

## Legal Developments

### Cloning

The United Nations began discussing cloning when the 56th UN General Assembly (2001) adopted a French/German resolution that tasked an *ad hoc* committee of the UN General Assembly's Sixth (Legal) Committee to develop a framework for a convention to ban human reproductive cloning. The United States joined consensus on the resolution only after language was added to indicate that the General Assembly would consider the initiative, while expressing substantial skepticism about the wisdom of a convention. In 2002, the *ad hoc* committee and the working group of the Sixth Committee were unable to resolve differences between countries that wanted a convention to ban all human cloning (including the United States) and countries that wanted a ban limited to reproductive cloning only.

In 2003, the Sixth Committee considered two draft resolutions on cloning. One, submitted by Costa Rica and cosponsored by the United States and 64 other countries, called for negotiation of a convention that would ban all human cloning. The competing resolution, submitted by Belgium and cosponsored by 22 other countries, called for a convention that would ban reproductive cloning only, allowing states to pursue experimental cloning.

The United States supports a ban on all cloning of human embryos, both for reproductive and so-called "therapeutic" or "experimental" purposes. The United States does not distinguish one type from the other since both entail the creation, through cloning, of a human embryo. The United States believes that using "therapeutic" cloning to create human life specifically to destroy that life for experimental purposes is no less, if not more, of an affront to human dignity than cloning for reproductive purposes.

In the final day of discussion of human cloning at the UN Sixth Committee, the Organization of the Islamic Conference moved to defer debate of the agenda item until the 60th General Assembly, a two-year postponement. The United States opposed this motion, which passed with a vote of 80 to 79, with 15 abstentions. On December 9, the UN General Assembly, at U.S. urging, decided to place the human cloning item on the agenda of the 59th General Assembly session (2004) instead of the 60th General Assembly session, as the Sixth Committee had recommended. An agreement was reached between all concerned parties to consider the item in one year. Neither the Costa Rican nor Belgian resolution was put to a vote.

### Commission on International Trade Law (UNCITRAL)

The UN Commission on International Trade Law (UNCITRAL), established by General Assembly Resolution 2205 (XXI) in 1966, continued to

work on commercial and economic law reform, including harmonizing national laws to promote trade and commerce in all geographic regions. Based on the report of the General Assembly's Sixth (Legal) Committee, the General Assembly in December 2003 reaffirmed the Commission's mandate as the core legal body within the UN system in the field of international trade law (Resolution 58/75).

The Commission focuses largely on economic effects of trade laws, particularly potential benefits to developing and emerging states. It promotes economic reform through multilateral conventions, model national laws, UN legal guidelines, and technical assistance on trade and commercial law undertaken by the Secretariat on the basis of legal texts adopted by the Commission. The United States actively participates in the work of the Commission, since its work products are generally effective and are beneficial to the U.S. private sector as well as to governmental interests. The United States was re-elected to a new six-year term on the Commission, which expires in 2010.

Located at the UN Center in Vienna, the Commission usually holds several weeks of working group meetings annually on each topic, as well as additional meetings of experts groups in which the United States is represented. Outcomes are then reviewed at the Commission's annual plenary session. Private-sector and industry nongovernmental organizations (NGOs) with technical expertise in commercial law are invited to participate. U.S. private-sector associations are particularly active and the Department of State works closely with U.S. bar and trade industry groups to assure representation of their interests in the international process. Twenty-six member states, 32 observer states, and 18 international organizations and NGO observers attended the June 2003 Plenary session.

The growth of privately financed and managed infrastructure, in partnership with governments, has significantly shifted since the early 1990s away from direct government financing or bilateral aid. This shift has had a substantial impact, especially in developing and emerging states. Following the Commission's completion of its *Legislative Guide on Privately Financed Infrastructure Projects*, the Commission embarked in 2001 on preparation of model core legislative provisions, which were completed and approved at the plenary session in June. A number of recommendations of the Public-Private Infrastructure Advisory Facility, a multi-donor technical assistance organization focused on developing country issues, were considered along with recommendations of the World Bank and others. The model legislation covered the bidding and selection process, implementation, financing, extension, and termination. The legislation was based on the earlier and widely used Model Law of the Commission on Procurement of Construction, Goods, and Services. On December 9, the General Assembly adopted Resolution 58/76, which endorsed the model legislative provisions.

In July, the Commission temporarily approved the principles embodied in a draft UNCITRAL insolvency legislative guide. In line with

U.S. goals, the Commission adopted the resolution containing the guide. This resolution and the approved principles recognized the importance of options for reorganization of failed enterprises. The adoption of this resolution was a U.S. goal. The Working Group on Insolvency Law met twice and continued to finalize the legislative guide. Reflecting recognition that an effective system for recycling economic assets will be critical to financing and economic growth, especially in developing and emerging states, and to mitigate systemic risk, international financial institutions, including the International Monetary Fund (IMF) and the Asian Development Bank, supported this project. It is expected that the final text will include U.S. proposals on expedited corporate rescue and refinance, in order to preserve failing businesses where feasible, many of which now operate on a multinational basis. UN Under Secretary for Legal Affairs Hans Correll stressed the importance of coordination with concurrent work by the World Bank. UNCITRAL, the World Bank, the IMF, and key states, including the United States, worked to consolidate standards to assess performance of states in economic reform.

The Commission continued to consider a draft convention on the carriage of goods by sea, and agreed on application of its terms to certain inland transportation legs. The draft Convention would replace outdated international transportation treaties. U.S. industry sectors and other groups concerned with carriage of goods, ship financing, and insurance supported this project. The Commission's Working Group on Transport Law reviewed drafts prepared jointly by the Secretariat and the Comité Maritime Internationale, an industry-based international NGO in Brussels. The Working Group considered a U.S. compromise package, which dealt with liability standards, application to inland claimants, jurisdiction, and the right to vary the provisions by contract for certain shipping arrangements. The gaps between U.S. views and a number of its trading partners narrowed. The Group believed that the project might be completed in 2005.

The Commission maintained its lead role to advance alternative international dispute mechanisms. In July, the U.S. National Conference of Commissioners on Uniform State Laws adopted the UNCITRAL Model Law on International Commercial Conciliation and recommended it to states for enactment. The Commission continued its general oversight of the widely adopted New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, including the review of legislative implementation by nations party to the Convention. In addition, the Commission's Working Group IV on Arbitration continued to examine possible amendments to or interpretations of the New York Convention on whether interim measures of protection could be ordered by an arbitral tribunal and under what circumstances such orders would be entitled to enforcement by states party to the Convention. The United States supported this effort but no consensus had developed on it. It is hoped that a conclusion can be reached at the Plenary in 2006. Other initiatives, such as international rules on the form of an arbitral agreement, also remained unresolved.

Parallel reform of secured financing laws and insolvency law is a prime objective of international financial institutions and the United States to upgrade economic performance through legal reform. Following the General Assembly's adoption in 2001 of the UNCITRAL Convention on Assignment of Receivables in International Trade, the Commission began to prepare a legislative guide on general laws on secured interest financing. The United States signed the UN Receivables Convention on December 30, at the UN Treaty Office in New York.

The Commission agreed that the initial scope for the new project was the financing of trade and inventory receivables, which the United States proposed as an achievable goal. Extending the scope to intellectual property and banking instruments may be considered later. The Working Groups initiated joint sessions on this project and on insolvency law to ensure coordination of the Commission's work products and a common UN standard. Adoption of modern secured finance law, already in place in the United States through the Uniform Commercial Code, will enable countries to promote economic growth by accessing private-sector capital markets, and can materially reduce the financing gap that affects developing states and states in transition. However, notwithstanding earlier adoption of many of these principles in the Convention on Assignment of Receivables, some states wished to retain older systems of financing and did not support extension of newer methods to other states.

The Commission's Working Group on Electronic Commerce continued to work on a draft convention on the formation of contracts in e-commerce and the validity of computer messaging. The Working Group reviewed the initial draft, which had been prepared by the Secretariat. The draft drew on recent U.S. national laws and laws and directives in the European Union and other countries. The Working Group continued to elaborate provisions that would provide a treaty overlay on electronic messaging that states could apply to existing multilateral and bilateral instruments. The United States believed that such an initiative was consistent with treaty law and would expand modern e-commerce basic law to many countries, especially developing and emerging states so that they could close gaps in their access to new Internet and other e-commerce markets. However, the United States continued to oppose regulatory provisions. The Working Group was not able to achieve consensus on whether to limit its scope to cross-border transactions or parties in different states, and if so, how to identify locations in cases involving the Internet or other computer systems, and whether to exclude consumer transactions, financial services transactions, or transactions involving software or intellectual property.

Fraudulent financial documentation was an area of growing concern for both developing and developed states and appeared in part to be related to wider use of computer-based documentation. UN Under Secretary Correll noted that the absence of an international legal regime for the Internet in part contributed to this problem. No UN system body had this subject clearly within its scope of work. The United States expected that UNCITRAL's

review would involve cooperation with the UN Office on Drugs and Crime also headquartered in Vienna. The Commission's review was facilitated by information provided by the U.S. Government and U.S. private-sector experts. However, some states noted that to undertake any activity in this field would expand the scope of the Commission's work. Limited resources were already a serious concern vis-à-vis funding for the Secretariat and the existing Working Groups.

The Secretariat continued its record of effective technical assistance to implement modern commercial law, primarily for developing countries. The Commission's work in modernizing commercial law has facilitated access to international trade markets for a number of states. Trade markets are theoretically available through trade agreements or other trade liberalization, but these are often difficult to achieve because older domestic legal standards are incompatible with modern commerce. In addition, the Commission continued to publish abstracts of decisions involving UNCITRAL conventions and its other trade law texts through its CLOUT (Case Law on UNCITRAL Texts) system, which appears in the six official UN languages. The CLOUT system promotes harmonization of decisions. The University of Pittsburgh hosted a conference to review new initiatives for the CLOUT system. These initiatives would expand CLOUT's scope to include trends in national court and arbitral decisions and other matters.

In November the General Assembly selected 24 new states as members, maintaining the proportions between geographic regions that existed previously. Many member states requested more work on commercial law reform. Globalization and increased awareness of disparities in commercial laws between countries employing modern commercial law and countries using more traditional laws are often reflected by trade and financing gaps. The Commission doubled the number of active projects, while reducing the average length of Working Group meetings so as to accommodate the workload within existing conference resources. The United States supported the expansion of the work program.

Based on the report of the UN's Office of Internal Oversight Services, the General Assembly increased the Commission's professional staffing level, which had remained at its original 1968 level despite work program increases over the last several decades. The Commission expected to reorganize with the additional resources along the lines of two "pillars." The first pillar would be preparation of new international commercial and trade law instruments. The second pillar would cover adoption and implementation of those instruments, coordination within and outside of the UN system, technical assistance for states with an emphasis on developing countries, and other work of the Commission.

The Commission discussed coordination within as well as outside the UN system. The Commission's previous chair Joko-Smart (Sierra Leone) highlighted concerns about overlapping work that might emerge in the field of electronic commerce through the UN Economic Community of Europe's

Center for Trade Facilitation. Under Secretary Correll stated that the Commission's role as coordinator on commercial law reform within the UN system gave it an obligation to more closely monitor such activities. This increase in resources would in part be aimed at monitoring. Efforts continued throughout 2003 to enhance the coordination of related work on cross-border insolvency law reform undertaken by UNCITRAL, with the assistance of the IMF, the World Bank, and other organizations. Completion of that work would require agreement on coordination between the United Nations and the Bank. Finally, coordination on secured finance projects was achieved by agreement among member states that UNIDROIT, a non-UN international body headquartered in Rome, would cover investment securities in its proposed draft convention and UNCITRAL would cover all other aspects of secured finance. It was expected that the Secretariat of the UN's Trade Law Branch, which covers UNCITRAL, would expand its coverage of activities of other international bodies to more actively promote coordination and avoid overlap.

UNCITRAL's budget for 2003 was \$159,500. The U.S. assessment was \$35,000.

## **Host Country Relations**

The General Assembly established the Committee on Relations with the Host Country, which is the United States, in 1971 to address issues concerning the presence of the United Nations and the UN diplomatic community in the United States. These matters concerned the security of missions, the safety of their personnel, tax questions, legal and visa issues, and privileges and immunities of diplomatic staff. The UN Headquarters Agreement and the Convention on the Privileges and Immunities of the United Nations provide the legal framework for the work of the Committee.

The topic of greatest concern to members during 2003 was the delay in the issuance of U.S. visas for members to attend official UN meetings and functions. The U.S. representative noted that the United States was mindful of its obligations under Article IV, section 11 of the Headquarters Agreement to issue visas in a timely manner. The representative also noted that the United States had to carefully balance its obligations under the treaty with national security concerns. In light of the enhanced national security requirements implemented in the United States following the events of September 11, 2001, the U.S. representative advised the Committee on February 1, 2003, to allow at least 20 days for the processing of visa applications.

The Parking Program for Diplomatic Vehicles was adopted in 2002 after considerable rancor in the diplomatic community. During meetings in 2003, Committee members complained about the implementation of the program. The U.S. representative noted that overall, the parking situation for diplomats in New York City had improved significantly and that the number of tickets issued had diminished from past years. The U.S. representative also indicated that the U.S. Mission would continue to work with New York City officials to address outstanding issues, such as the tow hotline. On the

occasion of the first anniversary of the implementation of the program, the Committee decided on October 16 to conduct a detailed review of the implementation of the Parking Program, as recommended by the Legal Counsel in his opinion of September 24, 2002.

On December 9, 2003, the General Assembly adopted without a vote Resolution 58/78, "Report of the Committee on Relations with the Host Country." The resolution requested that the host country continue to solve, through negotiations, problems that might arise and to take all measures necessary to prevent any interference with the functioning of the missions; welcomed the decision to conduct a detailed review of the implementation of the parking program; expressed its appreciation for the efforts made by the host country; and noted that the Committee anticipated that the host country would continue to ensure the timely issuance of visas to representatives of member states for the purpose of attending official UN meetings.

## **International Court of Justice**

The International Court of Justice (ICJ) is the UN's principal judicial organ. The Court decides cases submitted to it by states and gives advisory opinions on legal questions at the request of international organizations authorized to request such opinions. The UN General Assembly and the Security Council vote separately to elect the Court's judges from a list of persons nominated by national groups on the Permanent Court of Arbitration. Judges are elected for nine-year terms, with five judges elected every three years.

The ICJ is composed of 15 judges, no two of whom may be nationals of the same state. As of December 31, 2003, the Court was composed as follows: Shi Jiuyong (China—President), Raymond Ranjeva (Madagascar—Vice-President), Gilbert Guillaume (France), Abdul G. Koroma (Sierra Leone), Vladlen S. Vereshchetin (Russia), Rosalyn Higgins (United Kingdom), Gonzalo Parra-Aranguren (Venezuela), Pieter H. Kooijmans (Netherlands), Francisco Rezek (Brazil), Awn Shawkat Al-Khasawneh (Jordan), Thomas Buergenthal (United States), Nabil Elaraby (Egypt), Hisashi Owada (Japan), Bruno Simma (Germany), and Peter Tomka (Slovakia).

The Court's budget of \$14.35 million was funded from the UN regular budget. The United States paid \$3.16 million of this amount.

The United States was involved in the following matters in the Court in 2003.

### ***Iran v. United States of America***

On November 2, 1992, Iran brought a case against the United States that claimed U.S. military actions against Iranian oil platforms in the Persian Gulf during the conflict between Iran and Iraq during the 1980s violated the 1955 Treaty of Amity between the United States and Iran. The incidents cited by Iran followed attacks by Iranian military forces against U.S. naval and commercial vessels in the Gulf.

The United States filed a Preliminary Objection to the Court's jurisdiction, which was considered at hearings in September 1996. In December 1996, the Court decided that it did not have jurisdiction under two of the three treaty articles invoked by Iran, but that it had jurisdiction to consider a third treaty claim. The claim asserted that the actions breached a treaty article providing for freedom of commerce and navigation between the territories of the two parties.

On June 23, 1997, the United States filed its Counter-Memorial and a counter-claim that asserted Iran's attacks on shipping during the same period breached the same article. The Court held on March 10, 1998, that the counter-claim was "admissible as such" and directed the parties to submit further written pleadings on the merits. Following two requests for extensions, Iran filed its Reply and defense to the U.S. counter-claim on March 10, 1999. The United States filed its Rejoinder on March 23, 2001. Iran subsequently requested and received authorization to submit an additional written pleading related solely to the U.S. counter-claim. Iran filed the pleading on September 24, 2001.

The United States and Iran participated in oral proceedings on the merits of the case held from February 17–March 9, 2003. On November 6, 2003, the Court delivered its judgment. The Court held that the United States had not breached the "freedom of commerce" provision in the 1955 Treaty by taking military action against Iranian offshore oil platforms since the actions did not disrupt commerce between the territories of Iran and the United States. The Court thus rejected Iran's claim. It also rejected the U.S. counter-claim on similar grounds.

Despite rejecting Iran's claim, the Court devoted a substantial portion of its opinion to a consideration of whether the U.S. actions against the oil platforms qualified as self-defense under international law. The Court's discussion of these points was unnecessary to resolve the case.

### ***Libya v. United States of America***

On March 3, 1992, Libya brought cases against the United States and the United Kingdom claiming breaches of the 1971 Montreal (Air Sabotage) Convention. Libya claimed that the United States and the United Kingdom interfered with Libya's alleged right under the Montreal Convention to try two persons accused by U.S. and Scottish authorities of bombing Pan Am Flight 103 over Lockerbie, Scotland, on December 21, 1988.

On June 20, 1995, the United States filed Preliminary Objections to the Court's jurisdiction in the case; the United Kingdom also filed Preliminary Objections. The Court held hearings on both sets of Preliminary Objections on October 13–22, 1997. On February 27, 1998, the Court denied some of the U.S. and U.K. Preliminary Objections and held that others could only be decided at the merits stage of the case. The Court then ordered the United States to file its Counter-Memorial by December 30, 1998.

On December 8, 1998, the United States asked the Court for a three-month extension, in order to ascertain whether Libya would respond to an initiative by the United States and United Kingdom proposing the creation of a Scottish court in the Netherlands to try the two suspects. By Orders dated December 17, 1998, the Court extended the filing date for the U.S. and U.K. Counter-Memorials until March 31, 1999. The United States and the United Kingdom both filed Counter-Memorials on that date.

On April 5, 1999, the two suspects arrived in the Netherlands in the company of the UN Legal Counsel. They were detained by Netherlands authorities and were then extradited to the custody of Scottish authorities for trial in a Scottish court constituted in the Netherlands.

In June 1999, the Court held a meeting with the parties to both cases to discuss further scheduling in light of these developments. The Court subsequently ordered that Libya file its Replies to the U.S. and U.K. Counter-Memorials by June 29, 2000. Following Libya's filing of its Replies on that date, the Court set the date of August 3, 2001, for the filing of the U.S. and U.K. Rejoinders. The U.S. and the U.K. Rejoinders were filed on August 3, 2001, and August 1, 2001, respectively.

On September 9, 2003, the United States and Libya jointly notified the Court that the Libyan Arab Jamhuriya and the United States of America had agreed to discontinue the proceedings. On September 10, the President of the Court placed on record the discontinuance of the case and directed that the case be removed from the Court's list.

### ***Mexico v. United States of America***

On January 9, 2003, Mexico brought a case against the United States that alleged breaches of Articles 5 and 36 of the Vienna Convention on Consular Relations with respect to the provision of consular information to 54 alleged Mexican nationals who had been sentenced to death in the United States. Mexico asked the Court to decide that the United States had breached its obligations under the Convention and that the convictions of the 54 Mexican nationals in question should be set aside. Any new trials should be conducted without use of statements or other evidence tainted by the failure to provide consular information. Mexico also asked the Court to order the United States to provide guarantees of non-repetition of Article 36 breaches in the future.

In addition, Mexico requested that the Court order the United States take all measures necessary to ensure that no Mexican national be executed and no execution date be set for any Mexican national. This provisional measure would apply pending the final judgment in the case. A hearing on Mexico's provisional measures request was held in The Hague on January 21. The United States argued against the provisional measures requested by Mexico. On February 5, the Court issued a provisional measures order that stated the United States must take all measures necessary to ensure that three of the 54 alleged Mexican nationals whose cases were most advanced not be executed pending a final judgment of the Court.

Mexico filed its Memorial in the case on June 20, and the United States filed its Counter-Memorial on November 3. The hearing on the merits of the case was held in The Hague December 15–19. In its Counter-Memorial and at the hearing, the United States argued that Mexico had not established breaches of the Convention and that, if breaches of the Convention had occurred, Mexico was not entitled to the relief that it had requested. The United States noted that, with respect to cases involving foreign nationals in which a breach of the consular information provision [Article 36] of the Convention had taken place, the United States had conformed its conduct to the Court’s Judgment in the LaGrand Case (*Germany v. United States*). The Court judged that the United States should provide review and reconsideration of the conviction and sentence of foreign nationals, taking into account the breach of the provision. The United States noted that it had provided such review and reconsideration not only with respect to German nationals but, consistent with the declaration of the President of the Court in that case, to all detained foreign nationals of states party to the Convention. The United States urged the Court not to go beyond its decision in LaGrand. The case remained pending as of December 31, 2003.

### **International Criminal Court (ICC)**

The International Criminal Court (ICC) is not a UN body. The United States is not a party to the Rome Statute establishing the ICC. In anticipation of the Rome Statute coming into force in July 2002, the United States became concerned that U.S. peacekeepers and others involved in UN-authorized or established missions could fall under the jurisdiction of the ICC. This concern prompted the United States to seek UN Security Council agreement for Resolution 1422 in 2002; Resolution 1487, adopted June 12, 2003, renewed this resolution. Both resolutions specified that the ICC shall not investigate or prosecute personnel and officials from states not party to the ICC for acts or omissions relating to UN-authorized peacekeeping for the 12 months following adoption. Resolution 1487 expressed the Security Council’s intention to renew the resolution in 2004.

On June 12, 2003, the Council adopted Resolution 1487 by a vote of 12 to 0, with 3 abstentions (France, Germany, Syria). In addition to securing the adoption of Resolution 1487, the United States has pursued bilateral agreements consistent with Article 98 of the Rome Statute to protect U.S. nationals from surrender to the ICC.

The United States continued to be a forceful advocate for accountability for war crimes and other grave violations of international law. U.S. policy encouraged states to pursue justice within their sovereign institutions and, when appropriate, through *ad hoc* courts and other mechanisms authorized by the UN Security Council.

### **International Law Commission (ILC)**

The International Law Commission (ILC), which first met in 1948, promotes the codification and progressive development of international law.

Its 34 members are persons of recognized competence in international law who serve in their individual capacities. The General Assembly elects them for five-year terms. Mr. Robert Rosenstock of the United States resigned from the Commission on July 7, and was replaced by Mr. Michael Matheson, also an American, who will serve the remainder of Mr. Rosenstock's term.

The Commission studies international law topics referred to it by the General Assembly or that it decides are suitable for codification or progressive development. It usually selects one of its members, designated a "special rapporteur," to prepare reports on each topic. After discussion in the Commission, special rapporteurs prepare draft articles for detailed discussion by the members of the Commission. These articles are considered and refined in a drafting group before formal adoption by the Commission. The Commission reports annually on its work to the Sixth (Legal) Committee of the General Assembly.

At its 55th session in 2003, the Commission continued its work on the topic of "Reservations to treaties" by adopting 11 draft guidelines with three model clauses that deal with withdrawal and modification of reservations. It also adopted three draft articles in connection with the "Diplomatic protection" topic. The Commission continued its work on the "Unilateral acts of States" topic. It also established a working group to consider the future orientation of the topic "International liability for injurious consequences arising out of acts not prohibited by international law," which is liability in the case of hazardous activities causing harm across international borders. The Commission also continued its work on the topics "Responsibility of international organizations," adopting three draft articles; "Fragmentation of international law: difficulties arising from the diversification and expansion of international law"; and "Shared natural resources," considering the first report of the special rapporteur. The ILC also organized its work on Fragmentation of International Law for the remaining part of the present five-year cycle.

During the Sixth Committee's annual consideration of the Report of the International Law Commission in 2003, the U.S. representative made detailed observations on procedural and substantive aspects of the Commission's work. In the U.S. view, as a general matter, it was important that the ILC proceed cautiously in the area of "Responsibility of international organizations." The Commission should carefully assess the unique considerations relevant to this topic and not simply work to develop analogous rules to those earlier drafted by the ILC in the context of states.

The United States was also concerned that a number of the draft articles on "Diplomatic protection" adopted at that point did not reflect customary international law and the necessity to so deviate had not been justified. These articles concerned the continuous nationality rule (in which a state may exercise diplomatic protection only on behalf of a person who has been a national of the state from the time of injury on which the claim is based until through the date on which the claim is resolved), the protection of

shareholders (in which the state of nationality of shareholders may exercise diplomatic protection on their behalf when they have suffered direct losses), and the exhaustion of local remedies (in which a state may exercise diplomatic protection only after the injured person has exhausted all remedies available in the injuring state).

The United States hoped that the ILC would not ultimately take up the special rapporteur's recommendation that a convention on the prevention of transboundary harm from hazardous activities include a liability protocol.

Regarding "Reservations to treaties," the United States believed that it would not be desirable to define the term "objection" in the draft guidelines, to extend the proposed exceptional rule for the late formulation of a reservation, or to treat conditional interpretive declarations more strictly than reservations. The United States also believed that the development of a body of draft articles or rules respecting unilateral acts would not be appropriate or helpful.

The United States believed that the Commission should limit its work on shared natural resources to the subject of groundwater and that "Fragmentation of international law" (that is, difficulties arising from diversification and expansion of international law) is not a topic that lends itself to the development of draft articles or guidelines.

The Commission will take these observations into account in its work on these topics at its 56th session in 2004.

ILC's budget of \$863,000 was funded from the UN regular budget. The United States paid \$190,000.

## **Strengthening the Role of the United Nations**

The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (Charter Committee) held its annual session April 7–16. The General Assembly Sixth Committee (legal) debated and adopted Resolution 58/80 without a vote on December 9, which adopted the report of the Committee's work. On December 23, the General Assembly adopted Resolution 58/248, which concerned its chief substantive agenda item on "Implementation of the Provisions of the Charter of the United Nations Related to Assistance to Third States Affected by the Application of Sanctions." That issue concerns, principally, Article 50 of the Charter which provides that a state "which finds itself confronted with special economic problems" arising from the carrying out of preventive or enforcement measures against another state shall have the right "to consult the Security Council with regard to a solution of those problems."

The Special Committee recommended to the General Assembly that it continue to consider the sanctions assistance issue in an appropriate substantive manner and framework. It should take into account all of the pertinent reports of the Secretary-General on the matter, in particular the report on the results of the June 1998 *ad hoc* expert group meeting, which was originally proposed by the United States, on methodological approaches to

assessing the third-country effects of sanctions. The Special Committee also endorsed the call of the United States and other countries that continuing study of this issue include careful review of relevant work of the Security Council's *ad hoc* working group on sanctions, so as to avoid duplication of efforts. The United States reiterated its support for procedural measures aimed at ensuring that United Nations and other appropriate bodies paid proper attention to this issue. The United States continued to stress that international financial institutions play the leading role addressing such economic problems. The United States opposed such proposals, such as one that called for a UN trust fund, funded by assessed contributions, for aggrieved third states.

Other subjects the Special Committee considered and were supported by the United States as having practical merit included ways and means to (1) improve the organization's dispute prevention and settlement capabilities by enhancing mediation and other tools available to the Secretary-General, and (2) improve the working methods and increase the efficiency of the Special Committee itself. On the former subject in 2003, several delegations welcomed the adoption by the General Assembly on November 19, 2002, of Resolution 57/26 on the prevention and peaceful settlement of disputes, a proposal by Sierra Leone and the United Kingdom, which the United States had been instrumental in shaping and steering towards Committee consensus. On the latter subject, the United States continued to support Japan's initiative, subsequently joined by South Korea, to streamline the Special Committee's work. The initiative included a mechanism for deleting from the Committee's meeting agenda longstanding, often politically-charged, proposals that were duplicative of matters being considered elsewhere in the organization and/or stood no chance of achieving consensus. In this regard, the United States once again took a lead role in the Special Committee by opposing, as unnecessary and inappropriate, continued efforts by some other delegations to foster new, generic criteria and guidelines that would establish certain controls with respect to the imposition of sanctions, peacekeeping operations, the use of force, and General Assembly vs. Security Council prerogatives.

## **War Crimes Tribunals**

### **International Criminal Tribunals for the former Yugoslavia and Rwanda**

The Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) in May 1993 and the International Criminal Tribunal for Rwanda (ICTR) in November 1994. The Tribunals investigate and try individuals accused of having committed genocide, crimes against humanity, and other serious violations of international humanitarian law in those respective countries. Theodor Meron (United States) continued as President of the ICTY in 2003.

From its inception through the end of 2003, the ICTY had indicted 141 individuals. Of the 91 persons who have appeared before the tribunal, 41 were convicted and five acquitted of all charges; the rest remained fugitives

from justice. The ICTR had detained 55 individuals for trial, 10 of whom were convicted and are serving sentences, including the former Rwandan Prime Minister Jean Kambanda.

In 2003, the UN Security Council unanimously adopted seven resolutions that further directed the work of the ICTY and the ICTR. Resolutions 1481 and 1503 were adopted as Presidential texts, meaning all members, including the United States, acted as cosponsors.

Resolution 1503, adopted on August 28, created the new post of Prosecutor for the ICTR, splitting the position that Carla Del Ponte (Switzerland) held for both Tribunals. On September 4, the Security Council adopted Resolution 1505, which appointed Hassan Bubacar Jallow (the Gambia) as the ICTR Prosecutor for a four-year term. Ms. Del Ponte retained the role of Prosecutor for the ICTY as noted in Resolution 1504.

Resolution 1512, adopted on October 27, amended the ICTR Statute to allow the ICTR's Chambers to include five additional temporary judges. Resolution 1481 provided similar direction for the ICTY judges. These changes aimed to accelerate the work of both tribunals, allowing them to fulfill the Completion Strategies outlined in Resolution 1503. These strategies called on the ICTY and ICTR to take all possible measures to complete investigations by the end of 2004, all trial activities by 2008, and all work by 2010.

On April 29, the Security Council adopted Resolution 1477 by consensus. This resolution forwarded names to the General Assembly for consideration for *ad litem* judges. Later in the year, Resolution 1482 extended the terms for expiring judicial appointments in the ICTR so that the judges could finish their current cases, thereby preserving continuity and fairness. The Security Council adopted this resolution by consensus.

The capture and prosecution at the ICTY and the ICTR of persons indicted for war crimes—especially senior leaders Radovan Karadzic, Ratko Mladic, and Ante Gotovina at the ICTY and Felicien Kabuga at the ICTR—was a critical priority for the United States and the Security Council. The United States strongly urged all pertinent parties, particularly the Republika Srpska in Bosnia-Herzegovina, the Republic of Serbia in Serbia and Montenegro, Croatia, and the Government of Rwanda, to cooperate and support the efforts and integrity of the ICTY and ICTR by apprehending and transferring fugitive indictees to the appropriate tribunal, and by freezing the assets and restricting travel of fugitive indictees.

The United States continued to closely monitor the tribunals and ensure that they adopted and adhered to practices that improved efficiency and effectiveness. The United States helped make sure that all increases to the budgets were fully justified and in line with the tribunals' completion strategies. In calendar year 2003, the United States was assessed \$57 million for both tribunals, approximately a quarter of the total costs, about \$228 million.

## **Special Court for Sierra Leone**

The Special Court for Sierra Leone (SCSL) was established by an agreement between the Government of Sierra Leone and the United Nations. The Court would be financed by voluntary contributions. It is mandated to try those who bear the greatest responsibility for serious violations of international humanitarian and Sierra Leonean law committed in the territory of Sierra Leone since November 30, 1996.

By the end of 2003, the Special Court had indicted 11 persons. This included the 17-count indictment against former Liberian President Charles Taylor issued in March. The indictment against Taylor charged war crimes, crimes against humanity, and other serious violations of international humanitarian law. Indictments against two other persons were withdrawn in December due to the deaths of the accused.

In resolutions concerning the UN Mission in Sierra Leone, the Security Council included provisions that stressed the importance of the SCSL and a related Truth and Reconciliation Commission (TRC). These resolutions, among other things, called upon all member states to financially support the work of these institutions. The Security Council unanimously adopted these measures. The United States publicly echoed the resolution's call for donor assistance to the SCSL.

The TRC, which was established in 2002, also continued to collect testimony of victims and perpetrator. It held hearings to create an impartial record of human rights violations, which would promote healing and national reconciliation. Both the SCSL and the TRC have important and complementary roles to play in promoting reconciliation and the rule of law in Sierra Leone. The United States has contributed \$700,000 to the TRC since its inception.

The United States is also an active member of the Court's Management Committee, comprised of the largest donors (United States, the United Kingdom, the Netherlands, and Canada) as well as Nigeria, Lesotho, Sierra Leone, and UN representatives. The Committee provides policy advice and direction on all the non-judicial aspects of the Court's operations, including the Court's annual budget. In 2003, the Court revised its three-year budget estimate upwards, from approximately \$56 million to \$87 million.

The United States has been a key supporter of the SCSL, voluntarily contributing a total of \$10 million in 2003. In order to assist in securing funding for the Court, the United States strongly urged other member states to contribute voluntary funding to the Court. A U.S. citizen, David Crane, was appointed as Prosecutor for a three-year term that began in 2002.

*United States Participation in the United Nations—2003*