

International Institutions

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I. Introduction

The United Nations (UN) and other international institutions received great attention domestically and internationally in 1996. After the dramatic increase in the UN's profile in recent years, particularly in peacekeeping activities, the UN and its affiliated agencies faced a period of financial constraint and associated reassessment of mandates and structures. Calls for UN reform intensified, particularly from the U.S. Congress. There was perhaps no greater reflection of this upheaval than in the difficult battle over election of the new UN Secretary-General, Kofi Annan of Ghana.

Significant budgetary and management challenges confront the UN and its specialized agencies.¹ They are increasingly strapped by financial shortfalls, resulting in large part from the failure of the United States to pay its legally required dues. The United States has fallen behind in its payments to the UN by approximately \$1 billion; further payments to the UN are likely to be conditioned on evidence of institutional reforms. Payments of current assessments also have been heavily conditioned by Congress; a large portion of the U.S. payment for the UN regular budget must be withheld unless the UN stays within its agreed budget. As for the UN specialized agencies, the United States failed to pay its full assessment in 1996 for the Food and Agricultural Organization (FAO) and the International Labor Organization; it already is in substantial arrears to the FAO and the World Health Organization. Furthermore, Congress has barred payment of legally required U.S. payments to the United Nations Industrial Development Organization from which the U.S. withdrew effective December 31, 1996. The problem is not just money. Several of these international organizations are poorly run, flaccid institutions whose continued relevance will require firm, imaginative leadership.

The failure of the United States to pay its arrears to the UN and other international organizations not only has contributed to their current financial problems, but has brought into question the U.S. commitment to the entire system of international structures, norms, and mutually

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1. A number of the UN-affiliated agencies were in the process of changing their leadership in 1996. These include the World Health Organization, the International Civil Aviation Organization, the International Atomic Energy Agency, and the World Intellectual Property Organization.

agreed treaty obligations. It bears recalling that this system has served the United States and other countries well over the years, although it necessarily involves hard and slow bargaining with some level of compromise. As events of the past year attest, the UN and other international organizations continue to serve an immensely important role in creating and strengthening the rule of law in areas such as peacekeeping, arms control and nonproliferation, international criminal law, human rights, protecting intellectual property, and liberalizing global trade and investment.

II. The Security Council and Regional Conflicts

With the end of the Cold War and paralyzing superpower vetoes, the UN Security Council became the forum for unprecedented activism in the early 1990s. It has imposed a variety of legal obligations on states, authorized the deployment of numerous UN peacekeeping operations, and created novel subsidiary organs to handle unprecedented tasks. The Council continues to serve its vital role in maintaining or restoring peace and security in a number of "trouble spots" around the world.

A. YUGOSLAVIA

The international community continued to work to encourage the parties to the conflict in the former Yugoslavia to fulfill their commitments under the Dayton Peace Agreement signed in Paris on December 14, 1995.² Pursuant to an authorization by the UN Security Council,³ the multinational force in Bosnia (IFOR) successfully ended its mission to monitor and ensure compliance by all parties with the military aspects of the peace agreement—in short, to demobilize the combatants and ensure that they did not re-engage. This year, the Council adopted Resolution 1088 on December 12, 1996, authorizing an IFOR follow-on operation, known as the Stabilization Force (SFOR).⁴ SFOR will continue the functions of IFOR, including deterrence of hostilities or new threats to peace, and promotion of a climate in which the civilian aspects of the peace process may continue. Resolution 1088 also extended the mandate of the International Police Task Force, a UN civilian police force entrusted with restructuring and advising local law enforcement agencies on democratic and ethnically neutral policing principles.⁵

The Organization for Security and Cooperation in Europe (OSCE), a collection of European and North American Countries, played a noteworthy role in helping to implement the civilian aspects of the Dayton Agreement. For example, under Dayton's Annex 3, OSCE was requested to adopt and put in place a program of elections for Bosnia and Herzegovina, a huge and difficult task that it has carried out with considerable success.

The Security Council also decided in Resolution 1022 (1995) to suspend the economic and trade embargo against the FRY (Serbia and Montenegro) and to terminate the embargo ten days after the occurrence of the first free and fair elections.⁶ In Resolution 1074 (1996),

2. General Framework Agreement for Peace in Bosnia and Herzegovina, Dec. 14, 1995, Bosn. & Herz.-Croat.-Yugo., 35 I.L.M. 75 [hereinafter Peace Agreement].

3. S.C. Res. 1031, ¶ 14, U.N. SCOR, 3607th mtg., S/RES./1031 (Dec. 15, 1995), 35 I.L.M. 235, 251.

4. S.C. Res. 1088, U.N. SCOR, 3723rd mtg., U.N. Doc. S/RES./1088 (Dec. 12, 1996).

5. *Id.*; see also Peace Agreement, *supra* note 2, at Annex 11, arts. III, VI.

6. S.C. Res. 1022, ¶ 1, U.N. SCOR, 3595th mtg., U.N. Doc. S/RES./1022 (Nov. 22, 1995), 35 I.L.M. 259, 260.

the Security Council acted to lift these sanctions, following the national elections in Bosnia.⁷ Nonetheless, a so-called outer wall of sanctions (pertaining to FRY membership in the UN and other international organizations) remains in effect.

B. IRAQ

Several important developments involved Iraq, on which the Security Council has devoted more time than on any other situation. In early September, following the incursion of Saddam Hussein's forces into Northern Iraq, the United States acted with force. It launched cruise missile attacks on Iraq's air defense capabilities and extended the no-fly-zone in the south of Iraq. Questions were raised as to the international legal authority for U.S. actions. Resolution 688, adopted by the Council in 1991, deemed Iraq's continued repression of its civilian population to be a threat to international peace and security in the region.⁸ In the U.S. view, establishment and enforcement of no-fly-zones over northern and southern Iraq are two means by which coalition members, without Security Council objection, have supported and monitored implementation of U.N.S.C.R. 688, Resolutions 678, 687, 949, and other relevant resolutions (all aimed at preventing Iraq from taking aggressive or other illegal actions against its civilian population or its neighbors).

Saddam Hussein's September incursion into northern Iraq delayed implementation of Resolution 986, which permits Iraq to sell up to \$2 billion worth of oil over six months to purchase humanitarian goods and to fund various UN activities regarding Iraq, including the UN Special Commission and the UN Compensation Commission.⁹ Implementation began in September but was suspended by the UN Secretary-General in order to reassess the situation and determine whether monitoring and distribution by UN personnel could take place in the north. After things quieted, the Secretary-General submitted a report to the Security Council on December 9 that triggered implementation of Resolution 986; Iraq's oil exports resumed soon thereafter under strict UN controls.

In the aftermath of the Persian Gulf War, the Security Council established a number of unprecedented subsidiary organs to handle various aspects of the ceasefire. One example is the UN Compensation Commission (UNCC), which was charged with adjudicating claims against Iraq resulting from the invasion and occupation of Kuwait. Panels of commissioners are appointed to review claims, and proposed claims awards are approved by the UNCC's Governing Council.¹⁰ The UNCC has issued over one million awards of approximately \$5.2 billion. Notably, in 1996, the UNCC approved a claim of \$610 million by the Kuwait National Oil Company for the costs of extinguishing oil well fires ignited by Iraq at the end of the Gulf War.

III. International Tribunals

Recent years have seen a dramatic increase in the establishment and use of international tribunals. The docket of the International Court of Justice has become quite heavy, including

7. S.C. Res. 1078, ¶ 2, U.N. SCOR, 3700th mtg., U.N. Doc. S/RES./1074 (Oct. 1, 1996), 35 I.L.M. 1561.

8. S.C. Res. 688, U.N. SCOR, 2982d mtg., U.N. Doc. S/RES./688 (Apr. 5, 1991), 35 I.L.M. 858.

9. S.C. Res. 986, U.N. SCOR, 3519th mtg., U.N. Doc. S/RES./986 (Apr. 14, 1995), 35 I.L.M. 1095.

10. S.C. Res. ¶ 18, U.N. SCOR, 2981st mtg., U.N. Doc. S/RES./687 (Apr. 3, 1991); 30 I.L.M. 846, 852; S.C. Res. 692, ¶ 3, U.N. SCOR, 2987th mtg., U.N. Doc. S/RES./692 (May 20, 1991), 30 I.L.M. 864, 865.

several cases in which the United States has an interest. The recently created ad hoc war crimes tribunals for the former Yugoslavia and Rwanda continue to progress, albeit unevenly, toward implementing their historic mandates. Negotiations continue for the establishment of an international criminal court to prosecute individuals who commit serious violations of international humanitarian law. Finally, the first elections were held in August for judges of the International Tribunal for the Law of the Sea.

A. INTERNATIONAL COURT OF JUSTICE

1. *Nuclear Weapons Cases*

The ICJ issued advisory opinions about the legality of the use of nuclear weapons.¹¹ The Court rejected the World Health Organization's request as outside the scope of that organization's competence, but gave a multifaceted response to the question raised by the General Assembly.¹² It reviewed various sources of law (including environmental and human rights treaties) and determined that there was no general prohibition on the threat or use of nuclear weapons.¹³ The ICJ expressly avoided deciding on the legality of nuclear deterrence, stating that it "cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake."¹⁴ The Court focused instead on the law concerning use of force in armed conflict. Half of the judges (with the president casting an additional tie-breaking vote) decided that "the threat or use of nuclear weapons would *generally* be contrary to the rules of international law applicable in armed conflict."¹⁵ The Court also held that there is a good faith obligation to pursue nuclear disarmament negotiations.¹⁶

2. *Bosnia Genocide*

On July 11, the ICJ announced its decision on jurisdictional challenges raised by Serbia to Bosnia's claim against it under the Convention on the Prevention and Punishment of the Crime of Genocide.¹⁷ The suit alleges that Serbia or its agents (including the Yugoslav Army) engaged in acts, such as killings, torture, and rape, against Muslims in Bosnia with the intent to destroy them in whole or in part. The Court found that, at the time Bosnia filed its case before the Court, both Bosnia and Serbia were parties to the Genocide Convention, and thus Bosnia could bring this case.¹⁸ Moreover, the Court determined that there was a legal dispute between the parties regarding the interpretation, application, or fulfillment of the convention.¹⁹ The Court also rejected Serbia's argument that the conflict in Bosnia was not international in character and that the Convention only applied to acts by a state within its own territory.²⁰ The case will now proceed to the merits.

11. Legality of the Threat or Use of Nuclear Weapons, General List No. 95 (I.C.J. Advisory Opinion of July 8, 1996), 35 I.L.M. 1343 [hereinafter Nuclear Weapons Opinion].

12. U.N. GAOR, 49th Sess., 90th mtg., GA Res. 49/75K, U.N. Doc. A/49/699 (Dec. 15, 1994).

13. Nuclear Weapons Opinion, *supra* note 11, at 27.

14. *Id.* at 33, 36, 35 I.L.M., at 1348.

15. *Id.* at 36, 35 I.L.M. at 831.

16. *Id.* at 33-35, 35 I.L.M. at 1348.

17. Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugo.), Gen. List No. 91 (I.C.J. Judgment on Preliminary Objections July 11, 1996).

18. *Id.* at 19.

19. *Id.* at 21.

20. *Id.* at 22-23.

3. *Iran Oil Platforms*

On December 12, the ICJ decided that it has jurisdiction to consider one element of Iran's case against the United States under the 1955 bilateral Treaty of Amity, Economic Relations and Consular Rights for attacks on Iranian oil platforms in the Persian Gulf during 1987-88.²¹ The United States maintains that it attacked these platforms in lawful self-defense, contending that they were used to stage attacks on neutral shipping in the Gulf and on the military vessels escorting that shipping. Specifically, the Court agreed that Iran could attempt to prove that in attacking the oil platforms, the United States unlawfully interfered with "freedom of commerce and navigation" under Article X of the treaty.²² Nevertheless, the ICJ rejected Iran's attempt to base its case on claims that U.S. actions violated other treaty provisions on "friendly relations" and "equitable treatment."²³ The case will now go forward on the merits.

4. *Iran Airbus*

On February 22, the Court issued an order directing that this case be removed from its docket, reflecting an agreement between Iran and the United States to settle their differences.²⁴ The Airbus case concerned the destruction of a civilian Iranian aircraft and the death of its passengers and crew as a result of two surface to air missiles launched by the U.S.S. *Vincennes* in July 1988. Iran had brought suit in May 1989, alleging that the use of force by the United States violated, among other things, certain provisions of the Chicago and Montreal Conventions, which govern and protect international civil aviation.²⁵

5. *Elections of ICJ Judges*

The judges of the 15-member court are elected to a nine-year term of office and may be reelected.²⁶ The terms of five judges end every three years, giving rise to elections held separately on the same day in the General Assembly and the Security Council of the UN. On November 6, the General Assembly and the Security Council reelected Judges Mohammed Bedjaoui (Algeria), Stephen M. Schwabel (United States), and Vladlen S. Vereshehin (Russia) as members of the court. On the same day, Pieter Kooijmans (Netherlands) and Jose Rezek (Brazil) were elected to be members of the court beginning February 6, 1997.

B. WAR CRIMES TRIBUNALS

1. *Yugoslavia*

The activities of the International Criminal Tribunal for the Former Yugoslavia (ICTY) picked up considerably last year. The ICTY, which is based at The Hague, has issued seventeen indictments for 74 persons, 7 of whom are in custody. In May 1996, the ICTY commenced its case against Dusko Tadic, with the first international criminal prosecution of an alleged war criminal since the Nuremberg and Tokyo trials after World War II. This followed the 1995 opinion of the Appeals Chamber rejecting Tadic's challenge to the lawfulness and jurisdiction

21. Case Concerning Oil Platforms (Iran v. U.S.), Gen. List No. 90 (I.C.J. Judgment on Preliminary Objections Dec. 12, 1996).

22. *Id.* at 16.

23. *Id.* at 12-13.

24. Case Concerning the Aerial Incident of July 3, 1988 (Iran v. U.S.), Gen. List No. 79 (I.C.J. Order of Removal of Case from the Docket Feb. 22, 1996), 35 I.L.M. 550.

25. Memorial of the Islamic Republic of Iran (Iran v. U.S.), vol. I, at 3 (July 24, 1990).

26. Statute of the International Court of Justice art. 3, ¶ 1, art. 13, ¶ 1.

of the ICTY.²⁷ Tadic was accused of expulsion, killing, and mistreatment of Muslims in the region of Prijedor and three of its infamous camps. After eighty-two working days and 115 witnesses, the case ended with closing arguments on November 28. Tadic relied on an alibi defense throughout the trial.

The ICTY held indictment confirmation proceedings under Rule 61 of its Rules of Procedure and Evidence against Radovan Karadzic and Ratko Mladic, respectively the president and the commander of the army of the Bosnian Serbs, who were indicted for, among other things, genocide and crimes against humanity.²⁸ A Rule 61 hearing permits the prosecutor to present evidence against a prior indictee not yet in custody before a full trial chamber.²⁹ If the trial chamber determines that there are reasonable grounds for believing that the accused committed the crimes charged, it confirms the indictment and issues an international arrest warrant so that the accused may be arrested if he crosses international boundaries.³⁰ In July 1996, the trial chamber reconfirmed the indictments against Karadzic and Mladic and issued international arrest warrants.

Later in November 1996, the tribunal sentenced Drazen Erdemovic, who had pled guilty, to 10 years in prison for his participation in the mass execution of some 1,200 Muslim civilians captured after the fall of Srebrenica. Erdemovic received a reduced sentence in exchange for cooperation with the prosecutor's office. Also in November, the tribunal confirmed an amended indictment against General Tihomir Blaskic, adding six counts to an indictment in both his individual and command capacity, for crimes against humanity and war crimes allegedly committed against Bosnian Muslims. Blaskic's trial is scheduled to take place in 1997.

2. Rwanda

The International Criminal Tribunal for Rwanda (ICTR), based in Arusha, Tanzania, has had some difficulty getting started. Six judges preside over the Arusha court, and its chief prosecutor shares time with the ICTY. Most of the tribunal's staff are in Kigali and Arusha, with the rest at The Hague. The ICTR has indicted 21 people on charges connected with the slaughter of at least 500,000 persons on Tutsis and Hutus between April and July 1994. Eleven suspects are in custody in Arusha, with others in custody in Belgium, the Ivory Coast, Cameroon, and the United States. Three trials, scheduled to commence in 1996, have been postponed. The trial of Jean-Paul Akayesu, the first defendant to face the Arusha tribunal, began on January 10, 1997.

The ICTR has been plagued by management problems, a failure to hire sufficient staff, and even an investigation by the recently created UN's Office of Internal Oversight Services regarding a wide range of management shortcomings. The ICTR also has been criticized by the Rwandan Government, which has sought to try some of the leaders of the genocide. The current Rwandan Government, which ousted the former Hutu-led regime that orchestrated the genocide, started its own proceedings in December 1996. More than 88,000 genocide suspects reside in Rwandan prisons.

27. Prosecutor v. Dusko Tadic, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, Case No. IT-94-I-AR72 (App. Chamber Oct. 2, 1995), 35 I.L.M. 32, 35.

28. Third Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, at 21, U.N. Doc. A/51/292, S/1996/665 (Aug. 16, 1996).

29. *Id.* at 19.

30. *Id.*

3. *International Criminal Court*

The UN currently is reviewing a proposal by the International Law Commission (ILC) to establish a permanent international criminal court (ICC). The ILC developed a draft treaty to create such a court, which was submitted to the General Assembly, and has been the basis for further work by a preparatory committee (PrepCom) created by the General Assembly in 1996.³¹ The PrepCom was charged with studying the issues raised by the ILC draft and preparing a widely acceptable text for consideration at a diplomatic conference. Two three-week sessions of this PrepCom were held in the spring and summer of 1996 in New York. These sessions revealed widespread support for the creation of a court, but made clear that governments need to reach a broader consensus on key issues.³² In December 1996, the General Assembly scheduled additional PrepCom sessions for 1997 and early 1998, and decided that a conference would be held in 1998.

Substantial work on major policy issues as well as technical matters remains. Most countries believe that the subject matter jurisdiction of the ICC should be limited to serious violations of international humanitarian law (genocide, war crimes, and crimes against humanity), although many would leave some opportunity to broaden the scope of the court's jurisdiction through periodic review conferences. Several states wish to include aggression and terrorism crimes in the court's jurisdiction. Also, most states seem to appreciate the importance of complementarity, the principle that the ICC would have jurisdiction only where domestic judicial proceedings are unavailable or ineffective, although there are different views on what exactly this should mean in practice.

The procedure by which a case is "triggered" before the ICC also remains controversial. The United States believes the Security Council, which has the primary responsibility for restoring international peace and security under the UN Charter, has a major role to play, particularly if the crimes are limited to serious violations of international humanitarian law. Other governments prefer a system based only on consent, by which two or more interested states must consent to an investigation or prosecution. Still others want the ICC to have "inherent" jurisdiction, requiring neither state consent nor Security Council assent before the ICC could exercise jurisdiction over a particular case.

C. INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

The UN Convention on the Law of the Sea (UNCLOS), which entered into force in November 1994, currently has 110 state parties. President Clinton transmitted the convention and the related Part XI Agreement on Deep Seabed Mining to the Senate in October 1994, but the Senate has yet to give its advice and consent. Elections were held this past August for judges of the International Tribunal for the Law of the Sea, one of the mechanisms under UNCLOS to resolve disputes regarding the interpretation or application of the treaty. The Tribunal consists of 21 judges elected by the states parties for nine-year terms.

31. See Report of the International Law Commission on the Work of Its Forty-Sixth Session, U.N. GAOR, 49th Sess., Supp. No. 10 U.N. Doc. A/49/10 (1994).

32. See generally Report of the Preparatory Committee on the Establishment of an International Criminal Court, U.N. GAOR, 51st Sess., Supp. Nos. 22, 22A vols. I-II U.N. Doc. A/51/22.

IV. International Law Commission (ILC)

The ILC, a creation of the General Assembly, consists of 34 legal experts who meet each year to promote the progressive development of international law and its codification.³³ The ILC report this year is of unusual interest, with the presentation of a completed draft code of crimes against the peace and security of mankind, draft articles on state responsibility, and important requests for governments' views on international liability for injurious consequences arising out of acts not prohibited by international law.³⁴ Also, the General Assembly's Sixth (Legal) Committee met as a working group to seek to develop a treaty based on the ILC's draft articles on nonnavigational uses of international watercourses.

A. DRAFT CODE OF CRIMES

The ILC completed its final reading on the draft Code of Crimes Against the Peace and Security of Mankind, on which work first began in 1947. Responding to the reactions of many governments to prior drafts, the ILC's final text limited the scope of the code to a core group of serious offenses, such as genocide, war crimes, crimes against humanity, and crimes against UN and associated personnel. While still very general in some respects, the ILC articles and commentary further clarified the mental status required for commission of crimes and definitions of key elements. The draft code and its commentary are likely to receive careful study in connection with the ongoing work on the ICC.

B. STATE RESPONSIBILITY

The ILC completed its first reading of the articles on state responsibility, and recommended that states be given until January 1, 1998, to comment in detail on the draft articles. The General Assembly agreed to this recommendation. In addressing the Sixth (Legal) Committee, the United States highlighted areas of particular concern—(1) the concept of state crimes, including the articles on reparations for international crimes; (2) inflexibility and impracticality of the draft's elaborate regimes for dispute settlement; (3) the draft's limitations on the use of countermeasures; and (4) a flawed and improperly conditioned standard of compensation for violations of state responsibility.

C. LIABILITY FOR INJURIOUS CONSEQUENCES

The ILC has been considering this topic since 1978. In 1996, the ILC formed a working group, which presented a set of draft articles and commentaries upon which states were asked to comment. The articles intend to create a legal regime requiring states to set up a process for preparing environmental impact assessments and issuing permits for virtually all activities that might cause significant transboundary harm, and implies state liability for all such harm. Although the ILC could not examine the draft articles at its 1996 session, the General Assembly was asked to comment on them this year. The United States and other countries raised serious concerns about the nature and scope of these articles, urging that the ILC narrow its focus, for example, considering only ultrahazardous or particularly hazardous activities.

33. GA Res. 174(ii), U.N. GAOR, 2d Sess., at 105-110, Nov. 21, 1947.

34. See Report of the International Law Commission on the Work of Its Forty-Eighth Session, U.N. GAOR, 51st Sess., Supp. No. 10, at 4-5 (A/51/10).

D. WATERCOURSES

An open-ended working group of the Sixth (Legal) Committee met during October 7-25, 1996, to develop a multilateral convention on equitable and reasonable use of international watercourses based on draft articles prepared over many years by the ILC. The working group reached preliminary agreement on many articles, but could not in the time available agree on key provisions defining and balancing the rights of up- and downstream riparian states. The delegations' views naturally were influenced by their national geographic circumstances as upstream or downstream states.

V. Arms Control and Disarmament

International organizations, including the United Nations, its Conference on Disarmament (CD) in Geneva, and the International Atomic Energy Agency, have long been important players in the pursuit of global arms control and disarmament. Events in 1996 continued to highlight their role in facilitating multilateral agreements and serving as a mechanism to implement them.

A. COMPREHENSIVE NUCLEAR TEST BAN TREATY

On September 17, the General Assembly voted to adopt the Comprehensive Test Ban Treaty (CTBT) and open it for signature.³⁵ This historic vote was a capstone of a forty-year search for a treaty to ban all nuclear test explosions. Nations have pursued negotiations on the treaty at the CD since 1994. The vote in favor of the resolution was 158 in favor, 3 opposed (India, Butan, Libya), and 5 abstentions (Cuba, Lebanon, Syria, Mauritius, Tanzania). The treaty was signed at the UN by the vast majority of the supporters on September 24, the day it was opened for signature. President Clinton was the first signatory. (There was a threat that the CTBT would never come before the General Assembly because of Indian objections that prevented "consensus" being reached in the CD on the CTBT's adoption, but the General Assembly decided to proceed notwithstanding India's objections.)

The treaty bans any nuclear weapon explosion or any other nuclear explosion.³⁶ Its system for verification includes an international monitoring system, on-site inspections, and confidence-building measures. The treaty also establishes an organization, to be located in Vienna, that will ensure the treaty's implementation, including international verification measures. The new organization will include a conference of state parties, an executive council, and a technical secretariat. To help pave the way for the new CTBT organization, the states parties established a Preparatory commission, which held its first meeting in November 1996.

B. CHEMICAL WEAPONS CONVENTION (CWC)

The triggering event for entry into force of the 1993 Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction took place this year. With ratification by the 65th state (Hungary) in October, the CWC will enter into force on April 29, 1997. Although many key states (such as the United Kingdom, France, Germany, and Japan) have already ratified the treaty, the United States has not done

35. G.A. Res. 50/245, U.N. GAOR, U.N. Doc. A/RES./50/245 (Sept. 17, 1996).

36. Comprehensive Nuclear Test Ban Treaty, Opened for Signature at the United Nations Headquarters in New York Sept. 24, 1996, 35 I.L.M. 1439 (1996).

so. In September, the U.S. Senate postponed debate on the CWC, while an effort was made to reach agreement on certain amendments to the resolution of ratification.

Among other things, the treaty calls for the establishment of an Organization for the Prohibition of Chemical Weapons (OPCW) to implement its provisions, including those regarding international verification of destruction of these weapons. The OPCW will come into existence at the conclusion of the first session of the Conference of the States Parties which will take place no later than 30 days after April 29, 1997. In the meantime, the CWC signatories adopted a resolution in Paris in 1993 that created a preparatory commission (PrepCom) for the OPCW.

C. CONVENTION ON CERTAIN CONVENTIONAL WEAPONS (CCW)

The United States and other parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons adopted at the final session of the Conference on Disarmament in Geneva on May 3, 1996, a revision of the protocol governing landmine use and transfer (Protocol II). The revised Protocol II is a significant improvement over the original and is aimed at addressing the humanitarian crisis caused by indiscriminate use of antipersonnel landmines. Among other things, the revised protocol expands the scope of the existing protocol to include internal armed conflicts (where most civilian landmine casualties have occurred in recent decades), and requires that all antipersonnel landmines be detectable. There are significant efforts underway to begin negotiations on a global ban of antipersonnel landmines in the CD in 1997.

VI. Economic Issues

International institutions played an important role in the resolution of disputes in the economic area as well as in the development of new agreements to facilitate global trade and investment. Especially notable were challenges made by many countries to the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996,³⁷ better known as the Helms-Burton Act, which was signed by the president on March 12 after the downing of two civilian aircraft by the Cuban Government. Title III of the bill permits U.S. nationals with claims to property expropriated by Cuba to bring suit in U.S. courts against persons who "traffic" in such property. In July 1996, and again in January 1997, the president exercised his authority to suspend for six months the ability of individuals to file suit under Title III. This must be reviewed again in July 1997. Title IV provides for denial of visas and exclusion from the United States of foreign nationals (and their family members) who "traffic" in confiscated Cuban property which is subject to a claim by a U.S. national. To date determinations under Title IV have been made with respect to two foreign companies.

A. WORLD TRADE ORGANIZATION

The European Union (EU) has challenged the consistency of Helms-Burton with the WTO Agreement and, at EU request, the WTO Dispute Settlement Body has approved the establishment of a dispute settlement panel. The panelists have not yet been selected. The EU charges that section 103, Title III, and Title IV of the Helms-Burton Act, as well as pre-existing measures related to the Cuban embargo that are "codified" by Helms-Burton, violate various provisions of the General Agreement on Tariffs and Trade and General Agreement on Trade in Services.

37. 22 U.S.C. § 6021 *et seq.* (1997).

In other major news, trade ministers from WTO members met in Singapore from December 9-13 for the first regular biennial meeting of the WTO at the ministerial level. Perhaps most notable, the meeting resulted in agreement by the United States and 27 other countries on an Information Technology Agreement (ITA) to eliminate tariffs by the year 2000 on a number of information technology products—semiconductors, telecommunications equipment, computers, computer equipment, and software products.³⁸ Technical details on the pace at which product tariffs will be reduced are to be finalized in Geneva at the WTO next year. The ministers also created working groups on government procurement and competition policy.

B. NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

Canada and Mexico have initiated consultations with the United States regarding Helms-Burton, charging that the Act violates provisions of NAFTA. In particular, they argue that Title III violates the investment chapter of NAFTA because it represents an extraterritorial exercise of U.S. jurisdiction that is contrary to international law. They also contend that Title IV violates undertakings in NAFTA to permit the entry of Canadian and Mexican business persons.

C. ORGANIZATION OF AMERICAN STATES (OAS)

The Inter-American Juridical Committee of the OAS was asked by the General Assembly of the OAS to examine the validity of the Helms-Burton Act under international law. The nonbinding legal opinion concluded that certain aspects and potential applications of the Helms-Burton legislation violate international law.³⁹

D. ORGANIZATION FOR COOPERATION AND ECONOMIC DEVELOPMENT (OECD)

Negotiations on a Multilateral Agreement on Investment (MAI) continued in Paris at the OECD this past year, with the goal of completing the agreement for presentation to the May 1997 ministerial meeting. The agreement is to provide a "state of the art" multilateral treaty for international investment with high standards for the liberalization of investment regimes and investment protection and with effective dispute settlement procedures. By the end of 1996, negotiators were in a position to move to a new phase of discussions based on a single consolidated text.

E. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Delegates from 160 countries met in Geneva at the WIPO Diplomatic Conference (December 2-20, 1996), and adopted two new treaties that should facilitate worldwide use of the Internet and other digital networks to disseminate creative products, including music and sound recordings, as well as help combat copyright piracy.

The first treaty (the WIPO Copyright Treaty) includes copyright protections regarding computer software and databases; distribution of copyrighted materials over networks; legal protections for anti-copying technology; and obligations concerning electronic rights management information (information identifying the work, its author, those with rights in the work,

38. Ministerial Declaration on Trade in Information Technology Products (Sing., Dec. 13, 1996).

39. See Opinion of the Inter-American Juridical Committee in Response to Resolution AG/Doc.3375/96 of the General Assembly of the Organization, Entitled "Freedom of Trade and Investment in the Hemisphere," CJI/SO/III/doc. 67/96 rev. 5 (Aug. 23, 1996), 35 I.L.M. 1322, 1329.

and the terms and conditions of its use). It reaffirmed (1) that copyright owners continue to enjoy a broadly applicable exclusive right of reproduction and communication to the public, and (2) that countries may recognize exceptions to those rights such as the "fair use" doctrine which permits some copying of works for personal use so long as the copying does not interfere with the commercial interests of the copyright holder. The second treaty (the WIPO Performances and Phonograms Treaty) brings protection for performers and producers of phonograms into closer accord with the protections available for other creative products, such as books, movies, and computer software.

VII. Human Rights

A number of bodies within the UN, including the General Assembly as well as the Economic and Social Council (ECOSOC) and its subsidiary bodies, have played a leading role in the setting of standards in human rights and monitoring the application of various international instruments. The UN system continued to be active in human rights throughout 1996.

A. COMMISSION ON HUMAN RIGHTS

The Commission on Human Rights held its 52nd session in Geneva from March 18 to April 26.⁴⁰ The commission continued its emphasis on the protection of "vulnerable groups." For example, it adopted by consensus an omnibus resolution on the rights of the child, addressing participation of children in armed conflict and the prevention of the sale of children, child prostitution, and child pornography.⁴¹ The commission called for greater implementation of the Convention on the Rights of the Child and authorized working groups to continue to meet on two draft optional protocols to the treaty. Also, indigenous issues were addressed by the Commission under a separate agenda item for the first time. It adopted consensus resolutions dealing with the Working Group on the Draft Declaration on Indigenous Populations, the possible establishment of a permanent forum in the UN system, and the International Decade of the World's Indigenous People.⁴² Furthermore, in follow-up to the 1995 Beijing World Conference on Women, the Commission referenced the human rights of women in nearly half of its resolutions.

The commission also adopted a series of resolutions on promotion and protection of economic, social, and cultural rights. This continued to be a contentious area, although the commission ultimately avoided controversial questions such as the existence and content of a right to a satisfactory environment and a right to adequate housing. Economic, social, and cultural rights became a focal point of debates in the two world conferences held this year, Habitat II (which dealt with a right to adequate housing) and the World Food Summit (which dealt with a right to food).

B. HABITAT II

The United Nations Conference on Human Settlements (Habitat II) was held in Istanbul, Turkey, on June 3-14, 1996. Habitat II was convened to focus on ways to achieve adequate

40. See generally Report of the Commission on Human Rights on the Fifty-Second Session (Mar. 18-Apr. 26, 1996), Supp. No. 3 (E/1996/23; E/CN.4/1996/177).

41. CHR Res. 1996/85 (Apr. 24, 1996).

42. CHR Res. 1996/38, 1996/39, 1996/40, 1996/41 (Apr. 19, 1996).

shelter for all and sustainable development of human settlements.⁴³ This was the last in the cycle of UN world conferences that started with the United Nations Conference on Environment and Development in Rio de Janeiro in 1992. The existence of an enforceable "right to housing," advocated by many delegations and nongovernmental organizations, became an issue of great controversy at Habitat II. The United States has long taken the position that economic, social, and cultural rights such as those relating to housing or food are not "rights" in the traditional sense but goals that are to be realized progressively, as reflected in the International Covenant on Economic, Social, and Cultural Rights. Ultimately, a compromise formulation was reached after extensive negotiations. After extensive debate, the governments reaffirmed their "commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments."⁴⁴

C. WORLD FOOD SUMMIT

On November 13-17, world leaders convened in Rome at the request of the FAO Director-General to renew commitments to end hunger and malnutrition. As with Habitat II, great controversy centered around a human rights issue—"the right to food." Many delegations and nongovernmental organizations felt it important that the countries articulate an enforceable "right to food." Ultimately, delegates adopted a Declaration, reaffirming "the right of everyone to have access to safe and nutritious food consistent with the right to adequate food and the fundamental right to be free from hunger."⁴⁵ The United States filed an interpretative statement noting that access to food envisioned the opportunity to secure food, as opposed to the right to receive a guaranteed "hand out," and that the attainment of any right to adequate food or fundamental right to be free from hunger is a goal or aspiration that did not give rise to an obligation that had to be implemented immediately.⁴⁶

43. Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul, June 3-14, 1996, 35 I.L.M. 1567.

44. *Id.* Istanbul Declaration, para. 8.

45. World Food Summit, Rome Declaration on World Food Security and World Food Summit Plan of Action, Nov. 13-17, 1996, Rome, Italy, at 1 (WFS 96/3).

46. World Food Summit, Reservations and/or Interpretative Statements on the Rome Declaration and Plan of Action, Nov. 13-17, 1996, Rome, Italy, Annex 15 (WFS 96/3).

