

Manual of the United Nations Human Rights Special Procedures

This Manual aims to provide guidance to the mandate-holders appointed under the various United Nations human rights Special Procedures. It also seeks to facilitate a better understanding of their work by all other stakeholders in the process. The Manual endeavours to reflect best practice and to assist the mandate-holders in their efforts to promote and protect human rights. It does so in light of the relevant mandates by which the various Special Procedures have been established and of the overall mandate given to the Human Rights Council in General Assembly resolution 60/251.

This Manual was originally adopted at the 6th Annual Meeting of Special Procedures mandate-holders, in 1999. Since that time it has been revised to reflect the changing structure of the United Nations human rights machinery, new developments in relation to mandates, and the evolving working methods of the mandate-holders. It is subject to periodic review and updating by the mandate-holders. They are responsible for its content and for its revision. The current version of the Manual was adopted by the mandate-holders on [...].

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I. Role and functions of Special Procedures

A. The scope of Special Procedures

1. The term Special Procedures has been developed in light of the practice of the Commission on Human Rights, the Economic and Social Council (ECOSOC) and the General Assembly to describe a diverse range of procedures established to promote human rights in relation to specific

themes or issues, or to examine the situation in specific countries. While the specific mandates and methods of work of the various Special Procedures differ, there are a great many commonalities in the ways in which they work. The purpose of this Manual is to explain and elaborate upon these methods of work with a view to assisting the mandate-holders themselves, Governments, civil society and all other interested parties.

2. As of June 2006 there are 28 thematic mandates (on thematic issues)¹ and 13 country-specific mandates.² The thematic mandates range across the full spectrum of civil, cultural, economic, political and social rights.

3. As of June 2006 most mandates had been created at the initiative of the Commission on Human Rights, with the subsequent approval of the ECOSOC. With the establishment of the Human Rights Council, which replaced the Commission on Human Rights as of 19 June 2006, the Council has been called upon to assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of Special Procedures.

B. Main characteristics of Special Procedures

4. Thematic Special Procedures are mandated to investigate the situation of human rights in all parts of the world, irrespective of whether a particular government is a party to any of the relevant human rights treaties. This requires them to taken the measures necessary to monitor and respond quickly to allegations of human rights violations against individuals or groups, either globally or in a specific country or territory, and to report on their activities. In the case of country mandates, mandate-holders are called upon to take full account of all human rights (civil, cultural, economic, political and social) unless directed otherwise.

5. The principal functions of Special Procedures include to:

- **analyse** the relevant thematic issue or country situation on behalf of the international community;
- **advise** on the measures which should be taken by the Government(s) concerned and other relevant actors;
- **alert** United Nations organs and agencies and the international community in general to the need to address specific situations and issues. In this regard they have a role in providing “early warning” and encouraging preventive measures;
- **advocate** on behalf of the victims of violations through measures such as requesting urgent action by relevant States and calling upon Governments to respond to specific allegations of human rights violations and provide redress;

¹ These are: enforced or involuntary disappearances (established in 1980), extrajudicial, summary or arbitrary executions (1982), torture (1985), freedom of religion or belief (1986), sale of children, child prostitution and child pornography (1990), arbitrary detention (1991), freedom of opinion and expression (1993), racism, racial discrimination (1993), independence of judges and lawyers (1994), violence against women (1994), toxic wastes (1995), right to education (1998), extreme poverty (1998), migrants (1999), right to food (2000), adequate housing (2000), human rights defenders (2000), economic reform policies and foreign debt (2000), indigenous people (2001), people of African descent (2002), physical and mental health (2002), internally displaced persons (2004), trafficking in persons (2004), mercenaries (2005), minority issues (2005), international solidarity (2005), countering terrorism (2005), and transnational corporations (2005).

² These are: Myanmar (in operation since 1992), Cambodia (1993), Palestinian Occupied Territories (1993), Somalia (1993), Haiti (1995), Cuba (2002), Liberia (2003), Belarus (2004), Burundi (2004), Democratic People’s Republic of Korea (2004), Democratic Republic of the Congo (2004), Sudan (2005) and Uzbekistan (2005).

- **activate** and mobilize the international and national communities to address particular human rights issues and to encourage cooperation among Governments, civil society and inter-governmental organizations.

C. Establishment of mandates

1. Terminology and duration of mandates

6. The term “Special Procedures” includes individuals variously denominated as “Special Rapporteur”, “Special Representative of the Secretary-General”, “Representative of the Secretary-General”, “Representative of the Commission on Human Rights” or “Independent Expert”, and Working Groups usually composed of five independent experts.³

7. While the body establishing the mandate retains discretion as to the duration of each individual mandate, the general practice as of mid-2006 has been for country mandates to be established for one year and thus to require annual renewal, while thematic mandates have been established for three year periods.

2. Appointment of mandate-holders

8. The relevant resolution can provide for the appointment of a mandate-holder by the Chairperson of the Commission on Human Rights, by the Secretary-General⁴, or by the High Commissioner. The individual mandate-holders are selected on the basis of their expertise, professionalism and independence. The requisite independence and impartiality are not compatible with the appointment of individuals currently holding decision-making positions within the executive or legislative branches of their Governments. While overall regional diversity is important, any link between a given region and any particular mandate would undermine the necessary emphasis on expertise and impartiality. It is, however, important that a gender balance be achieved in relation to the overall number of mandate-holders.

9. Mandate-holders serve in their personal capacities, and are not staff of the UN. They do not receive salaries or any other financial rewards for their work, although their expenses are defrayed by the UN.

10. At present the rule is that experts, including those serving on Working Groups,⁵ should serve a maximum term of 6 years.⁶ Nor are they eligible for appointment to a different mandate until three years after their previous mandate has expired.

D. Status of mandate-holders

1. Independence

11. Mandate-holders are selected based on their expertise and experience in the area of the mandate, integrity, independence and impartiality.⁷ The independent status of the mandate-holders

³ Although the titles vary, there are no major differences in the general responsibilities and methods of work of Special Rapporteurs, Independent Experts, Working Groups and Special Representatives of the Secretary-General.

⁴ The Representatives of the Secretary-General and some independent experts are selected by the United Nations Secretary-General upon the recommendation of the High Commissioner for Human Rights.

⁵ See CHR Dec. 2000/109 (2000).

⁶ See UN Doc. E/CN.4/1999/104, recommendation 6.

is crucial in order to enable them to fulfill their functions in all impartiality. As observed by the Secretary-General, “in the absence of complete independence, human rights mandate-holders and special rapporteurs would hesitate to speak out against and report violations of international human rights standards”.⁸ This independence is, however, in no way inconsistent with mandate-holders right to engage in dialogue with, and to seek information and support from, a wide range of actors.

2. Privileges and Immunities

12. The Charter of the United Nations empowers the General Assembly to make recommendations with a view to determining, *inter alia*, the privileges and immunities of “officials” of the Organisation or to propose conventions to Member States for this purpose.⁹ Accordingly, the Assembly adopted the Convention on the Privileges and Immunities of the United Nations on 13 February 1946.¹⁰

13. Mandate-holders are legally classified as “experts on mission” for the purposes of the Convention. While they are working on their mandates, experts enjoy functional privileges and immunities that are specified, *inter alia*, in article VI, section 22 of the Convention. These include:

- (a) Immunity from personal arrest and detention and from seizure of their personal baggage;
- (b) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity is to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
- (c) Inviolability for all papers and documents;
- (d) For the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

14. In 1989 and 1999 issues relating to the privileges and immunities of experts were the subject of advisory opinions given by the International Court of Justice (ICJ). The case of Mr. D. Mazilu concerned a Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of the Minorities who had been denied permission to travel to Geneva by the then Romanian Government to attend the Sub-Commission in order to present a report prepared in his capacity as Special Rapporteur. The ICJ, in its advisory opinion of 15 December 1989, confirmed that Article VI, Section 22 of the 1946 Convention:

⁷ See CHR resolution 2004/76 “Human rights and Special Procedures”; Report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights (E/CN.4/2000/112, paras.7 and 10); and the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission (ST/SGB/2002/9) (reproduced in Annex 5 below).

⁸ “Written statement submitted to the International Court of Justice on behalf of the Secretary-General of the United Nations” in the Advisory Opinion on *Difference Relation to the Immunity From Legal Process of a Special Rapporteur of the United Nations Commission on Human Rights*, para. 55.

⁹ Article 105, para. 3.

¹⁰ The full text is available in Annex 6.

is applicable to persons (other than United Nations officials) to whom a mission has been entrusted by the Organization and who are therefore entitled to enjoy the privileges and immunities provided for in this Section with a view to the independent exercise of their functions. During the whole period of such missions, experts enjoy these functional privileges and immunities whether or not they travel. They may be invoked as against the State of nationality or of residence unless a reservation to Section 22 of the General Convention has been validly made by that State.

15. The case of Dato' Param Cumaraswamy concerned the Special Rapporteur on Independence of Judges and Lawyers who was sued for having used allegedly defamatory language in an interview concerning his work as an expert which was published in the November 1995 issue of *International Commercial Litigation*. In its Advisory Opinion of April 1999 the ICJ re-affirmed the integrity of the work of the rapporteurs and experts of the Commission. It held that article VI, Section 22, of the Convention was "applicable" in the case of Mr. Cumaraswamy, and that he was "entitled to immunity from legal process of every kind" for the words spoken by him during the interview. The Court also stated that Mr. Cumaraswamy should be "held financially harmless for any costs imposed upon him by the Malaysian courts, in particular taxed costs". The Court found that the Government of Malaysia was obligated "to communicate the advisory opinion to the Malaysian courts, in order that Malaysia's international obligations are given effect and Mr. Cumaraswamy's immunity be respected".¹¹

3. Security and insurance arrangements

16. The UN's comprehensive Security Management System encompasses all United Nations Departments, Agencies, Programs and Funds and aims to ensure the safety and security of all staff worldwide and to eliminate as much risk as possible from their work. For the purposes of the Security Management System, anyone who has any kind of contractual status or travels on official business for the United Nations is considered as "staff", and mandate-holders are thus covered.¹²

17. As for insurance coverage, the United Nations has entered into an agreement with an agency to obtain life/accident insurance from Lloyds of London for staff required to serve at hazardous duty stations. In 1980 the ILO Administrative Tribunal adjudged that international organizations bear responsibility for the assignment or travel of staff members to potentially dangerous areas, and ruled that an employee is not obliged to run abnormal risks for the benefit of his employer, at any rate, unless he/she is given adequate insurance coverage.

18. The coverage provided applies to malicious acts, i.e. for death or disability caused directly or indirectly by war, invasion, acts of foreign enemies, revolution, rebellion, insurrection, military or usurped power, riot or civil commotion, sabotage, explosion of war weapons, terrorist activities (whether terrorists are the country's own nationals or not), murder, or assault by foreign enemies or any attempt thereat.

19. As from 1 April 1990, coverage extends to professional experts, including mandate-holders, on official mission/travel/Daily Subsistence Allowance (DSA) status and other official visitors in the designated countries. Coverage and benefits are identical to that for Professional staff members assigned to the duty station. Since it is the Organization that bears responsibility for the travel of experts on mission, the cost of obtaining the malicious acts insurance policy is absorbed by the

¹¹ See Annex 7 below for a summary of the Advisory Opinion.

¹² See Annex 4 below on Security briefing.

E. OHCHR support

20. In 2002, “Guiding principles regarding the working relations between Special Procedures mandate-holders and OHCHR staff” were adopted to determine the division of work and responsibilities between OHCHR and mandate-holders. This document details all aspects of the working relationship between mandate-holders and staff of OHCHR.

21. The Special Procedures Branch (SPB) provides support to thematic Special Procedures with thematic, fact-finding, and legal expertise, research and analytical work, and administrative and logistical services. In addition to the specific support provided to each mandate, SPB provides a number of common services to enhance the effectiveness of Special Procedures. In the area of communications, the Quick Response Desk processes communications sent by mandate-holders through the database on communications and the dedicated e-mail urgent-action@ohchr.org, which centralizes incoming information to be submitted to the attention of mandate-holders. The Branch assists mandate-holders in the development of tools and methodologies to improve coordination among mandate-holders and to strengthen linkages between Special Procedures and OHCHR, the United Nations system and other partners. The Branch developed tools to raise awareness about Special Procedures and to analyze and present in a reader-friendly way the work of mandate-holders.

22. While direct assistance to thematic mandate-holders is provided by SPB, other parts of OHCHR contribute to and benefit from the work of Special Procedures. The Capacity Building and Field Operations Branch (CBB) supports the work of country Special Procedures and links the work of all mandate-holders to country engagement strategies of OHCHR. The Research and Right to Development Branch (RRDB) supported mandates on economic, social and cultural rights until June 2006 and will continue to provide direct assistance to some mandates. The collaboration between Special Procedures and RRDB is mutually beneficial for the strengthening of thematic expertise. The Treaties and Council Branch (TCB) facilitates the interaction between Special Procedures and treaty-bodies. The Communications Section assists mandate-holders in their contact with the media. The Administration Section processes the administrative arrangements linked to the activities of mandate-holders.

II. Methods of work

A. Sources of information

23. Mandate-holders are called upon to take account of all available sources of information that they consider to be credible and relevant. This includes information emanating from Governments, inter-governmental organizations, non-governmental organizations, national human rights institutions, the victims of alleged human rights abuses, relatives of victims, and witnesses. Wherever feasible and appropriate mandate-holders should endeavour to consult and meet with such sources.

24. Because of the sensitivity of many of the issues that arise mandate-holders should be guided in their information-gathering activities by the principles of discretion, transparency and even-handedness. Appropriate opportunities should be provided for Government representatives to

¹³ See Annex 5 below on the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission (ST/SGB/2002/9).

comment on allegations made against them and for those alleging violations to comment on Governmental responses thereto.

25. Mandate-holders are not required to inform those who provide information about any subsequent measures they have taken. They may, however, choose to provide some information, but this would normally not involve disclosure of the specific contents of communications with Governments, unless an issue has been definitively dealt with by the government in question.

26. In the case of country visits full details of the action taken will be provided in the mandate-holder's official report on his or her visit. In the case of communications a summary of the exchange of information will be provided in the report on communications submitted periodically to the Council.

27. Mandate-holders will take all feasible precautions to ensure that sources of information are not subjected to retaliation (Specific examples are contained in the sections below on Communications and Country Visits). Mandate-holders shall invite individuals and groups which have provided information and have suffered any form of reprisals or retaliation as a result to report all such incidents to the mandate-holder so that appropriate follow-up action can be taken.

B. Communications

1. Definition and purpose

28. Most Special Procedures provide for the relevant mandate-holders to receive information from different sources and to act on credible information by sending a communication to the relevant Government(s) in relation to any actual or anticipated human rights violations which fall within the scope of their mandate.

29. Communications may deal with cases concerning individuals, groups or communities, with general trends and patterns of human rights violations in a particular country or more generally, or with the content of existing or draft legislation considered to be a matter of concern.

30. Communications do not imply any kind of value judgment on the part of the Special Procedure concerned and are thus not per se accusatory. They are not intended as a substitute for judicial or other proceedings at the national level. Their purpose is to obtain clarification in response to allegations of violations and to promote measures designed to protect human rights.

31. The Quick Response Desk (QRD) of OHCHR coordinates the sending of communications by all mandates. Information available to the Office is provided to relevant mandate-holders in order to ascertain whether they wish to take action on them. In the case of an affirmative response a draft communication is prepared and circulated for approval. The Quick response Desk also provides information on any previous action taken in relation to the case in question.

32. Mandate-holders are encouraged to send joint communications whenever this seems appropriate. Communications by thematic mandate-holders in relation to a State for which a country rapporteur exists shall be prepared in consultation with the latter. Where agreement between the thematic and country Special Procedures cannot be reached the advice of the Coordination Committee shall be sought.

33. OHCHR desk officers and relevant United Nations field offices should also be consulted, to the extent feasible, in the preparation of communications concerning the areas of their

responsibility. In order to ensure necessary coordination they should also be provided with copies of any relevant communications which have been sent.

34. Each communication must be expressly authorized by the relevant mandate-holder(s).¹⁴ Communications usually take the form of a letter transmitted by the OHCHR to the Permanent Representative of the country concerned to the Office of the United Nations in Geneva. In the absence of such representation the letter shall be transmitted to the relevant Permanent Representative at United Nations Headquarters in New York, or to the Ministry of Foreign Affairs of the country or countries concerned.

35. In communications sent to Governments, the source is normally kept confidential in order to protect against reprisals or retaliation. An information source may, however, request that its identity be revealed.

36. In light of information received in response from the Government concerned, or of further information from other sources, the mandate-holder will determine how best to proceed. This might include the initiation of further inquiries, the elaboration of recommendations or observations to be published in the relevant report, or other appropriate steps designed to achieve the objectives of the mandate.

37. All communications sent and responses received thereon are confidential until such time as they are published in the relevant report of the mandate-holder or the mandate-holder determines that the specific circumstances require action to be taken before that time. Periodic reports issued by the Special Procedures should reflect the communications sent by the mandate-holder and the governments' responses thereto. They may also contain observations of the mandate-holders in relation to the outcome of the exchange of views. The names of alleged victims are reflected in the reports, although exceptions may be made in relation to children and other victims of violence in relation to whom publication would be problematic.

2. Criteria for taking action

38. Communications submitted to the Special Procedures alleging violations should be in written, printed or electronic form and include full details of the sender's identity and address, and full details of the relevant incident or situation. Anonymous communications are not considered.

39. A decision to take action on a case or situation rests in the discretion of the mandate-holder, in light of the mandate entrusted to him or her. For this purpose each mandate-holder may adopt criteria or guidelines governing the acceptance of information or the taking of action.

40. Allegations should ideally contain: the name of individual victim(s) or other identifying information, such as date of birth, sex, passport no. and place of residence; the name of any community or organization subject to alleged violations, information as to the circumstances, including available information as to the date and place of any incident(s), alleged perpetrators, suspected motives, contextual information; and any steps already taken at the national, regional or international level in relation to the case.

41. A number of Special Procedures have developed standard requirements/questionnaires to facilitate the collection of relevant information.

¹⁴ The procedures for sending communications of the Working Group on arbitrary detention and the Working Group on enforced or involuntary disappearances has several specificities which are reflected in their methods of work. See fact Sheet No. 26, Annex IV and E/CN.4/2002/79, Annex I.

42. In determining whether to act the mandate-holder will generally take account of the reliability of the source, the internal consistency of the information received, the precision of the factual details, and the relevance of the issues raised in terms of the mandate. It is up to mandate-holders to seek additional information from the original source or from other appropriate sources in order to clarify the issues or verify the credibility of the information.

43. Unlike the requirements of communication procedures established under human rights treaties, the exhaustion of domestic remedies is not a pre-requisite for the consideration of an allegation by the Special Procedures. The Special Procedures are not quasi-judicial mechanisms. Rather, they are premised upon the need for rapid action, designed to protect victims and potential victims, and do not preclude in any way the taking of appropriate judicial measures at the national level.

3. Letters of Allegation

44. Letters of allegation are used to communicate information about violations that are alleged to have already occurred and whose impact on the alleged victim can no longer be changed.

45. Letters of allegation generally follow a standard format consisting of four parts: (i) a reference to the resolution creating the mandates concerned; (ii) a summary of the available facts, and when applicable an indication of previous action taken on the same case; (iii) an indication of the specific concerns of the mandate-holder in light of the provisions of relevant international instruments and case law; and (iv) a request to the Government to provide information on: (a) the substance of the allegations; (b) measures taken to investigate and punish alleged perpetrators; (c) compensation, protection, or assistance provided to the alleged victims; (d) legislative, administrative and other steps taken to avoid the recurrence of such violations in the future; and (e) other relevant information. The content of the specific questions or requests addressed to the Government may vary considerably according to the substance of the allegations.

46. Governments are usually requested to provide a substantive response to communication letters within two months. Some mandate-holders forward the substance of the replies received to the source for its comments.

4. Urgent Appeals

47. Urgent appeals are used to communicate information about an alleged violation that is ongoing or imminent. The intention is to ensure that the appropriate State authorities are informed as quickly as possible of the circumstances so that they can intervene to end or prevent a human rights violation.

48. Urgent appeals are transmitted by appropriate means (including, for example, by fax) addressed directly to the Minister of Foreign Affairs of the State concerned with a copy to the Permanent Mission. Such appeals are sent on humanitarian grounds to ensure protection of the persons involved and do not prejudice any conclusions on the merits of the case.

49. Urgent appeals also generally follow a standard format consisting of four parts: (i) a reference to the resolution creating the mandates concerned; (ii) a summary of the available facts, and when applicable an indication of previous action taken on the same case; (iii) an indication of the specific concerns of the mandate-holder in light of the provisions of relevant international instruments and case law; and (iv) a request to the Government to provide information on the

substance of the allegations and to take urgent measures to prevent or stop the alleged violations. The content of the questions or requests addressed to the Government will vary significantly according to the situation in each case. Governments are generally requested to provide a substantive response within thirty days. In appropriate cases mandate-holders may decide to make such urgent appeals public by issuing press releases or public statements.

5. Press Statements

50. In appropriate situations, including those of grave concern or in which a Government has repeatedly failed to provide a substantive response, a Special Procedure mandate-holder may issue a press statement or hold a press conference, either individually or jointly with other mandate-holders.

51. Press releases and statements are processed by the Communications section of the OHCHR and posted on the OHCHR's web-site.

52. As a measure of courtesy, but for information purposes only, a copy of the press statement should be transmitted to the Permanent Mission of the country concerned shortly before its public release.

C. COUNTRY VISITS

1. Definition and purpose

53. Country visits are an essential means to obtain direct and first-hand information. They allow for direct observation of the human rights situation and facilitate an intensive dialogue with all relevant state authorities, including those in the executive, legislative and judicial branches. They also allow for contact with and information gathering from victims, witnesses, international and local NGOs and other members of civil society, the academic community, and officials of international agencies present in the country concerned.

54. Country visits generally vary in duration between one and two weeks but can be either shorter or longer if the circumstances so require. The visit occurs at the invitation of a State. Its purpose is to assess the actual human rights situation in the country concerned, including an examination of the relevant institutional, legal, judicial, and administrative aspects and to make recommendations thereon in relation to issues that arise under the relevant mandate.

55. Country visits by mandate-holders provide an opportunity to enhance awareness at the country, regional and international levels of the specific problems under consideration. This is done, *inter alia*, through meetings, briefings, press coverage of the visit and dissemination of the report.

2. Invitations and requests for visits

56. A Government may invite a mandate-holder on its own initiative. Alternatively a mandate-holder may solicit an invitation by communicating with the Government concerned, by discussions with members of the diplomatic service of the country concerned, including especially the Permanent Representative to the United Nations Office in Geneva or at Headquarters, or by other appropriate means. The General Assembly, the Human Rights Council, or the High Commissioner for Human Rights might also suggest or request that a visit be undertaken.

57. In instances in which an invitation is not forthcoming it is appropriate for a mandate-holder to remind the Government concerned, to draw the attention of the Council to the outstanding

request, and to take other appropriate measures designed to promote respect for human rights. An updated table of the status of requests for country visits is maintained on the website of the OHCHR.

58. Considerations which might lead a mandate-holder to request to visit a country include, *inter alia*, human rights developments at the national level (whether positive or negative), the availability of substantive information giving rise to concern, or a wish to pursue a particular thematic interest. Other factors which might be taken into account in determining which visits to undertake at any particular time might include considerations of geographical balance, the expected impact of the visit and the willingness of national actors to cooperate with the mandate-holder, the likelihood of follow-up on any recommendations made, the recent adoption by one or more treaty bodies of relevant concluding observations, the upcoming examination of the situation by one or more treaty bodies, recent or proposed visits by other Special Procedure mandate-holders, the list of countries scheduled for consideration under the Council's Universal Periodic Review (UPR) mechanism, and the priorities reflected in OHCHR's country engagement strategy.

59. The Commission on Human Rights strongly encouraged all States to extend a "standing invitation" to all thematic Special Procedures. By extending such an invitation States announce that they will automatically accept a request to visit by any of the Special Procedures.¹⁵ In such cases, mandate-holders will proceed to ask the State concerned to agree to proposed dates for a visit. The extension of a standing invitation, and the overall cooperation afforded to Special Procedures,¹⁶ are appropriately taken into account in considering the "pledges and commitments" made by States seeking election to the Human Rights Council.

60. Where appropriate country visits might be undertaken by several mandate-holders acting together, or by mandate-holders in conjunction with other representatives of the international community.

3. Preparation

61. The preparation of country visits is carried out on the basis of close consultation and cooperation among the mandate-holder(s), OHCHR and other relevant United Nations entities.

62. In advance of their visit, mandate-holders are provided with a "country assessment" prepared by OHCHR, which is a briefing document on the situation in the country covering

¹⁵ A list of states that have extended a standing invitation to thematic procedures can be found on the OHCHR's website: <http://www.ohchr.org/english/bodies/chr/special/invitations.htm>

¹⁶ Commission on Human Rights Resolution 2004/76 reiterated states' obligations to cooperate with Special Procedures:

Urges all Governments to cooperate with the Commission through the pertinent Special Procedures, including by:

(a) Responding without undue delay to requests for information made to them through the Special Procedures, so that the procedures may carry out their mandates effectively;

(b) Considering Special Procedures to visit their countries and considering favourably accepting visits from Special Procedures when requested;

(c) Facilitating follow-up visits as appropriate in order to help to contribute to the effective implementation of recommendations by the Special Procedures concerned;

3. *Calls upon* the Governments concerned to study carefully the recommendations addressed to them by Special Procedures and to keep the relevant mechanisms informed without undue delay on the progress made towards their implementation;

4. *Calls upon* all States to protect individuals, organizations or groups of persons who provide information to, meet with, or otherwise cooperate with the Special Procedures from any type of violence, coercion, harassment, or other form of intimidation or reprisal (...)"

legislation, relevant policies and programmes, institutions, administrative practices, and case law, as well as specific information relating to alleged violations or particular situations of concern.

63. The actual agenda for a country visit is a matter to be determined by the mandate-holder.

64. Those parts of the programme involving meetings with public authorities and institutions are negotiated between the mandate-holder and the Government concerned, usually through their mission to the United Nations. These discussions usually cover the timing of the mission, the list of official meetings requested with relevant authorities, and the nomination of an official from the host country as focal point throughout the visit (usually from the Ministry of Foreign Affairs or the Office of the Prime Minister or President). In this connection Governments must offer appropriate guarantees, preferably in writing, to ensure the protection of witnesses and the absence of all reprisals against any person cooperating with the mission in any way.

65. Those parts of the programme involving meetings with civil society are prepared by the mandate-holder with the support of the UNCT and OHCHR field presence as well as NGOs and national institutions. The details of this part of the programme may be shared with state authorities at the discretion of the mandate-holder. As specified in the Terms of Reference (see b) iii and iv.), the authorities commit to allow the mandate-holder to meet with NGOs and witnesses and to refrain from creating obstacles in that regard. Any person or group who cooperates with a Special Procedure is entitled to protection by the State from harassment, threats or any other form of intimidation or retaliation.

66. Security arrangements are made by OHCHR, and due respect for United Nations security regulations should be paid in the planning of visits. The Government has the primary responsibility of ensuring the security of the mission. This may require military or bodyguard escort. In such cases, careful consideration should be given to offers for security measures that may have an impact on the conduct of the mission. Advice in this regard should be sought from the local United Nations official in charge of security questions. Should the host Government be unable to provide the requisite security, under rare and exceptional circumstances, the United Nations system may protect experts on mission by employing security service companies providing armed guards. In the alternative, armed United Nations security officers may accompany a mandate-holder. The United Nations Security Coordinator must authorize such protection well in advance of the mission.

67. The necessary visas for the countries to be visited are to be obtained by mandate-holders, usually in their places of residence. When needed, the OHCHR shall cooperate with the appropriate authorities to facilitate the obtaining of a visa for the mandate-holder. Visa fees incurred will be reimbursed as part of the final settlement of travel expenses. In cases in which mandate-holders propose to undertake a mission in their countries of origin or residence, visas are not required. In such cases, they should simply notify their Government of nationality or residence.

68. In most cases mandate-holders will issue a brief press release, perhaps one week before the start of the mission, through the Communications Section of OHCHR, providing essential information on the mandate, the mandate-holder and the objectives of the visit. This press release should be made available on the website of the OHCHR and publicized in the country to be visited.

4. Conduct of the visit

69. The minimum standards that Governments are expected to apply in the context of a country visit by mandate-holders are reflected in the 'Terms of reference for fact-finding missions by Special Rapporteurs/Representatives of the Commission on Human Rights' which are reproduced in

Annex 3 of this Manual. Additional guarantees may be agreed upon between the mandate-holder and the Government when the specificities of the particular situation or mandate so require.

70. The OHCHR will make the necessary arrangements to ensure that mandate-holders have the staff support needed to conduct their mission effectively. Mandate-holders are usually accompanied in their meetings by OHCHR staff.

71. In terms of logistics, OHCHR works closely with the United Nations Resident Coordinator or Representative in the country. Where specific agencies have a major role in relation to the human rights situation, they are also consulted and may be requested to provide support. In addition, mandate-holders sometimes request one or more NGOs to coordinate some or all meetings with NGOs and individuals.

72. At the beginning and at the end of their visit, mandate-holders usually organize a meeting with the Government authority in charge of the visit, which is normally the Ministry of Foreign Affairs. During the initial briefing the Government should be informed about the purpose of the visit, the most significant issues to be addressed and the anticipated approach of the mandate-holder. During the departure briefing, the mandate-holder shares with the Government his or her preliminary findings and recommendations. The process for preparing the report, as well as the means of follow-up, may also be discussed.

73. At the end of a visit, mandate-holders will generally organize a press conference during which they will make a press statement and share their preliminary conclusions. The organization of the press conference is facilitated by the UNCTs.

74. When conducting interviews with victims and witnesses of human rights violations mandate-holders will be guided by principles of objectivity, respect, confidentiality, and verifiability. They should explain the mandate and avoid raising unrealistic expectations. They should also assess the reliability of the information and of the person(s) providing the information. Interviews should always be private and confidential. Where available and appropriate, United Nations premises should be used for interviews. Wherever interviews are held Government neither military nor civilian authorities should be present during the interview. Testimonies should not be reproduced in such a way that they can be attributed and real names should not be cited in the report without the explicit consent of the person concerned.

5. Reporting on the visit

75. The mission report prepared by a mandate-holder will generally contain details of the itinerary and of the principal meetings, an analysis of the situation, and a set of conclusions and recommendations directed towards the Government and other relevant actors. The draft report is first submitted to the Government with a view to the correction of any misunderstandings or factual inaccuracies. A time limit of at least four weeks will be specified during which Governmental comments can be taken into account. Mandate-holders might also opt to solicit comments on the draft report from UNCTs and other appropriate sources. The final reports are generally published as a separate document but might also be included as a part of a general report by the mandate-holder. Comments by the Government concerned on the substance of the report may, upon request, also be issued as an official document.

D. Other activities

1. Thematic studies

76. In addition to any other reports, mandate-holders may opt to devote a separate report to a particular topic of relevance to the mandate. Such studies may be initiated by the mandate-holder or undertaken pursuant to a specific request by relevant bodies. The practical arrangements in relation to the drafting and publication of these reports will be determined in consultation with OHCHR.

77. Such studies should be thoroughly researched and where appropriate take account of replies to questionnaires or other requests for information transmitted to governments, United Nations agencies, NGOs, treaty bodies, regional organizations, other experts, or partners.

2. Participation in seminars and conferences

78. Mandate-holders are frequently invited in their official capacity to participate in conferences, seminars and other events. OHCHR staff should be kept informed about such activities and should, both as a matter of courtesy and for reasons of transparency, inform the state concerned of the visit.

3. Awareness raising

79. Awareness raising is an important element in relation to the conduct of most Special Procedures, but the precise nature of measures taken will vary from one mandate to another. All mandate-holders have a webpage on the OHCHR website that provides information about the mandate as well as links to their reports and other relevant documents.

80. Three times each year the OHCHR publishes the “Special Procedures Bulletin”, aimed at providing a general overview of the main activities of Special Procedures.

81. The Communications Section of OHCHR issues press releases and responds to questions in relation to the activities and reports of mandate-holders. In addition, the Special Procedure Branch, and other branches, of OHCHR undertake appropriate promotional and informational activities to make the work of the Special Procedures better known and understood.

E. Relations with Non-State actors

82. International law focuses upon the legal responsibility of the State for violations of human rights committed on its territory or within its jurisdiction, whether by State agents or by non-State actors ranging from national liberation movements to private corporate or other actors. In appropriate circumstances, however, non-State actors can also be held to account for human rights violations and may be relevant interlocutors in the quest to restore respect for human rights and to establish accountability for violations. It might thus be appropriate for mandate-holders to engage in a dialogue with such actors.

83. In a State in which a peace process is under way, a cease-fire has been proclaimed by all relevant parties, or where territory is de-facto controlled by a non-State actor, interaction between the mandate-holder and representatives of the non-State actor might take place within the country concerned. The context of such meetings and the conditions under which they are held should seek to ensure that the involvement of the mandate-holder is not understood as an endorsement of any particular claim made by the non-State actor as to representativity, legitimacy, or other matters. In other contexts, such contacts should preferably be organized outside the territory of the State concerned and should avoid the appearance of a clandestine meeting. Practice indicates that many

mandate-holders have made recommendations addressed to non-State actors and that some have sent communications to such actors.

84. In addition, mandate-holders also communicate regularly with a range of other non-State actors including international organizations such as the World Bank, business entities, and other entities such as United Nations mandated peacekeeping forces.

F. Reporting on activities and interaction with Governments

85. Mandate-holders report on their activities on a regular basis to the relevant United Nations bodies, and particularly the Human Rights Council and the General Assembly. The relevant deadlines and word limits are set by Conference Services in light of the relevant legislative mandates. Advanced edited versions of reports are posted on the OHCHR's web-site as soon as they are available.

86. An inter-active dialogue constitutes an important element in the presentation of reports by mandate-holders. Such dialogues take place with the General Assembly and the Commission on Human Rights and are expected to be maintained by the Human Rights Council.

87. Mandate-holders also maintain contact with relevant Governments through meetings and consultations in Geneva, New York, or elsewhere. Such meetings might focus on requests for visits, follow-up to visits, individual cases, or any other question related to the mandate. Such contacts are designed to facilitate smooth and fruitful cooperation between Governments and mandate-holders.

III. Follow-up and interaction with other international and regional human rights mechanisms

88. Follow-up to the work of the Special Procedures includes the full range of "measures taken to encourage, facilitate and monitor the implementation of recommendations by any of the Special Procedures".¹⁷ It is considered to be a crucial element in ensuring that appropriate measures are taken in response to the work of the Special Procedures. The precise approach adopted varies from one mandate to another.¹⁸

89. One of the most important forms of follow-up consists of the interactive dialogue between mandate-holders who are presenting their reports and the Human Rights Council. As of June 2005 the modalities of this interaction remain to be determined. Around one third of the mandate-holders also report to the General Assembly, and some have informally briefed the Security Council.¹⁹

A. Follow-up to communications

90. Follow-up to communications is undertaken in several ways, including: (i) through reporting to the Human Rights Council and other appropriate bodies on communications sent and replies received, and on observations on the relevant information; (ii) through the analysis of general

¹⁷ Report of the 12th Annual meeting of Special Procedures mandate-holders, E/CN.4/2006/4, Paragraph 85.

¹⁸ Examples of well-developed follow-up arrangements can be found, for example, in the work of the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on the question of torture, and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

¹⁹ Under the Arria formula, Special Procedures mandate-holders may be invited by the President of the Security Council in order to provide informal briefings to interested Security Council members in relation to thematic and specific country situations.

trends, including the documentation of positive developments; and (iii) by maintaining a systematic and constructive dialogue with Governments concerned, the sources of communications and other partners.

1. Reporting

91. Summaries of communications and the essence of Governments' replies to communications are compiled in reports submitted to the Council²⁰. In addition, although the approach varies from mandate to mandate, the general practice is for the mandate-holder to provide some response to, or evaluation of, the exchange. The main principle is that of effectiveness, and this will often call for going beyond a straightforward exchange of correspondence.

2. Statistical information and tools for analysis

92. The OHCHR database on communications can be used to provide statistical information that allows for qualitative and quantitative analysis of trends of communications. This serves as a basis to plan and monitor initiatives to follow-up on communications.

93. OHCHR produces a *Monthly Communications Bulletin* which gives information on the number of communications, the mandate(s) involved, the number of individual situations addressed, disaggregated by sex, region and country, the responsiveness of governments, further information received from the sources; and follow-up. The OHCHR Special Procedures Branch (SPB) also provides qualitative analysis of three aspects of the communications system:

(i) Country analyses of the main trends reflected in communications, as a means of assisting the activities of mandate-holders and informing the country engagement activities of the Office.

(ii) Thematic analyses illustrating how particular cross-cutting themes, such as the situation of women, children, minorities, and counter-terrorism, have been dealt with in communications.

(iii) "Good news stories" (positive developments) arising out of communications sent by mandate-holders. Such information may come from different sources including the Government concerned, the original source, the UNCT, reliable media, or from those affected by the alleged violation.

3. Constructive dialogue with Governments, sources, and other partners

94. The aim of the communications procedure is to ensure a constructive dialogue with Governments in order to promote respect for human rights. It is thus appropriate that reminders be sent to Governments in relation to unanswered correspondence. Similarly, where it would enhance the quality of the dialogue and understanding of the situation, mandate-holders can follow-up on replies provided by Governments in order to request further clarification or information or to take the issue further.

95. Information on communications sent by each mandate-holder is available on the OHCHR website, and this information should be kept as up to date as possible. Mandate-holders are encouraged to share reports on communications on a regular basis with the relevant sources of

²⁰ Many mandate-holders issue a separate report on communications as an addendum to their main report.

information and to inform the latter of positive or negative developments in relation to the relevant cases. This provides the necessary feedback to those concerned and facilitates the adoption of follow-up measures designed to reinforce the objectives of the procedure.

96. Efforts to raise awareness and understanding of the procedure and to build an expanded network of sources of information are an essential component of the activities of the OHCHR and mandate-holders. The latter are encouraged to work with OHCHR, including its field presences, to identify additional means by which to promote follow-up.

B. Follow-up to country visits

97. Mandate-holders can seek to enhance the effectiveness of their country visits in various ways, including by: 1) formulating their recommendations in ways that facilitate implementation and monitoring; 2) undertaking follow-up initiatives through communications and further visits; and 3) cooperating with relevant partners.

1. Shaping recommendations

98. Recommendations should be SMART: specific, measurable, attainable, realistic, and time-bound. Not all issues that arise in the context of a visit may be best addressed through a specific recommendation, and mandate-holders should generally give priority to those proposals which meet the SMART criteria.

99. In formulating recommendations advice should be sought from a wide range of sources, including in particular those who might be in a position to contribute to following up in relation to implementation and monitoring. The identification of actors who might play a specific role in this regard is also important.

2. Follow-up initiatives

100. Follow-up to reports is of central importance. For this purpose mandate-holders can request information from the Government(s) concerned, from civil society, and from other appropriate sources, in order to assess the status of implementation of the recommendations made following recent country visits. A questionnaire, or other tools, can be used for the purpose of obtaining the information necessary to enable a mandate-holder to evaluate the extent to which effect has been given to the relevant recommendations. The resulting report might be issued in a dedicated follow-up report, in the mandate-holder's main report, or in other appropriate forms.

101. Follow-up visits to countries already visited might be considered, depending in part on budgetary considerations. Another approach, to the extent that mandates or issues dealt with overlap, is for other mandate-holders subsequently visiting the country concerned to address issues highlighted and build on recommendations formulated by a previous mandate-holder on the basis of his or her visit to the country. In addition, a mandate-holder reporting on a country visit might recommend future visits by other mandate-holders to the country to address situations that fall within the scope of their mandates.

102. Mandate-holders may follow-up on country visits by all appropriate means including through follow-up seminars organized at the initiative of mandate-holders themselves, the government(s) concerned, UNCTs, national institutions, NGOs and other partners.

3. Partners working on follow-up

103. Mandate-holders play an important role in catalyzing initiatives designed to follow-up on their recommendations and to document subsequent developments. Because the operational capacity and resources of mandate-holders are limited, the contribution of potential partners becomes especially important.

104. In addition to Governments, which have the main responsibility of implementing the recommendations contained in country reports, key national level partners who might be involved in follow-up include national human rights institutions, national NGOs and UNCTs. Geographic desk officers in OHCHR should play a role in ensuring that recommendations are integrated in country engagement strategies and in facilitating contacts and coordination with national counterparts.

105. Collaborative activities which might strengthen the likelihood of follow-up at the national level include: a) sharing the draft mission report with UNCTs and/or relevant agencies and programmes; b) seeking advice and suggestions in formulating recommendations so as to ensure that they fit in country engagement strategies of OHCHR and are relevant to the work of partners in the field; c) sharing final mission reports with partners, encouraging wide dissemination of the report, and supporting initiatives to raise awareness of the issues, including translation of the report into national language(s); d) encouraging partners to follow-up with the Government on recommendations and to keep mandate-holders informed of developments; e) when appropriate, encouraging UNCTs to monitor the situation of individuals and organizations which have cooperated with the mission in order to avoid retaliation and to report on any such problems; and f) informing partners about ways in which mandate-holders can provide support to their work through their personal intervention.

C. Follow-up to thematic studies

106. Thematic studies undertaken by Special Procedures mandate-holders can make important contributions to the overall body of knowledge in the field and to the understanding of complex problems and their possible solutions. Such studies can be used to raise awareness of particular problems and to shed light on the types of laws, policies and programmes which might best ensure the respect for human rights in such circumstances.

107. As noted above the information gathered in the preparation of thematic reports can be made available on the OHCHR website in a variety of formats. The reports themselves should also be widely disseminated by all appropriate means, including press releases, press conferences, and presentations to conferences and to meetings convened by other relevant groups such as civil society, academia and others.

108. Thematic studies can also be used to provide human rights input into the formulation of legislative, policy and other initiatives in the relevant fields.

D. Interaction with other international and regional human rights mechanisms

109. Cross-fertilization between the work of Special Procedures and that of the treaty bodies is highly desirable in order to strengthen and reinforce the overall human rights system. One way of promoting this is to encourage the use of concluding observations, general comments, and final views adopted by treaty bodies by the Special Procedures in their work, and the use of the findings and recommendations of mandate-holders in the work of the treaty bodies wherever relevant.

110. Interaction between Special Procedures and treaty bodies can be facilitated by: 1) briefings by mandate-holders for treaty bodies in relation to both country situations and thematic issues; 2) participation of mandate-holders in days of general discussion organized by treaty bodies; 3) contributions by mandate-holders to the elaboration of general comments; and 4) the incorporation of information and jurisprudence generated by the treaty bodies in the work of Special Procedures.

111. Regional human rights mechanisms are also of considerable importance. Mandate-holders are thus encouraged to establish and maintain contacts with regional human rights mechanisms working on issues related to their mandate to ensure exchanges of information, coordination, and mutual support in common areas of work. In this spirit mandate-holders should also make use, wherever relevant and appropriate, of the jurisprudence, standards, resolutions and other official documents of regional organizations to reinforce their analyses and recommendations.

IV. Coordination and cooperation

A. Coordination among Special Procedures

1. The Coordination Committee

112. In June 2005 the annual meeting of mandate-holders created a Coordination Committee, the principal role of which is to contribute to the ability of the individual experts to carry out their mandates in the most effective way and to promote the standing of the Special Procedures system within the broader framework of the United Nations and its human rights programmes.

113. The Committee's role is essentially facilitative and its interventions are of a recommendatory nature. It has no role in relation to the substantive issues being dealt with by each Special Procedure. Its overall role is limited in order to avoid an excessive workload for its members and to ensure the independence and autonomy of mandate-holders.

114. The Committee's main function is to seek to assist coordination among mandate-holders and to act as a bridge between them and the OHCHR, the broader United Nations human rights framework, and civil society. Consequently, it should play a role in:

- (a) enhancing the effectiveness and independence of mandate-holders and facilitating their work;
- (b) being available to mandate-holders to share experience concerning methods of work;
- (c) ensuring that the concerns of the Special Procedures system are taken into account in the reform process, and reporting on the developments and progress in this regard;
- (d) proactively identifying issues of concern to groups of mandates and facilitating joint action on cross-cutting issues or issues of shared concern;
- (e) structuring the exchange of information and in particular keeping mandate-holders informed of the activities carried out by colleagues; and
- (f) proposing a draft agenda for the Annual Meeting of the Special Procedures and presenting a report to the Meeting.

115. The Coordination Committee consists of five members, including the Chairperson and the Rapporteur of the Annual Meeting. The Chairperson and the Rapporteur then select three more members from a list of nominees submitted to them by mandate-holders. Those members shall be selected with a view to ensuring appropriate balance and diversity in terms of country and thematic

mandates, geographical balance, gender, and experience in the Special Procedure system. There should be some continuity over time in the composition of the Committee.

116. The Coordination Committee members should be in touch via internet and conference calls. If need be, they should meet at an appropriate time during the course of the year, and should meet informally one day before the annual meeting. The Committee should oversee the development of a more effective system of communicating among mandate-holders involving an interactive webpage or message board open only to the experts themselves.

2. Joint communications

117. The issuance of joint communications is one method by which to promote coordinated action by Special Procedures in situations which implicate the mandate of more than one mandate-holder. While there is no obligation on an individual mandate-holder to participate jointly with others, it should be recognized that joint action can facilitate better coordination at all levels and reduce the burden imposed upon Governments in cases in which multiple communications might otherwise be sent. The OHCHR's Quick Response Desk (QRD) has an important role to play in facilitating joint communications. In 2005, 53 per cent of communications sent were joint communications.

3. Annual meetings of mandate-holders

118. The 1993 Vienna World Conference on Human Rights underlined the importance of strengthening and harmonizing the system of Special Procedures. As a result, since 1994 annual meetings of all of the mandate-holders have been convened.

119. The Annual Meeting is an opportunity for mandate-holders to meet each other and to exchange views with Member States, NGOs and representatives of international organizations. It is also used to facilitate a dialogue with the Chairpersons of the various treaty bodies.

B. Cooperation with partners

120. As made clear in the previous sections of this Manual, Special Procedures mandate-holders work in close cooperation with a range of partners. They include the following.

1. Cooperation with OHCHR

121. The role of the OHCHR is to facilitate and support the work of mandate-holders. At the same time the output from that work constitutes an important input into the programs and priorities of both the OHCHR and the broader United Nations system.

122. This includes the work of the treaty bodies which are provided with the findings of the Special Procedures and whose outputs are, in turn, fed into the background materials used by the mandate-holders in their work. During the Annual Meeting of Special Procedures mandate-holders, the experts and the chairpersons of the treaty bodies hold a joint meeting to discuss issues of common concern and explore opportunities for enhanced cooperation. In this spirit, mandate-holders are encouraged to take account of the general comments, concluding observations and final views of the treaty bodies in so far as they are relevant to reporting on a particular country.

123. In addition, the work of the Special Procedures should be integrated into, and draw upon, the work of the OHCHR at the country level.

2. Cooperation with UNCT

124. Action 2 of the 2002 Reform Programme put forward by the Secretary-General emphasized the importance of integrating human rights into the work of the United Nations as a whole, particularly at the country level. In this spirit, it is essential to ensure appropriate linkages, in both directions, between the work of the United Nations Country Teams and that of the Special Procedures. A Memorandum of Understanding on country visits was signed between OHCHR and UNDP in 1998, and a Guidance Note for United Nations Country Teams in relation to Special Procedures and the treaty bodies was issued in May 2005. It identifies opportunities for cooperation between Special Procedures and UNCTs and provides examples of good practices in the following three main areas of cooperation:

Mission preparation and conduct

125. Substantive participation by UNCTs in mission preparation and the conduct of the mission provides an opportunity for the Team to update and contextualize the information already received by the mandate-holder, and assists the latter in identifying persons, sites and material of particular relevance. It can also provide opportunities for the UNCT to engage in a dialogue on human rights issues, with a range of partners including the mandate-holders themselves, relevant Governmental authorities, NGOs, and others. To facilitate this process, information on the mandates and the mandate-holders should be provided in advance of the mission to the UNCT.

Follow-up to missions

126. Mandate-holders can engage with the UNCTs in drawing up their recommendations, in gathering additional information, in seeking advice on the accuracy of their analyses and on the appropriateness of their proposed recommendations, and in identifying the most appropriate measures to take in order to encourage meaningful follow-up. It is also appropriate for UNCTs, which should receive a copy of all reports as soon as they are finalized, to undertake appropriate publicity for those reports, and to maintain contact with the mandate-holder in order to maintain momentum on the relevant issues.

Advocacy and programming

127. UNCTs can encourage the government to invite and cooperate with mandate-holders and to implement the recommendations which result from the visit. Mandate-holders can encourage these practices through regular contact and cooperation with UNCTs.

3. Cooperation with United Nations agencies and other institutions

United Nations agencies, other international or regional organizations or bodies

128. Special Procedures benefit from cooperation with other parts of the United Nations system, including the various United Nations specialised agencies and other bodies. This might extend to working closely together in the preparatory stages of a mission, during the mission or in the context of follow-up.

129. Mandate-holders may be solicited to join advocacy activities and campaigns, to participate in conferences and other events, to contribute to interagency studies, and to work on the drafting of policy tools and guidelines. Such contributions must respect the different mandates and roles of the

Special Procedures on the one hand and the United Nations agencies on the other, and every effort should be made to keep the OHCHR fully informed of, and where appropriate, involved in, such activities.

National Human Rights Institutions

130. Independent national human rights institutions are usually ideally placed to interact with, and facilitate, the work of mandate-holders, as well as to contribute to the implementation of, and the follow-up to, their recommendations. The roles of the two actors should be mutually reinforcing in various respects.

131. Mandate-holders are well placed to support the establishment or strengthening of national institutions, to facilitate and encourage their work in specific areas, to reinforce their need for independence in accordance with the Paris Principles, to promote the provision of adequate resources to enable them to function effectively and to take action when they are under threat from any source. They can also call attention to any shortcomings in their role in relation to relevant issues.

4. Cooperation with civil society

132. Civil society in general, and international, regional and national NGOs in particular, provide invaluable support to the Special Procedures system. They provide information and analysis, help to disseminate the findings of the Special Procedures, and assist in follow-up activities. Meetings with their representatives are appropriate in all aspects of the work of the Special Procedures including in their activities in Geneva and New York, on field missions, and more generally. It is thus appropriate for mandate-holders to give careful and timely consideration to invitations from NGOs and academic institutions to participate in activities such as conferences, debates, and seminars. The OHCHR should generally be kept informed of the relevant activities of mandate-holders as they relate to civil society.

Annex I

LIST OF SPECIAL PROCEDURES OF THE COMMISSION ON HUMAN RIGHTS

Thematic mandates

- Working Group on enforced or involuntary disappearances (1980)
 - Mr. Santiago Corcuera, Chairperson (Mexico), appointed in 2004
 - Mr. Stephen Toope (Canada), appointed in 2002
 - Mr. Joel Adebayo Adekanye (Nigeria), appointed in 2000
 - Mr. Saied Rajaie Khorasani (Islamic Republic of Iran), appointed in 2003
 - Mr. Darko Götlicher (Croatia), appointed in 2004
- Special Rapporteur on extrajudicial, summary or arbitrary executions (1982)
 - Mr. Philip Alston (Australia), appointed in 2004
- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (1985)
 - Mr. Manfred Nowak (Austria), appointed in 2004
- Special Rapporteur on the right to freedom of religion or belief (1986)
 - Ms. Asma Jahangir (Pakistan), appointed in 2004
- Special Rapporteur on the sale of children, child prostitution and child pornography (1990)
 - Mr. Juan Miguel Petit (Uruguay), appointed in 2001
- Working Group on arbitrary detention (1991)
 - Ms. Leila Zerrougui, Chairperson-Rapporteur (Algeria), appointed in 2001
 - Mr. Tamás Bán (Hungary), Vice Chairperson, appointed in 2001
 - Ms. Manuela Carmena Castrillo (Spain), appointed in 2003
 - Mr. Seyyed Mohammad Hashemi (Islamic Republic of Iran), appointed in 2002
 - Ms. Soledad Villagra de Biedermann (Paraguay), appointed in 2000
- Special Rapporteur on the right to freedom of opinion and expression (1993)
 - Mr. Ambeyi Ligabo (Kenya), appointed in 2002
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (1993)
 - Mr. Doudou Diène (Senegal), appointed in 2002
- Special Rapporteur on the independence of judges and lawyers (1994)
 - Mr. Leandro Despouy (Argentina), appointed in 2003
- Special Rapporteur on violence against women, its causes and consequences (1994)
 - Ms. Yakin Ertürk (Turkey), appointed in 2003
- Special Representative of the Secretary-General for children and armed conflict (1997)
 - Ms. Radikha Coomaraswamy (Sri Lanka), appointed in 2006

- Special Rapporteur on the human rights of migrants (1999)
Mr. Jorge Bustamante (Mexico), appointed in 2005
- Special Representative of the Secretary-General on human rights defenders (2000)
Ms. Hina Jilani (Pakistan), appointed in 2000
- Special Rapporteur on trafficking in persons, especially in women and children (2004)
Ms. Sigma Huda (Bangladesh), appointed in 2004
- Representative of the Secretary-General on the human rights of internally displaced persons (2004)
Mr. Walter Kalin (Switzerland), appointed in 2004
- Working Group on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (2005)
Ms. Amada Benavides de Pérez (Colombia) appointed in 2005
Ms Najat Al-Hajjaji (Libyan Arab Jamahiriya) appointed in 2005
Mr. José Gómez del Prado (Spain) appointed in 2005
Mr. Alexander Ivanovich Nikitin (Russian Federation) appointed in 2005
Ms. Shaista Shameem (Fiji) appointed in 2005
- Special Rapporteur on the promotion and protection on human rights and fundamental freedoms while countering terrorism (2005)
Mr. Martin Scheinin (Finland) appointed in 2005
- Independent Expert of the High Commissioner on minority issues (2005)
Ms. Gay McDougall (United States of America) appointed in 2005
- Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (1995)
Mr. Okechukwu Ibeanu (Nigeria), appointed in 2004
- Independent expert on human rights and extreme poverty (1998)
Mr. Arjun Sengupta (India), appointed in 2004
- Special Rapporteur on the right to education (1998)
Mr. Vernor Muñoz (Costa Rica), appointed in 2004
- Special Rapporteur on the right to food (2000)
Mr. Jean Ziegler (Switzerland), appointed in 2000
- Special Rapporteur on the right to adequate housing (2000)
Mr. Miloon Kothari (India), appointed in 2000
- Independent expert on economic reform policies and foreign debt (2000)
Mr. Bernards Andrews Nyamwaya Mudho (Kenya), appointed in 2001
- Special Rapporteur on human rights and fundamental freedoms of indigenous peoples (2001)

Mr. Rodolfo Stavenhagen (Mexico), appointed in 2001

- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2002)
Mr. Paul Hunt (New Zealand), appointed in 2002
- Working Group on people of African descent (2002)
Mr. Peter Lesa Kasanda, Chairperson (Zambia), appointed in 2002
- Independent expert on human rights and international solidarity (2005)
Mr. Rudi Muhammad Rizki (Indonesia) appointed in 2005
- Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (2005)

Mr. John Ruggie (United States of America) appointed in 2005

Geographic mandates

- Special Rapporteur on the situation of human rights in Palestinian territories occupied since 1967 (1993)
Mr. John Dugard (South Africa), appointed in 2001
- Special Rapporteur on the situation of human rights in Myanmar (1992)
Mr. Paulo Sergio Pinheiro (Brazil), appointed in 2000
- Special Rapporteur on the situation of human rights in Democratic People's Republic of Korea (2004)
Mr. Vitit Muntarbhorn (Thailand), appointed in 2004
- Special Rapporteur on the situation of human rights in Belarus (2004)
Mr. Adrian Severin (Romania), appointed in 2004
- Special Rapporteur on the situation of human rights in the Sudan (2005)
Ms Sima Samar (Afghanistan), appointed in 2005
- Special Representative of the Secretary-General for human rights in Cambodia (1993)
Mr. Yash Ghai (Kenya), appointed in 2005
- Independent expert of the Secretary-General on the situation of human rights in Somalia (1993)
Mr. Ghanim Alnajjar (Kuwait), appointed in 2001
- Independent expert of the Secretary-General on the situation of human rights in Haiti (1995)
Mr. Louis Joinet (France), appointed in 2002
- Personal Representative of the High Commissioner on the situation of human rights in Cuba (2003)
Ms. Christine Chanet (France), appointed in 2003

- Independent expert on technical cooperation and advisory services in Liberia (2003)
Ms. Charlotte Abaka (Ghana), appointed in 2003
- Independent expert on the situation of human rights in Burundi (2004)
Mr. Akich Okola (Kenya), appointed in 2004
- Independent expert on the situation of human rights in the Democratic Republic of the Congo (2004)
Mr. Titinga Frédéric Pacéré (Burkina Faso), appointed in 2004
- Independent Expert on the situation of human rights in Uzbekistan (2004)
Mr. Latif Huseynov (Azerbaijan), appointed in 2004

Annex II

Guiding principles regarding the working relations between special procedures mandate-holders and OHCHR staff

Introduction

1. An in-house analysis of the working relations between mandate-holders and OHCHR (staff members) servicing Special Procedures was initiated in 2001, in order to determine the division of work and responsibilities in each situations. From the results of this analysis, it was clear that wide disparities existed as regards this division, and there was much uncertainty as to where the basis of responsibility for different aspects of the mandate lay.
2. The present guidelines have been drafted in order to clarify, for the benefit of both the mandate-holders and OHCHR staff members, as well as external partners, the nature of the working relationship between the mandate-holders and OHCHR staff members which each should expect to maintain, as well as the parameters of responsibility.

General framework

3. Special procedures mandate-holders are ultimately responsible for their mandate and have been appointed by the Commission on Human Rights, the Secretary-General or the High Commissioner to carry out certain tasks as independent experts. They have been selected for their expertise, impartiality, objectivity and independence (cf. inter alia CHR resolutions entitled “human rights and thematic procedures”; see most recently: CHR resolution 2004/76). The direct and close involvement of mandate-holders in the conduct of the activities under their respective mandates is the best guarantee that special procedures mandates are discharged in accordance with these fundamental principles. In performing their functions, the mandate-holders engage their personal and professional responsibility.
4. OHCHR will seek to assign at least one staff member to ensure the proper servicing of each special procedure mandate. It is the responsibility of OHCHR to identify staff to be assigned to each such mandate. As staff members of the United Nations Secretariat, OHCHR officers are responsible to their respective supervisors within OHCHR; they are servicing a mandate, not a mandate-holder. OHCHR staff’s activities, and the time schedule within which they should be performed, are detailed in their respective work plans that are prepared in consultation with their supervisors, taking into account the work plan of their respective team and branch and within the overall framework of OHCHR’s mandate and priorities.
5. While the day-to-day working relationship between a mandate-holder and the OHCHR staff servicing his/her mandate will take shape according to the specificities of the mandate concerned, the two points referred above should aim at guaranteeing a clear division of work that may be reasserted by OHCHR management if need be. OHCHR

staff member's yearly work plan as approved by his/her supervisor should also provide clarification with respect to this division of work.

6. OHCHR should be duly informed of all activities carried out by the mandate-holder in his/her official capacity. Official correspondence undertaken in the framework of special procedures mandates should be done by the OHCHR following general guidelines or specific instructions given by the mandate-holders. In cases where the latter decides to undertake directly such correspondence, whether in Geneva or in his/her country of residence, OHCHR should be kept informed for the sake of coordination. Likewise, whenever contacts or correspondence which have some relevance to the mandates are done by the OHCHR, the mandate-holders should be automatically informed.

Division of work

7. Daily management of the mandate:

- (a) Regular correspondence, in particular the drafting of urgent appeals and of allegation letters, with Governments and non-governmental organizations is normally incumbent upon the OHCHR staff.
- (b) The mandate-holder must give his/her final approval to any communications sent on his/her behalf. In accordance with the current practice and established procedures, in view of the time-sensitivity of urgent appeals, mandate-holders usually give the authorization to the Chief of the Special Procedures Branch to transmit urgent appeals which they have approved.
- (c) Contacts with governmental delegations and non-governmental organizations on official matters regarding the mandate are incumbent on the OHCHR. Official contacts between a mandate-holder and Governments should always be done through OHCHR.
- (d) E-mail and other direct addresses of mandate-holders should not be given to external parties without the prior explicit approval of the mandate-holder concerned.

8. Drafting of reports

- (a) Content of reports:
 - (i) The general responsibility regarding the drafting of any report remains incumbent upon the mandate-holder, a responsibility that the mandate-holder assumes when accepting his/her appointment.
 - (ii) The general outline of any report, including mission reports, as well as the drafting of conclusions and recommendations, and the formulation of policies and final analysis, are incumbent on the mandate-holder.
 - (iii) The drafting of introductory and descriptive parts, as well as preliminary research, may be delegated to the OHCHR staff.
 - (iv) Written reports for any mission financed by the United Nations and attended by the mandate-holders alone –participation in seminars, conferences, workshops, country visits, etc-, should be shared with the staff supporting the mandate.

- (b) Timely submission and length of reports:
- (i) Mandate-holders are responsible for the timely submission of their reports. OHCHR senior management should directly inform mandate-holders of submission deadlines in a timely manner. In particular, the latter should be reminded that the editing and publication of reports depends on UNOG Conference Services, not OHCHR. OHCHR staff is responsible for drawing the attention of mandate-holders to deadlines of submissions of report to the CHR and/or the GA (10-weeks rule and two weeks rule for editors).
 - (ii) OHCHR, in consultation with Conference Services, will recall mandate-holders of criteria applied regarding the late submission of reports, in particular with respect to the question of the processing and translation of such reports in all UN languages and/or language(s) of submission, as well as criteria regarding the length of report should also be set up.

9. Missions

(a) Planning:

- (i) Every mandate holder should draw up a work-plan running from January through December, in line with the UN budgetary cycle and the work-plans of OHCHR staff. This plan should include references to the mandate holder's strategy and aims and objectives for the year. Mandate-holders are also encouraged to indicate the timing of the missions they intend to undertake during the following year with a view to establishing a yearly work plan for all special procedures.
- (ii) OHCHR should ensure that mandate-holders are informed on requests or plans to undertake visits by other mechanisms, in particular pending requests by other mandate-holders, in order to avoid duplication. This should also ensure that countries do not play a mechanism against another with respect to their invitations to undertake missions and to plan joint mission of special procedures.
- (iii) OHCHR should ensure that mandate-holders are also informed of activities carried out, e.g., by the High Commissioner and her regional representatives, OHCHR advisory services, its technical cooperation programme, field presences and geographic desk officers and national institutions in the countries they intend to visit. This should be done through the preparation of a country assessment prior to country missions. The country assessment will also reflect treaty bodies' recommendations. Feedback on the mandate-holders' visit in a country shall be provided to OHCHR geographic desk officer and OHCHR staff in general through debriefing sessions and to OHCHR field presence in the country if any.

(b) Preparation:

- (i) Official communications channels with Governments concerned to ensure the latter's cooperation and agreement on the modalities of the visit should be respected by mandate-holders and facilitated by OHCHR.
- (ii) The programme of a mission should be established by OHCHR staff in consultation with the mandate-holders. The final programme must be approved by the mandate-holder.
- (iii) The substantive research in preparation to the mission is incumbent upon the OHCHR staff.

- (iv) The logistical preparation of missions, including fact-finding missions, are incumbent upon the OHCHR staff, the General Service staff assigned to the mandate and the relevant administrative officer. Support in the preparation of the mission will also be sought from OHCHR field presences. UNDP logistical support will be sought in the preparation of the mission by the OHCHR staff in accordance with the UNDP/OHCHR Memorandum of Understanding.
 - (v) Security arrangements should be made by the OHCHR staff. Due respect for UN security regulations should be paid in the planning of field missions.
 - (vi) Ideally, missions should take place sufficiently early before the deadline regarding the submission of reports to the Human Rights Council. This rule should be applied with flexibility in order to take into account exceptional circumstances that may require late missions to take place. In the latter case, mandate-holders should be made aware of possible consequences of a late submission of their reports..
- (c) Staff support during missions:
- (i) OHCHR will make all necessary arrangements to ensure that mandate-holders have the staff support needed to effectively conduct their mission. OHCHR shall make available one staff member from Geneva – either the staff member servicing the mandate concerned or if needed, a staff member with the relevant experience, or from the OHCHR Field Office where the mission is taking place.
 - (ii) OHCHR will request the necessary staff support from its field presence, if any, and/or from the UNDP Office in the country concerned to assist the mission, as needed.
- (d) Visas, medical clearance and payments of local expenditures:
- (i) Mandate-holders are responsible for all personal issues regarding their travel, such as visas and medical clearance, which is necessary especially for travel in countries in conflict situations. Medical examinations and vaccinations which may be required by the UN Medical Service Department must be arranged at the mandate-holders' place of residence.
 - (ii) Travel and financial authorizations, in particular with respect to local expenditures to be incurred by the mission, should be processed in a timely manner by the Administrative Unit.
 - (iii) Mandate holders should submit all necessary information and documents in a timely manner to enable the submission and processing of travel claims.

10. Drafting of speeches and other contributions

- (a) While the drafting of official speeches and other (written) contributions may be delegated to the OHCHR, the mandate-holder should provide an outline indicating the issues to be raised, two to three weeks before the deadline of the text.
- (b) Texts intended for non-UN publications should be drafted by the mandate-holder.

11. Participation to meetings/seminars

- (a) If the mandate-holder cannot participate in a meeting he/she has been invited to attend as a participant, OHCHR staff may be requested, upon approval by the

Executive Office, to attend the meeting and deliver the mandate-holder's statement. In case costs are not covered by the organizers, financial authorization to attend such events by OHCHR staff is subject to approval by the Administrative Unit of OHCHR, upon recommendation of the Chief of Branch based on the request made by the mandate-holder.

- (b) OHCHR staff will nevertheless not represent the mandate-holder, but OHCHR. In that capacity, he or she is entitled to provide general information and respond to general queries regarding the mandate he or she is servicing.
- (c) Mandate holders should keep OHCHR staff duly informed about their travel in their capacity as mandate holders and in a public context for purposes other than country visits. As a matter of courtesy and for reasons of transparency, OHCHR staff shall inform the state concerned about the visit

12. Administrative issues

- (a) In addition to the focal points in SPB, CBB and RRDB direct contacts should be established between the Travel Unit of the Administrative Section of OHCHR and mandate-holders regarding administrative issues.
- (b) Regarding all issues related to reimbursement of travel costs, it should be incumbent upon the mandate-holder to provide all the necessary documentation and fill in all the necessary forms as required by the rules and regulations of the United Nations. In addition, it should be incumbent upon the Administrative Section to ensure speedy settlement of such reimbursements and to ensure clarity of information regarding the reimbursement e.g. to which travel they pertain.

13. Relations with the media

- (a) Mandate-holders act as their own spokespersons. OHCHR staff may assist mandate-holders in their public information activities, but they may not speak on their behalf or comment on their activities.
- (b) Mandate-holders should consult OHCHR before inviting journalists to participate in official field missions.
- (c) Official statements by mechanisms of the special procedures should be processed through the public information unit of OHCHR in Geneva.
- (d) As a matter of courtesy and for information purposes only, mandate holders may find it appropriate to share press statements with concerned countries shortly before they are publicly released.

14. Research-assistants/interns and consultants

- (a) Standard terms of reference may be drafted to clarify the chain of responsibility of research-assistants, in particular if they are to be based at OHCHR. While directly

responsible to the mandate-holders, research-assistants may be under the daily supervision of OHCHR staff. They however remain non-UN staff. Rules and regulations for the recruitment of OHCHR interns shall apply to research-assistants.

- (b) Such terms of reference should also be drafted with respect to research-assistants based where the mandate-holder lives, in particular with respect to the division of work and the necessity to have constant sharing of information.
- (c) Interns recruited through OHCHR shall remain under the direct supervision of the OHCHR staff to which they are assigned. Rules and regulations for the recruitment of interns shall apply, in particular with respect to the duration of their assignments, types of activities and relationship with mandate-holders.
- (d) OHCHR may decide to engage the services of external consultants for a specific period of time and in accordance with UN rules and regulations to provide specific additional assistance in the servicing of a mandate. Consultants shall be selected and supervised by OHCHR.

15. Resources

- (a) Under the regular budget, only a limited number of staff members is available to assist mandate-holders. Voluntary contributions are regularly sought to maintain a core support to the special procedures with a view to ensuring that all special procedures be properly serviced.
- (b) Efforts are made by OHCHR management to distribute the overall budget thus obtained equally among all mandates, taking into consideration specificities of the mandates.
- (c) It is the policy of OHCHR to request provisions to allow each mandate-holder to carry out two field missions a year, accompanied by a staff member, as well as a number of missions of consultations in Geneva and New York, if appropriate.
- (d) It is OHCHR general fundraising policy to encourage non-earmarked voluntary contributions. Accordingly, OHCHR management decides on the funding of particular activities of special procedures in accordance with given priorities at a certain time.
- (e) In principle, mandate-holders should not engage in fund-raising activities with donor countries with respect to the financial support, unless so authorized by OHCHR and in close coordination with OHCHR Fundraising Unit.
- (f) The “programme budget implications” (PBIs, i.e., the estimated costs of the activities expected to be carried out by the mandate-holder under his or her mandate) are taken into account in the process of establishing the budget.

16. Cooperation with other UN agencies and external parties

- (a) General cooperation activities within the framework of special procedures mandate with other UN agencies and external parties should be done through OHCHR.

(b) Mandate-holders should not engage in cooperation agreements with other external parties, including academic and research institutions, with regard to official activities directly related to their mandate without undertaking the relevant consultations with OHCHR, and if appropriate, with the OHCHR legal adviser. Such assistance should remain under the direct responsibility of the mandate-holder.

Annex III

(E/CN.4/1998/45 Appendix V)

TERMS OF REFERENCE FOR FACT-FINDING MISSIONS BY SPECIAL RAPPORTEURS/REPRESENTATIVES OF THE COMMISSION ON HUMAN RIGHTS

During fact-finding missions, special rapporteurs or representatives of the Commission on Human Rights, as well as United Nations staff accompanying them, should be given the following guarantees and facilities by the Government that invited them to visit its country:

- (a) Freedom of movement in the whole country, including facilitation of transport, in particular to restricted areas;
- (b) Freedom of inquiry, in particular as regards:
 - (i) Access to all prisons, detention centres and places of interrogation;
 - (ii) Contacts with central and local authorities of all branches of government;
 - (iii) Contacts with representatives of non-governmental organizations, other private institutions and the media;
 - (iv) Confidential and unsupervised contact with witnesses and other private persons, including persons deprived of their liberty, considered necessary to fulfil the mandate of the special rapporteur; and
 - (v) Full access to all documentary material relevant to the mandate;
- (c) Assurance by the Government that no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings;
- (d) Appropriate security arrangements without, however, restricting the freedom of movement and inquiry referred to above;
- (e) Extension of the same guarantees and facilities mentioned above to the appropriate United Nations staff who will assist the special rapporteur/representative before, during and after the visit.

Annex IV

SECURITY BRIEFING

Introduction

The United Nations has developed a comprehensive Security Management System that encompasses all UN Departments, Agencies, Programs and Funds. This system is dedicated to the safety and security of all staff worldwide and to enabling their program delivery as risk free as possible. For the purposes of the Security Management System, anyone who has any kind of contractual status or travels on official business for the UN is considered as “staff”.

All staff are required to conduct themselves in accordance with certain standards in order to contribute to their own safety and that of those implicated by their work.

The responsibility for security of staff rests, first and foremost, with the host government, but the organization also has certain responsibilities and obligations towards the staff. These elements, when combined with a high level of personal security awareness by individual staff members, all contribute to enhancing the safety and security of staff.

Security Management System

Under the leadership of the USG heading the Department of Safety and Security (DSS) in New York, each country has a Designated Official for Security (DO). This person is usually the resident representative or the highest-ranking UN official in the country.

DSS manages policy and procedural issues as well as responding to and coordinating major incidents. DSS also manages the more than 200 international professional security officers and several hundred support staff found in the field.

The DO manages security affairs within a country, or sometimes region. A Security Management Team (SMT) supports the DO. The SMT consists of the heads of each agency present in the country plus any specialists such as the UNDP doctor. The DO and the SMT are supported by a professional Field Security Coordination Officer (FSCO) who is responsible for overall coordination of all security activity in the country. In some cases this person has regional responsibilities. The DO and the FSCO will know the current security situation in the country and will issue directives to facilitate the safe conduct of activities.

The DO is further assisted by area security coordinators (ASC) who represent him in areas outside the capital and warden, normally allocated by neighborhood, who will notify staff of security issues, especially in cases of communications failures.

OHCHR has a Security Unit in Geneva to provide the High Commissioner and her staff with advice and support on security management issues. In countries that pose very difficult operating conditions, OHCHR has deployed professional security officers whose primary functions are to support the local offices in coordination with the DO and FSCO. OHCHR has its own security policy, which enhances the common UN policy while taking into account the unique work of OHCHR. The security unit in Geneva will ensure all staff are trained, equipped and informed about security issues. Geneva based security officers may also accompany staff on mission to areas where the circumstances are quite difficult and this security coverage must be budgeted and paid for by the mission receiving the support.

Insurance

The UN pays for the Malicious Acts Insurance Program (MAIP). The MAIP is in effect for all staff working in a country where a phase of the security system has been declared. Before paying a claim the insurer will ask: was the staff member granted a security clearance; was the staff member properly equipped to MOSS (see below); was the staff member properly trained; and, was the staff member properly briefed? These questions must be answered in the affirmative before the insurer will pay any benefits.

Standards

The UN security management system has a set of mandatory standards approved by the Secretary General and the General Assembly called the Minimum Operating Security Standards (MOSS). MOSS covers a wide range of issues such as training, communications, fire safety, transportation and so on. These minimum standards are based on an assessment of each duty station and their needs as they potentially move through the various phases of the security alert system.

All staff must meet MOSS whether as part of a permanent presence at the duty station or just visiting for a short mission. For those on mission, requirements must be met before travelling to or at least on arrival at the duty station. Meeting MOSS is tied to and validates insurance coverage.

Training

A high standard of personal security awareness is essential. While common sense will serve most people well, a minimum level of training is important. A mandatory two part security self training course is available over the internet, intranet and on CD ROM. Successful completion provides a certificate which indicates that a staff member is trained to an acceptable minimum level and is 'fit field'. This certificate is also used to validate MAIP. Security clearances will not be granted to those without a certificate and travel will not be processed by administration. A copy of this certificate must be provided to the OHCHR security unit who will ensure that other appropriate offices have a copy.

In addition, the security unit will provide training and briefings any time anywhere to those who need or want it. A security briefing is always wise before travel and can be arranged through your desk officer or directly to the security unit.

Security Phases

There are 5 security phases, these are declared and moved up or down by consultation between the DO, FSCO and the SMT. Only the SG can approve changes between levels 4 and 5.

No phase	- situation normal
Phase 1	- precautionary
Phase 2	- restricted movement
Phase 3	- relocation
Phase 4	- emergency operations
Phase 5	- evacuation

Security Clearance

All staff who travel to a duty station (or within a country) where any phase of the security management system has been declared must be granted a security clearance by the DO before arriving. Restrictions may apply. MOSS must be met.

The security unit in Geneva obtains the security clearance to enter a country for you. Security clearances for travel within the country must be obtained locally. Some basic information is required for processing the clearance. As situations are prone to change, this request is processed approximately a week before travel starts. Staff are encouraged to notify the security unit as far in advance as possible of travel to allow time for the situation in difficult locations to be followed, analyzed and prepared for. You will normally be given a written security clearance, which you should keep with you. You may be given additional travel advice, medical precautions or information on local procedures.

On arrival at a duty station, the staff member should inform the DO or FSCO of their arrival. This will ensure that arrangements can be made in case of evacuation or other notification of events. The security unit will provide these points of contact.

On completion of travel, staff should advise the security unit of any security related problems encountered so that remedial action may be taken.

Security Checklist

Here are the main things to know or do when you travel.

What is the security phase, do I need a clearance, has one been requested?

What medical precautions should I take? Do I have medical clearance?

Am I trained?

Am I equipped or have arrangements been made for the equipment I will need to meet MOSS? Do I know how to use it? (Satellite phone, radio)

Have I received a security briefing?

Do I have a list of contacts? (Arrival notification, in an emergency)

For further information, we invite you to visit our page on the OHCHR portal or feel free to contact any member of the Security Unit.

OHCHR Senior Security Manager Stuart Groves Office: +4122 917 9651 Mobile:+4179 217 3062 (24 hrs) Fax: +4122 917 9023 sgroves@ohchr.org	
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Annex V

ST/SGB/2002/9

Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission

Secretary-General's bulletin

Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission

The Secretary-General promulgates the following Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission (hereinafter "the Regulations").

Section 1 General provisions

1.1 By its resolution 56/280 of 27 March 2002, the General Assembly adopted the Regulations.

1.2 The text of the Regulations is attached to the present bulletin.

Section 2 Final provision

The present bulletin shall enter into force on 1 July 2002.

(Signed) Kofi A. **Annan**
Secretary-General

I. Introduction

1. Article 105, paragraph 3, of the Charter of the United Nations empowers the General Assembly to make recommendations with a view to determining, inter alia, the privileges and immunities of officials of the Organization or to propose conventions to Member States for this purpose. The Assembly did so by adopting the Convention on the Privileges and Immunities of the United Nations²¹ on 13 February 1946 (hereinafter called “the General Convention”).

2. The United Nations has persons performing full-time services for it, at the direction of its legislative organs, who are not staff. For example, article 13 of the statute of the Joint Inspection Unit (approved by the General Assembly in its resolution 31/192 of 22 December 1976) provides that the Inspectors shall have the status of officials of the Organization but shall not be staff members. In addition, pursuant to article V, section 17, of the General Convention, the Secretary-General has specified and submitted to the Assembly proposals that a number of persons who occupy certain positions within the Organization be accorded privileges and immunities under articles V and VII of the General Convention, even though they are not staff members. Those persons are the presiding officers of United Nations organs performing functions for the Organization on a substantially full-time basis (for example, the Chairman of the Advisory Committee on Administrative and Budgetary Questions and the Chairman and Vice-Chairman of the International Civil Service Commission). Those officials are not in a separate category under the General Convention, but their names are submitted by the Secretary-General to the host country together with those of Secretariat officials who are staff members. These persons have been consistently referred to by the General Assembly as “officials other than Secretariat officials”.

3. Experts on mission may be retained by way of a contract known as a consultant contract, which sets out the terms of their appointment and the tasks that they must discharge. Other individuals may have the status of experts on mission, even though they do not sign a consultant contract, if they are designated by United Nations organs to carry out missions or functions for the United Nations (for example, rapporteurs of the Commission on Human Rights, rapporteurs and members of its Subcommission on the Promotion and Protection of Human Rights and members of the International Law Commission).

4. Article VI of the General Convention provides that experts (other than officials coming within the scope of article V) shall be accorded privileges and immunities necessary to enable them to carry out their missions for

²¹ United Nations, *Treaty Series*, vol. I, No. 4, p. 15.

the United Nations and specifies a number of those privileges and immunities. Article VII, section 26, of the General Convention provides that facilities similar to those specified in section 25 (concerning applications for visas and facilities for speedy travel) shall be accorded to experts and other persons who are travelling on the business of the United Nations.

5. The Regulations contained in the present bulletin will apply to officials other than Secretariat officials, and to experts on mission. The Regulations are in most parts very general since they must apply to all officials other than Secretariat officials, and experts on mission. However, the application of the Regulations and the commentary to officials other than Secretariat officials, and to experts on mission who perform functions in respect of the United Nations and other organizations in the common system in accordance with their mandates (e.g., the Chairman and Vice-Chairman of the International Civil Service Commission and the Inspectors of the Joint Inspection Unit), is explained in various provisions of the Regulations and the commentary (see, e.g., regulation 1 (f), paragraph 3 of the commentary to regulation 1 (a) and the commentary to Regulation 1 (b)). The Regulations contained in the present bulletin will form part of the contract of employment or terms of appointment of any individual, including officials other than Secretariat officials, and experts on mission, who are appointed through Assembly action or through the actions of other representative bodies.

Role of the commentary

6. Each provision of the Regulations set out in the present bulletin is followed by a commentary. The commentary is designed to explain those provisions and will thus be of help to those persons subject to the Regulations. The commentary is not part of the Regulations adopted by the Assembly, and so is not a legal norm; nor does it have the legal force of a rule. It is, however, an official guide published by the Secretary-General on the scope and application of the Regulations. The commentary will be updated from time to time in the light of experience gained in applying the Regulations to specific instances.

II. Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission

**Regulation 1
Status**

(a) The responsibilities of officials other than Secretariat officials (hereinafter referred to as “officials”) and of experts on mission are not national but exclusively international.

(b) Officials and experts on mission shall make the following written declaration witnessed by the Secretary-General or an authorized representative:

“I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me by the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization.”

(c) The Secretary-General shall seek to ensure that the rights and duties of officials and of experts on mission, as set out in the General Convention, are respected. The Secretary-General shall also seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for officials and experts on mission carrying out the responsibilities entrusted to them.

(d) Experts on mission will receive a copy of the present Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission (hereinafter referred to as “the Regulations”) when they receive documentation from the United Nations relating to their mission and will be required to acknowledge receipt of the Regulations. Officials will receive a copy of the Regulations at an appropriate opportunity.

(e) The privileges and immunities enjoyed by the United Nations by virtue of Article 105 of its Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to those who are covered by them to fail to observe the laws and police regulations of the State in which they are located; nor do they furnish an excuse for non-performance of their private obligations. In any case where an issue arises regarding the application of these privileges and immunities, an official or an expert on mission shall immediately report the matter to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall

be waived, in accordance with the relevant instruments. The Secretary-General should inform and may take into account the views of the legislative bodies that appointed the officials or experts on mission.

(f) These regulations are applicable to the Chairman and Vice-Chairman of the International Civil Service Commission and the Inspectors of the Joint Inspection Unit, without prejudice to and in accordance with the statutes of the International Civil Service Commission and the Joint Inspection Unit, which stipulate that these officials perform their functions in respect of the United Nations and other organizations that accept their statutes.

Regulation 2

Conduct

(a) Officials and experts on mission shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

(b) In the performance of their duties, officials and experts on mission shall neither seek nor accept instructions from any Government or from any other source external to the Organization.

(c) Officials and experts on mission shall discharge their functions and regulate their conduct with the interests of the Organization only in view. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all individuals covered by the present Regulations.

(d) While the personal views and convictions of officials and experts on mission, including their political and religious convictions, remain inviolable, they shall ensure that those views and convictions do not adversely affect their official duties or the interests of the United Nations. Officials and experts on mission shall conduct themselves at all times in a manner befitting their status. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status.

(e) Officials and experts on mission shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the gain of any third party, including family, friends and those they favour. Nor shall they use their office for

personal reasons to prejudice the positions of those they do not favour.

(f) Officials and experts on mission shall exercise the utmost discretion in regard to all matters of official business. Officials and experts on mission shall not communicate to any Government, entity, person or any other source any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General. If they are not appointed by the Secretary-General, such authorization shall be conferred by the body that appointed them. These obligations do not cease upon the cessation of their official functions.

(g) Officials and experts on mission may not accept any honour, decoration, favour, gift or remuneration from any Government or non-governmental source for activities carried out during the course of their official functions while in the service of the United Nations.

(h) Officials and experts on mission shall not be actively associated with the management of, or hold a financial interest in, any profit-making, business or other concern, if it were possible for them or the profit-making, business or other concern to benefit from such association or financial interest by reason of their position with the United Nations. Officials or experts on mission who are in such a situation shall either dispose of that financial interest or formally excuse themselves from participating with regard to any involvement in that matter that has given rise to the conflict-of-interest situation.

(i) Officials and experts on mission shall file financial disclosure statements if requested to do so by the Secretary-General. The Secretary-General shall prescribe the format and information to be provided in such statements and shall establish procedures for filing them. The financial disclosure statements will remain confidential and will be used, as prescribed by the Secretary-General, only in making determinations pursuant to regulation 2 (h). It will be for the Secretary-General, in due consultation with the appointing authority in the case of officials not appointed by the Secretary-General, to judge whether a particular fact has given rise to a conflict-of-interest situation.

(j) Officials and experts on mission must comply with local laws and honour their private legal obligations, including, but not limited to, the obligation to honour orders of competent courts.

(k) Any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse, at the workplace or in connection with work, is prohibited.

(l) Officials and experts on mission shall not intentionally misrepresent their functions, official title or the nature of their duties to Member States or to any entities or persons external to the United Nations.

(m) Officials and experts on mission participating, as part of their official functions, in activities organized by a Government, intergovernmental organization, non-governmental organization or other private source may receive from the Government, intergovernmental organization, non-governmental organization or private source accommodation and travel and subsistence allowance generally in line with those payable by the United Nations. In such cases, the travel and subsistence allowance that may otherwise be payable by the United Nations shall be reduced in the same manner as in respect of staff members of the Organization.

Regulation 3 Accountability

Officials and experts on mission are accountable to the United Nations for the proper discharge of their functions.

III. Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, with commentary

Regulation 1 Status

Regulation 1 (a)

The responsibilities of officials other than Secretariat officials (hereinafter referred to as “officials”) and of experts on mission are not national but exclusively international.

Commentary

1. The United Nations has persons who perform services for it on a substantially full-time basis but who are not staff members. These persons have consistently been referred to by the General Assembly as “officials other than Secretariat officials”. In addition, pursuant to article V, section 17, of the General Convention, the Secretary-General has specified and submitted to the Assembly proposals that a number of persons who occupy certain positions within the Organization be accorded the privileges and immunities under articles V and VII of the General Convention, even though they are not staff members. These persons have also been referred to as “officials other than Secretariat officials”.

2. *The United Nations also has experts who perform assignments for the Organization. Article VI of the General Convention provides that experts (other than officials coming within the scope of article V) shall be accorded privileges and immunities necessary to enable them to carry out their missions for the United Nations and specifies a number of those privileges and immunities. These experts have been referred to as “experts on mission”.*

3. *The Regulations and the commentary, as applied to the Chairman and the Vice-Chairman of the International Civil Service Commission, the Inspectors of the Joint Inspection Unit and other officials and experts who perform functions in respect of the common system, in accordance with the statute of the International Civil Service Commission or that of the Joint Inspection Unit, respectively, or other mandates approved by the General Assembly or other relevant main bodies and organs of the United Nations, should be construed in the light of those functions and mandates. References to the United Nations or the United Nations Organization in the context of these Regulations and the commentary should be applied, bearing in mind that the functions of those officials and experts are related to the common system.*

4. *Regulation 1 (a) is similar to the second sentence of staff regulation 1.1 (a).²²*

* * *

Regulation 1 (b)

Officials and experts on mission shall make the following written declaration witnessed by the Secretary-General or an authorized representative:

“I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me by the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization.”

Commentary

Regulation 1 (b), which is similar to staff regulation 1.1 (b), contains the declaration of office of officials and experts on mission. In view of the

²² Hereinafter, references to staff regulations and rules denote the provisions contained in article I of the Staff Regulations and chapter I of the 100 series of the Staff Rules that came into effect on 1 January 1999, pursuant to General Assembly resolution 52/252.

system-wide functions of the International Civil Service Commission and the Joint Inspection Unit, the term “United Nations” in the written declaration will be replaced by the words “United Nations and other participating organizations”, and the word “Organization” will be replaced by the word “organizations” in the case of the Chairman and Vice-Chairman of the International Civil Service Commission and the Inspectors of the Joint Inspection Unit.

* * *

Regulation 1 (c)

The Secretary-General shall seek to ensure that the rights and duties of officials and experts on mission, as set out in the General Convention, are respected. The Secretary-General shall also seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for officials and experts on mission carrying out the responsibilities entrusted to them.

Commentary

1. The first sentence of regulation 1 (c), which is similar to staff regulation 1.1 (c), codifies an implicit duty that falls upon the Secretary-General, namely, to seek to ensure that the rights and duties of officials and experts on mission as set out in the General Convention are respected (as such rights are granted by Governments, the Secretary-General can only “seek to ensure” that they are respected). The protection accorded to officials and experts on mission under this provision relates to their official acts and thus does not lapse upon cessation of their service for the Organization, or, if they are part-time, on days when they are not in service.

2. The second sentence of regulation 1 (c), which reproduces the essence of the second sentence of staff regulation 1.2 (c), sets forth the responsibility of the Secretary-General to seek to ensure the safety of officials and experts on mission.

* * *

Regulation 1 (d)

Experts on mission will receive a copy of the present Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission (hereinafter referred to as “the Regulations”) when they receive documentation from the United Nations relating to their mission and will be required to acknowledge receipt of the Regulations. Officials will receive a copy of the Regulations at an appropriate opportunity.

Commentary

1. *Experts on mission retained by the Secretariat sign a consultant contract or receive a letter or other documentation indicating the scope of their mission for the Organization. The consultant contract or other documentation will incorporate the Regulations by reference, and experts will be required to acknowledge that they will abide by the Regulations.*

2. *At times, legislative bodies entrust tasks to individuals to perform assignments for those bodies (for example, members and special rapporteurs of the International Law Commission and other bodies). Those individuals have the status of experts on mission. Although their appointments may have been concluded without the signature of any document of appointment, their attention will be drawn to the Regulations when they receive documentation from the Secretariat relating to their functions and/or their assignment. That documentation will include a copy of the Regulations explaining that they were adopted by the General Assembly and thus constitute part of the conditions of those individuals' assignment for the United Nations.*

3. *Officials will receive a copy of the Regulations at an appropriate time, such as when they make the declaration of office (see regulation 1 (b)).*

* * *

Regulation 1 (e)

The privileges and immunities enjoyed by the United Nations by virtue of Article 105 of its Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to those who are covered by them to fail to observe the laws and police regulations of the State in which they are located; nor do they furnish an excuse for non-performance of their private obligations. In any case where an issue arises regarding the application of these privileges and immunities, an official or an expert on mission shall immediately report the matter to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall be waived, in accordance with the relevant instruments. The Secretary-General should inform and may take into account the views of the legislative bodies that appointed the officials or experts on mission.

Commentary

1. *Regulation 1 (e), which deals with privileges and immunities, is similar to staff regulation 1.1 (f) (see paras. 32, 49, 54 and 55 of the report on standards of conduct in the international civil service 1954,²³ which*

²³ A/52/488, annex III.

was prepared by the International Civil Service Advisory Board (hereinafter referred to as “the ICSAB report”).

2. Regulation 2 (j) specifies the obligations on those who are covered by such privileges and immunities to honour their private legal obligations.

3. Pursuant to article V, section 20, and article VI, section 23, of the General Convention, it is only the Secretary-General who has the right to waive the privileges and immunities accorded to officials and experts on mission. In deciding whether such privileges and immunities exist and whether they should be waived, the Secretary-General may take into account the views of the legislative body that appointed the officials or experts on mission.

Regulation 1 (f)

These regulations are applicable to the Chairman and Vice-Chairman of the International Civil Service Commission and the Inspectors of the Joint Inspection Unit, without prejudice to and in accordance with the statutes of the International Civil Service Commission and the Joint Inspection Unit, which stipulate that these officials perform their functions in respect of the United Nations and other organizations that accept their statutes.

[There is no commentary to this provision.]

* * *

Regulation 2 Conduct

Regulation 2 (a)

Officials and experts on mission shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

Commentary

1. Regulation 2 (a), which describes basic values expected of officials and experts on mission, is similar to staff regulation 1.2 (b).

2. The first sentence of regulation 2 (a) is derived from Article 101, paragraph 3, of the Charter of the United Nations by virtue of affirmatively placing upon officials and experts on mission the obligation to uphold the highest standards of efficiency, competence and integrity. As pointed out in paragraph 4 of the ICSAB report, the concept of integrity includes “honesty, truthfulness, fidelity, probity and freedom from corrupting influences”.

* * *

Regulation 2 (b)

In the performance of their duties, officials and experts on mission shall neither seek nor accept instructions from any Government or from any other source external to the Organization.

Commentary

Regulation 2 (b), which is similar to staff regulation 1.2 (d), flows from the first sentence of Article 100, paragraph 1, of the Charter of the United Nations (see ICSAB report, paras. 7, 18 and 31).

* * *

Regulation 2 (c)

Officials and experts on mission shall discharge their functions and regulate their conduct with the interests of the Organization only in view. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all individuals covered by the present Regulations.

Commentary

1. *Regulation 2 (c) in substance contains the same obligations as are contained in staff regulation 1.2 (e) applicable to staff. The first sentence of regulation 2 (c) sets forth an idea that is contained in staff regulation 1.1 (a) and in staff regulation 1.1 (b), which contains the written declaration of office, that is to say, the idea that staff must regulate their conduct with the interests of the Organization only in view (ibid., para. 4).*

2. *The second sentence of regulation 2 (c) focuses on the concept of loyalty to the aims, principles and purposes of the Organization as set forth in the Charter of the United Nations (which is alluded to in the declaration contained in regulation 1(b)) (ibid., paras. 5, 6 and 21).*

* * *

Regulation 2 (d)

While the personal views and convictions of officials and experts on mission, including their political and religious convictions, remain inviolable, they shall ensure that those views and convictions do not adversely affect their official duties or the interests of the United Nations. Officials and experts on mission shall conduct themselves at all times in a manner befitting their status. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public

pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status.

Commentary

1. *Regulation 2 (d) is similar to staff regulation 1.2 (f). The core idea of conduct befitting an international civil servant was considered by the International Civil Service Advisory Board in 1954. The Advisory Board remarked that “high standards of conduct are best attained by a universal understanding among staff members of the relation between their conduct and the success of the international organizations, and by the development of a strong tradition among men and women who are jealous of the reputation of the organizations that they serve and are anxious to safeguard it” (ICSAB report, para. 2; see also para. 4, on the integrity expected of international civil servants; paras. 5, 6 and 21, on loyalty; paras. 7 and 18, on independence; and paras. 8 and 48, on impartiality).*

2. *In respect of the last sentence of the regulation, it would be for the Organization to characterize an action or pronouncement as adversely reflecting on the status of an official or an expert on mission.*

* * *

Regulation 2 (e)

Officials and experts on mission shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the gain of any third party, including family, friends and those they favour. Nor shall they use their office for personal reasons to prejudice the positions of those they do not favour.

Commentary

1. *Regulation 2 (e), which is similar to staff regulation 1.2 (g), codifies principles set out in the ICSAB report (see paras. 17, 28 and 42). The use of one’s office for personal gain is clearly unacceptable. This includes not only conducting a business from a United Nations office but also such activities as using United Nations facilities for a business, using the United Nations name, logo or address for a business and approving a contract for a family business without disclosure. Regulation 2 (e) also reflects the principle set out in staff regulation 1.2 (g) that a staff member shall not use information that has not been made public for the private advantage of the staff member or of any third party.*

2. *The regulation, for clarity, makes specific reference to prohibiting an official or expert on mission from so favouring a third party, including family or friends, as to enable that third party to profit from the position of the official or expert on mission or from the exercise of*

his or her functions. The term “friends” is broad and seeks to encompass not only friends as normally understood, but also relationships that are not recognized by the United Nations as creating a dependency.

3. The regulation also prohibits the use of office or knowledge gained from that office for personal reasons to prejudice or harm third parties.

* * *

Regulation 2 (f)

Officials and experts on mission shall exercise the utmost discretion in regard to all matters of official business. Officials and experts on mission shall not communicate to any Government, entity, person or any other source any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General. If they are not appointed by the Secretary-General, such authorization shall be conferred by the body that appointed them. These obligations do not cease upon the cessation of their official functions.

Commentary

1. Regulation 2 (f), which is similar to staff regulation 1.2 (i), reflects the principle that official information may not be used for private purposes, except with authorization. This flows from the idea that officials and experts on mission are obligated to regulate their conduct with the interests of the Organization only in view (see ICSAB report, para. 4) and also from the requirements of regulation 2 (e). It follows that permission must be obtained for disclosure to third parties of information that has not been made public, unless such disclosure is specifically authorized or is in the normal course of duties of the official or expert on mission. Authorization of the Secretary-General is not required for officials and experts on mission who have not been appointed by the Secretary-General. Those officials and experts on mission would require the authorization of the body that had appointed them if the communication of the information was not a normal part of their duties.

2. The last sentence of the regulation provides that the obligations contained in the provision do not cease upon cessation of official functions. It may be difficult to enforce such a provision, but, at the very least, if a former official or expert on mission ignored the obligations contained in this regulation, the official file of the former official or expert on mission could be noted so as to prevent his or her re-engagement.

* * *

Regulation 2 (g)

Officials and experts on mission may not accept any honour, decoration, favour, gift or remuneration from any Government or non-governmental source for activities carried out during the course of their official functions while in the service of the United Nations.

Commentary

To ensure that officials and experts are perceived as impartial, regulation 2 (g) prohibits the acceptance of any honour, decoration, favour, gift or remuneration from any Government or non-governmental source for activities carried out during the course of their official functions while in the service of the United Nations.

* * *

Regulation 2 (h)

Officials and experts on mission shall not be actively associated with the management of, or hold a financial interest in, any profit-making, business or other concern, if it were possible for them or the profit-making, business or other concern to benefit from such association or financial interest by reason of their position with the United Nations. Officials or experts on mission who are in such a situation shall either dispose of that financial interest or formally excuse themselves from participating with regard to any involvement in that matter that has given rise to the conflict-of-interest situation.

Commentary

1. The first sentence of regulation 2 (h) is similar to staff regulation 1.2 (m). The purpose of the provision is to put officials and experts on mission on notice that they cannot be actively associated with a profit-making, business or other concern, if either the concern or the official or expert on mission is to profit therefrom by reason of the association with the Organization. It will be for the Secretary-General or the appointing authority to judge whether a particular act has given rise to a conflict-of-interest situation.

2. The second sentence of regulation 2 (h) is similar to the second part of staff rule 101.2 (n), which deals with the consequences of a staff member's having a possible conflict-of-interest situation. In such cases, the official or expert on mission shall dispose of the interests or, if practicable, shall excuse himself or herself from dealing with the matter on behalf of the Organization.

3. Generally, experts on mission are appointed on a part-time basis, and it is therefore likely that they are engaged in other activities, including employment,

when they are not performing services for the Organization. While there is no question that experts on mission may be so engaged, they must ensure that those activities are not incompatible with their status or functions as experts on mission.

* * *

Regulation 2 (i)

Officials and experts on mission shall file financial disclosure statements if requested to do so by the Secretary-General. The Secretary-General shall prescribe the format and information to be provided in such statements and shall establish procedures for filing them. The financial disclosure statements will remain confidential and will be used, as prescribed by the Secretary-General, only in making determinations pursuant to regulation 2 (h). It will be for the Secretary-General, in due consultation with the appointing authority in the case of officials not appointed by the Secretary-General, to judge whether a particular fact has given rise to a conflict-of-interest situation.

Commentary

Regulation 2 (i) is similar to, but more general than, staff regulation 1.2 (n), which requires all staff at the assistant secretary-general level and above to submit financial disclosure statements upon appointment and at intervals as prescribed by the Secretary-General, in respect of themselves and their dependent children, including any substantial transfers of assets and property to spouses and dependent children from the staff member or from any other source that might constitute a conflict of interest. This requirement is designed to minimize the risk of a perception of officials and experts on mission as using their position for personal gain. The regulation enables the Secretary-General to require officials and experts on mission to file financial disclosure statements, which will remain confidential and will be used only in dealing with conflict-of-interest situations (for example, in assessing whether an official was in such a situation).

* * *

Regulation 2 (j)

Officials and experts on mission must comply with local laws and honour their private legal obligations, including, but not limited to, the obligation to honour orders of competent courts.

Commentary

1. Regulation 2 (j), which is similar to staff rule 101.2 (c), is really an amplification of regulation 1 (e), which

provides that the privileges and immunities of the Organization afford no excuse for non-performance of private obligations (ibid., paras. 32, 54 and 55).

2. Regulation 2 (j) makes clear that private obligations must be honoured. It is the responsibility of those subject to the present Regulations, if they have a court order against them that they contest, to avail themselves of all means existing under the applicable national law to appeal the order and/or to secure relief from the obligation to comply with the order pending its appeal.

* * *

Regulation 2 (k)

Any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse, at the workplace or in connection with work, is prohibited.

Commentary

Regulation 2 (k), which is similar to staff rule 101.2 (d), reproduces the core of Secretary-General's bulletin ST/SGB/253 of 29 October 1992, which established United Nations policy on equal treatment of men and women in the Secretariat and also prohibited all forms of discrimination or harassment.

* * *

Regulation 2 (l)

Officials and experts on mission shall not intentionally misrepresent their functions, official title or the nature of their duties to Member States or to any entities or persons external to the United Nations.

Commentary

Regulation 2 (l) is similar to staff rule 101.2 (f), which prohibits the intentional misrepresentation of an official title or duties to outside parties (for example, by placing misleading titles on business cards). The use of the word "intentional" makes clear that this does not refer to careless or accidental acts.

* * *

Regulation 2 (m)

Officials and experts on mission participating, as part of their official functions, in activities organized by a Government, intergovernmental organization, non-governmental organization or other private source may receive from the Government, intergovernmental organization, non-governmental organization or private source accommodation and travel and subsistence

allowance generally in line with those payable by the United Nations. In such cases, the travel and subsistence allowance that may otherwise be payable by the United Nations shall be reduced in the same manner as in respect of staff members of the Organization.

Commentary

1. Regulation 2 (m), which is similar to staff rule 101.2 (s), deals with the issue of participation at various official functions. Officials and experts on mission who as part of their official functions participate in activities organized by a Government, intergovernmental organization, non-governmental organization or other private source may receive from it accommodation and travel and subsistence allowance generally in line with those payable by the United Nations, and in such cases the allowances that may otherwise be payable by the United Nations shall be reduced in the same amount as in respect of staff members of the Organization. Such provisions are presently found in staff rule 107.15 (a).

2. It should be noted that accommodation and travel and subsistence allowance may be accepted only if their acceptance would be appropriate to the status of officials and experts on mission and to the integrity, independence and impartiality that are required by that status. There may therefore be situations in which it would not be appropriate to accept those allowances from a Government, intergovernmental organization, non-governmental organization or other private source.

* * *

Regulation 3 Accountability

Officials and experts on mission are accountable to the United Nations for the proper discharge of their functions.

Commentary

Regulation 3, which is similar to staff regulation 1.3 (a), makes clear that officials and experts on mission are accountable for their actions. The method of accountability may vary. For officials appointed by the General Assembly, that accountability would be a matter for the Assembly.

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For experts on mission, it would be the Secretary-General or the appointing authority who could terminate an assignment or otherwise admonish the expert.

Annex VI

Convention on the Privileges and Immunities of the United Nations

(Adopted by the General Assembly of the United Nations on 13 February 1946)

Whereas Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes and

Whereas Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization;

Consequently the General Assembly by a Resolution adopted on the 13 February 1946, approved the following Convention and proposed it for accession by each Member of the United Nations.

Article I

JURIDICAL PERSONALITY

Section 1. The United Nations shall possess Juridical personality. It shall have the capacity:

- (a) to contract;
- (b) to acquire and dispose of immovable and movable property;
- (c) to institute legal proceedings.

Article II

PROPERTY, FUNDS AND ASSETS

Section 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, Judicial or legislative action.

Section 4. The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

Section 5. Without being restricted by financial controls, regulations or moratoria of any kind,

(a) the United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;

(b) the United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

Section 6. In exercising its rights under section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member insofar as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

Section 7. The United Nations, its assets, income and other property shall be:

(a) exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemptions will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;

(c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Section 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article III

FACILITIES IN RESPECT OF COMMUNICATIONS

Section 9. The United Nations shall enjoy in the territory Of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

Section 10. The United Nations shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Article IV

THE REPRESENTATIVES OF MEMBERS

Section 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during their Journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

(b) inviolability for all papers and documents;

(c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(d) exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;

(e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also

(g) such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

Section 12. In order to secure, for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

Section 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a state for

the discharge of their duties shall not be considered as periods of residence.

Section 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of Justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 15. The provisions of sections 11, 12 and 13 are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative.

Section 16. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

Article V

OFFICIALS

Section 17. The Secretary-General will specify the categories of officials to which the provisions of this article and article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

Section 18. Officials of the United Nations shall:

- (a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
- (c) be immune from national service obligations;
- (d) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- (e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
- (f) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- (g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

Section 19. In addition to the immunities and privileges specified in section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and

minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

Section 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of Justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

Section 21. The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of Justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this article.

Article VI

EXPERTS ON MISSIONS FOR THE UNITED NATIONS

Section 22. Experts (other than officials coming within the scope of article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period Of their missions, including the time spent on Journeys in connection with their missions. In particular they shall be accorded:

(a) immunity from personal arrest or detention and from seizure of their personal baggage;

(b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

(c) inviolability for all papers and documents;

(d) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(e) the-same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

Section 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit Of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of Justice and it can be waived without prejudice to the interests of the United Nations.

Article VII

UNITED NATIONS LAISSEZ-PASSER

Section 24. The United Nations may issue United Nations laissez-passer to its officials. These laissez-passer shall be recognized and accepted as valid travel documents by the authorities of Members, taking into account the provisions of section 25.

Section 25. Applications for visas (where required) from the holders of United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

Section 26. Similar facilities to those specified in section 25 shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate that they are travelling on the business of the United Nations.

Section 27. The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations laissez-passer on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

Section 28. The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

Article VIII

SETTLEMENT OF DISPUTES

Section 29. The United Nations shall make provisions for appropriate modes of settlement of:

- (a) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;
- (b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

Section 30. All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

Final article

Section 31. This convention is submitted to every Member of the United Nations for accession.

Section 32. Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations and the Convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

Section 33. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

Section 34. It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this Convention.

Section 35. This Convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for 80 long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

Section 36. The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this Convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.

29 April 1999

**Difference Relating to Immunity from Legal Process of a
Special Rapporteur of the Commission on Human Rights**

Summary of the Advisory Opinion of 29 April 1999

Composition of the Court

President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Registrar Valencia-Ospina.

Review of the proceedings and summary of facts (paras. 1-21)

The Court begins by recalling that the question on which it has been requested to give an advisory opinion is set forth in decision 1998/297 adopted by the United Nations Economic and Social Council (hereinafter called the "Council") on 5 August 1998. Decision 1998/297 reads as follows:

"The Economic and Social Council.

Having considered the note by the Secretary-General on the privileges and immunities of the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers¹,

Considering that a difference has arisen between the United Nations and the Government of Malaysia, within the meaning of Section 30 of the Convention on the Privileges and Immunities of the United Nations, with respect to the immunity from legal process of Dato' Param Cumaraswamy, the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers,

Recalling General Assembly resolution 89 (I) of 11 December 1946,

1. Requests on a priority basis, pursuant to Article 96, paragraph 2, of the Charter of the United Nations and in accordance with General Assembly resolution 89 (I), an advisory opinion from the International Court of Justice on the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, taking into account the circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General¹, and on the legal obligations of Malaysia in this case;
2. Calls upon the Government of Malaysia to ensure that all judgements and proceedings in this matter in the Malaysian courts are stayed pending receipt

of the advisory opinion of the International Court of Justice, which shall be accepted as decisive by the parties.

¹E/1998/94."

Enclosed with the letter of transmittal of the Secretary-General was a note by him dated 28 July 1998 and entitled "Privileges and Immunities of the Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers" (E/1998/94) and an addendum to that note.

After outlining the successive stages of the proceedings (paras. 2-9), the Court observes that in its decision 1998/297, the Council asked the Court to take into account, for purposes of the advisory opinion requested, the "circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General" (E/1998/94). The text of those paragraphs is then reproduced. They set out the following:

In 1946, the General Assembly adopted, pursuant to Article 105 (3) of the Charter, the Convention on the Privileges and Immunities of the United Nations (the Convention), to which 137 member States have become parties and provisions of which have been incorporated by reference into many hundreds of agreements relating to the United Nations and its activities. The Convention is, *inter alia*, designed to protect various categories of persons, including "Experts on Mission for the United Nations", from all types of interference by national authorities. In particular, Section 22 (b) of Article VI of the Convention provides:

"Section 22: Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including time spent on journeys in connection with their missions. In particular they shall be accorded:

.....

(b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations."

In its Advisory Opinion of 14 December 1989 (in the so-called "Mazilu" case), the International Court of Justice held that a Special Rapporteur of the Subcommission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights was an "expert on mission" within the meaning of Article VI of the Convention.

The Commission on Human Rights in 1994 appointed Dato' Param Cumaraswamy, a Malaysian jurist, as the Commission's Special Rapporteur on the Independence of Judges and Lawyers. His mandate consists of tasks including, *inter alia*, to enquire into substantial allegations concerning, and to identify and record attacks on, the

independence of the judiciary, lawyers and court officials. Mr. Kumaraswamy has submitted four reports to the Commission on the execution of his mandate. After the third report containing a section on the litigation pending against him in the Malaysian civil courts, the Commission, in April 1997, renewed his mandate for an additional three years.

As a result of an article published on the basis of an interview which the Special Rapporteur gave to a magazine (International Commercial Litigation) in November 1995, two commercial companies in Malaysia asserted that the said article contained defamatory words that had "brought them into public scandal, odium and contempt". Each company filed a suit against him for damages amounting to M\$30 million (approximately US\$12 million each), "including exemplary damages for slander".

Acting on behalf of the Secretary-General, the Legal Counsel of the United Nations considered the circumstances of the interview and of the controverted passages of the article and determined that Dato' Param Kumaraswamy was interviewed in his official capacity as Special Rapporteur on the Independence of Judges and Lawyers, that the article clearly referred to his United Nations capacity and to the Special Rapporteur's global mandate to investigate allegations concerning the independence of the judiciary and that the quoted passages related to such allegations. On 15 January 1997, the Legal Counsel, in a note verbale, "requested the competent Malaysian authorities to promptly advise the Malaysian courts of the Special Rapporteur's immunity from legal process" with respect to that particular complaint. On 20 January 1997, the Special Rapporteur filed an application in the High Court of Kuala Lumpur (the trial court in which the suit had been filed) to set aside and/or strike out the plaintiffs' writ, on the ground that the words that were the subject of the suits had been spoken by him in the course of performing his mission for the United Nations as Special Rapporteur on the Independence of Judges and Lawyers. The Secretary-General issued a note on 7 March 1997 confirming that "the words which constitute the basis of plaintiffs' complaint in this case were spoken by the Special Rapporteur in the course of his mission" and that the Secretary-General "therefore maintains that Dato' Param Kumaraswamy is immune from legal process with respect thereto". The Special Rapporteur filed this note in support of his above-mentioned application.

In spite of representations that had been made by the Office of Legal Affairs, a certificate filed by the Malaysian Minister for Foreign Affairs with the trial court failed to refer in any way to the note that the Secretary-General had issued a few days earlier and that had in the meantime been filed with the court, nor did it indicate that in this respect, i.e., in deciding whether particular words or acts of an expert fell within the scope of his mission, the determination could exclusively be made by the Secretary-General, and that such determination had conclusive effect and therefore had to be accepted as such by the court. In spite of repeated requests by the Legal Counsel, the Minister for Foreign Affairs refused to amend his certificate or to supplement it in the manner urged by the United Nations.

On 28 June 1997, the competent judge of the Malaysian High Court for Kuala Lumpur concluded that she was "unable to hold that the Defendant is absolutely protected by the immunity he claims", in part because she considered that the Secretary-General's note was merely "an opinion" with scant probative value and no

binding force upon the court and that the Minister for Foreign Affairs' certificate "would appear to be no more than a bland statement as to a state of fact pertaining to the Defendant's status and mandate as a Special Rapporteur and appears to have room for interpretation". The Court ordered that the Special Rapporteur's motion be dismissed with costs, that costs be taxed and paid forthwith by him and that he file and serve his defence within 14 days. On 8 July, the Court of Appeal dismissed Mr. Cumaraswamy's motion for a stay of execution.

In July 1997, the Legal Counsel called on the Malaysian Government to intervene in the current proceedings so that the burden of any further defence, including any expenses and taxed costs resulting therefrom, could be assumed by the Government; to hold Mr. Cumaraswamy harmless in respect of the expenses he had already incurred or that were being taxed to him in respect of the proceedings so far; and, so as to prevent the accumulation of additional expenses and costs and the further need to submit a defence until the matter of his immunity was definitively resolved between the United Nations and the Government, to support a motion to have the High Court proceedings stayed until such resolution. The Legal Counsel referred to the provisions for the settlement of differences arising out of the interpretation and application of the 1946 Convention that might arise between the Organization and a member State, which are set out in Section 30 of the Convention, and indicated that if the Government decided that it could not or did not wish to protect and to hold harmless the Special Rapporteur in the indicated manner, a difference within the meaning of those provisions might be considered to have arisen between the Organization and the Government of Malaysia.

Section 30 of the Convention provides as follows:

"Section 30: All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties."

On 10 July, yet another lawsuit was filed against the Special Rapporteur. On 11 July, the Secretary-General issued a note corresponding to the one of 7 March 1997 and also communicated a note verbale with essentially the same text to the Permanent Representative of Malaysia with the request that it be presented formally to the competent Malaysian court by the Government. On 23 October and 21 November 1997, new plaintiffs filed third and fourth lawsuits against the Special Rapporteur. On 27 October and 22 November 1997, the Secretary-General issued identical certificates of the Special Rapporteur's immunity.

On 7 November 1997, the Secretary-General advised the Prime Minister of Malaysia that a difference might have arisen between the United Nations and the Government of Malaysia and about the possibility of resorting to the International Court of Justice pursuant to Section 30 of the Convention. Nonetheless on 19 February 1998, the Federal Court of Malaysia denied Mr. Cumaraswamy's application for leave to appeal

stating that he was neither a sovereign nor a full-fledged diplomat but merely "an unpaid, part-time provider of information".

The Secretary-General then appointed a Special Envoy, Maître Yves Fortier of Canada, who, after two official visits to Kuala Lumpur, and after negotiations to reach an out-of-court settlement had failed, advised that the matter should be referred to the Council to request an advisory opinion from the International Court of Justice. The United Nations had exhausted all efforts to reach either a negotiated settlement or a joint submission through the Council to the International Court of Justice. In this connection, the Government of Malaysia had acknowledged the Organization's right to refer the matter to the Council to request an advisory opinion in accordance with Section 30 of the Convention, advised the Secretary-General's Special Envoy that the United Nations should proceed to do so, and indicated that, while it would make its own presentations to the International Court of Justice, it did not oppose the submission of the matter to that Court through the Council.

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After reproducing paragraphs 1-15 of the Secretary-General's note, the Court then refers to the dossier of documents submitted to it by the Secretary-General, which contains additional information that bears on an understanding of the request to the Court, concerning the context in which Mr. Cumaraswamy was asked to give his comments; concerning the proceedings against Mr. Cumaraswamy in the High Court of Kuala Lumpur, which did not pass upon Mr. Cumaraswamy's immunity in limine litis, but held that it had jurisdiction to hear the case before it on the merits, including making a determination of whether Mr. Cumaraswamy was entitled to any immunity, a decision upheld by both the Court of Appeal and the Federal Court of Malaysia; and concerning the regular reports, which the Special Rapporteur made to the Commission on Human Rights and in which he reported on the lawsuits initiated against him. The Court further refers to the consideration and adoption without a vote by the Council of the draft decision requesting the Court to give an advisory opinion on the question formulated therein, and the fact that at that meeting, the Observer for Malaysia confirmed his previous criticism of the Secretary-General's note, but made no comment on the terms of the question to be put to the Court as now formulated by the Council. Finally, Malaysia's information on the status of proceedings in the Malaysian courts is referred to.

The Court's power to give an advisory opinion (paras. 22-27)

The Court begins by observing that this is the first time that the Court has received a request for an advisory opinion that refers to Article VIII, Section 30, of the General Convention, quoted above (p. 4).

This section provides for the exercise of the Court's advisory function in the event of a difference between the United Nations and one of its Members. The existence of such a difference does not change the advisory nature of the Court's function, which is governed by the terms of Article 96 of the Charter and Article 65 of the Statute. A distinction should thus be drawn between the advisory nature of the Court's task and the particular effects that parties to an existing dispute may wish to attribute, in their mutual relations, to an advisory opinion of the Court, which, "as such, . . . has no

binding force". These particular effects, extraneous to the Charter and the Statute which regulate the functioning of the Court, are derived from separate agreements; in the present case Article VIII, Section 30, of the General Convention provides that "[t]he opinion given by the Court shall be accepted as decisive by the parties". That consequence has been expressly acknowledged by the United Nations and by Malaysia.

The power of the Court to give an advisory opinion is derived from Article 96, paragraph 2, of the Charter and from Article 65 of the Statute. Both provisions require that the question forming the subject-matter of the request should be a "legal question". This condition is satisfied in the present case, as all participants in the proceedings have acknowledged, because the advisory opinion requested relates to the interpretation of the General Convention, and to its application to the circumstances of the case of the Special Rapporteur, Dato' Param Cumaraswamy.

Article 96, paragraph 2, of the Charter also requires that the legal questions forming the subject-matter of advisory opinions requested by authorized organs of the United Nations and specialized agencies shall arise "within the scope of their activities". The fulfilment of this condition has not been questioned by any of the participants in the present proceedings. The Court finds that the legal questions submitted by the Council in its request concern the activities of the Commission since they relate to the mandate of its Special Rapporteur appointed "to inquire into substantial allegations concerning, and to identify and record attacks on, the independence of the judiciary, lawyers and court officials".

Discretionary power of the Court (paras. 28-30)

As the Court held in its Advisory Opinion of 30 March 1950, the permissive character of Article 65 of the Statute "gives the Court the power to examine whether the circumstances of the case are of such a character as should lead it to decline to answer the Request" (Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 72). In the present case, the Court, having established its jurisdiction, finds no compelling reasons not to give the advisory opinion requested by the Council. Moreover, no participant in these proceedings questioned the need for the Court to exercise its advisory function in this case.

The question on which the opinion is requested (paras. 31-37)

As the Council indicated in the preamble to its decision 1998/297, that decision was adopted by the Council on the basis of the note submitted by the Secretary General on "Privileges and Immunities of the Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers". Paragraph 1 of the operative part of the decision refers expressly to paragraphs 1 to 15 of that note but not to paragraph 21, containing two questions that the Secretary-General proposed submitting to the Court. The Court would point out that the wording of the question submitted by the Council is quite different from that proposed by the Secretary-General.

Participants in these proceedings, including Malaysia and other States, have advanced differing views as to what is the legal question to be answered by the Court. The Court observes that it is for the Council - and not for a member State or the Secretary-General - to formulate the terms of a question that the Council wishes to ask. Accordingly, the Court will now answer the question as formulated by the Council.

Applicability of Article VI, Section 22, of the General Convention to Special Rapporteurs of the Human Rights Commission (paras. 38-46)

The Court initially examines the first part of the question laid before the Court by the Council, which is:

"the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, taking into account the circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General . . ."

From the deliberations which took place in the Council it is clear that the request of the Council does not only pertain to the threshold question whether Mr. Cumaraswamy was and is an expert on mission in the sense of Article VI, Section 22, of the General Convention but, in the event of an affirmative answer to this question, to the consequences of that finding in the circumstances of the case. The Court notes that Malaysia became a party to the General Convention, without reservation, on 28 October 1957. [Part of Section 22 of Article VI of that Convention is quoted above, on p. 2.]

The Court then recalls that in its Advisory Opinion of 14 December 1989 (in the so-called "Mazilu" case) it stated:

"The purpose of Section 22 is . . . evident, namely, to enable the United Nations to entrust missions to persons who do not have the status of an official of the Organization, and to guarantee them 'such privileges and immunities as are necessary for the independent exercise of their functions'. . . . The essence of the matter lies not in their administrative position but in the nature of their mission." (I.C.J. Reports 1989, p. 194, para. 47.)

In that same Advisory Opinion, it concluded that a Special Rapporteur who is appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and is entrusted with a research mission must be regarded as an expert on mission within the meaning of Article VI, Section 22, of the General Convention.

The Court finds that the same conclusion must be drawn with regard to Special Rapporteurs appointed by the Human Rights Commission, of which the Sub-Commission is a subsidiary organ. It observes that Special Rapporteurs of the Commission usually are entrusted not only with a research mission but also with the task of monitoring human rights violations and reporting on them. But what is decisive is that they have been entrusted with a mission by the United Nations and are therefore entitled to the privileges and immunities provided for in Article VI,

Section 22, that safeguard the independent exercise of their functions. After examining Mr. Cumaraswamy's mandate, the Court finds that he must be regarded as an expert on mission within the meaning of Article VI, Section 22, as from 21 April 1994, that by virtue of this capacity the provisions of this Section were applicable to him at the time of his statements at issue, and that they continue to be applicable.

The Court finally observes that Malaysia has acknowledged that Mr. Cumaraswamy, as Special Rapporteur of the Commission, is an expert on mission and that such experts enjoy the privileges and immunities provided for under the General Convention in their relations with States parties, including those of which they are nationals or on the territory of which they reside. Malaysia and the United Nations are in full agreement on these points, as are the other States participating in the proceedings.

Applicability of Article VI, Section 22, of the General Convention in the specific circumstances of the case (paras. 47-56)

The Court then considers the question whether the immunity provided for in Section 22 (b) applies to Mr. Cumaraswamy in the specific circumstances of the case; namely, whether the words used by him in the interview, as published in the article in International Commercial Litigation (November 1995 issue), were spoken in the course of the performance of his mission, and whether he was therefore immune from legal process with respect to these words.

In the process of determining whether a particular expert on mission is entitled, in the prevailing circumstances, to the immunity provided for in Section 22 (b), the Secretary-General of the United Nations has a pivotal role to play. The Secretary-General, as the chief administrative officer of the Organization, has the authority and the responsibility to exercise the necessary protection where required. Article VI, Section 23, of the General Convention provides that "[p]rivileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves". In exercising protection of United Nations experts, the Secretary-General is therefore protecting the mission with which the expert is entrusted. In that respect, the Secretary-General has the primary responsibility and authority to protect the interests of the Organization and its agents, including experts on mission.

The determination whether an agent of the Organization has acted in the course of the performance of his mission depends upon the facts of a particular case. In the present case, the Secretary-General, or the Legal Counsel of the United Nations on his behalf, has on numerous occasions informed the Government of Malaysia of his finding that Mr. Cumaraswamy had spoken the words quoted in the article in International Commercial Litigation in his capacity as Special Rapporteur of the Commission and that he consequently was entitled to immunity from "every kind" of legal process. The Secretary-General was reinforced in this view by the fact that it has become standard practice of Special Rapporteurs of the Commission to have contact with the media.

The Court notes that Mr. Cumaraswamy was explicitly referred to several times in the article "Malaysian Justice on Trial" in International Commercial Litigation in his

capacity as United Nations Special Rapporteur on the Independence of Judges and Lawyers, and further that in its various resolutions the Commission took note of the Special Rapporteur's reports and of his methods of work. In 1997, it extended his mandate for another three years. The Commission presumably would not have so acted if it had been of the opinion that Mr. Cumaraswamy had gone beyond his mandate and had given the interview to International Commercial Litigation outside the course of his functions. Thus the Secretary-General was able to find support for his findings in the Commission's position.

The Court concludes that it is not called upon in the present case to pass upon the aptness of the terms used by the Special Rapporteur or his assessment of the situation. In any event, in view of all the circumstances of this case, elements of which are set out in paragraphs 1 to 15 of the note by the Secretary-General, the Court is of the opinion that the Secretary-General correctly found that Mr. Cumaraswamy, in speaking the words quoted in the article in International Commercial Litigation, was acting in the course of the performance of his mission as Special Rapporteur of the Commission. Consequently, Article VI, Section 22 (b), of the General Convention is applicable to him in the present case and affords Mr. Cumaraswamy immunity from legal process of every kind.

Legal obligations of Malaysia in the case (paras. 57-65)

The Court then deals with the second part of the Council's question, namely, "the legal obligations of Malaysia in this case". Rejecting Malaysia's argument that it is premature to deal with that question, the Court points out that the difference which has arisen between the United Nations and Malaysia originated in the failure of the Government of Malaysia to inform the competent Malaysian judicial authorities of the Secretary-General's finding that Mr. Cumaraswamy had spoken the words at issue in the course of the performance of his mission and was, therefore, entitled to immunity from legal process. It is as from the time of this omission that the question before the Court must be answered.

As the Court has observed, the Secretary-General, as the chief administrative officer of the Organization, has the primary responsibility to safeguard the interests of the Organization; to that end, it is up to him to assess whether its agents acted within the scope of their functions and, where he so concludes, to protect these agents, including experts on mission, by asserting their immunity. This means that the Secretary-General has the authority and responsibility to inform the government of a member State of his finding and, where appropriate, to request it to act accordingly and, in particular, to request it to bring his finding to the knowledge of the local courts if acts of an agent have given or may give rise to court proceedings. That finding, and its documentary expression, creates a presumption of immunity which can only be set aside for the most compelling reasons and is thus to be given the greatest weight by national courts. The governmental authorities of a party to the General Convention are therefore under an obligation to convey such information to the national courts concerned, since a proper application of the Convention by them is dependent on such information. Failure to comply with this obligation, among others, could give rise to the institution of proceedings under Article VIII, Section 30, of the General Convention.

The Court concludes that the Government of Malaysia had an obligation, under Article 105 of the Charter and under the General Convention, to inform its courts of the position taken by the Secretary-General. According to a well-established rule of international law, the conduct of any organ of a State must be regarded as an act of that State. Because the Government did not transmit the Secretary-General's finding to the competent courts, and the Minister for Foreign Affairs did not refer to it in his own certificate, Malaysia did not comply with the above-mentioned obligation.

Section 22 (b) of the General Convention explicitly states that experts on mission shall be accorded immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their mission. By necessary implication, questions of immunity are therefore preliminary issues which must be expeditiously decided in limine litis. This is a generally-recognized principle of law, and Malaysia was under an obligation to respect it. The Malaysian courts did not rule in limine litis on the immunity of the Special Rapporteur, thereby nullifying the essence of the immunity rule contained in Section 22 (b). Moreover, costs were taxed to Mr. Cumaraswamy while the question of immunity was still unresolved. As indicated above, the conduct of an organ of a State - even an organ independent of the executive power - must be regarded as an act of that State. Consequently, Malaysia did not act in accordance with its obligations under international law.

The Court adds that the immunity from legal process to which it finds Mr. Cumaraswamy entitled entails holding Mr. Cumaraswamy financially harmless for any costs imposed upon him by the Malaysian courts, in particular taxed costs.

It further observes that, according to Article VIII, Section 30, of the General Convention, the opinion given by the Court shall be accepted as decisive by the parties to the dispute. Malaysia has acknowledged its obligations under Section 30. Since the Court holds that Mr. Cumaraswamy is an expert on mission who under Section 22 (b) is entitled to immunity from legal process, the Government of Malaysia is obligated to communicate this advisory opinion to the competent Malaysian courts, in order that Malaysia's international obligations be given effect and Mr. Cumaraswamy's immunity be respected.

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Finally, the Court points out that the question of immunity from legal process is distinct from the issue of compensation for any damages incurred as a result of acts performed by the United Nations or by its agents acting in their official capacity. The United Nations may be required to bear responsibility for the damage arising from such acts. However, as is clear from Article VIII, Section 29, of the General Convention, such compensation claims against the United Nations shall not be dealt with by national courts but shall be settled in accordance with the appropriate modes of settlement that the "United Nations shall make provisions for" pursuant to Section 29. The Court furthermore considers that it need hardly be said that all agents of the United Nations, in whatever official capacity they act, must take care not to exceed the scope of their functions, and should so comport themselves as to avoid claims against the United Nations.

The full text of the final paragraph (para. 67) reads as follows:

"For these reasons,

The Court

Is of the opinion:

(1) (a) By fourteen votes to one,

That Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations is applicable in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judge Koroma;

(b) By fourteen votes to one,

That Dato' Param Cumaraswamy is entitled to immunity from legal process of every kind for the words spoken by him during an interview as published in an article in the November 1995 issue of International Commercial Litigation;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judge Koroma;

(2) (a) By thirteen votes to two,

That the Government of Malaysia had the obligation to inform the Malaysian courts of the finding of the Secretary-General that Dato' Param Cumaraswamy was entitled to immunity from legal process;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judges Oda, Koroma;

(b) By fourteen votes to one,

That the Malaysian courts had the obligation to deal with the question of immunity from legal process as a preliminary issue to be expeditiously decided in limine litis;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judge Koroma;

(3) Unanimously,

That Dato' Param Cumaraswamy shall be held financially harmless for any costs imposed upon him by the Malaysian courts, in particular taxed costs;

(4) By thirteen votes to two,

That the Government of Malaysia has the obligation to communicate this advisory opinion to the Malaysian courts, in order that Malaysia's international obligations be given effect and Dato' Param Cumaraswamy's immunity be respected;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judges Oda, Koroma."

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Vice-President Weeramantry and Judges Oda and Rezek append separate opinions to the Advisory Opinion of the Court. Judge Koroma appends a dissenting opinion.