

# International Institutions

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The 2002 Year in Review of the International Institutions Committee details 2002 developments in three institutions: The U.N. (specifically the Sixth Committee), the World Bank, and the World Trade Organization. Much has transpired this year in each institution. For example, at the U.N., there were objections by some nations to Security Council Resolution 1422 that exempts U.N. Peacekeepers from the International Criminal Court of Justice's (ICC) jurisdiction. The United States continued its general opposition to the ICC due to the U.S.' concern regarding the danger of politically motivated prosecutions. In addition, the Ad Hoc Committee on a possible international convention against reproductive cloning of human beings continued its work towards the establishment of a negotiation for such a convention.

Last year, the World Bank was also fully engaged. The article notes that despite the fact the world's population living in dire poverty (less than \$1 a day) in the 1990s decreased 29 percent to 23 percent, the actual number of people living in dire poverty has not changed. The increase in infectious diseases in developing countries continues to rise. Malaria is endemic in over 100 countries and HIV/AIDS continues to affect millions of people per year. Combating these diseases are part of the eight areas the Bank is dedicated to improving through its work in advancing development in its client states. The Bank has established a number of additional trust funds including the Global Fund for AIDA, Tuberculosis, and Malaria.

Finally, last year the World Trade Organization (WTO) dedicated its time and resources in preparation of the Doha Development (DDA) round of trade negotiations. These negotiations are geared towards developing and implementing a program of technical cooperation and capacity building in developing countries. The negotiations are also dedicated to market access to non-agricultural goods, agricultural reform, and improvements in environmental related matters. In addition, the WTO added its 144th member, Chinese Tai-

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pei, and has made progress towards the addition of two new members: Yugoslavia Republic of Macedonia and Armenia.

Further information on the 2002 actions of the U.N. Sixth Committee, the World Bank, and the World Trade Organization are noted briefly in the three sections below.

## I. Work of the Sixth Committee at the Fifty-Seventh Session of the UN General Assembly<sup>1</sup>

### A. ANNUAL REPORTS OF LEGAL COMMISSIONS/COMMITTEES

At the fifty-seventh session of the United Nations General Assembly (UNGA), held in 2002, the Sixth (Legal) Committee<sup>2</sup> reviewed the annual reports of the following: the International Law Commission (ILC); the United Nations Commission on International Trade Law (UNCITRAL); the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (Special Committee); and the Committee on Relations with the Host Country (Host Country Committee).

The Chairman of the ILC introduced the report on the work of the Commission's fifty-fourth session,<sup>3</sup> which explained that the ILC had devoted a substantial portion of its session to the topic of diplomatic protection. During the fifty-fourth session, the ILC also addressed the topics of reservations to treaties, unilateral acts of states, international liability for injuries arising out of acts not prohibited by international law, responsibility of the international organizations, and the fragmentation of international law.

The Chairman of UNCITRAL introduced the report on the work of its thirty-fifth session,<sup>4</sup> which was highlighted by the adoption of the Model Law on International Commercial Conciliation on June 28, 2002. Additionally, enhancing coordination in the area of international trade law and strengthening the role of the secretariat of the UNCITRAL—U.N. International Trade Law Branch—were also discussed. The Sixth Committee concluded with a recommendation that the UNGA increase UNCITRAL's membership from thirty-six states to sixty states.<sup>5</sup>

The current Chairman of the Special Committee introduced his committee's report, which highlighted several proposals.<sup>6</sup> First, discussions were held on a proposal mandating the legal basis for peacekeeping operations. Second, the Special Committee discussed a proposal to request an advisory opinion from the International Court of Justice as to the legal consequences of the use of force unsanctioned by the United Nations. Third, the Committee debated a proposal regarding the future of the Trusteeship Council. Finally, assistance to third party states affected by the application of sanctions was discussed.

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1. After debate, draft resolutions, and/or decisions are adopted by the Sixth Committee on each agenda item. These drafts are then submitted to the UNGA, which takes action on them, typically adopting them. For the texts of resolutions and decisions adopted by the UNGA, see U.N. document *Resolutions and Decisions adopted by the General Assembly during its Fifty-seventh Session*—to be published shortly.

2. The other UNGA Main Committees are: First (Disarmament and International Security), Second (Economic and Financial), Third (Social, Humanitarian and Cultural), Fourth (Special Political and Decolonization), and Fifth (Administrative and Budgetary).

3. U.N. GAOR, 54th Sess., Supp. No. 10, U.N. Doc. A/57/10/Corr. 1 (2002).

4. U.N. GAOR, 57th Sess., Supp. No. 17, U.N. Doc. A/57/17 (2002).

5. See G.A. Res. 20, U.N. GAOR, 57th Sess., Agenda Item 155, U.N. Doc. A/RES/57/20 (2002).

6. U.N. GAOR, 57th Sess., Supp. No. 33, U.N. Doc. A/57/33 (2002).

The Chairman of the Host Country Committee introduced the report of his Committee,<sup>7</sup> noting that the introduction by the City of New York of a new parking program for diplomatic vehicles on November 1, 2002 had generated intense interest during the past year. Other issues of concern that were discussed included problems with the host country's (United States) timely issuance of entry visas to official representatives of U.N. Member States and restrictions on internal host country travel for certain representatives to the U.N. and U.N. staff.

#### B. REQUESTS FOR OBSERVER STATUS

The Sixth Committee also dealt with requests from various bodies to participate as an observer in the work of the General Assembly. These requests were received from the International Institute for Democracy and Electoral Assistance, Partners in Population and Development, the Asian Development Bank, the International Centre for Migration Policy Development, and, finally, the Inter-Parliamentary Union. The General Assembly adopted the Sixth Committee's draft decision and resolutions that permitted such participation.<sup>8</sup>

#### C. INTERNATIONAL CRIMINAL COURT

During the debate on this agenda item, it was noted that the first session of the Assembly of States Parties to the Rome Statute (Statute of the ICC),<sup>9</sup> which came into force on July 1, 2002, was held in September 2002. This session was resumed in February and April 2003. Several delegations expressed the view that the Statute of the ICC provided for all the necessary safeguards against the misuse of the court. Some delegations objected to Security Council Resolution 1422 of July 12, 2002, which exempted U.N. peacekeepers from the ICC's jurisdiction. Others objected to the proposed non-surrender bilateral agreements, which were felt to undermine the integrity of the court. Also during the UNGA fifty-seventh session, the United States reiterated its opposition to the court. The United States explained that there was the danger of politically motivated prosecutions and it has never recognized the right of an international organization to put individuals on trial without its or the Security Council's consent. Moreover, the United States believed that the statute raised serious due process concerns. Also under discussion during this past session were the forthcoming elections in February 2003 of the eighteen judges of the new court. The Prosecutor will be elected in April 2003.

#### D. OTHER AGENDA ITEMS

Other agenda items taken up by the Sixth Committee at the fifty-seventh session were the following: the status of the Protocols Additional to the Geneva Conventions of 1949 and protection of victims of armed conflicts; the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel; the Convention on Jurisdictional Immunities of States and their Property; the International Convention against the Reproductive Cloning of Human Beings; measures to eliminate international terrorism;

7. U.N. GAOR, 57th Sess., Supp. No. 26, U.N. Doc. A/57/26 (2002).

8. See U.N. GAOR, 57th Sess., U.N. Doc. A/57/PV.52 (2002).

9. *The Rome Statute of the International Criminal Court*, U.N. Doc. A/CONF.183/9 (July 17, 1998).

and consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions, and representatives.

During the debate on the status of the 1977 Protocols Additional to the Geneva Conventions of 1949 (Additional Protocols),<sup>10</sup> delegates acknowledged the twenty-fifth anniversary of the Additional Protocols and reiterated the need for strict observance of their provisions by urging all states to reflect and implement them in their national legislations.

Concerning the 1994 Convention on the Safety of United Nations and Associated Personnel,<sup>11</sup> discussions were held to consider the short-term measures proposed by the UN Secretary-General in document A/55/637. In particular, the Committee considered the recommendation that the U.N. Secretariat review its Status of Forces Agreements, Status of Missions Agreements, and host country agreements with a view to incorporating into these agreements the key provisions of the Convention. Longer-term measures were also discussed, as well as the proposal to extend the scope of the Convention to cover all U.N. operations and humanitarian, non-governmental personnel through the elaboration of a Protocol.

The agenda item "Convention on jurisdictional immunities of States and their property" was introduced by the Chairman of the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property. The Chairman explained that there remained outstanding, substantive issues to be resolved with the draft articles on jurisdictional immunities before the Sixth Committee could take further action, which had been adopted by the ILC in 1991 and subsequently recommended to the UNGA. In its draft resolution, the Sixth Committee decided that the Ad Hoc Committee would convene in February 2003 to make a final attempt to formulate a generally acceptable legal standard by consolidating areas of agreement and resolving outstanding issues.<sup>12</sup>

At the beginning of the debate on the agenda item "International Convention against the Reproductive Cloning of Human Beings," the Chairman recalled that following the adoption of General Assembly resolution 56/93, an ad hoc committee had been established to consider the preparation of a mandate. The purpose of the mandate was to set the table for the negotiation of an international convention against the reproductive cloning of human beings. Furthermore, the Chairman reported that the work on the possible convention had continued in a working group convened during the current session. After discussion on the subject, the Sixth Committee submitted a draft decision to the UNGA, recommending that the Ad Hoc Committee reconvene the following year to continue its work.<sup>13</sup>

Concerning the topic of international terrorism, the Chairman of the Ad Hoc Committee, which had been established by General Assembly Resolution 51/210 of December 17, 1996, introduced his report.<sup>14</sup> The report, mandated by General Assembly Resolution 56/88, was an effort to continue the elaboration of a draft comprehensive convention on in-

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10. Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 609.

11. For the full text of the Convention, see *Convention on the Safety of United Nations and Associated Personnel*, G.A. Res. 59, U.N. GAOR, 49th Sess., Annex, Agenda Item 141, U.N. Doc. A/RES/49/59 (1994).

12. See G.A. Res. 16, 57th Sess., Agenda Item 154, U.N. Doc. A/RES/57/16 (2002).

13. *International Convention against the Reproductive Cloning of Human Beings. Report of the Sixth Committee*, U.N. GAOR, 57th Sess., Agenda Item 162, U.N. Doc. A/57/569 (2002).

14. U.N. GAOR, 57th Sess., Supp. No. 37, U.N. Doc. A/57/37 (2002).

ternational terrorism and also to consider outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism. Furthermore, the report acted as a means to maintain the Committee's agenda to convene a high-level conference, under the auspices of the U.N., to formulate a joint response of the international community to terrorism in all its forms and manifestations. Following a discussion of the issues, the Sixth Committee submitted a draft resolution to the UNGA for its adoption that recommended that the Ad Hoc Committee continue with its work.<sup>15</sup>

Regarding the protection of diplomatic and consular missions, and representatives, the Sixth Committee held a brief debate on the Secretary-General's latest annual reports<sup>16</sup> that highlighted recent violations of diplomatic and consular law, and the measures taken in response to such violations. After a discussion on the subject, the Sixth Committee adopted a draft resolution that strongly condemned such acts of violence, as well as acts against missions and representatives, and officials of international, intergovernmental organizations. The Committee urged states to take all necessary measures at the national and international levels to prevent any acts of violence against these missions, representatives, and officials.<sup>17</sup>

## II. The World Bank Group

The World Bank Group (Group) consists of five closely associated institutions that have a mission of fighting poverty and improving the standards of living in client countries.<sup>18</sup> The Group is among the world leaders in providing loans, policy advice, technical assistance, and knowledge-sharing services to developing nations.<sup>19</sup> Their respective member countries own the five associated institutions, and membership varies from 134 members to 183 members.<sup>20</sup> This section will review developments during the Group's 2002 fiscal year. The first part of this section will review the 2002 activities of the two institutions that make up the World Bank—the International Bank for Reconstruction and Development and the International Development Association. The next three parts of this section will review the 2002 developments in the Group's three other institutions—the International Finance Corporation, the Multilateral Investment Guarantee Association, and the International Centre for Settlement of Investment Disputes.

### A. WORLD BANK

The World Bank (Bank) is an international organization that consists of more than 180 member nations committed to fighting poverty by building a climate for investment, jobs, and sustainable growth through investment in developing nations.<sup>21</sup> The Bank's mission

15. See G.A. Res. 27, U.N. GAOR, 57th Sess., Agenda Item 160, U.N. Doc. A/RES/57/27 (2002).

16. U.N. GAOR, 57th Sess., Item 155 of the provisional agenda, U.N. Docs. A/57/99/Add.1, A/57/99/Add.2, A/57/99/Corr.1 (2002).

17. See G.A. Res. 15, 57th Sess., Agenda Item 153, U.N. Doc. A/RES/57/15 (2002).

18. THE WORLD BANK, ANNUAL REPORT 2002: VOLUME 1, YEAR IN REVIEW 8–9 (2002), available at <http://www.worldbank.org/annualreport/2002/> (last visited Mar. 20, 2003).

19. *Id.*

20. *Id.*

21. *Id.* at 12.

focuses on the half of the world's six billion people who live in poverty, which is defined as living on less than \$2 a day.<sup>22</sup> Additionally, the Bank has set a goal of decreasing by half the number of people worldwide living in dire poverty. Dire poverty being defined as living on less than \$1 a day, presently over 1.2 billion people fall into the dire poverty category.<sup>23</sup>

The Bank analyzes its advancement of world development based on achievements set forth by the Millennium Development Goals (MDG).<sup>24</sup> The members of the Bank believe that there are eight areas of the MGD that need to be addressed to help the developing world's progress toward sustainability. The eight areas are as follows:<sup>25</sup>

Goal 1: Eradicate Extreme Poverty and Hunger—Although the percentage of the world's population living in dire poverty in the 1990s decreased from 29 percent to 23 percent, the reduction was the result of progress in East Asia and more specifically China. Because of world population growth, the actual number of people living in dire poverty has not changed.

Goal 2: Achieve Universal Primary Education—The MDGs set a goal of having all children enrolled in primary school by 2015. At present, over 120 million primary school age children are not receiving an education. Over three-quarters of these children are in the South Asia and African regions.

Goal 3: Promote Gender Equality and Empower Women—In most low-income countries, girls are less likely to attend school than boys, and the illiteracy rates among women are higher than men in all regions, except the Latin American/Caribbean region.

Goal 4: Reduce Child Mortality—Although the death rate for children under five decreased during the 1980s, the progress slowed in the 1990s. Recently, Africa has witnessed an increase in the death rate of children under five. The World Health Organization (WHO) estimates that two-thirds of these deaths of children under five are caused by either malnutrition or disease. It is believed that basic vaccinations, such as those for measles, are essential to solving this problem.

Goal 5: Improve Maternal Health—As of 1995, the WHO estimated that more than a half million women die each year from complications during pregnancy and childbirth, with over half of these deaths taking place in the African region. A number of different issues need to be addressed in this area including the spacing of pregnancies, making nutrition and health care available during the pregnancy, and providing access to medical facilities during the childbirth.

Goal 6: Combat HIV/AIDS, Malaria, and Other Disease—The increase in infectious diseases is a serious problem in developing countries. HIV/AIDS has infected almost forty million people worldwide and killed over twenty million as a result. Malaria is endemic in over 100 countries and affects approximately 300 million people each year. Tuberculosis has been growing rapidly in several regions over the last decade and is now the main cause of death from a single infectious agent among adults in the developing world. Although advancement in medicine is still required to help eliminate some of these diseases, many countries are not providing known treatments to their populations.

Goal 7: Ensure Environmental Sustainability—A sustainable environment is believed to be an essential requirement in the developing world because natural resources are necessary

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22. *Id.*

23. *Id.*

24. *Id.* at 2.

25. *Id.* at 45–50.

for advancement. Natural resource management can increase income for developing nations' populations, reduce natural disasters, and help prevent the spread of disease by creating jobs, preventing flooding, and providing safe drinking water.

Goal 8: Develop a Global Partnership for Development—The need to assist the developing nations requires direct assistance from the high-income countries to ensure fair and open trading, better access to markets, increased assistance, financial market development, and sustainable debt assistance. The Bank has called on wealthy nations to provide increased assistance in order to meet the goals of the MDG.

### 1. *International Bank for Reconstruction and Development (IBRD)*

The IBRD promotes sustainable development programs by private foreign investors through loans, guarantees, and non-lending services granted to middle-income and poor countries that are considered creditworthy.<sup>26</sup> Only countries with a per capita income of less than \$5,225 and who are not solely borrowers from the International Development Association are eligible for IBRD assistance. Any assistance received may not exceed \$13.5 billion.<sup>27</sup>

### 2. *International Development Association (IDA)*

The IDA is the largest source of concessional financial assistance to the world's seventy-nine poorest countries. To receive assistance, the country's per capita income must be less than \$885 in 2002 and it must lack creditworthiness, which gives it little or no capacity to borrow on capital markets.<sup>28</sup> Additionally, the IDA requires these countries to pursue sound policies that promote growth and reduce poverty.<sup>29</sup>

### 3. *The World Bank's Focus—Fiscal 2002*

The global economic slowdown that began in 2000 and extended to almost all regions in 2001, resulted in a decline of the world's Gross Domestic Product (GDP).<sup>30</sup> As a result, the IBRD and the IDA increased lending commitments for the fiscal year 2002 with a combined lending of \$19.5 billion, including the highest amounts ever by the IDA (\$8.1 billion for 133 new projects).<sup>31</sup> The total lending in fiscal year 2002 equaled a 13 percent increase over 2001 and a 28 percent increase over 2000.<sup>32</sup>

Based on the different programs' focuses and borrowing criteria, the IBRD and the IDA had distinctly different regional lending patterns in fiscal year 2002. The IBRD allocated 79 percent of their funds to the Europe/Central Asia and Latin American/Caribbean regions, whereas the IDA allocated 89 percent of its funds to the Africa, East Asia/Pacific, and South Asian regions.<sup>33</sup> Additionally, the IBRD and the IDA have different lending patterns based on the theme and sector of lending.<sup>34</sup> The IBRD allocated a larger percentage

26. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, ARTICLES OF AGREEMENT, art. 1 (amended Feb. 16, 1989).

27. See WORLD BANK, *supra* note 18, at 20.

28. *Id.* at 19–20.

29. *Id.*

30. *Id.* at 25. South East Asia was the only region to not witness a decrease in Gross Domestic Product.

31. *Id.* at 24; see also THE WORLD BANK, ANNUAL REPORT 2002: VOLUME 2, FINANCIAL STATEMENTS AND APPENDIXES (2002) for a complete analysis of the World Bank's finances, available at <http://www.worldbank.org/annualreport/2002/>.

32. See WORLD BANK, *supra* note 18, at 28.

33. *Id.* at 27–29.

34. *Id.*

of its funds in the Economic Management, Public Sector Governance, and Financial and Private Sector Development.<sup>35</sup> Meanwhile, the IDA's largest percentage of expenditures went to Economic Management, and Financial and Private Sector Development. Thus, it allocated more in the areas of Social Development, Human Development, and Rural Development than the IBRD.<sup>36</sup> In sector allocations, the IBRD focused its funds more on Law, Justice and Public Administration, and Finance reforms, while the IDA focused more on areas such as Industry and Trade, and Energy and Mining.<sup>37</sup>

#### 4. *Trust Funds*

Separate from direct Bank assistance, the Bank also administers a system of trust funds. The trust fund programs are separate from the Bank's own resources and are financed and administered by external donors. Because of the external donations, the trust fund program allows for the funding of high-priority, development project needs.<sup>38</sup> These projects allow the Bank to leverage its poverty reduction programs by providing expanding development collaboration, including technical assistance, advisory services, debt relief, and co-financing.<sup>39</sup> The trust fund programs of the Bank expanded 22 percent for the fiscal year 2002, with assets reaching \$5.34 billion and disbursements totaling \$1.93 billion.<sup>40</sup>

The largest expenditure of the trust fund system was the Heavily Indebted Poor Countries Initiative (HIPC). The HIPC is the Bank's and the International Monetary Fund's (IMF) project to reduce the external debt of the world's poorest, most heavily indebted countries.<sup>41</sup> By the end of fiscal year 2002, twenty-six countries were receiving HIPC debt service relief.<sup>42</sup>

In response to the emerging changes in the world, the Bank helped to establish several new trust funds in 2002, including the following: the Global Fund for AIDS, Tuberculosis, and Malaria; the Afghanistan Reconstruction Trust Fund; the Nile River Basin Trust Fund; and the Eastern Greater Great Lakes Trust Fund.<sup>43</sup>

#### 5. *Co-financed Projects*

Along with a number of development banks, and public and private sector organizations, the Bank co-financed 109 projects in fiscal year 2002. The main contributors included the Inter-American Development Bank, the African Development Bank, and the Japan Bank for International Cooperation.<sup>44</sup> These projects represent a combination of Bank financing supported by the resources of other donors to maintain helpful projects in specific regions and sectors.<sup>45</sup>

The Bank co-financing projects amounted to \$4.7 billion in fiscal year 2002.<sup>46</sup> The Latin American/Caribbean and African regions received the largest share of co-financing in fiscal

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35. *Id.* at 27–28.

36. *Id.* at 27–29.

37. *Id.*

38. *Id.* at 35.

39. *Id.*

40. *Id.* at 36.

41. *Id.* at 28, 36.

42. *Id.* at 28.

43. *Id.* at 36.

44. *Id.* at 35.

45. *Id.*

46. *Id.*

year 2002, amounting to \$2.3 billion and \$1.3 billion, respectively.<sup>47</sup> Some of the major projects included the Ghana Road Sector Development Project, the Columbia Structured Fiscal Adjustment Loan, and the Tunisia ECAL III Project.<sup>48</sup>

## B. INTERNATIONAL FINANCE CORPORATION (IFC)

The IFC promotes economic development by providing assistance to private sector business partners in member countries.<sup>49</sup> The IFC assists only those private investment projects that are commercially viable, target profitability, and are without governmental guarantees.<sup>50</sup> The IFC assistance can include equity investment, long-term loans, guarantees, advisory services, and risk management assessments on projects.<sup>51</sup>

In fiscal year 2002, the IFC committed \$3.6 billion to 204 new projects and approved an additional \$5.8 billion for 223 new projects.<sup>52</sup> The IFC's total investment portfolio exceeded \$16 billion at the end of fiscal year 2002, with the Latin American/Caribbean region accounting for 37 percent of investments.<sup>53</sup> The Europe/Central Asian and East Asia/Pacific regions accounted for 18 percent and 17 percent, respectively.<sup>54</sup>

## C. MULTILATERAL INVESTMENT GUARANTEE ASSOCIATION (MIGA)

The MIGA is the division of the Group that promotes foreign, direct investment in emerging market countries by providing foreign investors with political risk insurance in the form of loan guarantees.<sup>55</sup> These risk guarantees assist investors in case of losses caused by noncommercial risks such as foreign currency transfer restrictions, expropriation, breach of contract, war, and civil disturbances.<sup>56</sup>

Since its founding in 1988, the MIGA has issued more than 500 guaranties worth \$10.3 billion in approximately eighty countries and has facilitated a total investment of approximately \$46 billion.<sup>57</sup> During fiscal year 2002, the MIGA issued fifty-eight guaranties on thirty-eight different projects, totaling \$1.36 billion.<sup>58</sup>

In fiscal year 2002, the MIGA focused over 70 percent of its project guaranties to infrastructure (i.e., transportation, water, power, and telecommunications) and financial sectors of member countries.<sup>59</sup> Although the MIGA committed to diversifying its regional exposure, an astounding 55 percent of project commitments were in the Latin American/

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47. *Id.*

48. *Id.*

49. INTERNATIONAL FINANCE CORPORATION, ARTICLES OF AGREEMENT, art. I (amended Apr. 28, 1993), available at <http://www.ifc.org/about/articles/article1/article1.html> (last visited Mar. 20, 2003).

50. *Id.* art. I(i).

51. INTERNATIONAL FINANCE CORPORATION, ANNUAL REPORT ON INVESTING IN A SUSTAINABLE PRIVATE SECTOR, 26–27 (2002).

52. *Id.* at 2–3, 29–30.

53. *Id.*

54. *Id.* at 3.

55. WORLD BANK, *supra* note 18, at 9.

56. CONVENTION ESTABLISHING THE MULTILATERAL INVESTMENT GUARANTEE AGENCY, art. 11 (adopted Oct. 11, 1985), available at <http://www.miga.org/screens/about/convent/convent.htm> (last visited Mar. 20, 2003).

57. MULTILATERAL INVESTMENT GUARANTEE AGENCY, 2002 ANNUAL REPORT 14 (2002).

58. *Id.*

59. *Id.* at 17.

Caribbean regions, while an additional 20 percent were in the Europe/Central Asian region.<sup>60</sup> Conversely, fiscal year 2002 saw project commitments for the first time in four African countries—Benin, Mauritania, Nigeria, and Senegal.<sup>61</sup>

#### D. INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES (ICSID)

The ICSID is an institution designed to encourage foreign investment in developing countries by providing an international facility for conciliation and arbitration of investment disputes between states and foreign investors.<sup>62</sup> Technically an autonomous organization, the ICSID is closely linked to the Group through cross-over membership. For example, member countries' Bank Governors sit on the ICSID's Administrative Council. Moreover, the Group's budget finances the ICSID's expenses.<sup>63</sup>

For any dispute to be submitted to the ICSID for arbitration, a member government must give advanced consent.<sup>64</sup> Thus, the reason why provisions for ICSID arbitration can be found in approximately twenty different country's investment laws and in over 900 bilateral investment treaties.<sup>65</sup>

In recent years, the number of cases submitted to the ICSID increased significantly.<sup>66</sup> In fiscal year 2002, there were sixteen new cases registered with the ICSID, bringing the total number of registered cases to 103.<sup>67</sup>

### III. World Trade Organization

#### A. OVERVIEW

In 2002, the World Trade Organization concentrated its resources and energies on preparation for the next round of trade negotiations—the Doha Development round. The name is derived from the priority that the negotiations are expected to place on the needs and interests of both developing and least-developed countries (LDCs). Accordingly, a key component of the organization's work this past year addressed what is being called the Doha Development Agenda. The DDA aims to develop and implement a program of technical cooperation and capacity building for the developing countries and LDCs. Other essential elements of the Doha negotiations include agriculture reform, market access in non-agricultural goods and services, the environment, investment, competition, and government procurement rules.

#### B. LEADERSHIP CHANGE

On September 1, 2002, Dr. Supachai Panitchpakdi of Thailand began his three-year term as WTO Director-General. Dr. Panitchpakdi replaced Mike Moore of New Zealand, who, on August 31, 2002, completed his term of office. The six-year term of the Director-General

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60. *Id.*

61. *Id.* at 14.

62. See WORLD BANK, *supra* note 18, at 9.

63. THE WORLD BANK GROUP, *About ICSID*, available at <http://www.worldbank.org/icsid/about/main.htm> (last visited Feb. 15, 2003).

64. *Id.*

65. *Id.*

66. See WORLD BANK, *supra* note 18, at 9.

67. *Id.*

was split equally between the two men to end the stalemate over their candidacies after the expiration of the Renato Ruggiero's term in 1999.

Prior to assuming the position in mid-August, Dr. Panitchpakdi selected his four Deputy Directors-General whom will also serve for three-year terms. They are as follows: Mr. Roderick Abbott of England; Dr. Kipkorir Aly Azad Rana of Kenya; Mr. Francisco Thompson-Flores of Brazil; and Mr. Rufus H. Yerxa of the United States.

### C. ACCESSION

The WTO started the year with the addition of its 144th member, Chinese Taipei, on January 1, 2002. While no additional members were added in the course of the year, substantial progress was made toward the addition of two new members. On October 15, 2002, and December 10, 2002, the General Council approved the membership applications of the Former Yugoslavian Republics of Macedonia and Armenia. Both countries will become members within thirty days of ratification of their approval by their respective parliaments. Approximately thirty other countries hold observer status and are in various stages of negotiating membership to the WTO. A December agreement on a new accelerated schedule for Russia's accession negotiations led to speculation that Russia could become a member by the Fifth Ministerial Conference in 2003.

At its December meeting, the General Council approved guidelines streamlining the accession procedures of LDCs into the WTO. The simplified and accelerated accession procedures aim to assist in integrating LDCs into the global economy. Effective immediately, the guidelines exempt LDCs from making excessive concessions or commitments with regard to market access. Moreover, they grant transitional periods and create certain arrangements with regard to WTO rules. Lastly, the guidelines provide for support and technical assistance with both the accession process and general integration into the multilateral trading system.<sup>68</sup>

### D. PROGRESS OF NEGOTIATIONS

The Doha Agreement's initiative to begin a new round of trade negotiations included a requirement that the negotiations conclude on the basis of a "Single Undertaking." This requirement increases the need for members to have a tentative agreement on a final package before the January 2005 deadline for the conclusion of the round. How much progress has been made is unclear. In October, the Director-General revised the December 2002 deadlines that were proving too ambitious. Under the revised timeline, members were asked to submit proposals on modalities for market access (for non-agricultural goods) negotiations and reports for appropriate action on outstanding implementation issues by the end of the year. Issues left for 2003, include modalities for further commitments in agriculture negotiations. Also left for the upcoming year were negotiations for services, dispute settlement, technical assistance, and capacity building.

### E. GENERAL COUNCIL MEETINGS & KEY DECISIONS

#### 1. *Meeting Date & Site for Fifth Ministerial*

At its meeting of May 13–14, 2002, the General Council agreed that its Fifth Ministerial would be held on September 10–14, 2003. Already selected as the host country, Mexico indicated that the city of Cancun would be the site of the meeting.

68. WORLD TRADE ORG., *Accession of Least-Developed Countries*, WT/COMTD/LDC/12 (Dec. 5, 2002).

## F. INTERNAL TRANSPARENCY &amp; EFFECTIVE MEMBERSHIP PARTICIPATION

Without reaching a final decision, the Council has been addressing the issue of transparency relating to the preparation and organization of Ministerial Conferences. At the heart of the issue is the tension between the use of informal consultations during the organization's consensus approach to decision-making, and the difficulty that countries with limited resources have in effectively participating in those processes. Discussions have centered around three proposals. One proposal developed and circulated by the Like-Minded Group<sup>69</sup> outlines various proposals regarding the preparatory process in Geneva, and the negotiating procedures used at Ministerial Conferences. The ensuing discussions have highlighted the gap between those wishing to add more procedures and formalities to the preparatory and negotiating processes of the Ministerial Conferences, and those who fear that such procedures will undermine the consensus-making nature of the organization. The matter is to be taken up at future meetings.

Addressed at the May 13–14 General Council meeting, a related matter is the scheduling of meetings. The challenge is to set up an annual calendar of meetings in accordance with guidelines established in 1995. The goals of the guidelines are the following: to ensure that all members are aware of scheduled meetings; to remove conflicts so that no negotiation meetings are scheduled at the same time; and to minimize conflicts between the scheduling of other informal or formal meetings.

1. *External Transparency*

The General Council has developed a draft policy for the procedures governing the circulation and de-restriction of WTO documents. Key components of that draft policy are as follows: (1) the member country requesting preparation of a document must inform the Secretariat, at that time, whether the document should be issued as restricted or unrestricted; (2) if issued as restricted, the document is nevertheless automatically derestricted sixty days after the date of circulation. If otherwise requested by a member, the document remains restricted for another thirty days; and (3) a review of the procedures at an appropriate time. Currently most documents are not unrestricted until eight to nine months after circulation. At its May meeting, the General Council adopted the draft policy.

2. *Procedures for the Appointment of Future Directors-General*

At its December meeting, the General Council approved new procedures for the selection of future directors-general and chairpersons for WTO councils and committees. An earlier discussion on the issue of selection had served to underline a number of issues where more focused work was clearly necessary. These issues included the following: (1) decision-making, and whether or not there was need for a "circuit breaker" should a consensus not be reached by an agreed deadline; (2) whether a principle of rotation should be followed and, if so, what kind; and (3) whether an advisory committee should be provided to assist the Chairman. Additionally, there was discussion that the terms of the directors-general and deputy directors-general should be staggered to facilitate organizational continuity.

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69. This group consists of Cuba, the Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe. WORLD TRADE ORG., *Preparatory Process in Geneva and Negotiating Procedure*, WT/GC/W/471 (Apr. 24, 2002).

### G. *Technical Assistance & Capacity-Building*

On February 26, 2003, the Heads of Agencies of the Integrated Framework (IF) held their second meeting.<sup>70</sup> Among other decisions, the participants agreed to re-focus the work of the IF on the broader challenges of the Doha Development Agenda, to extend its work to a second group of LDCs, and to reaffirm the lead role of the World Bank in these efforts.

The WTO and the OECD have created an initiative for the establishment of the Doha Development Agenda Trade-Related Technical Assistance and Capacity-Building Database. The database is supposed to enhance transparency and coordination in the delivery of technical assistance. By enhancing transparency, the WTO and the OECD hope to minimize duplication and maximize the trade-related technical assistance benefits for the recipients.

The WTO and the World Bank have announced their joint intention to create a new fund, the "Standards and Trade Development Facility," which will provide grants and financial support for technical assistance projects in developing countries to help them shape and implement international standards on food safety, and plant and animal health. The Food and Agriculture Organization (FAO), the World Health Organization (WHO), and the World Organization for Animal Health (OIE) are expected to join the fund. The World Bank has agreed to provide an initial \$300,000, and the WTO, which will administer the fund, will allocate funding from the Doha Development Trust Fund.

### H. DISPUTE SETTLEMENT ACTIVITY

The use of the WTO's Dispute Settlement Body (DSB) continued to grow as an increasing number of countries brought their disputes to the DSB for resolution. In 2002, thirty-three new cases were initiated in the DSB, with eleven panel reports and eight appellate body reports adopted. Although there was a marked drop in the number of anti-dumping cases, the DSB continued to develop its interpretations of the agreements covering anti-dumping and safeguard measures. The DSB, however, also addressed the extent to which domestic laws and regulations operated as a trade restraint. The DSB's continued willingness to adopt recommendations that required a change to members' laws and regulations made implementation the most difficult phase of the DSB process. Because of this willingness, countries grappled with the need to reconcile their WTO obligations, as interpreted by the DSB, with their domestic agendas. The tension was particularly visible with respect to disputes between the United States and the European Commission (EC). For example, in a case brought by the EC against the United States, a panel ruled that the "U.S. Continued Dumping and Subsidy Offset Act of 2000," which would have permitted U.S. companies to receive compensation from antidumping duties, was illegal.<sup>71</sup> Moreover,

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70. The Integrated Framework is the result of a 2002 agreement between the six core development agencies to coordinate their efforts to facilitate the meaningful integration of developing and least-developed countries into the multilateral trading system and global economy. The six agencies are: WTO, International Monetary Fund (IMF), International Trade Centre (ITC), United Nations Commission on Trade & Development (UNCTAD), United Nations Development Programme (UNDP), and the World Bank. WORLD TRADE ORGANIZATION, *Final Joint Communiqué by the Six Core Agencies of the Integrated Framework*, available at [http://www.wto.org/english/news\\_e/news02\\_e/ifjointcom\\_washington\\_feb02\\_e.htm](http://www.wto.org/english/news_e/news02_e/ifjointcom_washington_feb02_e.htm) (last visited Mar. 20, 2003).

71. The Appellate Body confirmed the decision of the panel in a January 16, 2003 decision. See WTO APPELLATE BODY REPORT, *United States—Section 211 Omnibus Appropriations Act of 1998*, WT/DS/AB/R (Jan. 16, 2003).

the EC obtained a decision that held that section 110(5) of the U.S. Copyright Act violated the WTO's convention on Trade Related Aspects of Intellectual Property (TRIPs). Despite the panel decisions and a commitment by the United States to implement the holdings, the United States and the EC efforts to resolve their disagreements continued through 2002. Similarly, the United States and the EC continue to struggle with implementation of the 2000 DSB decision that held that the U.S. Foreign Sales Corporation law, under which U.S. companies operating overseas received tax exemptions, was an illegal export subsidy. Finally, in the "United States—Section 211 Omnibus Appropriations Act of 1998," popularly known as the Havana Club case, the United States and the EC continued to grapple. The main crux of the disagreement centered over the timeframe for U.S. implementation of the 2001 DSB holding that a U.S. provision denying Cuban corporations seeking to protect their registered trademarks access to U.S. courts was inconsistent with TRIPs.

These and similar opinions have led to proposals to revise the DSB process. In December, the United States and Chile submitted a joint proposal aimed at providing parties to a WTO dispute with more control of the content of Appellate Body reports, as well as the course of the dispute, settlement proceedings. Proposals included the following: introducing confidential interim reports that would be circulated to parties prior to issuing the final report; allowing parties to delete by mutual agreement findings in the report that are not helpful or necessary to resolving the dispute; allowing the DSB to only partially adopt a report; providing parties with a right to suspend panel or Appellate Body proceedings for further negotiations; and providing some form of additional guidance to WTO judicative bodies concerning the application and interpretation of WTO law.

Brazil, Canada, the EC, South Korea, and Switzerland criticized the proposal, cautioning that it would undermine the independence of the Appellate Body, transform the WTO dispute settlement system from litigation towards bilateral settlements, and subvert the predictability and security of the multilateral trading system.