

Legal Developments

Host Country Relations

The General Assembly established the Committee on Relations with the Host Country in 1971 to address issues concerning the presence of the United Nations and the UN diplomatic community in the United States. The Committee is composed of representatives of the Host Country and 18 other member states. The issues addressed by the Committee include the security of missions, the safety of their personnel, tax questions, visa issues, and privileges and immunities. 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.

In light of the enhanced national security requirements implemented in the United States following the events of September 11, 2001, and the effect of such requirements on representatives to the United Nations arriving and departing from the United States, the U.S. Mission again hosted a special briefing for all missions at the United Nations on August 30, 2006, in preparation for the 61st General Assembly. The briefing included guidance on diplomatic overflight and landing clearances, expedited port courtesies, customs and immigration, the escort-screening program, and other related matters. Member states were encouraged to take their own initiative to make the processes work smoothly. As a result of these efforts, the number of credible complaints from delegations to the 61st General Assembly regarding arrivals and departures was minimal.

Host Country Committee members continued to express concern about implementation of the Parking Program for diplomatic vehicles, which was originally adopted in 2002. The Committee agreed to bring to the attention of New York City officials any problems encountered by the permanent missions and began a periodic review of the implementation of the program in 2006.

On December 4, the General Assembly adopted without a vote the “Report of the Committee on Relations with the Host Country” (Resolution 61/41). The resolution requested that the host country continue to solve, through negotiations, problems that might arise and take all necessary measures to prevent interference with the functioning of the missions; noted that the Committee would periodically review the implementation of the Parking Program; expressed appreciation for the efforts made by the host country; noted that some travel restrictions previously imposed on the staff of certain missions and members of the Secretariat of certain nationalities were removed in 2006; and noted that the Committee anticipated that the host country would continue to facilitate timely issuance of visas to representatives

of member states for the purpose of traveling to New York on official UN business.

International Court of Justice (ICJ)

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 ICJ is composed of 15 judges, no two of whom may be nationals of the same state. The UN General Assembly and the UN 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. As of December 31, 2006, the Court was composed as follows: Rosalyn Higgins (United Kingdom, President); Awn Shawkat Al-Khasawneh (Jordan, Vice President); Raymond Ranjeva (Madagascar); Shi Jiuyong (China); Abdul G. Koroma (Sierra Leone); Gonzalo Parra-Aranguren (Venezuela); Thomas Buergenthal (United States); Hisashi Owada (Japan); Bruno Simma (Germany); Peter Tomka (Slovakia); Ronny Abraham (France); Kenneth Keith (New Zealand); Bernardo Sepulveda Amor (Mexico); Mohammed Bennouna (Morocco), and Leonid Skotnikov (Russian Federation).

International Criminal Court (ICC)

The International Criminal Court (ICC) is not a UN body, and the United States is not a party to the Rome Statute establishing the ICC. As in previous years, the United States dissociated itself from consensus on the annual resolution in the General Assembly on the ICC, which among other things, called on all states that are not parties to the Rome Statute to consider ratifying or acceding to it without delay. In its statement on the resolution in the General Assembly on November 20, 2006, the United States emphasized that it respects the rights of states to become parties to the Rome Statute, but asks in return that other states respect our decision not to do so. The United States also stressed its commitment to ensuring accountability for perpetrators of genocide, war crimes, and crimes against humanity, and urged common efforts to advance these objectives and avoidance of divisiveness over the ICC.

In 2005, the UN Security Council adopted Resolution 1593, referring the situation in Darfur, Sudan, to the ICC. Pursuant to that resolution, the Prosecutor of the ICC made two reports to the UN Security Council during 2006 on the ICC's work on investigating crimes in Darfur. As of the end of 2006, the ICC had not brought any formal charges in connection with its Darfur investigation.

International Law Commission (ILC)

The UN General Assembly established the International Law Commission (ILC) to promote the codification and progressive development

of international law. Its 34 members, each of a different nationality, are persons of recognized competence in international law who serve in their individual capacities. The General Assembly elects ILC members for five-year terms, and held elections for the upcoming five-year term at its 61st session. Michael Matheson, a U.S citizen and former Principal Deputy Legal Adviser (and Acting Legal Adviser) at the Department of State, served the remainder of his term during 2006 but was not elected to serve an additional term.

The ILC studies international law topics either 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 ILC, special rapporteurs typically prepare draft articles or reports for detailed discussion by the members of the ILC. These are considered and refined in a drafting group prior to formal adoption by the ILC. The ILC reports annually on its work to the Sixth (Legal) Committee of the General Assembly.

At its 58th session, in 2006, the ILC concluded its work on a number of topics. The ILC considered the final report of its Study Group on the “Fragmentation of International Law” and took note of its 42 conclusions. The ILC also concluded its work on the “Unilateral Acts of States” and adopted a set of 10 Guiding Principles and legal commentaries relating to unilateral declarations of states. It also completed its second reading of draft articles on the topic of “Diplomatic Protection,” and recommended the development of a convention on the basis of the draft articles. The ILC also considered the third report of the Special Rapporteur on the topic, “International liability for injurious consequences arising out of acts not prohibited by international law (International liability in the case of loss from transboundary harm arising out of hazardous activities),” and completed its second reading of this topic. It recommended that the General Assembly endorse the draft principles by resolution and urge states to take national and international action to implement them.

The ILC continued its work on the topic “Responsibility of international organizations,” and adopted 14 draft articles together with commentaries dealing with circumstances precluding wrongfulness and with the responsibility of a state in connection with the act of an international organization. It also completed its first reading of the draft articles on the law of transboundary aquifers under the topic “Shared natural resources,” considered the second part of the Special Rapporteur’s 10th report on the topic “Reservations to treaties,” and the second report of the Special Rapporteur on the topic “Effects of armed conflicts on treaties.”

The ILC also added five new topics to its long-term program of work: immunity of state officials from foreign criminal jurisdiction, jurisdictional immunity of international organizations, protection of persons in the event of disasters, protection of personal data in transborder flow of information, and extraterritorial jurisdiction.

During the annual consideration by the Sixth Committee of the UN General Assembly of the Commission's report, the U.S. representative made detailed observations on various procedural and substantive aspects of the ILC's work, including the following: as a general matter, it is important that the ILC proceed cautiously in the area of responsibility of international organizations, and that it carefully assess the unique considerations relevant to this topic and not simply work to develop articles analogous to those developed for states; it would not be advisable to attempt to develop a binding instrument on the topic of diplomatic protection; it was appropriate for the ILC to present the conclusions of its work on the topic of transboundary groundwaters in the form of non-binding standards of conduct and practice; the ILC should continue its work on aquifers, as part of its work on shared natural resources, rather than introduce new topics; and that it was appropriate for the ILC to conclude its work on fragmentation of international law by recommending that the report of its Study Group be published as a useful contribution to the ongoing development of this complex topic. The United States expects the ILC to take these observations into account in its work on these topics at its 59th session, in 2007.

Special Committee on the Charter of the United Nations

In 1974, the General Assembly adopted Resolution 3349, which established an Ad Hoc Committee on the Charter of the United Nations. The Committee was mandated to consider, among other things, specific proposals that governments might make with a view to enhancing the UN's ability to achieve its purposes as well as other suggestions for the more effective functioning of the United Nations. Since its 30th session, the General Assembly has reconvened the Special Committee on the Charter of the United Nations (Special Committee) every year, considered its successive reports, and renewed and revised its mandate on an annual basis in its resolutions on the topic of the Report of the Special Committee. Pursuant to General Assembly Resolution 50/52 (1995), the Special Committee operates by consensus.

The Special Committee held its annual session April 3-12, 2006. The General Assembly's Sixth Committee adopted a resolution commemorating the 60th anniversary of the International Court of Justice and a resolution adopting the report of the Committee's work. The General Assembly subsequently adopted the resolutions by consensus on December 18 (Resolutions 61/37 and 61/38, respectively).

The Special Committee recommended to the General Assembly that it continue to consider the question of implementation of provisions of the Charter relating to assistance to third states affected by the application of sanctions under Chapter VII of the Charter and the implementation of General Assembly resolutions, taking into account all pertinent reports of the Secretary-General on the subject, proposals presented, and views expressed in the Special Committee. The U.S. delegation to the annual meeting reiterated

its support for enhanced procedural and other attention to this issue, including from international financial institutions, while opposing proposals such as those which would provide a compensation mechanism for payments to third states affected by the application of sanctions. The U.S. delegation joined other delegations to the Special Committee in highlighting the work of the Security Council Informal Working Group on General Issues of Sanctions and in noting that all Security Council sanctions are currently targeted and that no State has requested assistance in the past year.

The United States continued to support initiatives to streamline the work of the Special Committee, including by advocating for removal from the Committee's meeting agenda longstanding, often politically charged proposals that are duplicative of matters considered elsewhere in the organization, and which stand no chance of achieving consensus. In this regard, the United States continued to oppose efforts by other delegations to foster new, generic criteria and guidelines aimed at establishing certain controls with respect to the imposition of sanctions, peacekeeping operations, use of force, and General Assembly vs. Security Council prerogatives.

War Crimes and Other Tribunals

International Criminal Tribunal for Rwanda

The Security Council established the International Criminal Tribunal for Rwanda (ICTR) in November 1994, pursuant to Resolution 955 (2004). The Tribunal investigates and tries individuals accused of having committed genocide, crimes against humanity, and other serious violations of international humanitarian law in Rwanda from January 1-December 31, 1994. Under the Tribunal's Completion Strategy, as endorsed by the Security Council in Resolution 1503 (2003), the ICTR seeks to complete all trials by 2008, and all work on appeals by 2010.

By the end of 2006, the Tribunal had completed 33 trials, with 28 convictions and five acquittals. At least 27 defendants were in trial or awaiting judgments. There were nine defendants still awaiting trial. An additional 18 indictees, including alleged genocide financier Felicien Kabuga, remained at large.

The surrender and prosecution of indictees by the ICTR, especially Felicien Kabuga, remains a critical priority for the United States and the Security Council. The United States has called on all member states, particularly Kenya and the Democratic Republic of the Congo, to fulfill their international obligations to apprehend and transfer to the ICTR all fugitive Tribunal indictees within their territories.

The United States continued to monitor the Tribunal closely, to ensure adherence to practices that improved efficiency and effectiveness. The United States helped to make sure that all increases to the ICTR budget were fully justified and in line with the Tribunal's completion strategies.

International Criminal Tribunal for the former Yugoslavia

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established in May 1993 in UNSC Resolution 808 to investigate and try individuals accused of having committed genocide, crimes against humanity, and other serious violations of international humanitarian law on the territory of the former Yugoslavia.

The apprehension and prosecution at the ICTY of persons indicted for war crimes, especially senior Bosnian Serb leaders Radovan Karadzic and Ratko Mladic, has long been a critical priority for the United States and the Security Council. The United States strongly urges all entities and states, particularly the Republic of Serbia and the Republika Srpska in Bosnia and Herzegovina, to cooperate by apprehending and transferring the remaining four fugitive indictees to the Tribunal, and to freeze the assets and restrict travel of those who support the fugitive indictees. The United States has also made clear to authorities in the region that meeting their obligations to the ICTY is a prerequisite for full integration into the Euro-Atlantic family.

In 2006, the United States worked to help to create the capacity for the fair and credible adjudication of low- and mid-level war crime cases by domestic courts in the region, and supported the transfer of such cases from the ICTY to domestic courts.

In the August 1, 2005-July 31, 2006 reporting period, the ICTY issued four judgments on the merits and five decisions referring nine accused to domestic jurisdictions for prosecution. Additionally, by the end of the reporting period, the ICTY was conducting six simultaneous trials of 21 accused. The United States continues to support the Tribunal's efforts to ensure successful implementation of its Completion Strategy and welcomed the ICTY's successful meeting of its first Completion Strategy benchmark when it issued its last indictments at the end of 2004.

The United States works closely with the Tribunal to ensure that it adopts and adheres to practices that improve both efficiency and effectiveness, and that any increases to its budget are fully justified and in line with the Tribunal's UNSC-endorsed Completion Strategy.

Since commencing its work, the ICTY has indicted 161 individuals. Fourteen persons have been referred to domestic jurisdictions for prosecution; 25 indictments were withdrawn prior either to commencement or to completion of the proceedings. Of those who have appeared before the Tribunal, 51 have been convicted and 5 acquitted. Four indictees, including Stojan Zupljanin, Goran Hadzic and the two most wanted -- Karadzic and Mladic - remain fugitives from justice.

Special Court for Sierra Leone

In 2006, the United States continued to support the United Nations and the Special Court for Sierra Leone in its mandate to "prosecute persons

who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.” The Court’s mission remains a key part of the reconciliation process in war-torn West Africa. The Special Court was originally intended to complete its work in 2005. This goal proved to be unattainable; the three joint trials (each with three defendants) have continued in Freetown well past that date, and former Liberian President Charles Taylor, indicted by the Special Court in March 2003, was only apprehended and transferred to the custody of the Special Court in Freetown in March 2006.

On June 16, 2006, the United States joined the other Security Council members in adopting Resolution 1688 which facilitated Taylor’s transfer to the Netherlands so that the Special Court could detain and try him there consistent with the terms of an agreement between the Special Court and the Government of the Netherlands. The resolution noted that Taylor’s continued presence in Freetown represented an impediment to stability and a threat to the peace of Liberia and Sierra Leone and to international peace and security in the region. The Special Court revised its completion strategy accordingly, aiming to conclude trials and appeals in Freetown by the end of 2008, and the Taylor trial and appeals in The Hague by the end of 2009.

Special Tribunal for Lebanon

Former Prime Minister Rafik Hariri was assassinated on February 14, 2005. His assassination prompted two weeks of protests calling for Syria’s withdrawal from Lebanon. On December 13, 2005, a day after the assassination of Gibran Tueni, the Government of Lebanon requested the establishment of a tribunal of an international character to try those found responsible for assassinating Hariri and others and to expand the mandate of the Commission to investigate additional assassinations and assassination attempts that took place in Lebanon.

The UN’s Office of Legal Affairs began initial consultations with Lebanese authorities in Beirut on January 26-27, 2006, which were followed by consultations at UN Headquarters with two senior Lebanese judges. On March 29, with the adoption of Resolution 1664 (2006), the Security Council requested that the Secretary-General negotiate an agreement with the Government of Lebanon aimed at establishing a tribunal of an international character based on the highest standards of international criminal justice. Negotiations on the legal framework for the establishment of the Special Tribunal for Lebanon between the UN and the Government of Lebanon (represented by the judges) took place thereafter, including in New York on May 31-June 1 and in The Hague July 3-7.

On September 6, the UN Legal Counsel presented the initial draft agreement and statute to the Lebanese Prime Minister and to the Minister of Justice of Lebanon for their consideration. On November 21, the Security Council approved the Tribunal documents. On November 25, after six Cabinet members resigned, the Lebanese Cabinet approved the draft text establishing the Tribunal. Lebanese President Lahoud, Parliamentary Speaker

Berri, and the Cabinet ministers who had resigned publicly disavowed the Cabinet's decision as "illegitimate."

Following the Lebanese Cabinet's approval, the Agreement was forwarded to President Lahoud, who refused to sign the Agreement. After the stipulated 15-day waiting period, the Lebanese Cabinet again approved the Agreement and was prepared to forward the Agreement to the Parliament for ratification.

By the end of 2006, the Agreement had yet to be ratified by the Lebanese Parliament, even though a majority in the Parliament supported the creation of the Tribunal. Approval of the Tribunal became a key element in the political tensions in Beirut in the fall of 2006, pitting Prime Minister Siniora and the "March 14" political bloc, led by Saad Hariri, against the pro-Syrian, Hizballah-Aounist alliance, which attempted to link the establishment of the Tribunal to its attempt to get a blocking minority in the Cabinet. The United States strongly supported the establishment of the Tribunal.

Cambodia Khmer Rouge Tribunal

The U.S. Cambodian Genocide Justice Act of April 30, 1994, committed the United States to "support efforts to bring to justice members of the Khmer Rouge for their crimes against humanity committed in Cambodia between April 17, 1975 and January 7, 1979." Following the recommendation of a UN-appointed panel to create a Khmer Rouge special tribunal, the UN and the Royal Government of Cambodia (RGC) began discussions on the establishment of such a tribunal. Negotiations on the form and composition of a tribunal were contentious and broke down in February 2002 over the question of whether the tribunal would be constituted as an international tribunal or a Cambodian tribunal with international assistance. Negotiations resumed in early 2003, and an agreement was signed in June 2003 to establish the Extraordinary Chambers in the Courts of Cambodia (ECCC), a hybrid tribunal to try senior leaders of the Khmer Rouge. Due to a political impasse following Cambodian national elections in 2003, Cambodia's National Assembly did not ratify the agreement until October 2004. Michelle Lee (China) was appointed Deputy Administrator of the Khmer Rouge Tribunal (KRT) on October 14, 2005, and the international and Cambodian judges to sit in the tribunal chambers were announced on May 7, 2006.

The KRT consists of three chambers: Pre-Trial, Trial, and a Supreme Court. The Pre-Trial Chamber and the Trial Chamber have five judges each (three Cambodian and two international) and the Supreme Court Chamber has seven judges (four Cambodian and three international). In addition, there are two prosecutors (one from each group) and two investigating judges (likewise). The names of these officials and their deputies were announced on May 7, 2006, and include two Americans, Paul Coffey, as a reserve co-prosecutor, and Judge Martin Karopkin, as a reserve judge in the Supreme Court Chamber. The Cambodian law implementing the 2003 UN-Cambodia Agreement to establish the KRT provides that life imprisonment shall be the maximum sentence for anyone convicted by the KRT.

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Donors were concerned by the initial cost estimate of almost \$80 million for the KRT; however, protracted negotiations finally resulted in a budget of \$56.3 million (\$43 million from the UN and \$13.3 million from the RGC). In January 2005, the UN issued a call for voluntary contributions. As of the end of 2006, \$41.8 million had been pledged, with Japan providing \$21.6 million. Other major donors are France (\$4.8 million), Germany (\$2.9 million), the UK (\$2.87 million), Australia (\$2.3 million), the Netherlands (\$2 million), Canada (\$1.6 million), and the EU (\$1.3 million). Cambodia has said it can only contribute \$1.5 million of its share of the tribunal budget and is seeking international donor support to make up the difference.

On May 1, 2006, the Secretary-General announced that enough of the required funding had been received to begin organizing the tribunal.