,” were debated and adopted during the UN General Assembly’s Sixth Committee meetings in the fall. The resolutions were subsequently adopted, without votes, by the General Assembly on December 15, 1997. (Resolutions 52/161 and 52/162.)

The Charter Committee recommended to the General Assembly for its consideration and adoption an amendment to the rules of procedure of the General Assembly which would require that all regional groups be represented in the elected management arm or “Bureau” of each of the Main Committees. The Charter Committee also recommended to the General Assembly that it invite member states and state parties to the Statute of the International Court of Justice, as well as the Court itself, to submit their comments on the consequences that the increase in the volume of cases before the Court has on its operation. Both of the Charter Committee’s recommended actions were taken by the General Assembly.

International Criminal Tribunals for Rwanda and the Former Yugoslavia

The International Criminal Tribunals for Rwanda and the former Yugoslavia have jurisdiction over genocide and other serious violations of international humanitarian law. The UN Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) in May 1993, and the International Criminal Tribunal for Rwanda (ICTR) in November 1994. The Tribunals share a Chief Prosecutor, Justice Louise Arbour of Canada, who assumed her position on October 1, 1996. The Chief Prosecutor and the Deputy Prosecutor for the ICTY are located in The Hague. The Rwanda Tribunal hears cases in Arusha, Tanzania, and the office of its Deputy Prosecutor is located in Kigali, Rwanda.

As of the end of 1997, the ICTY had charged 79 individuals (plus an additional, unknown number of persons who may be named in sealed indictments) with genocide and other serious violations of international humanitarian law. Twenty-two indictees were in custody. The voluntary surrender of 10 Croatian indictees in October significantly increased the number of indictees in custody to the point that the Tribunal's resources and staff were utilized to capacity. Three of the indictees were released after the Office of the Prosecutor determined the evidence against them was not sufficiently strong to warrant trial. On August 27 the Security Council passed resolution 1126 to extend the terms of the three judges assigned to the *Celebici* case beyond the original November deadline to allow them to finish their work. In late December, the General Assembly approved a substantial increase in the Tribunal's budget to ensure that it has the resources to respond to the anticipated additional caseload. Of the five cases considered by the ICTY in 1997, two defendants were found guilty and have appealed while the other three cases are ongoing.

As of the end of 1997, the ICTR had issued indictments charging 35 individuals with war crimes and related offenses. Twenty-three are in custody. In December 1997 a U.S. magistrate in Texas refused to surrender an additional indictee to the Tribunal. The U.S. Government was disappointed with the decision and believes the indictee should be surrendered and that there is a sound legal basis to do so. The Administration is exploring its options. The ICTR considered three cases in 1997; none has yet been concluded.

In early 1997, the UN Office of Internal Oversight Services (OIOS) issued a report on its investigation of alleged mismanagement of the ICTR. The United States and other concerned governments have pressed the ICTR to work to correct the deficiencies and to improve the efficiency and effectiveness of the Tribunal. Many of the deficiencies identified by the OIOS have been addressed by the ICTR.

United States Participation in the United Nations