

INTERNATIONAL COURT OF JUSTICE

THE JADHAV CASE

**THE REPUBLIC OF INDIA v. THE ISLAMIC REPUBLIC OF
PAKISTAN**

**COUNTER-MEMORIAL OF THE ISLAMIC REPUBLIC OF
PAKISTAN**



13TH DECEMBER 2017

EXHIBIT

VOLUME 6: ANNEXURES 122 – 140

Jadhav Case (India v Pakistan)

Counter-Memorial on behalf of the Islamic Republic of Pakistan

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13th December 2017



GOVERNMENT OF INDIA

LAW COMMISSION OF INDIA

Report No.262

The Death Penalty

August 2015

न्यायमूर्ति अजित प्रकाश शहा
भूतपूर्व मुख्य न्यायाधीश, दिल्ली उच्च न्यायालय
अध्यक्ष
भारत का विधि आयोग
भारत सरकार
14वाँ तल, हिन्दुस्तान टाइम्स हाऊस,
कस्तूरबा गाँधी मार्ग
नई दिल्ली-110 001



Justice Ajit Prakash Shah
Former Chief Justice of Delhi High court
Chairman
Law Commission of India
Government of India
14th Floor, Hindustan Times House
Kasturba Gandhi Marg
New Delhi – 110 001

D.O. No.6(3)263/2014-LC(LS)

31 August 2015

Dear Mr. Sadananda Gowda ji,

The Law Commission of India received a reference from the Supreme Court in *Santosh Kumar Satishbhushan Bariyar v. Maharashtra* [(2009) 6 SCC 498] and *Shankar Kisanrao Khade v. Maharashtra* [(2013) 5 SCC 546], to study the issue of the death penalty in India to “allow for an up-to-date and informed discussion and debate on the subject.”

This is not the first time that the Commission has been asked to look into the death penalty – the 35th Report (“Capital Punishment”, 1967), notably, is a key report in this regard. That Report recommended the retention of the death penalty in India. The Supreme Court has also, in *Bachan Singh v. UOI* [AIR 1980 SC 898], upheld the constitutionality of the death penalty, but confined its application to the ‘rarest of rare cases’, to reduce the arbitrariness of the penalty. However, the social, economic and cultural contexts of the country have changed drastically since the 35th report. Further, arbitrariness has remained a major concern in the adjudication of death penalty cases in the 35 years since the foremost precedent on the issue was laid down.

Accordingly, and in recognition of the fact that the death penalty is an issue of a very sensitive nature, the Commission decided to undertake an extensive study on the issue. In May 2014, the Commission invited public comments on the subject by issuing a consultation paper. Towards the same goal, the Commission also held a one-day Consultation on “The Death Penalty in India” on 11 July 2015 in New Delhi. Thereafter, upon extensive deliberations, discussions and in-depth study, the Commission has given shape to the present Report. The recommendation of the Commission in the matter is sent herewith in the form of the Commission’s **Report No.262** titled “**The Death Penalty**”, for consideration by the Government.

Certain concerns were raised by Part Time Member Prof (Dr) Yogesh Tyagi, which have been addressed to the best possible extent in the present Report; however, his signature could not be obtained as he was out of the country. Justice (retd.) Ms Usha Mehra, Member; Mr PK Malhotra, Law Secretary and Dr. Sanjay Singh, Secretary, Legislative Department, Ex-Officio Members, chose not to sign the Report and have submitted notes on the issue, which are attached to the Report as appendices.

With warm regards,

Yours sincerely,

Sd/-

[Ajit Prakash Shah]

Mr. D.V. Sadananda Gowda
Hon’ble Minister for Law and Justice
Government of India
Shastri Bhawan
New Delhi

Report No. 262
The Death Penalty
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confirms that retaining the death penalty is not a requirement for effectively responding to insurgency, terror or violent crime.

B. Recommendation

7.2.1 The Commission recommends that measures suggested in para 7.1.3 above, which include provisions for police reforms, witness protection scheme and victim compensation scheme should be taken up expeditiously by the government.

7.2.2 The march of our own jurisprudence -- from removing the requirement of giving special reasons for imposing life imprisonment instead of death in 1955; to requiring special reasons for imposing the death penalty in 1973; to 1980 when the death penalty was restricted by the Supreme Court to *the rarest of rare cases* – shows the direction in which we have to head. Informed also by the expanded and deepened contents and horizons of the right to life and strengthened due process requirements in the interactions between the state and the individual, prevailing standards of constitutional morality and human dignity, the Commission feels that time has come for India to move towards abolition of the death penalty.

7.2.3 Although there is no valid penological justification for treating terrorism differently from other crimes, concern is often raised that abolition of death penalty for terrorism related offences and waging war, will affect national security. However, given the concerns raised by the law makers, the commission does not see any reason to wait any longer to take the first step towards abolition of the death penalty for all offences other than terrorism related offences.

7.2.4 The Commission accordingly recommends that the death penalty be abolished for all crimes other than terrorism related offences and waging war.

7.2.5 The Commission trusts that this Report will contribute to a more rational, principled and informed debate on the abolition of the death penalty for *all* crimes.

7.2.6 Further, the Commission sincerely hopes that the movement towards absolute abolition will be swift and irreversible.

Sd/-
[Justice A.P. Shah]
Chairman

Sd/- [Justice S.N. Kapoor] Member	Sd/- [Prof. (Dr.) Mool Chand Sharma] Member	-- [Justice Usha Mehra] Member
---	---	--

--
[P.K. Malhotra]
Ex-officio Member

--
[Dr. Sanjay Singh]
Ex-officio Member

Sd/-
[Dr. G. Narayana Raju]
Member-Secretary

Sd/-
[R. Venkataramani]
Member (Part-Time)

Sd/-
[Prof. (Dr.) Gurjeet Singh]
Member (Part-Time)

Sd/-
[Dr. B. N. Mani]
Member (Part-Time)



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United Nations • Nations Unies
New York, 1983

OPTIONAL PROTOCOL¹ TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant,

Have agreed as follows:

Article 1. A State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol.

Article 2. Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3. The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse

¹ Came into force on 23 March 1976 in respect of the following States, i.e., three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession (the Covenant of 19 December 1966 on Civil and Political Rights having itself entered into force), in accordance with article 9 (1):*

State	Date of deposit of the instrument of ratification or accession (a)	State	Date of deposit of the instrument of ratification or accession (a)
2 Costa Rica	29 November 1968	3 Denmark**	6 January 1972
(Signature affixed on 19 December 1966.)		(Signature affixed on 20 March 1968.)	
4 Ecuador	6 March 1969	Norway**	13 September 1972
(Signature affixed on 4 April 1968.)		(Signature affixed on 20 March 1968.)	
1 Colombia	29 October 1969	Barbados	5 January 1973 ^a
(Signature affixed on 21 December 1966.)		Mauritius	12 December 1973 ^a
0 Uruguay	1 April 1970	5 Finland	19 August 1975
(Signature affixed on 21 February 1967.)		(Signature affixed on 11 December 1967.)	
7 Madagascar	21 June 1971	6 Jamaica	3 October 1975
(Signature affixed on 17 September 1969.)		(Signature affixed on 19 December 1966.)	
3 Sweden**	6 December 1971		
(Signature affixed on 29 September 1967.)			

* Same procedure, *mutatis mutandis*, as for the Covenant itself: see note**, p. 173.

** See p. 346 of this volume for the texts of the declarations and reservations made upon ratification or accession.

of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4. 1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5. 1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

- (a) The same matter is not being examined under another procedure of international investigation or settlement;
- (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6. The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7. Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14 December 1960¹ concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8. 1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

¹ United Nations, *Official Records of the General Assembly, Fifteenth Session, Supplement No. 16 (A/4684)*, p. 66.

Article 9. 1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10. The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11. 1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12. 1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13. Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph I, of the Covenant of the following particulars:

- (a) Signatures, ratifications and accessions under article 8;
- (b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;
- (c) Denunciations under article 12.

Article 14. 1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

IN FAITH WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Protocol, opened for signature at New York, on the nineteenth day of December, one thousand nine hundred and sixty-six.

**5. OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND
POLITICAL RIGHTS**

New York, 16 December 1966

ENTRY INTO FORCE: 23 March 1976, in accordance with article 9.
REGISTRATION: 23 March 1976, No. 14668.
STATUS: Signatories: 35. Parties: 116.^{1,2,3}
TEXT: United Nations, *Treaty Series*, vol. 999, p. 171.

Note: The Protocol was opened for signature at New York on 19 December 1966.

<i>Participant^{4,5}</i>	<i>Signature, Succession to signature(d)</i>	<i>Ratification, Accession(a), Succession(d)</i>	<i>Participant^{4,5}</i>	<i>Signature, Succession to signature(d)</i>	<i>Ratification, Accession(a), Succession(d)</i>
Albania.....		4 Oct 2007 a	Democratic Republic of the Congo.....		1 Nov 1976 a
Algeria.....		12 Sep 1989 a	Denmark.....	20 Mar 1968	6 Jan 1972
Andorra.....	5 Aug 2002	22 Sep 2006	Djibouti.....		5 Nov 2002 a
Angola.....		10 Jan 1992 a	Dominican Republic.....		4 Jan 1978 a
Argentina.....		8 Aug 1986 a	Ecuador.....	4 Apr 1968	6 Mar 1969
Armenia.....		23 Jun 1993 a	El Salvador.....	21 Sep 1967	6 Jun 1995
Australia.....		25 Sep 1991 a	Equatorial Guinea.....		25 Sep 1987 a
Austria.....	10 Dec 1973	10 Dec 1987	Estonia.....		21 Oct 1991 a
Azerbaijan.....		27 Nov 2001 a	Finland.....	11 Dec 1967	19 Aug 1975
Barbados.....		5 Jan 1973 a	France.....		17 Feb 1984 a
Belarus.....		30 Sep 1992 a	Gambia.....		9 Jun 1988 a
Belgium.....		17 May 1994 a	Georgia.....		3 May 1994 a
Benin.....		12 Mar 1992 a	Germany.....		25 Aug 1993 a
Bolivia (Plurinational State of).....		12 Aug 1982 a	Ghana.....	7 Sep 2000	7 Sep 2000
Bosnia and Herzegovina.....	1 Mar 1995	1 Mar 1995	Greece.....		5 May 1997 a
Brazil.....		25 Sep 2009 a	Guatemala.....		28 Nov 2000 a
Bulgaria.....		26 Mar 1992 a	Guinea.....	19 Mar 1975	17 Jun 1993
Burkina Faso.....		4 Jan 1999 a	Guinea-Bissau.....	12 Sep 2000	24 Sep 2013
Cabo Verde.....		19 May 2000 a	Guyana ²		5 Jan 1999 a
Cambodia.....	27 Sep 2004		Honduras.....	19 Dec 1966	7 Jun 2005
Cameroon.....		27 Jun 1984 a	Hungary.....		7 Sep 1988 a
Canada.....		19 May 1976 a	Iceland.....		22 Aug 1979 a
Central African Republic.....		8 May 1981 a	Ireland.....		8 Dec 1989 a
Chad.....		9 Jun 1995 a	Italy.....	30 Apr 1976	15 Sep 1978
Chile.....		27 May 1992 a	Jamaica ³	[19 Dec 1966]	[3 Oct 1975]
Colombia.....	21 Dec 1966	29 Oct 1969	Kazakhstan.....	25 Sep 2007	30 Jun 2009
Congo.....		5 Oct 1983 a	Kyrgyzstan.....		7 Oct 1994 a
Costa Rica.....	19 Dec 1966	29 Nov 1968	Latvia.....		22 Jun 1994 a
Côte d'Ivoire.....		5 Mar 1997 a	Lesotho.....		6 Sep 2000 a
Croatia.....		12 Oct 1995 a	Liberia.....	22 Sep 2004	
Cyprus.....	19 Dec 1966	15 Apr 1992	Libya.....		16 May 1989 a
Czech Republic ⁶		22 Feb 1993 d	Liechtenstein.....		10 Dec 1998 a
			Lithuania.....		20 Nov 1991 a
			Luxembourg.....		18 Aug 1983 a

<i>Participant^{4,5}</i>	<i>Signature, Succession to signature(d)</i>	<i>Ratification, Accession(a), Succession(d)</i>	<i>Participant^{4,5}</i>	<i>Signature, Succession to signature(d)</i>	<i>Ratification, Accession(a), Succession(d)</i>
Madagascar.....	17 Sep 1969	21 Jun 1971	Senegal.....	6 Jul 1970	13 Feb 1978
Malawi.....		11 Jun 1996 a	Serbia.....	12 Mar 2001 d	6 Sep 2001
Maldives.....		19 Sep 2006 a	Seychelles.....		5 May 1992 a
Mali.....		24 Oct 2001 a	Sierra Leone.....		23 Aug 1996 a
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Mongolia.....		16 Apr 1991 a	South Africa.....		28 Aug 2002 a
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Namibia.....		28 Nov 1994 a	Sri Lanka.....		3 Oct 1997 a
Nauru.....	12 Nov 2001		St. Vincent and the Grenadines.....		9 Nov 1981 a
Nepal.....		14 May 1991 a	Suriname.....		28 Dec 1976 a
Netherlands ⁸	25 Jun 1969	11 Dec 1978	Sweden.....	29 Sep 1967	6 Dec 1971
New Zealand ⁹		26 May 1989 a	Tajikistan.....		4 Jan 1999 a
Nicaragua.....		12 Mar 1980 a	The former Yugoslav Republic of Macedonia.....	12 Dec 1994 d	12 Dec 1994
Niger.....		7 Mar 1986 a	Togo.....		30 Mar 1988 a
Norway.....	20 Mar 1968	13 Sep 1972	Trinidad and Tobago ¹		[14 Nov 1980 a]
Panama.....	27 Jul 1976	8 Mar 1977	Tunisia.....		29 Jun 2011 a
Paraguay.....		10 Jan 1995 a	Turkey.....	3 Feb 2004	24 Nov 2006
Peru.....	11 Aug 1977	3 Oct 1980	Turkmenistan.....		1 May 1997 a
Philippines.....	19 Dec 1966	22 Aug 1989	Uganda.....		14 Nov 1995 a
Poland.....		7 Nov 1991 a	Ukraine.....		25 Jul 1991 a
Portugal.....	1 Aug 1978	3 May 1983	Uruguay.....	21 Feb 1967	1 Apr 1970
Republic of Korea.....		10 Apr 1990 a	Uzbekistan.....		28 Sep 1995 a
Republic of Moldova.....	16 Sep 2005	23 Jan 2008	Venezuela (Bolivarian Republic of).....	15 Nov 1976	10 May 1978
Romania.....		20 Jul 1993 a	Zambia.....		10 Apr 1984 a
Russian Federation.....		1 Oct 1991 a			
San Marino.....		18 Oct 1985 a			
Sao Tome and Principe..	6 Sep 2000	23 Mar 2017			

Declarations and Reservations

(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession.)

AUSTRIA

"On the understanding that, further to the provisions of article 5 (2) of the Protocol, the Committee provided for in Article 28 of the Covenant shall not consider any communication from an individual unless it has been ascertained that the same matter has not been examined by the European Commission on Human Rights established by the European Convention for the Protection of Human Rights and Fundamental Freedoms."

CHILE

In recognizing the competence of the Human Rights Committee to receive and consider communications from individuals, it is the understanding of the Government of Chile that this competence applies in respect of acts

occurring after the entry into force for that State of the Optional Protocol or, in any event, to acts which began after 11 March 1990.

CROATIA

"The Republic of Croatia interprets article 1 of this Protocol as giving the Committee the competence to receive and consider communications from individuals subject to the jurisdiction of the Republic of Croatia who claim to be victims of a violation by the Republic of any rights set forth in the Covenant which results either from acts, omissions or events occurring after the date on which the Protocol entered into force for the Republic of Croatia."

"With regard to article 5, paragraph 2 (a) of the Protocol, the Republic of Croatia specifies that the



Treaty Series

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VOLUME 1642

Recueil des Traités

*Traités et accords internationaux
enregistrés
ou classés et inscrits au répertoire
au Secrétariat de l'Organisation des Nations Unies*

United Nations • Nations Unies
New York, 1999

No. 14668. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS. ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 16 DECEMBER 1966¹

N° 14668. PACTE INTERNATIONAL RELATIF AUX DROITS CIVILS ET POLITIQUES. ADOPTÉ PAR L'ASSEMBLÉE GÉNÉRALE DES NATIONS UNIES LE 16 DÉCEMBRE 1966¹

SECOND OPTIONAL PROTOCOL TO THE ABOVE-MENTIONED COVENANT, AIMING AT THE ABOLITION OF THE DEATH PENALTY. ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 15 DECEMBER 1989

DEUXIÈME PROTOCOLE FACULTATIF SE RAPPORTANT AU PACTE SUSMENTIONNÉ, VISANT À ABOLIR LA PEINE DE MORT. ADOPTÉ PAR L'ASSEMBLÉE GÉNÉRALE DES NATIONS UNIES LE 15 DÉCEMBRE 1989

Authentic texts: English, French, Arabic, Chinese, Russian and Spanish.

Textes authentiques: anglais, français, arabe, chinois, russe et espagnol.

Registered ex officio on 11 July 1991.

Enregistré d'office le 11 juillet 1991.

¹ United Nations, *Treaty Series*, vol. 999, p. 171; vol. 1057, p. 407 (rectification of authentic Spanish text); vol. 1059, p. 451 (corrigendum to vol. 999); for subsequent actions, see references in Cumulative Indexes Nos. 17 and 18, as well as annex A in volumes 1103, 1106, 1120, 1130, 1131, 1132, 1136, 1138, 1141, 1144, 1147, 1150, 1151, 1161, 1181, 1195, 1197, 1199, 1202, 1203, 1205, 1207, 1211, 1213, 1214, 1216, 1218, 1222, 1225, 1249, 1256, 1259, 1261, 1272, 1275, 1276, 1279, 1286, 1289, 1291, 1295, 1296, 1299, 1305, 1308, 1312, 1314, 1316, 1324, 1328, 1329, 1333, 1334, 1338, 1339, 1344, 1347, 1348, 1349, 1351, 1352, 1354, 1356, 1357, 1358, 1360, 1365, 1379, 1387, 1389, 1390, 1392, 1393, 1399, 1403, 1404, 1408, 1409, 1410, 1413, 1417, 1419, 1421, 1422, 1424, 1427, 1429, 1434, 1435, 1436, 1437, 1438, 1439, 1441, 1443, 1444, 1455, 1457, 1458, 1462, 1463, 1464, 1465, 1475, 1477, 1478, 1480, 1482, 1484, 1485, 1487, 1488, 1490, 1491, 1492, 1495, 1498, 1499, 1501, 1502, 1505, 1506, 1508, 1510, 1512, 1513, 1515, 1520, 1522, 1525, 1527, 1530, 1533, 1534, 1535, 1540, 1543, 1545, 1548, 1551, 1555, 1556, 1557, 1562, 1563, 1564, 1567, 1570, 1577, 1578, 1579, 1580, 1582, 1593, 1598, 1607, 1637 and 1639.

¹ Nations Unies, *Recueil des Traités*, vol. 999, p. 171; vol. 1057, p. 407 (rectification du texte authentique espagnol); vol. 1059, p. 451 (corrigendum au vol. 999); pour les faits ultérieurs, voir les références données dans les Index cumulatifs nos 17 et 18, ainsi que l'annexe A des volumes 1103, 1106, 1120, 1130, 1131, 1132, 1136, 1138, 1141, 1144, 1147, 1150, 1151, 1161, 1181, 1195, 1197, 1199, 1202, 1203, 1205, 1207, 1211, 1213, 1214, 1216, 1218, 1222, 1225, 1249, 1256, 1259, 1261, 1272, 1275, 1276, 1279, 1286, 1289, 1291, 1295, 1296, 1299, 1305, 1308, 1312, 1314, 1316, 1324, 1328, 1329, 1333, 1334, 1338, 1339, 1344, 1347, 1348, 1349, 1351, 1352, 1354, 1356, 1357, 1358, 1360, 1365, 1379, 1387, 1389, 1390, 1392, 1393, 1399, 1403, 1404, 1408, 1409, 1410, 1413, 1417, 1419, 1421, 1422, 1424, 1427, 1429, 1434, 1435, 1436, 1437, 1438, 1439, 1441, 1443, 1444, 1455, 1457, 1458, 1462, 1463, 1464, 1465, 1475, 1477, 1478, 1480, 1482, 1484, 1485, 1487, 1488, 1490, 1491, 1492, 1495, 1498, 1499, 1501, 1502, 1505, 1506, 1508, 1510, 1512, 1513, 1515, 1520, 1522, 1525, 1527, 1530, 1533, 1534, 1535, 1540, 1543, 1545, 1548, 1551, 1555, 1556, 1557, 1562, 1563, 1564, 1567, 1570, 1577, 1578, 1579, 1580, 1582, 1593, 1598, 1607, 1637 et 1639.

SECOND OPTIONAL PROTOCOL¹ TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, AIMING AT THE ABOLITION OF THE DEATH PENALTY²

The States Parties to the present Protocol,

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

Recalling article 3 of the Universal Declaration of Human Rights adopted on 10 December 1948³ and article 6 of the International Covenant on Civil and Political Rights adopted on 16 December 1966,

Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

Desirous to undertake hereby an international commitment to abolish the death penalty,

Have agreed as follows:

Article 1

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.

2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

¹ The Protocol came into force on 11 July 1991 in respect of the following States, i.e., three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession, in accordance with article 8 (1):

<i>Participant</i>	<i>Date of deposit of the instrument of ratification or accession (a)</i>
Australia	2 October 1990 ^a
Finland	4 April 1991
German Democratic Republic*	16 August 1990
Iceland	2 April 1991
Netherlands	26 March 1991
(For the Kingdom in Europe, the Netherlands Antilles and Aruba.)	
New Zealand	22 February 1990
Portugal	17 October 1990
Romania	27 February 1991
Spain**	11 April 1991
Sweden	11 May 1990

* Prior to the coming into effect of the ratification, which should have taken place on 11 July 1991, the German Democratic Republic acceded to the Federal Republic of Germany with effect from 3 October 1990.

** See p. 471 of this volume for the text of the reservation made upon ratification.

² United Nations, *Treaty Series*, vol. 999, p. 171.

³ United Nations, *Official Records of the Third Session of the General Assembly*, part 1, p. 71.

Article 2

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.

3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

Article 3

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

Article 4

With respect to the States Parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 5

With respect to the States Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 6

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.

2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

Article 7

1. The present Protocol is open for signature by any State that has signed the Covenant.

2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 8

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 9

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 10

The Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

(a) Reservations, communications and notifications under article 2 of the present Protocol;

(b) Statements made under articles 4 or 5 of the present Protocol;

(c) Signatures, ratifications and accessions under article 7 of the present Protocol;

(d) The date of the entry into force of the present Protocol under article 8 thereof.

Article 11

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

[For the signatures, see p. 436 of this volume.]

**12. SECOND OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS, AIMING AT THE ABOLITION OF THE DEATH
PENALTY**

New York, 15 December 1989

ENTRY INTO FORCE 11 July 1991, in accordance with article 8(1).
REGISTRATION: 11 July 1991, No. 14668.
STATUS: Signatories: 38. Parties: 85.
TEXT: United Nations, *Treaty Series*, vol. 1642, p. 414.

Note: The said Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, was adopted by resolution [44/128](#)¹ of 15 December 1989 at the Forty-fourth session of the General Assembly of the United Nations and is open for signature at the United Nations Headquarters in New York by all States having signed the International Covenant on Civil and Political Rights.

<i>Participant</i>	<i>Signature</i>	<i>Ratification, Accession(a), Succession(d)</i>	<i>Participant</i>	<i>Signature</i>	<i>Ratification, Accession(a), Succession(d)</i>
Albania.....		17 Oct 2007 a	Gambia.....	20 Sep 2017	
Andorra.....	5 Aug 2002	22 Sep 2006	Georgia.....		22 Mar 1999 a
Angola.....	24 Sep 2013		Germany ³	13 Feb 1990	18 Aug 1992
Argentina.....	20 Dec 2006	2 Sep 2008	Greece.....		5 May 1997 a
Australia.....		2 Oct 1990 a	Guinea-Bissau.....	12 Sep 2000	24 Sep 2013
Austria.....	8 Apr 1991	2 Mar 1993	Honduras.....	10 May 1990	1 Apr 2008
Azerbaijan.....		22 Jan 1999 a	Hungary.....		24 Feb 1994 a
Belgium.....	12 Jul 1990	8 Dec 1998	Iceland.....	30 Jan 1991	2 Apr 1991
Benin.....		5 Jul 2012 a	Ireland.....		18 Jun 1993 a
Bolivia (Plurinational State of).....		12 Jul 2013 a	Italy.....	13 Feb 1990	14 Feb 1995
Bosnia and Herzegovina.....	7 Sep 2000	16 Mar 2001	Kyrgyzstan.....		6 Dec 2010 a
Brazil.....		25 Sep 2009 a	Latvia.....		19 Apr 2013 a
Bulgaria.....	11 Mar 1999	10 Aug 1999	Liberia.....		16 Sep 2005 a
Cabo Verde.....		19 May 2000 a	Liechtenstein.....		10 Dec 1998 a
Canada.....		25 Nov 2005 a	Lithuania.....	8 Sep 2000	27 Mar 2002
Chile.....	15 Nov 2001	26 Sep 2008	Luxembourg.....	13 Feb 1990	12 Feb 1992
Colombia.....		5 Aug 1997 a	Madagascar.....	24 Sep 2012	21 Sep 2017
Costa Rica.....	14 Feb 1990	5 Jun 1998	Malta ⁴		29 Dec 1994 a
Croatia.....		12 Oct 1995 a	Mexico.....		26 Sep 2007 a
Cyprus ²		10 Sep 1999 a	Monaco.....		28 Mar 2000 a
Czech Republic.....		15 Jun 2004 a	Mongolia.....		13 Mar 2012 a
Denmark.....	13 Feb 1990	24 Feb 1994	Montenegro ⁵		23 Oct 2006 d
Djibouti.....		5 Nov 2002 a	Mozambique.....		21 Jul 1993 a
Dominican Republic.....		21 Sep 2016 a	Namibia.....		28 Nov 1994 a
Ecuador.....		23 Feb 1993 a	Nepal.....		4 Mar 1998 a
El Salvador.....		8 Apr 2014 a	Netherlands ⁶	9 Aug 1990	26 Mar 1991
Estonia.....		30 Jan 2004 a	New Zealand ⁷	22 Feb 1990	22 Feb 1990
Finland.....	13 Feb 1990	4 Apr 1991	Nicaragua.....	21 Feb 1990	25 Feb 2009
France.....		2 Oct 2007 a	Norway.....	13 Feb 1990	5 Sep 1991
Gabon.....		2 Apr 2014 a	Panama.....		21 Jan 1993 a
			Paraguay.....		18 Aug 2003 a

<i>Participant</i>	<i>Signature</i>	<i>Ratification, Accession(a), Succession(d)</i>	<i>Participant</i>	<i>Signature</i>	<i>Ratification, Accession(a), Succession(d)</i>
Philippines	20 Sep 2006	20 Nov 2007	Switzerland		16 Jun 1994 a
Poland	21 Mar 2000	25 Apr 2014	The former Yugoslav Republic of Macedonia.....		26 Jan 1995 a
Portugal.....	13 Feb 1990	17 Oct 1990	Timor-Leste		18 Sep 2003 a
Republic of Moldova		20 Sep 2006 a	Togo.....		14 Sep 2016 a
Romania.....	15 Mar 1990	27 Feb 1991	Turkey.....	6 Apr 2004	2 Mar 2006
Rwanda		15 Dec 2008 a	Turkmenistan.....		11 Jan 2000 a
San Marino	26 Sep 2003	17 Aug 2004	Ukraine		25 Jul 2007 a
Sao Tome and Principe..	6 Sep 2000	10 Jan 2017	United Kingdom of Great Britain and Northern Ireland.....	31 Mar 1999	10 Dec 1999
Serbia.....		6 Sep 2001 a	Uruguay	13 Feb 1990	21 Jan 1993
Seychelles		15 Dec 1994 a	Uzbekistan		23 Dec 2008 a
Slovakia	22 Sep 1998	22 Jun 1999	Venezuela (Bolivarian Republic of)	7 Jun 1990	22 Feb 1993
Slovenia	14 Sep 1993	10 Mar 1994			
South Africa.....		28 Aug 2002 a			
Spain ⁸	23 Feb 1990	11 Apr 1991			
Sweden.....	13 Feb 1990	11 May 1990			

Declarations and Reservations
(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession.)

AZERBAIJAN⁹

“It is provided for the application of the death penalty in time of war pursuant to a conviction of a person for a most serious crime of a military nature committed during wartime.”

BRAZIL

... with an express reservation to article 2.

CHILE

Reservation:

The State of Chile formulates the reservation authorised under article 2, paragraph 1, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and may in consequence apply the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

CYPRUS²

EL SALVADOR

The Government of the Republic of El Salvador accedes to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty with an express reservation permitted to States under article 2 of the Protocol, which consists on the application of the death penalty in accordance with article 27 of the Constitution of the Republic of El Salvador, which reads as follows: ‘The death penalty may be imposed only in the cases provided by the military laws during an international state of war’.

GREECE

Subject to article 2 for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

GUINEA-BISSAU

Hereby declare that the declaration the Government has made in accordance with Article 41 of the International Covenant on Civil and Political Rights to recognize the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations do not extend to the provisions of the Second Optional Protocol, as provided in Article 4 thereof.

Also, declare that the competence that the Government of Guinea-Bissau recognizes for the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction does not extend to the provisions of the Second Optional Protocol, in accordance with the option provided in Article 5 thereof.

MALTA⁴

REPUBLIC OF MOLDOVA

"Until the full re-establishment of the territorial integrity of the Republic of Moldova, the provisions of the Convention shall be applied only on the territory controlled effectively by the authorities of the Republic of Moldova."
"

SPAIN⁸



Human Rights Council**Thirty-sixth session**

11–29 September 2017

Agenda item 3

Resolution adopted by the Human Rights Council on 29 September 2017**36/17. The question of the death penalty***The Human Rights Council,**Guided by the purposes and principles of the Charter of the United Nations,**Recalling* the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and all other relevant international human rights instruments, and reaffirming that all States must implement their obligations under international human rights law,*Recalling also* the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty,*Recalling further* General Assembly resolutions 62/149 of 18 December 2007, 63/168 of 18 December 2008, 65/206 of 21 December 2010, 67/176 of 20 December 2012, 69/186 of 18 December 2014 and 71/187 of 19 December 2016 on the question of a moratorium on the use of the death penalty,*Reaffirming* the safeguards guaranteeing the protection of persons facing the death penalty set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, and the provisions regarding the implementation of the guidelines contained in Council resolutions 1989/64 of 24 May 1989 and 1996/15 of 23 July 1996,*Recalling* all resolutions of the Commission on Human Rights on the question of the death penalty, the last of which was resolution 2005/59 of 20 April 2005,*Recalling also* Human Rights Council decision 18/117 of 28 September 2011 on reporting by the Secretary-General on the question of the death penalty, Council resolution 22/11 of 21 March 2013 on a panel on the human rights of children of parents sentenced to the death penalty or executed, Council decision 22/117 of 21 March 2013 on a high-level panel discussion on the question of the death penalty and Council resolutions 26/2 of 26 June 2014 and 30/5 of 1 October 2015 on the question of the death penalty,*Taking note* of the reports of the Secretary-General on the question of the death penalty, in the latest of which the Secretary-General examined the disproportionate impact of the use of the death penalty on poor or economically vulnerable individuals, foreign

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nationals, individuals exercising the rights to freedom of religion or belief and freedom of expression, and the discriminatory use of the death penalty against persons belonging to racial and ethnic minorities, its discriminatory use based on gender or sexual orientation, and its use against individuals with mental or intellectual disabilities,¹

Mindful of the work of special procedure mandate holders who have addressed human rights issues related to the death penalty, including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Working Group on the issue of discrimination against women in law and in practice,

Mindful also of the work undertaken by the treaty bodies to address human rights issues related to the death penalty,

Recalling general recommendation No. 35 on gender-based violence against women recently adopted by the Committee on the Elimination of Discrimination against Women, in which the Committee recommended that States parties to the Convention repeal all criminal provisions that affect women disproportionately, including those resulting in the discriminatory application of the death penalty to women,

Recalling also general recommendation No. 31 of the Committee on the Elimination of Racial Discrimination on the prevention of racial discrimination in the administration and functioning of the criminal justice system,

Recognizing the role of regional and subregional instruments and initiatives towards the abolition of the death penalty, which in some cases have led to the prohibition of the use of the death penalty,

Welcoming the fact that many States are applying a moratorium on the use of the death penalty,

Noting that States with different legal systems, traditions, cultures and religious backgrounds have abolished the death penalty or are applying a moratorium on its use,

Strongly deploring the fact that the use of the death penalty leads to violations of the human rights of the persons facing the death penalty and of other affected persons,

Acknowledging the report of the United Nations High Commissioner for Human Rights on the high-level panel discussion on the question of the death penalty,² during which it was concluded that a significant number of States hold that the death penalty is a form of torture or other cruel, inhuman or degrading treatment or punishment,

Deploring the fact that, frequently, poor and economically vulnerable persons and foreign nationals are disproportionately subjected to the death penalty, that laws carrying the death penalty are used against persons exercising their rights to freedom of expression, thought, conscience, religion or peaceful assembly and association, and that persons belonging to religious or ethnic minorities are disproportionately represented among those sentenced to the death penalty,

Condemning in particular the use of the death penalty against persons with mental or intellectual disabilities, persons below 18 years of age at the time of the commission of the crime, and pregnant women,

¹ A/HRC/36/26.

² A/HRC/36/27.

Condemning the imposition of the death penalty as a sanction for specific forms of conduct, such as apostasy, blasphemy, adultery and consensual same-sex relations, and expressing serious concern that the application of the death penalty for adultery is disproportionately imposed on women,

Recalling that, particularly in capital cases, States are required to provide adequate assistance of counsel at every stage of proceedings, including during detention and arrest,

Emphasizing that access to consular assistance for foreign nationals, provided for in the Vienna Convention on Consular Relations, is an important aspect of the protection of those facing the death penalty abroad,

Emphasizing also that lack of transparency in the use of the death penalty has direct consequences for the human rights of the persons sentenced to death as well as for other affected persons,

Acknowledging the interest in studying the question of the death penalty, as well as in holding local, national, regional and international debates related thereto,

1. *Urges* all States to protect the rights of persons facing the death penalty and other affected persons by complying with their international obligations, including the rights to equality and non-discrimination;

2. *Calls upon* States that have not yet acceded to or ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty to consider doing so;

3. *Calls upon* States that have not yet abolished the death penalty to ensure that it is not applied on the basis of discriminatory laws or as a result of discriminatory or arbitrary application of the law;

4. *Calls upon* States to ensure that all accused persons, in particular poor and economically vulnerable persons, can exercise their rights related to equal access to justice, to ensure adequate, qualified and effective legal representation at every stage of civil and criminal proceedings in capital punishment cases through effective legal aid, and to ensure that those facing the death penalty can exercise their right to seek pardon or commutation of their death sentence;

5. *Urges* States that have not yet abolished the death penalty to ensure that the death penalty is not applied against persons with mental or intellectual disabilities and persons below 18 years of age at the time of the commission of the crime, as well as pregnant women;

6. *Also urges* States that have not yet abolished the death penalty to ensure that it is not imposed as a sanction for specific forms of conduct such as apostasy, blasphemy, adultery and consensual same-sex relations;

7. *Calls upon* States to comply with their obligations under article 36 of the Vienna Convention on Consular Relations, and to inform foreign nationals of their right to contact the relevant consular post;

8. *Also calls upon* States to undertake further studies to identify the underlying factors that contribute to the substantial racial and ethnic bias in the application of the death penalty, where they exist, with a view to developing effective strategies aimed at eliminating such discriminatory practices;

9. *Calls upon* States that have not yet abolished the death penalty to make available relevant information, disaggregated by gender, age, nationality and other applicable criteria, with regard to their use of the death penalty, inter alia, the charges, number of persons sentenced to death, the number of persons on death row, the number of

executions carried out and the number of death sentences reversed, commuted on appeal or in which amnesty or pardon has been granted, as well as information on any scheduled execution, which can contribute to possible informed and transparent national and international debates, including on the obligations of States with regard to the use of the death penalty;

10. *Requests* the Secretary-General to dedicate the 2019 supplement to his quinquennial report on capital punishment to the consequences arising at various stages of the imposition and application of the death penalty on the enjoyment of the human rights of persons facing the death penalty and other affected persons, paying specific attention to the impact of the resumption of the use of the death penalty on human rights, and to present it to the Human Rights Council at its forty-second session;

11. *Decides* that the upcoming biennial high-level panel discussion to be held at the fortieth session of the Human Rights Council will address the human rights violations related to the use of the death penalty, in particular with respect to the rights to non-discrimination and equality;

12. *Requests* the Office of the United Nations High Commissioner for Human Rights to organize the high-level panel discussion and to liaise with States, relevant United Nations bodies, agencies, treaty bodies, special procedures and regional human rights mechanisms, as well as with parliamentarians, civil society, including non-governmental organizations, and national human rights institutions with a view to ensuring their participation in the panel discussion;

13. *Also requests* the Office of the High Commissioner to prepare a summary report on the panel discussion and to submit it to the Human Rights Council at its forty-second session;

14. *Decides* to continue its consideration of this issue in accordance with its programme of work.

*40th meeting
29 September 2017*

[Adopted by a recorded vote of 27 to 13, with 7 abstentions. The voting was as follows:

In favour:

Albania, Belgium, Bolivia (Plurinational State of), Brazil, Congo, Côte d'Ivoire, Croatia, Ecuador, El Salvador, Georgia, Germany, Ghana, Hungary, Kyrgyzstan, Latvia, Mongolia, Netherlands, Panama, Paraguay, Portugal, Rwanda, Slovenia, South Africa, Switzerland, Togo, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of)

Against:

Bangladesh, Botswana, Burundi, China, Egypt, Ethiopia, India, Iraq, Japan, Qatar, Saudi Arabia, United Arab Emirates, United States of America

Abstaining:

Cuba, Indonesia, Kenya, Nigeria, Philippines, Republic of Korea, Tunisia]



General Assembly

Distr.: General
26 February 2008

Sixty-second session
Agenda item 70 (b)

Resolution adopted by the General Assembly on 18 December 2007

[on the report of the Third Committee (A/62/439/Add.2)]

62/149. Moratorium on the use of the death penalty

The General Assembly,

Guided by the purposes and principles contained in the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights,¹ the International Covenant on Civil and Political Rights² and the Convention on the Rights of the Child,³

Recalling also the resolutions on the question of the death penalty adopted over the past decade by the Commission on Human Rights in all consecutive sessions, the last being resolution 2005/59 of 20 April 2005,⁴ in which the Commission called upon States that still maintain the death penalty to abolish it completely and, in the meantime, to establish a moratorium on executions,

Recalling further the important results accomplished by the former Commission on Human Rights on the question of the death penalty, and envisaging that the Human Rights Council could continue to work on this issue,

Considering that the use of the death penalty undermines human dignity, and convinced that a moratorium on the use of the death penalty contributes to the enhancement and progressive development of human rights, that there is no conclusive evidence of the deterrent value of the death penalty and that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable,

Welcoming the decisions taken by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty,

¹ Resolution 217 A (III).

² See resolution 2200 A (XXI), annex.

³ United Nations, *Treaty Series*, vol. 1577, No. 27531.

⁴ See *Official Records of the Economic and Social Council, 2005, Supplement No. 3* and corrigenda (E/2005/23 and Corr.1 and 2), chap. II, sect. A.

1. *Expresses its deep concern* about the continued application of the death penalty;
2. *Calls upon* all States that still maintain the death penalty:
 - (a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984;
 - (b) To provide the Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty;
 - (c) To progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed;
 - (d) To establish a moratorium on executions with a view to abolishing the death penalty;
3. *Calls upon* States which have abolished the death penalty not to reintroduce it;
4. *Requests* the Secretary-General to report to the General Assembly at its sixty-third session on the implementation of the present resolution;
5. *Decides* to continue consideration of the matter at its sixty-third session under the item entitled "Promotion and protection of human rights".

*76th plenary meeting
18 December 2007*



General Assembly

Sixty-second session

76th plenary meeting

Tuesday, 18 December 2007, 10 a.m.

New York

Official Records

President: Mr. Kerim (The former Yugoslav Republic of Macedonia)

The meeting was called to order at 10.30 a.m.

Reports of the Third Committee

The President: The General Assembly will consider the reports of the Third Committee on agenda items 42, 62, 63, 65 to 69, 70 and its sub-items (a) to (f), 106, 107, 121 and 129.

I request the Rapporteur of the Third Committee, Ms. Tebatso Future Baleseng of Botswana, to introduce in one intervention the reports of the Third Committee.

Ms. Baleseng (Botswana), Rapporteur of the Third Committee: I have the honour to present for consideration the following reports of the Third Committee on the agenda items allocated to it by the General Assembly.

Under agenda item 42, entitled “Report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees and displaced persons and humanitarian questions”, the Third Committee recommends, in paragraph 17 of document A/62/431, the adoption of three draft resolutions.

Under agenda item 62, entitled “Social development”, the Third Committee recommends, in paragraph 47 of document A/62/432, the adoption of six draft resolutions and, in paragraph 48, the adoption of one draft decision.

Under agenda item 63, entitled “Advancement of women”, the Third Committee recommends, in paragraph 43 of Part II of document A/62/433, the

adoption of seven draft resolutions and, in paragraph 44, the adoption of one draft decision.

Under agenda item 65, entitled “Report of the Human Rights Council”, the Third Committee recommends, in paragraph 16 of document A/62/434, the adoption of one draft resolution and, in paragraph 17, the adoption of one draft decision.

Under agenda item 66, entitled “Promotion and protection of the rights of children”, the Third Committee recommends, in paragraph 32 of document A/62/435, the adoption of four draft resolutions and, in paragraph 33, the adoption of one draft decision.

Under agenda item 67, entitled “Indigenous issues”, the Third Committee recommends, in paragraph 7 of document A/62/436, the adoption of one draft decision.

Under agenda item 68, entitled “Elimination of racism and racial discrimination”, the Third Committee recommends, in paragraph 26 of document A/62/437, the adoption of three draft resolutions and, in paragraph 27, the adoption of one draft decision.

Under agenda item 69, entitled “Right of peoples to self-determination”, the Third Committee recommends, in paragraph 23 of document A/62/438, the adoption of three draft resolutions.

Under agenda item 70, entitled “Promotion and protection of human rights”, the Third Committee recommends, in paragraph 5 of document A/62/439, the adoption of one draft decision.

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A. Corrections will be issued after the end of the session in a consolidated corrigendum.

07-64864 (E)



States on this matter of great importance and sensitivity in many of our societies. The purpose of this draft resolution is not to interfere in or impose our views on others. Our intention is to promote and to strengthen the growing trend towards the elimination of the death penalty.

As in the Third Committee, the sponsors of this draft resolution urge other States to support it by voting in favour.

Mr. Akindele (Nigeria): I would like to explain Nigeria's vote before the vote on draft resolution I, on the moratorium on the use of the death penalty, contained in document A/62/439/Add.2. The Nigerian Government upholds the rule of law, including the protection of human rights and fundamental freedoms, as well as their enjoyment by our citizens. Indeed, the thrust of my statement was made by the representative of Nigeria on 15 November when this matter was dealt with in the Third Committee.

The death penalty is retained on our statute books in order to serve the purpose of our internal security and as a deterrent to criminals who would not balk at threatening and taking the lives of innocent people, including civilians. My delegation cannot accept the inference in the draft resolution that the death penalty is undermining human dignity and that imposes an obligation on the States that maintain the death penalty to restrict its use. We do not accept that a moratorium will serve our purpose in the security in our country.

Let there be no doubt that capital punishment is meted out only in very serious criminal cases, where human lives have been taken or where the security of the State has been gravely endangered. Punishment is administered only after exhaustive legal and judicial processes, including recourse to the supreme court of the land.

Although it is on record that Nigeria has not administered capital punishment in recent years, the Nigerian delegation believes that a moratorium on the death penalty should not be imposed by a group of States, irrespective of their views or values on a subject that falls strictly under the exclusive domestic jurisdiction of States. In order to command acceptability and respect, any moratorium should be a matter of serious negotiation and agreement in terms of criminal law at the international level rather than as an issue of human rights.

Indeed, this draft resolution falls far short of that. Therefore, in view of its limited and limiting nature, including its subjectivity and inflexibility, as well as its attempt to interfere in matters that should fall within the domestic jurisdiction of States and in consonance with the laws of Nigeria and its constitution, Nigeria will vote against the draft resolution on the death penalty.

The President: We will now take a decision on draft resolutions I to IX and XI to XIX, and on the draft decisions, one by one. After all the decisions have been taken, representatives will again have the opportunity to explain their vote.

We first turn to draft resolution I entitled "Moratorium on the use of the death penalty". A recorded vote has been requested.

A recorded vote was taken.

In favour:

Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Canada, Cape Verde, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Moldova, Monaco, Montenegro, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, Samoa, San Marino, Sao Tome and Principe, Serbia, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Timor-Leste, Turkey, Turkmenistan, Tuvalu, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of).

Against:

Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belize,

Botswana, Brunei Darussalam, Chad, China, Comoros, Democratic People's Republic of Korea, Dominica, Egypt, Ethiopia, Grenada, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Jordan, Kuwait, Libyan Arab Jamahiriya, Malaysia, Maldives, Mauritania, Mongolia, Myanmar, Nigeria, Oman, Pakistan, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Solomon Islands, Somalia, Sudan, Suriname, Syrian Arab Republic, Thailand, Tonga, Trinidad and Tobago, Uganda, United States of America, Yemen, Zimbabwe.

Abstaining:

Belarus, Bhutan, Cameroon, Central African Republic, Cuba, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Fiji, Gambia, Ghana, Guinea, Kenya, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Malawi, Morocco, Niger, Republic of Korea, Sierra Leone, Swaziland, Togo, United Arab Emirates, United Republic of Tanzania, Viet Nam, Zambia.

Draft resolution I was adopted by 104 votes to 54, with 29 abstentions (resolution 62/149).

The President: Draft resolution II is entitled "Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization".

A separate vote has been requested on the fifth preambular paragraph of draft resolution II. Is there any objection to that request? There is none. A recorded vote has been requested.

A recorded vote was taken.

In favour:

Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Belize, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic,

Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Malawi, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of), Yemen, Zambia.

Against:

None.

Abstaining:

Belarus, Brunei Darussalam, Cuba, Egypt, Iran (Islamic Republic of), Malaysia, Myanmar, Singapore, South Africa, Sudan, Swaziland, Syrian Arab Republic, Viet Nam.

The fifth preambular paragraph of draft resolution II was retained by 168 votes to none, with 13 abstentions.



General Assembly

Distr.: General
13 February 2009

Sixty-third session
Agenda item 64 (b)

Resolution adopted by the General Assembly on 18 December 2008

[on the report of the Third Committee (A/63/430/Add.2)]

63/168. Moratorium on the use of the death penalty

The General Assembly,

Reaffirming its resolution 62/149 of 18 December 2007 on a moratorium on the use of the death penalty,

Welcoming the decisions taken by an increasing number of States to apply a moratorium on executions and the global trend towards the abolition of the death penalty,

1. *Welcomes* the report of the Secretary-General on the implementation of resolution 62/149,¹ and the conclusions and recommendations contained therein;

2. *Requests* the Secretary-General to provide a report on progress made in the implementation of resolution 62/149 and the present resolution, for consideration during its sixty-fifth session, and calls upon Member States to provide the Secretary-General with information in this regard;

3. *Decides* to continue consideration of the matter at its sixty-fifth session under the item entitled "Promotion and protection of human rights".

*70th plenary meeting
18 December 2008*

¹ A/63/293 and Corr.1.



General Assembly

Sixty-third session

70th plenary meeting

Thursday, 18 December 2008, 10 a.m.

New York

Official Records

President: Mr. D'Escoto Brockmann (Nicaragua)

In the absence of the President, Mr. Tanin (Afghanistan), Vice-President, took the Chair.

The meeting was called to order at 10.30 a.m.

Agenda item 104

Elections to fill vacancies in subsidiary organs and other elections

(b) Election of seven members of the Organizational Committee of the Peacebuilding Commission

Draft resolution A/63/L.58

The Acting President: The Assembly will now take a decision on draft resolution A/63/L.58, entitled "Election by the General Assembly of seven members of the Organizational Committee of the Peacebuilding Commission: term of office". May I take it that the Assembly wishes to adopt draft resolution A/63/L.58?

The draft resolution was adopted (resolution 63/145).

The Acting President: I now give the floor to the representative of Japan to make a statement on the resolution just adopted.

Mr. Takasu (Japan): First of all, I should like to welcome the adoption of resolution 63/145. I should like to express my sincere appreciation to all those delegations that participated in the consultations on the resolution for their support and understanding. I thank in particular those delegations which expressed and

demonstrated maximum flexibility to reach an agreement on the allocation of a seat for members of the Peacebuilding Commission. This arrangement will enable the Peacebuilding Commission to continue its effective work.

I would like to take this opportunity to record the two understandings. The first understanding is that this arrangement is of a provisional nature, applicable for the next two years, 2009 and 2010. Any arrangement beyond 2011 will be reviewed in conjunction with the general review of the Peacebuilding Commission to take place in 2010. The other understanding is that the chairmanship of the country-specific configuration of the Peacebuilding Commission will be determined by the first meeting of the Organizational Committee of the Peacebuilding Commission next year. The provisional rules of procedure of the Peacebuilding Commission state that the Organizational Committee decides on the presiding officer of country-specific meetings. Therefore, the Organizational Committee is in a position to decide continuity of chairmanship. If it so decides, Belgium will continue to chair the Central African Republic configuration and Brazil that of Guinea-Bissau.

The Acting President: The Assembly has thus concluded this stage of its consideration of sub-item (b) of agenda item 104.

Reports of the Third Committee

The Acting President: The General Assembly will consider the reports of the Third Committee on

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It was so decided.

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

**Report of the Third Committee
(A/63/430/Add.2)**

The Acting President: The Assembly has before it 23 draft resolutions recommended by the Third Committee in paragraph 182 of its report.

Before proceeding further, I should like to inform members that action on draft resolution XXIII, entitled "Committee on the Rights of the Child", is postponed to a later date to allow time for the review of its programme budget implications by the Fifth Committee. The Assembly will take action on draft resolution XXIII as soon as the report of the Fifth Committee on its programme budget implications is available.

I shall first give the floor to the representative of the Syrian Arab Republic who wishes to speak in explanation of their vote.

Ms. Halabi (Syrian Arab Republic) (*spoke in Arabic*): My delegation would like to explain its vote on draft resolution I, entitled "Moratorium on the use of the death penalty".

It is self-evident that Member States of this Organization enjoy the right to equal sovereignty according to the Charter of the United Nations. The exercise of this sovereignty is based on mutual respect and non-interference in the internal affairs of States. My delegation is of the view that the draft resolution on the moratorium on the use of the death penalty is a clear intervention in the internal affairs and the political independence of States, in contravention of the Charter.

The draft resolution has nothing to do with the implementation or non-implementation of the death penalty but relates in the first place to the sovereignty of each State in choosing its political, juridical, social and cultural systems. Asking countries to stop the implementation of this penalty is specifically a request for States to change their juridical systems, which are the end result of the historical, cultural, religious and political peculiarities of each State.

The discussion on the need to implement this penalty affects the human dignity of the defendant and it completely ignores the human dignity of the victim or victims, and this disregards the rights that values and human ideals require be restored to them. In many countries, including mine, the implementation of the death penalty is determined by legislatures. The Government of the Syrian Arab Republic implements that penalty in accordance with legislative decisions, which are primarily based on protecting the rights of victims and on a number of judicial, social, religious and cultural factors.

This penalty is a legal penal action that pertains to criminal justice. It has nothing to do with human rights. Its abolition would sanctify human rights violations and would reward perpetrators of crimes, who may destroy not just one life but many. Safeguarding human rights first and foremost requires thinking of the rights of victims before thinking of the penalty itself.

We would like to remind the Assembly that in joining the Organization, countries are admitted on the basis of the equal sovereignty of all States, as well as the principle of non-interference in their domestic affairs. We hope that those principles will serve as guidelines when some countries impose their own systems on others. Were that not the case, the Charter and the entire world order would be violated.

My country will therefore vote against draft resolution I in document A/63/430/Add.2. We encourage other countries to do likewise out of respect for the Charter.

The Acting President: We will now take a decision on draft resolutions I to XXII, one by one. After all the decisions have been taken, representatives will again have the opportunity to explain their votes or positions.

We first turn to draft resolution I, entitled "Moratorium on the use of the death penalty". A recorded vote has been requested.

A recorded vote was taken.

In favour:

Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Canada, Cape Verde, Chile, Colombia, Congo,

Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Montenegro, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Rwanda, Samoa, San Marino, Sao Tome and Principe, Serbia, Slovakia, Slovenia, Somalia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Timor-Leste, Turkey, Turkmenistan, Tuvalu, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of)

Against:

Afghanistan, Antigua and Barbuda, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, China, Comoros, Democratic People's Republic of Korea, Dominica, Egypt, Grenada, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Kuwait, Libyan Arab Jamahiriya, Malaysia, Maldives, Mongolia, Myanmar, Nigeria, Pakistan, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Solomon Islands, Sudan, Swaziland, Syrian Arab Republic, Thailand, Tonga, Trinidad and Tobago, Uganda, United States of America, Yemen, Zimbabwe

Abstaining:

Bahrain, Belarus, Bhutan, Cameroon, Central African Republic, Cuba, Djibouti, Eritrea, Fiji, Gambia, Ghana, Guatemala, Guinea, Jordan, Kenya, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Malawi, Mauritania, Morocco, Niger, Oman, Papua New Guinea, Republic of Korea, Senegal, Sierra Leone, Suriname, Togo, United Arab Emirates, United Republic of Tanzania, Viet Nam, Zambia

Draft resolution I was adopted by 106 votes to 46, with 34 abstentions (resolution 63/168).

[Subsequently, the delegation of Guatemala advised the Secretariat that it had intended to vote in favour; the delegation of Ethiopia advised the Secretariat that it had intended to vote against;]

The Acting President: Draft resolution II is entitled "The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights". The Third Committee adopted the draft resolution without a vote. May I take it that the Assembly wishes to do the same?

Draft resolution II was adopted (resolution 63/169).

The Acting President: Draft resolution III is entitled "Regional arrangements for the promotion and protection of human rights". The Third Committee adopted it without a vote. May I take it that the Assembly wishes to do the same?

Draft resolution III was adopted (resolution 63/170).

The Acting President: Draft resolution IV is entitled "Combating defamation of religions". A recorded vote has been requested.

A recorded vote was taken.

In favour:

Afghanistan, Algeria, Angola, Antigua and Barbuda, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Bhutan, Bolivia, Brunei Darussalam, Cambodia, China, Comoros, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Djibouti, Dominica, Egypt, El Salvador, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Guinea, Guinea-Bissau, Guyana, Honduras, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Libyan Arab Jamahiriya, Malaysia, Maldives, Mali, Mauritania, Morocco, Mozambique, Myanmar, Namibia, Nicaragua, Niger, Nigeria, Oman, Pakistan, Philippines, Qatar, Russian Federation, Saint Vincent and the Grenadines, Sao Tome and Principe, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic,



General Assembly

Distr.: General
28 March 2011

Sixty-fifth session
Agenda item 68 (b)

Resolution adopted by the General Assembly on 21 December 2010

[on the report of the Third Committee (A/65/456/Add.2 (Part II))]

65/206. Moratorium on the use of the death penalty

The General Assembly,

Guided by the purposes and principles contained in the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights,¹ the International Covenant on Civil and Political Rights² and the Convention on the Rights of the Child,³

Reaffirming its resolutions 62/149 of 18 December 2007 and 63/168 of 18 December 2008 on the question of a moratorium on the use of the death penalty, in which the General Assembly called upon States that still maintain the death penalty to establish a moratorium on executions with a view to abolishing it,

Mindful that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable,

Convinced that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights, and considering that there is no conclusive evidence of the deterrent value of the death penalty,

Noting ongoing national debates and regional initiatives on the death penalty, as well as the readiness of an increasing number of Member States to make available information on the use of the death penalty,

Noting also the technical cooperation among Member States in relation to moratoriums on the death penalty,

1. *Welcomes* the report of the Secretary-General on the implementation of resolution 63/168⁴ and the recommendations contained therein;

¹ Resolution 217 A (III).

² See resolution 2200 A (XXI), annex.

³ United Nations, *Treaty Series*, vol. 1577, No. 27531.

⁴ A/65/280 and Corr.1.



2. *Also welcomes* the steps taken by some countries to reduce the number of offences for which the death penalty may be imposed and the decisions made by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty;

3. *Calls upon* all States:

(a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, as well as to provide the Secretary-General with information in this regard;

(b) To make available relevant information with regard to their use of the death penalty, which can contribute to possible informed and transparent national debates;

(c) To progressively restrict the use of the death penalty and to reduce the number of offences for which it may be imposed;

(d) To establish a moratorium on executions with a view to abolishing the death penalty;

4. *Calls upon* States which have abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard;

5. *Requests* the Secretary-General to report to the General Assembly at its sixty-seventh session on the implementation of the present resolution;

6. *Decides* to continue its consideration of the matter at its sixty-seventh session under the item entitled "Promotion and protection of human rights".

*71st plenary meeting
21 December 2010*



General Assembly

Sixty-fifth session

71st plenary meeting

Tuesday, 21 December 2010, 3 p.m.

New York

Official Records

President: Mr. Deiss (Switzerland)

The meeting was called to order at 3.05 p.m.

Reports of the Third Committee

The President (*spoke in French*): The General Assembly will now consider the reports of the Third Committee on agenda items 27, 28, 61, 63 to 68, 105, 106, 118 and 130.

I now request the Rapporteur of the Third Committee, Mr. Asif Garayev of Azerbaijan, to introduce the reports of the Third Committee in one intervention.

Mr. Garayev (Azerbaijan), Rapporteur of the Third Committee: It is a great honour and privilege for me to introduce to the General Assembly the reports of the Third Committee submitted under the agenda items allocated to it by the Assembly, namely, items 27, 28, 61, 63 to 68, 105, 106, 118 and 130.

The reports, contained in documents A/65/448 to A/65/460, include the texts of draft resolutions and decisions recommended to the General Assembly for adoption. For the convenience of delegations, the Secretariat has issued document A/C.3/65/INF/1, which contains a checklist of action taken on the draft proposals contained in the reports before the Assembly.

Under agenda item 27, entitled “Social development”, including its sub-items (a) to (d), the Third Committee recommends, in paragraph 27 of document A/65/448, the adoption of five draft resolutions and, in paragraph 28, the adoption of one draft decision.

Under agenda item 28, entitled “Advancement of women”, including its sub-items (a) and (b), the Third Committee recommends, in paragraph 38 of document A/65/449, the adoption of five draft resolutions and, in paragraph 39, the adoption of one draft decision.

Under agenda item 61, entitled “Report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees and displaced persons and humanitarian questions”, the Third Committee recommends, in paragraph 14 of document A/65/450, the adoption of three draft resolutions.

Under agenda item 63, entitled “Report of the Human Rights Council”, the Third Committee recommends, in paragraph 14 of document A/65/451, the adoption of two draft resolutions.

Under agenda item 64, entitled “Promotion and protection of the rights of children”, the Third Committee recommends, in paragraph 13 of document A/65/452, the adoption of a draft resolution and, in paragraph 14, the adoption of a draft decision.

Under agenda item 65, entitled “Indigenous issues”, including its sub-items (a) and (b), the Third Committee recommends, in paragraph 11 of document A/65/453, the adoption of one draft resolution.

Under agenda item 66, entitled “Elimination of racism, racial discrimination, xenophobia and related intolerance”, including its sub-items (a) and (b), the Third Committee recommends, in paragraph 27 of document A/65/454, the adoption of three draft resolutions and, in paragraph 28, the adoption of a

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10-70469 (E)



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against them, and to call for the prosecution of those responsible.

We must not turn away from this issue. Regardless of whether the concept of sexual orientation is well defined, whether we are in favour of the claims of people of a different sexual orientation or whether we approve of their sexual conduct, we must nonetheless address the urgent situation in which men and women — fellow human beings — continue to be the target of murder in many of our societies and are at even greater risk than the majority of the other groups listed.

This is, unfortunately, a reality, and recognizing it as such has nothing to do with granting specific rights. It is simply heeding the call for their fundamental rights — their right to life, like yours and mine — not to be violated. On the contrary, to refuse to recognize this reality for legal, ideological or cultural reasons would be to continue burying our heads in the sand and to fail to alert States to these very real and current executions, which devastate families.

Take my word for it — a human group does not need to be legally defined in order to be the victim of execution and massacre; those who target them have established their own definition. Rwanda learned this the hard way 16 years ago. That is why the delegation of Rwanda will vote in favour of the amendment and calls on other delegations to do the same.

Mr. Chipaziwa (Zimbabwe): It is our view that sexual orientation has no place in this draft resolution. What does the phrase mean? It is neither a human right nor a universal value. We will not have it foisted on us. We cannot accept this, especially if it entails accepting such practices such as bestiality, paedophilia or other practices which many societies would find abhorrent to their value systems. We reject this incipient attempt to legislate at the international level on matters that may be problematic domestically. Individual proclivities should remain exactly that. To take this stance is not to condone extrajudicial execution. My delegation aligns itself totally with the statement made by the representative of Benin on behalf of the African Group.

In our view, what adult people do in their private capacity by mutual consent does not need agreement or rejection by Governments, save where such practices are legally proscribed. It is this international legal adventurism that compels us to reject the draft amendment before us (A/65/L.53). We are not

recruiting anyone to our position, but it seems to us that this amendment should be rejected.

The President (*spoke in French*): We have heard the last speaker in explanation of vote before the voting on draft resolutions I to XIX and the amendment to draft resolution III (A/65/L.53).

We will now take a decision, one by one, on the 19 draft resolutions and the amendment to draft resolution III contained in document A/65/L.53. After all the decisions have been taken, representatives will again have the opportunity to explain their vote on any or all of the draft resolutions and on the amendment.

We turn first to draft resolution I, entitled “Moratorium on the use of the death penalty”. A recorded vote has been requested.

A recorded vote was taken.

In favour:

Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Bhutan, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Canada, Cape Verde, Chile, Colombia, Congo, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Gabon, Gambia, Georgia, Germany, Greece, Guatemala, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Maldives, Mali, Malta, Marshall Islands, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Montenegro, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Rwanda, Samoa, San Marino, Sao Tome and Principe, Serbia, Slovakia, Slovenia, Somalia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Turkey, Turkmenistan, Tuvalu, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of).

Against:

Afghanistan, Antigua and Barbuda, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, China, Democratic People's Republic of Korea, Egypt, Ethiopia, Grenada, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Kuwait, Libyan Arab Jamahiriya, Malaysia, Myanmar, Pakistan, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Sudan, Swaziland, Syrian Arab Republic, Tonga, Trinidad and Tobago, Uganda, United States of America, Yemen, Zimbabwe.

Abstaining:

Bahrain, Belarus, Cameroon, Central African Republic, Comoros, Cuba, Democratic Republic of the Congo, Djibouti, Dominica, Eritrea, Fiji, Ghana, Guinea, Jordan, Kenya, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Malawi, Mauritania, Morocco, Niger, Nigeria, Oman, Republic of Korea, Senegal, Sierra Leone, Solomon Islands, Suriname, Thailand, United Arab Emirates, United Republic of Tanzania, Viet Nam, Zambia.

Draft resolution I was adopted by 109 votes to 41, with 35 abstentions (resolution 65/206).

[Subsequently, the delegation of the Gambia advised the Secretariat that it had intended to abstain.]

The President (*spoke in French*): Draft resolution II is entitled "The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights". The Third Committee adopted draft resolution II. May I take it that the Assembly wishes to do the same?

Draft resolution II was adopted (resolution 65/207).

The President (*spoke in French*): Draft resolution III is entitled "Extrajudicial, summary or arbitrary executions". An amendment to the draft resolution is contained in document A/65/L.53. In accordance with rule 90 of the rules of procedure, the Assembly will first take a decision on the amendment contained in document A/65/L.53. A recorded vote has been requested.

A recorded vote was taken.

In favour:

Albania, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bahamas, Barbados, Belgium, Belize, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Fiji, Finland, France, Georgia, Germany, Greece, Grenada, Guatemala, Honduras, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Montenegro, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Samoa, San Marino, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, Tonga, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Vanuatu, Venezuela (Bolivarian Republic of).

Against:

Afghanistan, Algeria, Azerbaijan, Bahrain, Bangladesh, Benin, Botswana, Brunei Darussalam, Burkina Faso, Burundi, China, Comoros, Congo, Democratic People's Republic of Korea, Democratic Republic of the Congo, Djibouti, Egypt, Gambia, Ghana, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kazakhstan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malawi, Malaysia, Mauritania, Morocco, Namibia, Niger, Nigeria, Oman, Pakistan, Qatar, Russian Federation, Saint Lucia, Saudi Arabia, Senegal, Sierra Leone, Solomon Islands, Somalia, Sudan, Swaziland, Syrian Arab Republic, Tajikistan, Tunisia, Uganda, United Arab Emirates, United Republic of Tanzania, Yemen, Zambia, Zimbabwe.

Abstaining:

Belarus, Bhutan, Cambodia, Eritrea, Guinea, Guinea-Bissau, Guyana, Haiti, Jamaica, Kenya, Lao People's Democratic Republic, Lesotho, Liberia, Maldives, Mali, Mongolia, Mozambique, Philippines, Saint Vincent and the Grenadines,



General Assembly

Distr.: General
20 March 2013

Sixty-seventh session
Agenda item 69 (b)

Resolution adopted by the General Assembly on 20 December 2012

[on the report of the Third Committee (A/67/457/Add.2 and Corr.1)]

67/176. Moratorium on the use of the death penalty

The General Assembly,

Guided by the purposes and principles contained in the Charter of the United Nations,

Reaffirming the Universal Declaration of Human Rights,¹ the International Covenant on Civil and Political Rights² and the Convention on the Rights of the Child,³

Reaffirming its resolutions 62/149 of 18 December 2007, 63/168 of 18 December 2008 and 65/206 of 21 December 2010 on the question of a moratorium on the use of the death penalty, in which the General Assembly called upon States that still maintain the death penalty to establish a moratorium on executions with a view to abolishing it,

Welcoming Human Rights Council decision 18/117 of 28 September 2011,⁴

Mindful that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable,

Convinced that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights, and considering that there is no conclusive evidence of the deterrent value of the death penalty,

Noting ongoing local and national debates and regional initiatives on the death penalty, as well as the readiness of an increasing number of Member States to make available to the public information on the use of the death penalty,

Noting also the technical cooperation among Member States in relation to moratoriums on the death penalty,

¹ Resolution 217 A (III).

² See resolution 2200 A (XXI), annex.

³ United Nations, *Treaty Series*, vol. 1577, No. 27531.

⁴ See *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 53A* and corrigendum (A/66/53/Add.1 and Corr.1), chap. III.



1. *Expresses its deep concern* about the continued application of the death penalty;
2. *Welcomes* the report of the Secretary-General on the implementation of resolution 65/206⁵ and the recommendations contained therein;
3. *Also welcomes* the steps taken by some Member States to reduce the number of offences for which the death penalty may be imposed and the decisions made by an increasing number of States, at all levels of government, to apply a moratorium on executions, followed in many cases by the abolition of the death penalty;
4. *Calls upon* all States:
 - (a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, as well as to provide the Secretary-General with information in this regard;
 - (b) To make available relevant information with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty;
 - (c) To progressively restrict the use of the death penalty and not to impose capital punishment for offences committed by persons below 18 years of age and on pregnant women;
 - (d) To reduce the number of offences for which the death penalty may be imposed;
 - (e) To establish a moratorium on executions with a view to abolishing the death penalty;
5. *Calls upon* States which have abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard;
6. *Calls upon* States that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;⁶
7. *Requests* the Secretary-General to report to the General Assembly at its sixty-ninth session on the implementation of the present resolution;
8. *Decides* to continue consideration of the matter at its sixty-ninth session under the item entitled "Promotion and protection of human rights".

*60th plenary meeting
20 December 2012*

⁵ A/67/226.

⁶ United Nations, *Treaty Series*, vol. 1642, No. 14668.



General Assembly

Sixty-seventh session

60th plenary meeting
Thursday, 20 December 2012, 10 a.m.
New York

Official Records

President: Mr. Jeremić (Serbia)

The meeting was called to order at 10.20 a.m.

A/67/450, the adoption of five draft resolutions and, in paragraph 31, the adoption of two draft decisions.

Reports of the Third Committee

The President: The General Assembly will consider the reports of the Third Committee on agenda items 27, 28, 62, 64 to 69, 103, 104, 116 and 131. I request the Rapporteur of the Third Committee, Mr. Suljuk Mustansar Tarar of Pakistan, to introduce the reports of the Committee in one intervention.

Under agenda item 62, entitled “Report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees and displaced persons and humanitarian questions”, the Third Committee recommends, in paragraph 12 of document A/67/451, the adoption of two draft resolutions.

Mr. Tarar (Pakistan), Rapporteur of the Third Committee: It is a great honour and privilege for me to introduce to the General Assembly the reports of the Third Committee, submitted under the agenda items allocated to it by the General Assembly, namely, items 27, 28, 62, 64 to 69, 103, 104, 116 and 131.

Under agenda item 64, entitled “Report of the Human Rights Council”, the Third Committee recommends, in paragraph 9 of document A/67/452, the adoption of one draft resolution.

The reports, contained in documents A/67/449 to A/67/461, include the texts of draft resolutions and decisions recommended to the General Assembly for adoption. For the convenience of delegations, the Secretariat has issued document A/C.3/67/INF/1, which contains a checklist of action taken on the draft proposals contained in the reports before the Assembly.

Under agenda item 65, entitled “Promotion and protection of the rights of children”, including its sub-items (a) and (b), the Third Committee recommends, in paragraph 17 of document A/67/453, the adoption of one draft resolution and, in paragraph 18, the adoption of one draft decision.

Under agenda item 27, entitled “Social development”, including its sub-items (a), (b) and (c), the Third Committee recommends, in paragraph 32 of document A/67/449, the adoption of six draft resolutions.

Under agenda item 66, entitled “Rights of indigenous peoples”, including its sub-items (a) and (b), the Third Committee recommends, in paragraph 11 of document A/67/454, the adoption of one draft resolution and, in paragraph 12, the adoption of one draft decision.

Under agenda item 28, entitled “Advancement of women”, including its sub-items (a) and (b), the Third Committee recommends, in paragraph 30 of document

Under agenda item 67, entitled “Elimination of racism, racial discrimination, xenophobia and related intolerance”, including its sub-items (a) and (b), the Third Committee recommends, in paragraph 22 of document A/67/455, the adoption of three draft resolutions and, in paragraph 23, the adoption of one draft decision.

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12-65911 (E)



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Kingdom of Great Britain and Northern Ireland,
United States of America

Abstaining:

Armenia, Papua New Guinea, Samoa, Singapore,
South Sudan, Tonga

Draft resolution XII was adopted by 127 votes to 54, with 6 abstentions (resolution 67/173).

[Subsequently, the delegations of South Africa and Togo informed the Secretariat that they had intended to vote in favour.]

The Acting President: Draft resolution XIII is entitled “The right to food”. The Third Committee adopted it. May I take it that the Assembly wishes to do the same?

Draft resolution XIII was adopted (resolution 67/174).

The Acting President: We now turn to draft resolution XIV, entitled “Promotion of a democratic and equitable international order”. A recorded vote has been requested.

A recorded vote was taken.

In favour:

Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Bolivia (Plurinational State of), Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, China, Colombia, Comoros, Congo, Côte d’Ivoire, Cuba, Democratic People’s Republic of Korea, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People’s Democratic Republic, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Philippines, Qatar, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Seychelles, Sierra Leone,

Singapore, Solomon Islands, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Thailand, Timor-Leste, Tonga, Trinidad and Tobago, Tunisia, Turkmenistan, Tuvalu, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe

Against:

Albania, Andorra, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Monaco, Montenegro, Netherlands, New Zealand, Norway, Palau, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America

Abstaining:

Chile, Costa Rica, Mexico, Peru, Samoa, Togo

Draft resolution XIV was adopted by 126 votes to 53, with 6 abstentions (resolution 67/175).

[Subsequently, the delegations of South Africa and Togo informed the Secretariat that they had intended to vote in favour.]

The Acting President: We now turn to draft resolution XV, entitled “Moratorium on the use of the death penalty”.

A recorded vote was taken.

In favour:

Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bhutan, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Canada, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d’Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kyrgyzstan,

Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Mali, Malta, Marshall Islands, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Montenegro, Mozambique, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Rwanda, Samoa, San Marino, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Somalia, South Africa, South Sudan, Spain, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tunisia, Turkey, Turkmenistan, Tuvalu, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of)

Against:

Afghanistan, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, China, Democratic People's Republic of Korea, Dominica, Egypt, Ethiopia, Grenada, Guyana, India, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Kuwait, Libya, Malaysia, Myanmar, Oman, Pakistan, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Sudan, Swaziland, Syrian Arab Republic, Tonga, Trinidad and Tobago, Uganda, United States of America, Yemen, Zimbabwe

Abstaining:

Belarus, Cameroon, Comoros, Cuba, Democratic Republic of the Congo, Djibouti, Eritrea, Fiji, Guinea, Indonesia, Jordan, Kenya, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Malawi, Maldives, Mauritania, Morocco, Namibia, Niger, Nigeria, Papua New Guinea, Republic of Korea, Senegal, Solomon Islands, Sri Lanka, Suriname, Thailand, United Arab Emirates, United Republic of Tanzania, Viet Nam, Zambia

Draft resolution XV was adopted by 111 votes to 41, with 34 abstentions (resolution 67/176).

[Subsequently, the delegation of the Niger informed the Secretariat that it had intended to vote in favour.]

The Acting President: Draft resolution XVII is entitled "Missing Persons". The Third Committee adopted the draft resolution. May I take it that the Assembly wishes to do the same?

Draft resolution XVII was adopted (resolution 67/177).

The Acting President: Draft resolution XVIII is entitled "Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief". The Third Committee adopted the draft resolution. May I take it that the Assembly wishes to do the same?

Draft resolution XVIII was adopted (resolution 67/178).

The Acting President: Draft resolution XIX is entitled "Freedom of religion or belief". The Third Committee adopted the draft resolution. May I take it that the Assembly wishes to do the same?

Draft resolution XIX was adopted (resolution 67/179).

The Acting President: Draft resolution XX is entitled "International Convention for the Protection of All Persons from Enforced Disappearance". The Third Committee adopted the draft resolution. May I take it that the Assembly wishes to do likewise?

Draft resolution XX was adopted (resolution 67/180).

The Acting President: The General Assembly has thus concluded this stage of its consideration of sub-item (b) of agenda item 69.

(c) Human rights situations and reports of special rapporteurs and representatives

Report of the Third Committee (A/67/457/Add.3)

The Acting President: The Assembly has before it four draft resolutions recommended by the Third Committee in paragraph 29 of its report.

Before proceeding further, I should like to inform members that action on draft resolution I, entitled "Situation of human rights in Myanmar", is postponed to a later date to allow time for the review of its programme budget implications by the Fifth Committee. The Assembly will take action on draft resolution I as soon as the report of the Fifth Committee on its programme budget implications is available.

We will now consider draft resolutions II to IV.

I shall now give the floor to those representatives who wish to speak in explanation of vote before the voting.



General Assembly

Distr.: General
4 February 2015

Sixty-ninth session
Agenda item 68 (b)

Resolution adopted by the General Assembly on 18 December 2014

[on the report of the Third Committee (A/69/488/Add.2 and Corr.1)]

69/186. Moratorium on the use of the death penalty

The General Assembly,

Guided by the purposes and principles contained in the Charter of the United Nations,

Reaffirming the Universal Declaration of Human Rights,¹ the International Covenant on Civil and Political Rights² and the Convention on the Rights of the Child,³

Reaffirming also its resolutions 62/149 of 18 December 2007, 63/168 of 18 December 2008, 65/206 of 21 December 2010 and 67/176 of 20 December 2012 on the question of a moratorium on the use of the death penalty, in which the General Assembly called upon States that still maintain the death penalty to establish a moratorium on executions with a view to abolishing it,

Welcoming all relevant decisions and resolutions of the Human Rights Council,

Mindful that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable,

Convinced that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights, and considering that there is no conclusive evidence of the deterrent value of the death penalty,

Noting ongoing local and national debates and regional initiatives on the death penalty, as well as the readiness of an increasing number of Member States to make available to the public information on the use of the death penalty, and also, in this regard, the decision by the Human Rights Council in its resolution 26/2 of 26 June 2014⁴ to convene biennial high-level panel discussions in order to further exchange views on the question of the death penalty,

¹ Resolution 217 A (III).

² See resolution 2200 A (XXI), annex.

³ United Nations, *Treaty Series*, vol. 1577, No. 27531.

⁴ See *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 53 (A/69/53)*, chap. V, sect. A.



Recalling the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,⁵ and in this regard welcoming the increasing number of accessions to and ratifications of the Second Optional Protocol,

Noting the technical cooperation among Member States, as well as the role of relevant United Nations entities and human rights mechanisms, in supporting State efforts to establish moratoriums on the death penalty,

1. *Expresses its deep concern* about the continued application of the death penalty;

2. *Welcomes* the report of the Secretary-General on the implementation of resolution 67/176⁶ and the recommendations contained therein;

3. *Also welcomes* the steps taken by some States to reduce the number of offences for which the death penalty may be imposed, as well as steps taken to limit its application;

4. *Further welcomes* the decisions made by an increasing number of States, at all levels of government, to apply a moratorium on executions, followed in many cases by the abolition of the death penalty;

5. *Calls upon* all States:

(a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, as well as to provide the Secretary-General with information in this regard;

(b) To comply with their obligations under article 36 of the 1963 Vienna Convention on Consular Relations,⁷ particularly the right to receive information on consular assistance within the context of a legal procedure;

(c) To make available relevant information, disaggregated by applicable criteria, with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty;

(d) To progressively restrict the use of the death penalty and not to impose capital punishment for offences committed by persons below 18 years of age, on pregnant women or on persons with mental or intellectual disabilities;

(e) To reduce the number of offences for which the death penalty may be imposed;

(f) To establish a moratorium on executions with a view to abolishing the death penalty;

6. *Calls upon* States which have abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard;

⁵ United Nations, *Treaty Series*, vol. 1642, No. 14668.

⁶ A/69/288.

⁷ United Nations, *Treaty Series*, vol. 596, No. 8638.

7. *Calls upon* States that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;⁵

8. *Requests* the Secretary-General to report to the General Assembly at its seventy-first session on the implementation of the present resolution;

9. *Decides* to continue consideration of the matter at its seventy-first session under the item entitled “Promotion and protection of human rights”.

*73rd plenary meeting
18 December 2014*



General Assembly

Sixty-ninth session

Official Records

73rd plenary meeting
Thursday, 18 December 2014, 10 a.m.
New York

President: Mr. Kutesa (Uganda)

In the absence of the President, Mr. Mendonça e Moura (Portugal), Vice-President, took the Chair.

The meeting was called to order at 10.05 a.m.

Terrorist attack on school in Pakistan

The Acting President: Before proceeding to the items on our agenda, I should like, on behalf of the General Assembly, to express my sincere compassion and deepest sympathy to the Government and people of Pakistan following the horrific terrorist attack at a school in Peshawar.

On behalf of the President of the General Assembly, I wish to deliver the following statement:

“I condemn, in the strongest terms, the horrific terrorist act that took place at the school in Peshawar, Pakistan, on 16 December 2014, causing numerous deaths and injuries, the majority of which were among children. I also condemn other recent terror attacks around the world.

“I extend my deepest sympathy and condolences to the victims of that heinous act, their families and the people and Government of Pakistan. The United Nations General Assembly stands in solidarity with the people and Government of Pakistan in this difficult moment. I wish also to stress the importance of ensuring the right of every child to have access to education in a safe learning environment.

“Terrorism, in all its forms and manifestations, is unjustifiable, regardless of its motivation and wherever, whenever and by whomever it is committed. I call on the international community to redouble its efforts in the fight against the scourge of terrorism. The perpetrators of these acts should be brought to justice, and I call on Member States, in accordance with their obligations under international law, to cooperate and support the efforts of the Government of Pakistan in this regard.”

Reports of the Third Committee

The Acting President: The General Assembly will consider the reports of the Third Committee on agenda items 26, 27, 61, 63 to 68, 105, 106, 118 and 133.

I request the Rapporteur of the Third Committee, Mr. Ervin Nina of Albania, to introduce in one intervention the reports of the Committee.

Mr. Nina (Albania), Rapporteur of the Third Committee: It is a great honour and privilege for me to introduce to the General Assembly the reports of the Third Committee submitted under the agenda items allocated to it by the General Assembly, namely, items 26, 27, 61, 63 to 68, 105, 106, 118 and 133. The reports, contained in documents A/69/480 to A/69/942, include the texts of draft resolutions and decisions recommended to the General Assembly for adoption. For the convenience of delegations, the Secretariat has issued document A/C.3/69/INF/1, which contains

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14-70272 (E)



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Against:

None

Abstaining:

Afghanistan, Algeria, Angola, Bahrain, Bangladesh, Botswana, Brunei Darussalam, Burkina Faso, Cameroon, Chad, China, Comoros, Congo, Democratic People's Republic of Korea, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Ethiopia, Gabon, Gambia, Guinea, Guyana, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Mauritania, Morocco, Mozambique, Namibia, Niger, Nigeria, Oman, Pakistan, Qatar, Russian Federation, Saint Lucia, Saudi Arabia, Senegal, Sri Lanka, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Tonga, Tuvalu, Uganda, United Arab Emirates, United Republic of Tanzania, Uzbekistan, Yemen, Zambia, Zimbabwe

Draft resolution XVII was adopted by 122 votes to none, with 66 abstentions (resolution 69/182).

[Subsequently, the delegations of Grenada and the former Yugoslav Republic of Macedonia informed the Secretariat that they had intended to vote in favour.]

The Acting President: Draft resolution XVIII is entitled "Human rights and extreme poverty". The Third Committee adopted it. May I take it that the Assembly wishes to do the same?

Draft resolution XVIII was adopted (resolution 69/183).

The Acting President: Draft resolution XIX is entitled "Missing persons". The Third Committee adopted it. May I take it that the General Assembly wishes to do the same?

Draft resolution XIX was adopted (resolution 69/184).

The Acting President: Draft resolution XX is entitled "The safety of journalists and the issue of impunity". The Third Committee adopted it. May I take it that the Assembly wishes to do the same?

Draft resolution XX was adopted (resolution 69/185)

The Acting President: Draft resolution XXI is entitled "Moratorium on the use of the death penalty". A recorded vote has been requested.

A recorded vote was taken.

In favour:

Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bhutan, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cambodia, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Mali, Malta, Marshall Islands, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Montenegro, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Palau, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Rwanda, Samoa, San Marino, Sao Tome and Principe, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Somalia, South Africa, South Sudan, Spain, Suriname, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tunisia, Turkey, Turkmenistan, Tuvalu, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of)

Against:

Afghanistan, Antigua and Barbuda, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, China, Democratic People's Republic of Korea, Dominica, Egypt, Ethiopia, Grenada, Guyana, India, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Kuwait, Libya, Malaysia, Oman, Pakistan, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Sudan, Syrian Arab Republic, Trinidad and Tobago, Yemen, Zimbabwe

Abstaining:

Bahrain, Belarus, Cameroon, Comoros, Cuba, Democratic Republic of the Congo, Djibouti, Gambia, Ghana, Guinea, Indonesia, Jordan, Kenya, Lao People's Democratic Republic, Lebanon, Liberia, Malawi, Maldives, Mauritania, Morocco, Myanmar, Namibia, Nigeria, Republic of Korea, Senegal, Solomon Islands, Sri Lanka, Thailand, Tonga, Uganda, United Arab Emirates, United Republic of Tanzania, Viet Nam, Zambia

Draft resolution XXI was adopted by 117 votes to 37, with 34 abstentions (resolution 69/187).

[Subsequently, the delegation of the United States of America informed the Secretariat that it had intended to vote against.]

The Acting President: Draft resolution XXII is entitled "Migrant children and adolescents". The Third Committee adopted it. May I take it that the Assembly wishes to do the same?

Draft resolution XXII was adopted (resolution 69/187)

May I take it that it that it is the wish of the General Assembly to conclude its consideration of sub-item (b) of agenda item 68?

It was so decided.

(c) Human rights situations and reports of special rapporteurs and representatives

Report of the Third Committee (A/69/488/Add.3)

The Acting President: The Assembly has before it four draft resolutions recommended by the Third Committee in paragraph 36 of its report.

Before proceeding further, I should like to inform members that action on draft resolution III, entitled "Situation of human rights in Myanmar", is postponed to a later date to allow time for the review of its programme budget implications by the Fifth Committee. The Assembly will take action on draft resolution III as soon as the report of the Fifth Committee on its programme budget implications is available.

I shall now give the floor to representatives who wish to speak in explanation of vote or position on draft resolutions I, II or IV before we take action on the draft resolutions.

Mr. Al-Musharakh (United Arab Emirates) (*spoke in Arabic*): The United Arab Emirates is one of the principal authors of the draft resolution on the situation of human rights in Syria. We believe that we must put an end to the tragedy that the Syrian Arab people, our brothers, have endured for almost four years of the worst possible abuses and violations of human rights. There have been arbitrary killings and detentions. Civilians have been used as targets and thousands of people have been displaced, including women and children. The conflict in Syria has also produced many incidents of sexual violence and other major crimes against human rights, which have led to other crimes against humanity being perpetrated by the parties to the conflict in Syria, in clear and flagrant violation of international law and international humanitarian law. We therefore urge all Member States to vote in favour of the draft resolution.

Mr. Ja'afari (Syrian Arab Republic) (*spoke in Arabic*): My delegation wishes to speak in explanation of vote before the voting on draft resolution II, entitled "Situation of human rights in the Syrian Arab Republic".

The subject of the draft resolution is not, as a previous speaker just stated, human rights in the Syrian Arab Republic. What provokes indignation and irony is the fact that it is the Saudi and Qatari regimes that are introducing a draft resolution criticizing the human rights situation in Syria. It is a surprising paradox, for several reasons, but, since we have limited time, I will confine myself to citing two significant paradoxes.

First, hundreds of reports and communications have revealed the degree to which those regimes have fomented violence and introduced international terrorism into Syria and created obstacles to a political solution. Not content with arming and financing terrorist groups and giving them support through the media, they have established military training camps for terrorists in Saudi Arabia, Qatar, Jordan and Turkey. According to recent American reporting, including in the Washington Post of 18 November,

"the Saudi State and its religious establishment have for decades fuelled sectarian animosities across the region, [which] only further entrenches divisions and hostilities that have fuelled the rise of extremist Islamic groups and the regional sectarian war".

I could also quote dozens of reports from Western organizations, including one by the Foundation for



General Assembly

Distr.: General
2 February 2017

Seventy-first session
Agenda item 68 (b)

Resolution adopted by the General Assembly on 19 December 2016

[on the report of the Third Committee (A/71/484/Add.2)]

71/187. Moratorium on the use of the death penalty

The General Assembly,

Guided by the purposes and principles contained in the Charter of the United Nations,

Reaffirming the Universal Declaration of Human Rights,¹ the International Covenant on Civil and Political Rights² and the Convention on the Rights of the Child,³

Recalling the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,⁴ and in this regard welcoming the increasing number of accessions to and ratifications of the Second Optional Protocol,

Reaffirming its resolutions 62/149 of 18 December 2007, 63/168 of 18 December 2008, 65/206 of 21 December 2010, 67/176 of 20 December 2012 and 69/186 of 18 December 2014 on the question of a moratorium on the use of the death penalty, in which the General Assembly called upon States that still maintain the death penalty to establish a moratorium on executions with a view to abolishing it,

Welcoming all relevant decisions and resolutions of the Human Rights Council,

Mindful that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable,

Convinced that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights, and considering that there is no conclusive evidence of the deterrent value of the death penalty,

Noting ongoing local and national debates and regional initiatives on the death penalty, as well as the readiness of an increasing number of Member States to make

¹ Resolution 217 A (III).

² See resolution 2200 A (XXI), annex.

³ United Nations, *Treaty Series*, vol. 1577, No. 27531.

⁴ *Ibid.*, vol. 1642, No. 14668.



available to the public information on the use of the death penalty, and also, in this regard, the decision by the Human Rights Council in its resolution 26/2 of 26 June 2014⁵ to convene biennial high-level panel discussions in order to further exchange views on the question of the death penalty,

Recognizing the role of national human rights institutions in contributing to ongoing local and national debates and regional initiatives on the death penalty,

Welcoming the considerable movement towards the abolition of the death penalty globally and the fact that many States are applying a moratorium, including long-standing moratoriums, either in law or in practice, on the use of the death penalty,

Emphasizing the need to ensure that persons facing the death penalty are treated with humanity and with respect for their inherent dignity and in compliance with their rights under international human rights law,

Noting the technical cooperation among Member States, as well as the role of relevant United Nations entities and human rights mechanisms, in supporting State efforts to establish moratoriums on the death penalty,

Bearing in mind the work of special procedures mandate holders who have addressed human rights issues related to the death penalty within the framework of their respective mandates,

1. *Reaffirms* the sovereign right of all countries to develop their own legal systems, including determining appropriate legal penalties, in accordance with their international law obligations;

2. *Expresses its deep concern* about the continued application of the death penalty;

3. *Welcomes* the report of the Secretary-General on the implementation of resolution 69/186⁶ and the recommendations contained therein;

4. *Also welcomes* the steps taken by some States to reduce the number of offences for which the death penalty may be imposed, as well as steps taken to limit its application;

5. *Further welcomes* initiatives and political leadership encouraging national discussions and debates on the possibility of moving away from capital punishment through domestic decision-making;

6. *Welcomes* the decisions made by an increasing number of States from all regions, at all levels of government, to apply a moratorium on executions, followed in many cases by the abolition of the death penalty;

7. *Calls upon* all States:

(a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, as well as to provide the Secretary-General with information in this regard;

⁵ See *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 53 (A/69/53)*, chap. V, sect. A.

⁶ [A/71/332](#).

(b) To comply with their obligations under article 36 of the 1963 Vienna Convention on Consular Relations,⁷ particularly the right to receive information on consular assistance;

(c) To make available relevant information, disaggregated by sex, age and race, as applicable, and other applicable criteria, with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, the number of death sentences reversed or commuted on appeal and information on any scheduled execution, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty;

(d) To progressively restrict the use of the death penalty and not to impose capital punishment for offences committed by persons below 18 years of age, on pregnant women or on persons with mental or intellectual disabilities;

(e) To reduce the number of offences for which the death penalty may be imposed;

(f) To ensure that those facing the death penalty can exercise their right to apply for pardon or commutation of their death sentence by ensuring that clemency procedures are fair and transparent and that prompt information is provided at all stages of the process;

(g) To establish a moratorium on executions with a view to abolishing the death penalty;

8. *Calls upon* States which have abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard;

9. *Encourages* States which have a moratorium to maintain it and to share their experience in this regard;

10. *Calls upon* States that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;⁴

11. *Requests* the Secretary-General to report to the General Assembly at its seventy-third session on the implementation of the present resolution;

12. *Decides* to continue consideration of the matter at its seventy-third session under the item entitled "Promotion and protection of human rights".

*65th plenary meeting
19 December 2016*

⁷ United Nations, *Treaty Series*, vol. 596, No. 8638.



General Assembly

Seventy-first session

65th plenary meeting
Monday, 19 December 2016, 10 a.m.
New York

Official Records

President: Mr. Thomson (Fiji)

The meeting was called to order at 10.30 a.m.

paragraph 34 of document A/71/477, the adoption of four draft resolutions, and, in paragraph 35, the adoption of one draft decision.

Reports of the Third Committee

The President: The General Assembly will consider the reports of the Third Committee on agenda items 26, 27, 60, 63 to 68, 106, 107, 121 and 135.

I request the Rapporteur of the Third Committee, Ms. Cécile Mballa Eyenga of Cameroon, to introduce in one intervention the reports of the Committee.

Under agenda item 60, entitled “Report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees and displaced persons and humanitarian questions”, the Third Committee recommends, in paragraph 14 of document A/71/478, the adoption of three draft resolutions.

Ms. Mballa Eyenga (Cameroon), Rapporteur of the Third Committee (*spoke in French*): It is a great privilege for me to introduce to the General Assembly the reports of the Third Committee, submitted under agenda items allocated to it by the General Assembly, namely, items 26, 27, 60, 63, 64, 65, 66, 67, 68, 106, 107, 121 and 135.

Under agenda item 63, entitled “Report of the Human Rights Council”, the Third Committee recommends, in paragraph 17 of document A/71/479, the adoption of one draft resolution.

The reports, contained in documents A/71/476 to A/71/488, include the texts of draft resolutions and decisions recommended to the General Assembly for adoption. For the convenience of delegations, the Secretariat has issued document A/C.3/71/INF/1, which contains a checklist of actions taken on the draft proposals contained in the reports before the Assembly.

Under agenda item 64, entitled “Promotion and protection of the rights of children”, the Third Committee recommends, in paragraph 29 of document A/71/480, the adoption of three draft resolutions, and, in paragraph 30, the adoption of one draft decision.

Under agenda item 26, including sub-items (a) and (b), entitled “Social development”, the Third Committee recommends, in paragraph 27 of document A/71/476, the adoption of five draft resolutions, and, in paragraph 28, the adoption of one draft decision.

Under agenda item 65, entitled “Rights of indigenous peoples”, the Third Committee recommends, in paragraph 12 of document A/71/481, the adoption of one draft resolution, and, in paragraph 13, the adoption of one draft decision.

Under agenda item 27, entitled “Advancement of women”, the Third Committee recommends, in

Under agenda item 66, entitled “Elimination of racism, racial discrimination, xenophobia and related intolerance”, the Third Committee recommends, in paragraph 24 of document A/71/482, the adoption of three draft resolutions, and, in paragraph 25, the adoption of one draft decision.

This record contains the text of speeches delivered in English and of the translation of speeches delivered in other languages. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room U-0506 (verbatimrecords@un.org). Corrected records will be reissued electronically on the Official Document System of the United Nations (<http://documents.un.org>).

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(a) Implementation of human rights instruments**Report of the Third Committee (A/71/484/Add.1)**

The President: The Assembly has before it a draft resolution recommended by the Committee in paragraph 14 of its report. We shall now take a decision on the draft resolution, entitled “Human rights treaty body system”. I have been informed that the delegation that requested a vote on the draft resolution in the Committee is not requesting a vote in the plenary.

We shall now consider the draft resolution. May I take it that the Assembly wishes to adopt the draft resolution without a vote?

The draft resolution was adopted (resolution 71/185).

The President: May I take it that it is the wish of the General Assembly to conclude its consideration of sub-item (a) of agenda item 68?

It was so decided.

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**Report of the Third Committee (A/71/484/Add.2)**

The President: The Assembly has before it 16 draft resolutions recommended by the Third Committee in paragraph 137 of its report.

We shall now take decisions on draft resolutions I to XVI, one by one. After all the decisions have been taken, representatives will again have the opportunity to explain their vote.

We first turn to draft resolution I, entitled “Human rights and extreme poverty”. The Third Committee adopted it without a vote. May I take it that the Assembly wishes to do the same?

Draft resolution I was adopted (resolution 71/182).

The President: Draft resolution II is entitled “Moratorium on the use of the death penalty”. A recorded vote has been requested.

A recorded vote was taken.

In favour:

Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bhutan, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cambodia, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d’Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Eritrea, Estonia, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Marshall Islands, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Montenegro, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Peru, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Samoa, San Marino, Sao Tome and Principe, Serbia, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tunisia, Turkey, Turkmenistan, Tuvalu, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of)

Against:

Afghanistan, Antigua and Barbuda, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, Burundi, China, Democratic People’s Republic of Korea, Dominica, Egypt, Ethiopia, Grenada, Guyana, India, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Kuwait, Libya, Malaysia, Maldives, Oman, Pakistan, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, South Sudan, Sudan, Syrian Arab Republic, Trinidad and Tobago, United States of America, Yemen

Abstaining:

Bahrain, Belarus, Cameroon, Comoros, Cuba, Djibouti, Equatorial Guinea, Ghana, Indonesia, Jordan, Kenya, Lao People’s Democratic Republic, Lebanon, Lesotho, Liberia, Mauritania, Morocco, Myanmar, Niger, Nigeria, Philippines, Republic

of Korea, Seychelles, Thailand, Tonga, Uganda, United Arab Emirates, United Republic of Tanzania, Viet Nam, Zambia, Zimbabwe

Draft resolution I was adopted by 117 votes to 40, with 31 abstentions (resolution 71/187).

The President: Draft resolution III is entitled “Human rights in the administration of justice”. The Third Committee adopted it without a vote. May I take it that the Assembly wishes to do the same?

Draft resolution III was adopted (resolution 71/188).

The President: Draft resolution IV is entitled “Declaration on the Right to Peace”. A recorded vote has been requested.

A recorded vote was taken.

In favour:

Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Bolivia (Plurinational State of), Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d’Ivoire, Cuba, Democratic People’s Republic of Korea, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People’s Democratic Republic, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, South Sudan, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia,

Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe

Against:

Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Israel, Japan, Latvia, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, New Zealand, Republic of Korea, Romania, Slovakia, Slovenia, Spain, Sweden, the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland, United States of America

Abstaining:

Albania, Andorra, Armenia, Cyprus, Georgia, Greece, Iceland, Italy, Liechtenstein, Norway, Palau, Poland, Portugal, Republic of Moldova, San Marino, Serbia, Switzerland, Turkey, Ukraine

Draft resolution IV was adopted by 131 votes to 34, with 19 abstentions (resolution 71/189).

The President: Draft resolution V is entitled “Promotion of a democratic and equitable international order”. A recorded vote has been requested.

A recorded vote was taken.

In favour:

Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Bolivia (Plurinational State of), Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Central African Republic, Chad, China, Colombia, Comoros, Congo, Côte d’Ivoire, Cuba, Democratic People’s Republic of Korea, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Ghana, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kuwait, Lao People’s Democratic Republic, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mongolia, Morocco,

**Draft articles on
Responsibility of States for Internationally Wrongful Acts,
with commentaries
2001**

Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10). The report, which also contains commentaries on the draft articles, appears in the *Yearbook of the International Law Commission, 2001*, vol. II, Part Two, as corrected.



(3) The primary obligation breached may also play an important role with respect to the form and extent of reparation. In particular, in cases of restitution not involving the return of persons, property or territory of the injured State, the notion of reverting to the *status quo ante* has to be applied having regard to the respective rights and competences of the States concerned. This may be the case, for example, where what is involved is a procedural obligation conditioning the exercise of the substantive powers of a State. Restitution in such cases should not give the injured State more than it would have been entitled to if the obligation had been performed.⁴⁸⁷

(4) The provision of each of the forms of reparation described in article 34 is subject to the conditions laid down in the articles which follow it in chapter II. This limitation is indicated by the phrase “in accordance with the provisions of this chapter”. It may also be affected by any valid election that may be made by the injured State as between different forms of reparation. For example, in most circumstances the injured State is entitled to elect to receive compensation rather than restitution. This element of choice is reflected in article 43.

(5) Concerns have sometimes been expressed that the principle of full reparation may lead to disproportionate and even crippling requirements so far as the responsible State is concerned. The issue is whether the principle of proportionality should be articulated as an aspect of the obligation to make full reparation. In these articles, proportionality is addressed in the context of each form of reparation, taking into account its specific character. Thus, restitution is excluded if it would involve a burden out of all proportion to the benefit gained by the injured State or other party.⁴⁸⁸ Compensation is limited to damage actually suffered as a result of the internationally wrongful act, and excludes damage which is indirect or remote.⁴⁸⁹ Satisfaction must “not be out of proportion to the injury”.⁴⁹⁰ Thus, each of the forms of reparation takes such considerations into account.

(6) The forms of reparation dealt with in chapter II represent ways of giving effect to the underlying obligation of reparation set out in article 31. There are not, as it were, separate secondary obligations of restitution, compensation and satisfaction. Some flexibility is shown in practice in terms of the appropriateness of requiring one form of reparation rather than another, subject to the requirement of full reparation for the breach in accordance with article 31.⁴⁹¹ To the extent that one form of reparation is dispensed with or is unavailable in the circumstances, others,

especially compensation, will be correspondingly more important.

Article 35. Restitution

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(a) is not materially impossible;

(b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Commentary

(1) In accordance with article 34, restitution is the first of the forms of reparation available to a State injured by an internationally wrongful act. Restitution involves the re-establishment as far as possible of the situation which existed prior to the commission of the internationally wrongful act, to the extent that any changes that have occurred in that situation may be traced to that act. In its simplest form, this involves such conduct as the release of persons wrongly detained or the return of property wrongly seized. In other cases, restitution may be a more complex act.

(2) The concept of restitution is not uniformly defined. According to one definition, restitution consists in re-establishing the *status quo ante*, i.e. the situation that existed prior to the occurrence of the wrongful act. Under another definition, restitution is the establishment or re-establishment of the situation that would have existed if the wrongful act had not been committed. The former definition is the narrower one; it does not extend to the compensation which may be due to the injured party for loss suffered, for example for loss of the use of goods wrongfully detained but subsequently returned. The latter definition absorbs into the concept of restitution other elements of full reparation and tends to conflate restitution as a form of reparation and the underlying obligation of reparation itself. Article 35 adopts the narrower definition which has the advantage of focusing on the assessment of a factual situation and of not requiring a hypothetical inquiry into what the situation would have been if the wrongful act had not been committed. Restitution in this narrow sense may of course have to be completed by compensation in order to ensure full reparation for the damage caused, as article 36 makes clear.

(3) Nonetheless, because restitution most closely conforms to the general principle that the responsible State is bound to wipe out the legal and material consequences of its wrongful act by re-establishing the situation that would exist if that act had not been committed, it comes first among the forms of reparation. The primacy of restitution was confirmed by PCIJ in the *Factory at Chorzów*

⁴⁸⁷ Thus, in the judgment in the *LaGrand* case (see footnote 119 above), ICJ indicated that a breach of the notification requirement in article 36 of the Vienna Convention on Consular Relations, leading to a severe penalty or prolonged detention, would require reconsideration of the fairness of the conviction “by taking account of the violation of the rights set forth in the Convention” (p. 514, para. 125). This would be a form of restitution which took into account the limited character of the rights in issue.

⁴⁸⁸ See article 35 (b) and commentary.

⁴⁸⁹ See article 31 and commentary.

⁴⁹⁰ See article 37, paragraph 3, and commentary.

⁴⁹¹ For example, the *Mélanie Lachenal* case (UNRIAA, vol. XIII (Sales No. 64.V.3), p. 117, at pp. 130–131 (1954)), where compensation was accepted in lieu of restitution originally decided upon, the Franco-Italian Conciliation Commission having agreed that restitution

would require difficult internal procedures. See also paragraph (4) of the commentary to article 35.

case when it said that the responsible State was under “the obligation to restore the undertaking and, if this be not possible, to pay its value at the time of the indemnification, which value is designed to take the place of restitution which has become impossible”. The Court went on to add that “[t]he impossibility, on which the Parties are agreed, of restoring the Chorzów factory could therefore have no other effect but that of substituting payment of the value of the undertaking for restitution”.⁴⁹² It can be seen in operation in the cases where tribunals have considered compensation only after concluding that, for one reason or another, restitution could not be effected.⁴⁹³ Despite the difficulties restitution may encounter in practice, States have often insisted upon claiming it in preference to compensation. Indeed, in certain cases, especially those involving the application of peremptory norms, restitution may be required as an aspect of compliance with the primary obligation.

(4) On the other hand, there are often situations where restitution is not available or where its value to the injured State is so reduced that other forms of reparation take priority. Questions of election as between different forms of reparation are dealt with in the context of Part Three.⁴⁹⁴ But quite apart from valid election by the injured State or other entity, the possibility of restitution may be practically excluded, e.g. because the property in question has been destroyed or fundamentally changed in character or the situation cannot be restored to the *status quo ante* for some reason. Indeed, in some cases tribunals have inferred from the terms of the *compromis* or the positions of the parties what amounts to a discretion to award compensation rather than restitution. For example, in the *Walter Fletcher Smith* case, the arbitrator, while maintaining that restitution should be appropriate in principle, interpreted the *compromis* as giving him a discretion to award compensation and did so in “the best interests of the parties, and of the public”.⁴⁹⁵ In the *Aminoil* arbitration, the parties agreed that restoration of the *status quo ante* following the annulment of the concession by the Kuwaiti decree would be impracticable.⁴⁹⁶

(5) Restitution may take the form of material restoration or return of territory, persons or property, or the reversal of some juridical act, or some combination of them. Examples of material restitution include the release of detained individuals, the handing over to a State of an indi-

vidual arrested in its territory,⁴⁹⁷ the restitution of ships⁴⁹⁸ or other types of property,⁴⁹⁹ including documents, works of art, share certificates, etc.⁵⁰⁰ The term “juridical restitution” is sometimes used where restitution requires or involves the modification of a legal situation either within the legal system of the responsible State or in its legal relations with the injured State. Such cases include the revocation, annulment or amendment of a constitutional or legislative provision enacted in violation of a rule of international law,⁵⁰¹ the rescinding or reconsideration of an administrative or judicial measure unlawfully adopted in respect of the person or property of a foreigner⁵⁰² or a requirement that steps be taken (to the extent allowed by international law) for the termination of a treaty.⁵⁰³ In some cases, both material and juridical restitution may be involved.⁵⁰⁴ In others, an international court or tribunal can, by determining the legal position with binding force for the parties, award what amounts to restitution under another form.⁵⁰⁵ The term “restitution” in article 35 thus

⁴⁹⁷ Examples of material restitution involving persons include the “*Trent*” (1861) and “*Florida*” (1864) incidents, both involving the arrest of individuals on board ships (Moore, *Digest*, vol. VII, pp. 768 and 1090–1091), and the *United States Diplomatic and Consular Staff in Tehran* case in which ICJ ordered Iran to immediately release every detained United States national (see footnote 59 above), p. 44–45.

⁴⁹⁸ See, e.g., the “*Giaffarieh*” incident (1886) which originated in the capture in the Red Sea by an Egyptian warship of four merchant ships from Massawa under Italian registry, *Società Italiana per l’Organizzazione Internazionale–Consiglio Nazionale delle Ricerche, La prassi italiana di diritto internazionale*, 1st series (Dobbs Ferry, NY., Oceana, 1970), vol. II, pp. 901–902.

⁴⁹⁹ For example, *Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 6, at pp. 36–37, where ICJ decided in favour of a Cambodian claim which included restitution of certain objects removed from the area and the temple by Thai authorities. See also the *Hôtel Métropole* case, UNRIAA, vol. XIII (Sales No. 64.V.3), p. 219 (1950); the *Ottoz* case, *ibid.*, p. 240 (1950); and the *Hénon* case, *ibid.*, p. 248 (1951).

⁵⁰⁰ In the *Buzău-Nehoiși Railway* case, an arbitral tribunal provided for the restitution to a German company of shares in a Romanian railway company, UNRIAA, vol. III (Sales No. 1949.V.2), p. 1839 (1939).

⁵⁰¹ For cases where the existence of a law itself amounts to a breach of an international obligation, see paragraph (12) of the commentary to article 12.

⁵⁰² For example, the *Martini* case, UNRIAA, vol. II (Sales No. 1949.V.1), p. 975 (1930).

⁵⁰³ In the *Bryan-Chamorro Treaty* case (*Costa Rica v. Nicaragua*), the Central American Court of Justice decided that “the Government of Nicaragua, by availing itself of measures possible under the authority of international law, is under the obligation to re-establish and maintain the legal status that existed prior to the Bryan-Chamorro Treaty between the litigant republics in so far as relates to matters considered in this action” (*Anales de la Corte de Justicia Centroamericana* (San José, Costa Rica), vol. VI, Nos. 16–18 (December 1916–May 1917), p. 7); and AJIL, vol. 11, No. 3 (1917), p. 674, at p. 696; see also page 683.

⁵⁰⁴ Thus, PCIJ held that Czechoslovakia was “bound to restore to the Royal Hungarian Peter Pázmány University of Budapest the immovable property claimed by it, freed from any measure of transfer, compulsory administration, or sequestration, and in the condition in which it was before the application of the measures in question” (*Appeal from a judgment of the Hungaro-Czechoslovak Mixed Arbitral Tribunal* (see footnote 481 above)).

⁵⁰⁵ In the *Legal Status of Eastern Greenland* case, PCIJ decided that “the declaration of occupation promulgated by the Norwegian Government on July 10th, 1931, and any steps taken in this respect by that Government, constitute a violation of the existing legal situation and are accordingly unlawful and invalid” (*Judgment, 1933, P.C.I.J., Series A/B, No. 53*, p. 22, at p. 75). In the case of the *Free Zones of Upper Savoy and the District of Gex* (see footnote 79 above), the Court decided that France “must withdraw its customs line in accordance with

(Continued on next page.)

⁴⁹² *Factory at Chorzów, Merits* (see footnote 34 above), p. 48.

⁴⁹³ See, e.g., *British Claims in the Spanish Zone of Morocco* (footnote 44 above), pp. 621–625 and 651–742; *Religious Property Expropriated by Portugal*, UNRIAA, vol. I (Sales No. 1948.V.2), p. 7 (1920); *Walter Fletcher Smith, ibid.*, vol. II (Sales No. 1949.V.1), p. 913, at p. 918 (1929); and *Heirs of Lebas de Courmont, ibid.*, vol. XIII (Sales No. 64.V.3), p. 761, at p. 764 (1957).

⁴⁹⁴ See articles 43 and 45 and commentaries.

⁴⁹⁵ *Walter Fletcher Smith* (see footnote 493 above). In the *Greek Telephone Company* case, the arbitral tribunal, while ordering restitution, asserted that the responsible State could provide compensation instead for “important State reasons” (see J. G. Wetter and S. M. Schwebel, “Some little known cases on concessions”, *BYBIL*, 1964, vol. 40, p. 216, at p. 221).

⁴⁹⁶ *Government of Kuwait v. American Independent Oil Company (Aminoil)* ILR, vol. 66, p. 519, at p. 533 (1982).

has a broad meaning, encompassing any action that needs to be taken by the responsible State to restore the situation resulting from its internationally wrongful act.

(6) What may be required in terms of restitution will often depend on the content of the primary obligation which has been breached. Restitution, as the first of the forms of reparation, is of particular importance where the obligation breached is of a continuing character, and even more so where it arises under a peremptory norm of general international law. In the case, for example, of unlawful annexation of a State, the withdrawal of the occupying State's forces and the annulment of any decree of annexation may be seen as involving cessation rather than restitution.⁵⁰⁶ Even so, ancillary measures (the return of persons or property seized in the course of the invasion) will be required as an aspect either of cessation or restitution.

(7) The obligation to make restitution is not unlimited. In particular, under article 35 restitution is required "provided and to the extent that" it is neither materially impossible nor wholly disproportionate. The phrase "provided and to the extent that" makes it clear that restitution may be only partially excluded, in which case the responsible State will be obliged to make restitution to the extent that this is neither impossible nor disproportionate.

(8) Under article 35, *subparagraph* (a), restitution is not required if it is "materially impossible". This would apply where property to be restored has been permanently lost or destroyed, or has deteriorated to such an extent as to be valueless. On the other hand, restitution is not impossible merely on grounds of legal or practical difficulties, even though the responsible State may have to make special efforts to overcome these. Under article 32 the wrongdoing State may not invoke the provisions of its internal law as justification for the failure to provide full reparation, and the mere fact of political or administrative obstacles to restitution does not amount to impossibility.

(9) Material impossibility is not limited to cases where the object in question has been destroyed, but can cover more complex situations. In the *Forests of Central Rhodopia* case, the claimant was entitled to only a share in the forestry operations and no claims had been brought by the other participants. The forests were not in the same condition as at the time of their wrongful taking, and detailed inquiries would be necessary to determine their condition. Since the taking, third parties had acquired rights to them. For a combination of these reasons, restitution was denied.⁵⁰⁷ The case supports a broad understanding of the impossibility of granting restitution, but it concerned questions of property rights within the legal system of the responsible State.⁵⁰⁸ The position may be different where

the rights and obligations in issue arise directly on the international plane. In that context restitution plays a particularly important role.

(10) In certain cases, the position of third parties may have to be taken into account in considering whether restitution is materially possible. This was true in the *Forests of Central Rhodopia* case. But whether the position of a third party will preclude restitution will depend on the circumstances, including whether the third party at the time of entering into the transaction or assuming the disputed rights was acting in good faith and without notice of the claim to restitution.

(11) A second exception, dealt with in article 35, *subparagraph* (b), involves those cases where the benefit to be gained from restitution is wholly disproportionate to its cost to the responsible State. Specifically, restitution may not be required if it would "involve a burden out of all proportion to the benefit deriving from restitution instead of compensation". This applies only where there is a grave disproportionality between the burden which restitution would impose on the responsible State and the benefit which would be gained, either by the injured State or by any victim of the breach. It is thus based on considerations of equity and reasonableness,⁵⁰⁹ although with a preference for the position of the injured State in any case where the balancing process does not indicate a clear preference for compensation as compared with restitution. The balance will invariably favour the injured State in any case where the failure to provide restitution would jeopardize its political independence or economic stability.

Article 36. Compensation

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

Commentary

(1) Article 36 deals with compensation for damage caused by an internationally wrongful act, to the extent that such damage is not made good by restitution. The notion of "damage" is defined inclusively in article 31, paragraph 2, as any damage whether material or moral.⁵¹⁰ Article 36, paragraph 2, develops this definition by specifying that compensation shall cover any financially

(Footnote 505 continued.)

the provisions of the said treaties and instruments; and that this régime must continue in force so long as it has not been modified by agreement between the Parties" (p. 172). See also F. A. Mann, "The consequences of an international wrong in international and municipal law", *BYBIL*, 1976-1977, vol. 48, p. 1, at pp. 5-8.

⁵⁰⁶ See above, paragraph (8) of the commentary to article 30.

⁵⁰⁷ *Forests of Central Rhodopia* (see footnote 382 above), p. 1432.

⁵⁰⁸ For questions of restitution in the context of State contract arbitration, see *Texaco Overseas Petroleum Company and California Asiatic Oil Company v. The Government of the Libyan Arab Republic* (1977),

ILR, vol. 53, p. 389, at pp. 507-508, para. 109; *BP Exploration Company (Libya) Limited v. Government of the Libyan Arab Republic*, *ibid.*, p. 297, at p. 354 (1974); and *Libyan American Oil Company (LIAMCO) v. Government of the Libyan Arab Republic* *ibid.*, vol. 62, p. 141, at p. 200 (1977).

⁵⁰⁹ See, e.g., J. H. W. Verzijl, *International Law in Historical Perspective* (Leiden, Sijthoff, 1973), part VI, p. 744, and the position taken by the Deutsche Gesellschaft für Völkerrecht (German International Law Association) in *Yearbook ... 1969*, vol. II, p. 149.

⁵¹⁰ See paragraphs (5) to (6) and (8) of the commentary to article 31.

assessable damage including loss of profits so far as this is established in the given case. The qualification “financially assessable” is intended to exclude compensation for what is sometimes referred to as “moral damage” to a State, i.e. the affront or injury caused by a violation of rights not associated with actual damage to property or persons: this is the subject matter of satisfaction, dealt with in article 37.

(2) Of the various forms of reparation, compensation is perhaps the most commonly sought in international practice. In the *Gabčíkovo-Nagymaros Project* case, ICJ declared: “It is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it.”⁵¹¹ It is equally well established that an international court or tribunal which has jurisdiction with respect to a claim of State responsibility has, as an aspect of that jurisdiction, the power to award compensation for damage suffered.⁵¹²

(3) The relationship with restitution is clarified by the final phrase of article 36, paragraph 1 (“insofar as such damage is not made good by restitution”). Restitution, despite its primacy as a matter of legal principle, is frequently unavailable or inadequate. It may be partially or entirely ruled out either on the basis of the exceptions expressed in article 35, or because the injured State prefers compensation or for other reasons. Even where restitution is made, it may be insufficient to ensure full reparation. The role of compensation is to fill in any gaps so as to ensure full reparation for damage suffered.⁵¹³ As the Umpire said in the “*Lusitania*” case:

The fundamental concept of “damages” is ... reparation for a loss suffered; a judicially ascertained *compensation* for wrong. The remedy should be commensurate with the loss, so that the injured party may be made whole.⁵¹⁴

Likewise, the role of compensation was articulated by PCIJ in the following terms:

Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.⁵¹⁵

⁵¹¹ *Gabčíkovo-Nagymaros Project* (see footnote 27 above), p. 81, para. 152. See also the statement by PCIJ in *Factory at Chorzów, Merits* (footnote 34 above), declaring that “[i]t is a principle of international law that the reparation of a wrong may consist in an indemnity” (p. 27).

⁵¹² *Factory at Chorzów, Jurisdiction* (see footnote 34 above); *Fisheries Jurisdiction* (see footnote 432 above), pp. 203–205, paras. 71–76; *Military and Paramilitary Activities in and against Nicaragua* (see footnote 36 above), p. 142.

⁵¹³ *Factory at Chorzów, Merits* (see footnote 34 above), pp. 47–48.

⁵¹⁴ UNRIAA, vol. VII (Sales No. 1956.V.5), p. 32, at p. 39 (1923).

⁵¹⁵ *Factory at Chorzów, Merits* (see footnote 34 above), p. 47, cited and applied, *inter alia*, by ITLOS in the case of the *M/V “Saiga” (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment, ITLOS Reports 1999*, p. 65, para. 170 (1999). See also *Papamichalopoulos and Others v. Greece (article 50), Eur. Court H.R., Series A, No. 330-B*, para. 36 (1995); *Velásquez Rodríguez* (footnote 63 above), pp. 26–27 and 30–31; and *Tippetts, Abbott, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran, Iran-U.S. C.T.R.*, vol. 6, p. 219, at p. 225 (1984).

Entitlement to compensation for such losses is supported by extensive case law, State practice and the writings of jurists.

(4) As compared with satisfaction, the function of compensation is to address the actual losses incurred as a result of the internationally wrongful act. In other words, the function of article 36 is purely compensatory, as its title indicates. Compensation corresponds to the financially assessable damage suffered by the injured State or its nationals. It is not concerned to punish the responsible State, nor does compensation have an expressive or exemplary character.⁵¹⁶ Thus, compensation generally consists of a monetary payment, though it may sometimes take the form, as agreed, of other forms of value. It is true that monetary payments may be called for by way of satisfaction under article 37, but they perform a function distinct from that of compensation. Monetary compensation is intended to offset, as far as may be, the damage suffered by the injured State as a result of the breach. Satisfaction is concerned with non-material injury, specifically non-material injury to the State, on which a monetary value can be put only in a highly approximate and notional way.⁵¹⁷

(5) Consistently with other provisions of Part Two, article 36 is expressed as an obligation of the responsible State to provide reparation for the consequences flowing from the commission of an internationally wrongful act.⁵¹⁸ The scope of this obligation is delimited by the phrase “any financially assessable damage”, that is, any damage which is capable of being evaluated in financial terms. Financially assessable damage encompasses both damage suffered by the State itself (to its property or personnel or in respect of expenditures reasonably incurred to remedy or mitigate damage flowing from an internationally wrongful act) as well as damage suffered by nationals, whether persons or companies, on whose behalf the State is claiming within the framework of diplomatic protection.

(6) In addition to ICJ, international tribunals dealing with issues of compensation include the International Tribunal for the Law of the Sea,⁵¹⁹ the Iran-United States Claims Tribunal,⁵²⁰ human rights courts and other

⁵¹⁶ In the *Velásquez Rodríguez*, *Compensatory Damages* case, the Inter-American Court of Human Rights held that international law did not recognize the concept of punitive or exemplary damages (Series C, No. 7 (1989)). See also *Letelier and Moffitt*, ILR, vol. 88, p. 727 (1992), concerning the assassination in Washington, D.C., by Chilean agents of a former Chilean minister; the *compromis* excluded any award of punitive damages, despite their availability under United States law. On punitive damages, see also N. Jørgensen, “A reappraisal of punitive damages in international law”, *BYBIL*, 1997, vol. 68, pp. 247–266; and S. Wittich, “Awe of the gods and fear of the priests: punitive damages in the law of State responsibility”, *Austrian Review of International and European Law*, vol. 3, No. 1 (1998), p. 101.

⁵¹⁷ See paragraph (3) of the commentary to article 37.

⁵¹⁸ For the requirement of a sufficient causal link between the internationally wrongful act and the damage, see paragraphs (11) to (13) of the commentary to article 31.

⁵¹⁹ For example, the *M/V “Saiga”* case (see footnote 515 above), paras. 170–177.

⁵²⁰ The Iran-United States Claims Tribunal has developed a substantial jurisprudence on questions of assessment of damage and the valuation of expropriated property. For reviews of the tribunal’s juris-

bodies,⁵²¹ and ICSID tribunals under the Convention on the Settlement of Investment Disputes between States and Nationals of other States.⁵²² Other compensation claims have been settled by agreement, normally on a without prejudice basis, with the payment of substantial compensation a term of the agreement.⁵²³ The rules and principles developed by these bodies in assessing compensation can be seen as manifestations of the general principle stated in article 36.

(7) As to the appropriate heads of compensable damage and the principles of assessment to be applied in quantification, these will vary, depending upon the content of particular primary obligations, an evaluation of the respective behaviour of the parties and, more generally, a concern to reach an equitable and acceptable outcome.⁵²⁴ The following examples illustrate the types of damage that may be compensable and the methods of quantification that may be employed.

(8) Damage to the State as such might arise out of the shooting down of its aircraft or the sinking of its ships, attacks on its diplomatic premises and personnel, damage caused to other public property, the costs incurred in responding to pollution damage, or incidental damage arising, for example, out of the need to pay pensions and medical expenses for officials injured as the result of a wrongful act. Such a list cannot be comprehensive and the categories of compensable injuries suffered by States are not closed.

(9) In the *Corfu Channel* case, the United Kingdom sought compensation in respect of three heads of damage: replacement of the destroyer *Saumarez*, which be-

(Footnote 520 continued.)

prudence on these subjects, see, *inter alia*, Aldrich, *op. cit.* (footnote 357 above), chaps. 5–6 and 12; C. N. Brower and J. D. Brueschke, *The Iran-United States Claims Tribunal* (The Hague, Martinus Nijhoff, 1998), chaps. 14–18; M. Pellonpää, “Compensable claims before the Tribunal: expropriation claims”, *The Iran-United States Claims Tribunal: Its Contribution to the Law of State Responsibility*, R. B. Lillich and D. B. McGraw, eds. (Irvington-on-Hudson, Transnational, 1998), pp. 185–266; and D. P. Stewart, “Compensation and valuation issues”, *ibid.*, pp. 325–385.

⁵²¹ For a review of the practice of such bodies in awarding compensation, see D. Shelton, *Remedies in International Human Rights Law* (Oxford University Press, 1999), pp. 214–279.

⁵²² ICSID tribunals have jurisdiction to award damages or other remedies in cases concerning investments arising between States parties and nationals. Some of these claims involve direct recourse to international law as a basis of claim. See, e.g., *Asian Agricultural Products Limited v. Republic of Sri Lanka*, *ICSID Reports* (Cambridge University Press, 1997), vol. 4, p. 245 (1990).

⁵²³ See, e.g., *Certain Phosphate Lands in Nauru*, *Preliminary Objections* (footnote 230 above), and for the Court’s order of discontinuance following the settlement, *ibid.*, *Order* (footnote 232 above); *Passage through the Great Belt (Finland v. Denmark)*, *Order of 10 September 1992*, *I.C.J. Reports 1992*, p. 348 (order of discontinuance following settlement); and *Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America)*, *Order of 22 February 1996*, *I.C.J. Reports 1996*, p. 9 (order of discontinuance following settlement).

⁵²⁴ See Aldrich, *op. cit.* (footnote 357 above), p. 242. See also Graefrath, “Responsibility and damages caused: relationship between responsibility and damages” (footnote 454 above), p. 101; L. Reitzer, *La réparation comme conséquence de l’acte illicite en droit international* (Paris, Sirey, 1938); Gray, *op. cit.* (footnote 432 above), pp. 33–34; J. Personnaz, *La réparation du préjudice en droit international public* (Paris, 1939); and M. Iovane, *La riparazione nella teoria e nella prassi dell’illecito internazionale* (Milan, Giuffrè, 1990).

came a total loss, the damage sustained by the destroyer “*Volage*”, and the damage resulting from the deaths and injuries of naval personnel. ICJ entrusted the assessment to expert inquiry. In respect of the destroyer *Saumarez*, the Court found that “the true measure of compensation” was “the replacement cost of the [destroyer] at the time of its loss” and held that the amount of compensation claimed by the British Government (£ 700,087) was justified. For the damage to the destroyer “*Volage*”, the experts had reached a slightly lower figure than the £ 93,812 claimed by the United Kingdom, “explained by the necessarily approximate nature of the valuation, especially as regards stores and equipment”. In addition to the amounts awarded for the damage to the two destroyers, the Court upheld the United Kingdom’s claim for £ 50,048 representing “the cost of pensions and other grants made by it to victims or their dependants, and for costs of administration, medical treatment, etc.”⁵²⁵

(10) In the *M/V “Saiga” (No. 2)* case, Saint Vincent and the Grenadines sought compensation from Guinea following the wrongful arrest and detention of a vessel registered in Saint Vincent and the Grenadines, the “*Saiga*”, and its crew. ITLOS awarded compensation of US\$ 2,123,357 with interest. The heads of damage compensated included, *inter alia*, damage to the vessel, including costs of repair, losses suffered with respect to charter hire of the vessel, costs related to the detention of the vessel, and damages for the detention of the captain, members of the crew and others on board the vessel. Saint Vincent and the Grenadines had claimed compensation for the violation of its rights in respect of ships flying its flag occasioned by the arrest and detention of the “*Saiga*”; however, the tribunal considered that its declaration that Guinea acted wrongfully in arresting the vessel in the circumstances, and in using excessive force, constituted adequate reparation.⁵²⁶ Claims regarding the loss of registration revenue due to the illegal arrest of the vessel and for the expenses resulting from the time lost by officials in dealing with the arrest and detention of the ship and its crew were also unsuccessful. In respect of the former, the tribunal held that Saint Vincent and the Grenadines failed to produce supporting evidence. In respect of the latter, the tribunal considered that such expenses were not recoverable since they were incurred in the exercise of the normal functions of a flag State.⁵²⁷

(11) In a number of cases, payments have been directly negotiated between injured and injuring States following wrongful attacks on ships causing damage or sinking of the vessel, and in some cases, loss of life and injury among the crew.⁵²⁸ Similar payments have been negotiated where damage is caused to aircraft of a State, such as

⁵²⁵ *Corfu Channel, Assessment of Amount of Compensation* (see footnote 473 above), p. 249.

⁵²⁶ The *M/V “Saiga”* case (see footnote 515 above), para. 176.

⁵²⁷ *Ibid.*, para. 177.

⁵²⁸ See the payment by Cuba to the Bahamas for the sinking by Cuban aircraft on the high seas of a Bahamian vessel, with loss of life among the crew (RGDIP, vol. 85 (1981), p. 540), the payment of compensation by Israel for an attack in 1967 on the USS *Liberty*, with loss of life and injury among the crew (*ibid.*, p. 562), and the payment by Iraq of US\$ 27 million for the 37 deaths which occurred in May 1987 when Iraqi aircraft severely damaged the USS *Stark* (AJIL, vol. 83, No. 3 (July 1989), p. 561).

the “full and final settlement” agreed between the Islamic Republic of Iran and the United States following a dispute over the destruction of an Iranian aircraft and the killing of its 290 passengers and crew.⁵²⁹

(12) Agreements for the payment of compensation are also frequently negotiated by States following attacks on diplomatic premises, whether in relation to damage to the embassy itself⁵³⁰ or injury to its personnel.⁵³¹ Damage caused to other public property, such as roads and infrastructure, has also been the subject of compensation claims.⁵³² In many cases, these payments have been made on an *ex gratia* or a without prejudice basis, without any admission of responsibility.⁵³³

(13) Another situation in which States may seek compensation for damage suffered by the State as such is where costs are incurred in responding to pollution damage. Following the crash of the Soviet *Cosmos 954* satellite on Canadian territory in January 1978, Canada’s claim for compensation for expenses incurred in locating, recovering, removing and testing radioactive debris and cleaning up affected areas was based “jointly and separately on (a) the relevant international agreements ... and (b) general principles of international law”.⁵³⁴ Canada asserted that it was applying “the relevant criteria established by general principles of international law according to which fair compensation is to be paid, by including in its claim only those costs that are reasonable, proximately caused by the intrusion of the satellite and deposit of debris and capable of being calculated with a reasonable degree of certainty”.⁵³⁵ The claim was eventually settled in April 1981 when the parties agreed on an *ex gratia* payment of Can\$ 3 million (about 50 per cent of the amount claimed).⁵³⁶

⁵²⁹ *Aerial Incident of 3 July 1988* (see footnote 523 above) (order of discontinuance following settlement). For the settlement agreement itself, see the General Agreement on the Settlement of Certain International Court of Justice and Tribunal Cases (1996), attached to the Joint Request for Arbitral Award on Agreed Terms, Iran-U.S. C.T.R., vol. 32, pp. 213–216 (1996).

⁵³⁰ See, e.g., the Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Indonesia concerning the losses incurred by the Government of the United Kingdom and by British nationals as a result of the disturbances in Indonesia in September 1963 (1 December 1966) for the payment by Indonesia of compensation for, *inter alia*, damage to the British Embassy during mob violence (*Treaty Series No. 34 (1967)*) (London, HM Stationery Office) and the payment by Pakistan to the United States of compensation for the sacking of the United States Embassy in Islamabad in 1979 (RGDIP, vol. 85 (1981), p. 880).

⁵³¹ See, e.g., Claim of Consul *Henry R. Myers (United States v. Salvador)* (1890), *Papers relating to the Foreign Relations of the United States*, pp. 64–65; (1892), pp. 24–44 and 49–51; (1893), pp. 174–179, 181–182 and 184; and Whiteman, *Damages in International Law* (footnote 347 above), pp. 80–81.

⁵³² For examples, see Whiteman, *Damages in International Law* (footnote 347 above), p. 81.

⁵³³ See, e.g., the United States-China agreement providing for an *ex gratia* payment of US\$ 4.5 million, to be given to the families of those killed and to those injured in the bombing of the Chinese Embassy in Belgrade on 7 May 1999, AJIL, vol. 94, No. 1 (January 2000), p. 127.

⁵³⁴ The claim of Canada against the Union of Soviet Socialist Republics for damage caused by *Cosmos 954*, 23 January 1979 (see footnote 459 above), pp. 899 and 905.

⁵³⁵ *Ibid.*, p. 907.

⁵³⁶ Protocol between Canada and the Union of Soviet Socialist Republics in respect of the claim for damages caused by the Satellite “Cosmos 954” (Moscow, 2 April 1981), United Nations, *Treaty Series*,

(14) Compensation claims for pollution costs have been dealt with by UNCC in the context of assessing Iraq’s liability under international law “for any direct loss, damage—including environmental damage and the depletion of natural resources ... as a result of its unlawful invasion and occupation of Kuwait”.⁵³⁷ The UNCC Governing Council decision 7 specifies various heads of damage encompassed by “environmental damage and the depletion of natural resources”.⁵³⁸

(15) In cases where compensation has been awarded or agreed following an internationally wrongful act that causes or threatens environmental damage, payments have been directed to reimbursing the injured State for expenses reasonably incurred in preventing or remedying pollution, or to providing compensation for a reduction in the value of polluted property.⁵³⁹ However, environmental damage will often extend beyond that which can be readily quantified in terms of clean-up costs or property devaluation. Damage to such environmental values (biodiversity, amenity, etc.—sometimes referred to as “non-use values”) is, as a matter of principle, no less real and compensable than damage to property, though it may be difficult to quantify.

(16) Within the field of diplomatic protection, a good deal of guidance is available as to appropriate compensation standards and methods of valuation, especially as concerns personal injury and takings of, or damage to, tangible property. It is well established that a State may seek compensation in respect of personal injuries suffered by its officials or nationals, over and above any direct injury it may itself have suffered in relation to the same event. Compensable personal injury encompasses not only associated material losses, such as loss of earnings and earning capacity, medical expenses and the like, but also non-material damage suffered by the individual (sometimes, though not universally, referred to as “moral damage” in national legal systems). Non-material damage is generally understood to encompass loss of loved ones, pain and suffering as well as the affront to sensibilities associated with an intrusion on the person, home or private life. No less than material injury sustained by the injured State, non-material damage is financially assessable and may be the subject of a claim of compensation, as stressed in the “*Lusitania*” case.⁵⁴⁰ The umpire considered that international law provides compensation for mental

vol. 1470, No. 24934, p. 269. See also ILM, vol. 20, No. 3 (May 1981), p. 689.

⁵³⁷ Security Council resolution 687 (1991), para. 16 (see footnote 461 above).

⁵³⁸ Decision 7 of 16 March 1992, Criteria for additional categories of claims (S/AC.26/1991/7/Rev.1), para 35.

⁵³⁹ See the decision of the arbitral tribunal in the *Trail Smelter* case (footnote 253 above), p. 1911, which provided compensation to the United States for damage to land and property caused by sulphur dioxide emissions from a smelter across the border in Canada. Compensation was assessed on the basis of the reduction in value of the affected land.

⁵⁴⁰ See footnote 514 above. International tribunals have frequently granted pecuniary compensation for moral injury to private parties. For example, the *Chevreau* case (see footnote 133 above) (English translation in AJIL, vol. 27, No. 1 (January 1933), p. 153); the *Gage* case, UNRIAA, vol. IX (Sales No. 59.V.5), p. 226 (1903); the *Di Caro* case, *ibid.*, vol. X (Sales No. 60.V.4), p. 597 (1903); and the *Heirs of Jean Maninat* case, *ibid.*, p. 55 (1903).

suffering, injury to feelings, humiliation, shame, degradation, loss of social position or injury to credit and reputation, such injuries being “very real, and the mere fact that they are difficult to measure or estimate by money standards makes them none the less real and affords no reason why the injured person should not be compensated ...”.⁵⁴¹

(17) International courts and tribunals have undertaken the assessment of compensation for personal injury on numerous occasions. For example, in the *M/V “Saiga”* case,⁵⁴² the tribunal held that Saint Vincent and the Grenadines’ entitlement to compensation included damages for injury to the crew, their unlawful arrest, detention and other forms of ill-treatment.

(18) Historically, compensation for personal injury suffered by nationals or officials of a State arose mainly in the context of mixed claims commissions dealing with State responsibility for injury to aliens. Claims commissions awarded compensation for personal injury both in cases of wrongful death and deprivation of liberty. Where claims were made in respect of wrongful death, damages were generally based on an evaluation of the losses of the surviving heirs or successors, calculated in accordance with the well-known formula of Umpire Parker in the “*Lusitania*” case:

Estimate the amounts (*a*) which the decedent, had he not been killed, would probably have contributed to the claimant, add thereto (*b*) the pecuniary value to such claimant of the deceased’s personal services in claimant’s care, education, or supervision, and also add (*c*) reasonable compensation for such mental suffering or shock, if any, caused by the violent severing of family ties, as claimant may actually have sustained by reason of such death. The sum of these estimates reduced to its present cash value, will generally represent the loss sustained by claimant.⁵⁴³

In cases of deprivation of liberty, arbitrators sometimes awarded a set amount for each day spent in detention.⁵⁴⁴ Awards were often increased when abusive conditions of confinement accompanied the wrongful arrest and imprisonment, resulting in particularly serious physical or psychological injury.⁵⁴⁵

(19) Compensation for personal injury has also been dealt with by human rights bodies, in particular the European Court of Human Rights and the Inter-American Court of Human Rights. Awards of compensation encompass material losses (loss of earnings, pensions, medical expenses, etc.) and non-material damage (pain and suffering, mental anguish, humiliation, loss of enjoyment of life and loss of companionship or consortium), the latter usually quantified on the basis of an equitable assessment. Hitherto, amounts of compensation or damages awarded or recommended by these bodies have been modest.⁵⁴⁶ Nonetheless, the decisions of human rights bodies

on compensation draw on principles of reparation under general international law.⁵⁴⁷

(20) In addition to a large number of lump-sum compensation agreements covering multiple claims,⁵⁴⁸ property claims of nationals arising out of an internationally wrongful act have been adjudicated by a wide range of *ad hoc* and standing tribunals and commissions, with reported cases spanning two centuries. Given the diversity of adjudicating bodies, the awards exhibit considerable variability.⁵⁴⁹ Nevertheless, they provide useful principles to guide the determination of compensation under this head of damage.

(21) The reference point for valuation purposes is the loss suffered by the claimant whose property rights have been infringed. This loss is usually assessed by reference to specific heads of damage relating to (i) compensation for capital value; (ii) compensation for loss of profits; and (iii) incidental expenses.

(22) Compensation reflecting the capital value of property taken or destroyed as the result of an internationally wrongful act is generally assessed on the basis of the “fair market value” of the property lost.⁵⁵⁰ The method used to

of Human Rights (The Hague, Martinus Nijhoff, 1999); and R. Pisillo Mazzeschi, “La riparazione per violazione dei diritti umani nel diritto internazionale e nella Convenzione europea”, *La Comunità internazionale*, vol. 53, No. 2 (1998), p. 215.

⁵⁴⁷ See, e.g., the decision of the Inter-American Court of Human Rights in the *Velásquez Rodríguez* case (footnote 63 above), pp. 26–27 and 30–31. Cf. *Papamichalopoulos* (footnote 515 above).

⁵⁴⁸ See, e.g., R. B. Lillich and B. H. Weston, *International Claims: Their Settlement by Lump Sum Agreements* (Charlottesville, University Press of Virginia, 1975); and B. H. Weston, R. B. Lillich and D. J. Bederman, *International Claims: Their Settlement by Lump Sum Agreements, 1975–1995* (Ardsley, N.Y., Transnational, 1999).

⁵⁴⁹ Controversy has persisted in relation to expropriation cases, particularly over standards of compensation applicable in the light of the distinction between lawful expropriation of property by the State on the one hand, and unlawful takings on the other, a distinction clearly drawn by PCIJ in *Factory at Chorzów, Merits* (footnote 34 above), p. 47. In a number of cases, tribunals have employed the distinction to rule in favour of compensation for lost profits in cases of unlawful takings (see, e.g., the observations of the arbitrator in *Libyan American Oil Company (LIAMCO)* (footnote 508 above), pp. 202–203; and also the *Aminoil* arbitration (footnote 496 above), p. 600, para. 138; and *Amoco International Finance Corporation v. The Government of the Islamic Republic of Iran*, Iran-U.S. C.T.R., vol. 15, p. 189, at p. 246, para. 192 (1987)). Not all cases, however, have drawn a distinction between the applicable compensation principles based on the lawfulness or unlawfulness of the taking. See, e.g., the decision of the Iran-United States Claims Tribunal in *Phillips Petroleum* (footnote 164 above), p. 122, para. 110. See also *Starrett Housing Corporation v. Government of the Islamic Republic of Iran*, Iran-U.S. C.T.R., vol. 16, p. 112 (1987), where the tribunal made no distinction in terms of the lawfulness of the taking and its award included compensation for lost profits.

⁵⁵⁰ See *American International Group, Inc. v. The Islamic Republic of Iran*, which stated that, under general international law, “the valuation should be made on the basis of the fair market value of the shares”, Iran-U.S. C.T.R., vol. 4, p. 96, at p. 106 (1983). In *Starrett Housing Corporation* (see footnote 549 above), the tribunal accepted its expert’s concept of fair market value “as the price that a willing buyer would pay to a willing seller in circumstances in which each had good information, each desired to maximize his financial gain, and neither was under duress or threat” (p. 201). See also the Guidelines on the Treatment of Foreign Direct Investment, which state in paragraph 3 of part IV that compensation “will be deemed ‘adequate’ if it is based on the fair market value of the taken asset as such value is determined immediately before the time at which the taking occurred or the decision to take the asset became publicly known”, World Bank, *Legal Framework*

⁵⁴¹ “*Lusitania*” (see footnote 514 above), p. 40.

⁵⁴² See footnote 515 above.

⁵⁴³ “*Lusitania*” (see footnote 514 above), p. 35.

⁵⁴⁴ For example, the “*Topaze*” case, UNRIAA, vol. IX (Sales No. 59.V.5), p. 387, at p. 389 (1903); and the *Faulkner* case, *ibid.*, vol. IV (Sales No. 1951.V.1), p. 67, at p. 71 (1926).

⁵⁴⁵ For example, the *William McNeil* case, *ibid.*, vol. V (Sales No. 1952.V.3), p. 164, at p. 168 (1931).

⁵⁴⁶ See the review by Shelton, *op. cit.* (footnote 521 above), chaps. 8–9; A. Randelzhofer and C. Tomuschat, eds., *State Responsibility and the Individual: Reparation in Instances of Grave Violations*

assess “fair market value”, however, depends on the nature of the asset concerned. Where the property in question or comparable property is freely traded on an open market, value is more readily determined. In such cases, the choice and application of asset-based valuation methods based on market data and the physical properties of the assets is relatively unproblematic, apart from evidentiary difficulties associated with long outstanding claims.⁵⁵¹ Where the property interests in question are unique or unusual, for example, art works or other cultural property,⁵⁵² or are not the subject of frequent or recent market transactions, the determination of value is more difficult. This may be true, for example, in respect of certain business entities in the nature of a going concern, especially if shares are not regularly traded.⁵⁵³

(23) Decisions of various *ad hoc* tribunals since 1945 have been dominated by claims in respect of nationalized business entities. The preferred approach in these cases has been to examine the assets of the business, making allowance for goodwill and profitability, as appropriate. This method has the advantage of grounding compensation as much as possible in some objective assessment of value linked to the tangible asset backing of the business. The value of goodwill and other indicators of profitability may be uncertain, unless derived from information provided by a recent sale or acceptable arms-length offer. Yet, for profitable business entities where the whole is greater than the sum of the parts, compensation would be incomplete without paying due regard to such factors.⁵⁵⁴

for the *Treatment of Foreign Investment* (Washington, D.C., 1992), vol. II, p. 41. Likewise, according to article 13, paragraph 1, of the Energy Charter Treaty, compensation for expropriation “shall amount to the fair market value of the Investment expropriated at the time immediately before the Expropriation”.

⁵⁵¹ Particularly in the case of lump-sum settlements, agreements have been concluded decades after the claims arose. See, e.g., the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics concerning the Settlement of Mutual Financial and Property Claims arising before 1939 of 15 July 1986 (*Treaty Series*, No. 65 (1986)) (London, HM Stationery Office) concerning claims dating back to 1917 and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China concerning the Settlement of Mutual Historical Property Claims of 5 June 1987 (*Treaty Series*, No. 37 (1987), *ibid.*) in respect of claims arising in 1949. In such cases, the choice of valuation method was sometimes determined by availability of evidence.

⁵⁵² See Report and recommendations made by the panel of Commissioners concerning part two of the first instalment of individual claims for damages above US\$ 100 000 (category “D” claims), 12 March 1998 (S/AC.26/1998/3), paras. 48–49, where UNCC considered a compensation claim in relation to the taking of the claimant’s Islamic art collection by Iraqi military personnel.

⁵⁵³ Where share prices provide good evidence of value, they may be utilized, as in *INA Corporation v. The Government of the Islamic Republic of Iran*, Iran-U.S. C.T.R., vol. 8, p. 373 (1985).

⁵⁵⁴ Early claims recognized that even where a taking of property was lawful, compensation for a going concern called for something more than the value of the property elements of the business. The American-Mexican Claims Commission, in rejecting a claim for lost profits in the case of a lawful taking, stated that payment for property elements would be “augmented by the existence of those elements which constitute a going concern”: *Wells Fargo and Company (Decision No. 22–B)* (1926), American-Mexican Claims Commission (Washington, D.C., United States Government Printing Office, 1948), p. 153 (1926). See also decision No. 9 of the UNCC Governing Council in “Propositions and conclusions on compensation for business losses: types of damages and their valuation” (S/AC.26/1992/9), para. 16.

(24) An alternative valuation method for capital loss is the determination of net book value, i.e. the difference between the total assets of the business and total liabilities as shown on its books. Its advantages are that the figures can be determined by reference to market costs, they are normally drawn from a contemporaneous record, and they are based on data generated for some other purpose than supporting the claim. Accordingly, net book value (or some variant of this method) has been employed to assess the value of businesses. The limitations of the method lie in the reliance on historical figures, the use of accounting principles which tend to undervalue assets, especially in periods of inflation, and the fact that the purpose for which the figures were produced does not take account of the compensation context and any rules specific to it. The balance sheet may contain an entry for goodwill, but the reliability of such figures depends upon their proximity to the moment of an actual sale.

(25) In cases where a business is not a going concern,⁵⁵⁵ so-called “break-up”, “liquidation” or “dissolution” value is generally employed. In such cases, no provision is made for value over and above the market value of the individual assets. Techniques have been developed to construct, in the absence of actual transactions, hypothetical values representing what a willing buyer and willing seller might agree.⁵⁵⁶

(26) Since 1945, valuation techniques have been developed to factor in different elements of risk and probability.⁵⁵⁷ The discounted cash flow (DCF) method has gained some favour, especially in the context of calculations involving income over a limited duration, as in the case of wasting assets. Although developed as a tool for assessing commercial value, it can also be useful in the context of calculating value for compensation purposes.⁵⁵⁸ But difficulties can arise in the application of the DCF method to establish capital value in the compensation context. The method analyses a wide range of inherently speculative elements, some of which have a significant impact upon the outcome (e.g. discount rates, currency fluctuations, inflation figures, commodity prices, interest rates and other commercial risks). This has led tribunals to adopt a

⁵⁵⁵ For an example of a business found not to be a going concern, see *Phelps Dodge Corp. v. The Islamic Republic of Iran*, Iran-U.S. C.T.R., vol. 10, p. 121 (1986), where the enterprise had not been established long enough to demonstrate its viability. In *SEDCO, Inc. v. National Iranian Oil Co.*, the claimant sought dissolution value only, *ibid.*, p. 180 (1986).

⁵⁵⁶ The hypothetical nature of the result is discussed in *Amoco International Finance Corporation* (see footnote 549 above), at pp. 256–257, paras. 220–223.

⁵⁵⁷ See, for example, the detailed methodology developed by UNCC for assessing Kuwaiti corporate claims (report and recommendations made by the panel of Commissioners concerning the first instalment of “E4” claims, 19 March 1999 (S/AC.26/1999/4), paras. 32–62) and claims filed on behalf of non-Kuwaiti corporations and other business entities, excluding oil sector, construction/engineering and export guarantee claims (report and recommendations made by the panel of Commissioners concerning the third instalment of “E2” claims, 9 December 1999 (S/AC.26/1999/22)).

⁵⁵⁸ The use of the discounted cash flow method to assess capital value was analysed in some detail in *Amoco International Finance Corporation* (see footnote 549 above); *Starrett Housing Corporation (ibid.)*; *Phillips Petroleum Company Iran* (see footnote 164 above); and *Ebrahimi (Shahin Shaine) v. Islamic Republic of Iran*, Iran-U.S. C.T.R., vol. 30, p. 170 (1994).

cautious approach to the use of the method. Hence, although income-based methods have been accepted in principle, there has been a decided preference for asset-based methods.⁵⁵⁹ A particular concern is the risk of double-counting which arises from the relationship between the capital value of an enterprise and its contractually based profits.⁵⁶⁰

(27) Paragraph 2 of article 36 recognizes that in certain cases compensation for loss of profits may be appropriate. International tribunals have included an award for loss of profits in assessing compensation: for example, the decisions in the *Cape Horn Pigeon* case⁵⁶¹ and *Sapphire International Petroleum Ltd. v. National Iranian Oil Company*.⁵⁶² Loss of profits played a role in the *Factory at Chorzów* case itself, PCIJ deciding that the injured party should receive the value of property by way of damages not as it stood at the time of expropriation but at the time of indemnification.⁵⁶³ Awards for loss of profits have also been made in respect of contract-based lost profits in *Libyan American Oil Company (LIAMCO)*⁵⁶⁴ and in some ICSID arbitrations.⁵⁶⁵ Nevertheless, lost profits have not been as commonly awarded in practice as compensation for accrued losses. Tribunals have been reluctant to provide compensation for claims with inherently speculative elements.⁵⁶⁶ When

⁵⁵⁹ See, e.g., *Amoco* (footnote 549 above); *Starrett Housing Corporation* (*ibid.*); and *Phillips Petroleum Company Iran* (footnote 164 above). In the context of claims for lost profits, there is a corresponding preference for claims to be based on past performance rather than forecasts. For example, the UNCC guidelines on valuation of business losses in decision 9 (see footnote 554 above) state: "The method of a valuation should therefore be one that focuses on past performance rather than on forecasts and projections into the future" (para. 19).

⁵⁶⁰ See, e.g., *Ebrahimi* (footnote 558 above), p. 227, para. 159.

⁵⁶¹ *Navires* (see footnote 222 above) (*Cape Horn Pigeon* case), p. 63 (1902) (including compensation for lost profits resulting from the seizure of an American whaler). Similar conclusions were reached in the *Delagoa Bay Railway* case, Martens, *op. cit.* (footnote 441 above), vol. XXX, p. 329 (1900); Moore, *History and Digest*, vol. II, p. 1865 (1900); the *William Lee* case (footnote 139 above), pp. 3405–3407; and the *Yuille Shortridge and Co.* case (*Great Britain v. Portugal*), Lapradelle–Politis, *op. cit.* (*ibid.*), vol. II, p. 78 (1861). Contrast the decisions in the *Canada* case (*United States of America v. Brazil*), Moore, *History and Digest*, vol. II, p. 1733 (1870) and the *Lacaze* case (footnote 139 above).

⁵⁶² ILR, vol. 35, p. 136, at pp. 187 and 189 (1963).

⁵⁶³ *Factory at Chorzów, Merits* (see footnote 34 above), pp. 47–48 and 53.

⁵⁶⁴ *Libyan American Oil Company (LIAMCO)* (see footnote 508 above), p. 140.

⁵⁶⁵ See, e.g., *Amco Asia Corporation and Others v. The Republic of Indonesia, First Arbitration* (1984); *Annulment* (1986); *Resubmitted case* (1990), ICSID Reports (Cambridge, Grotius, 1993), vol. 1, p. 377; and *AGIP SpA v. the Government of the People's Republic of the Congo, ibid.*, p. 306 (1979).

⁵⁶⁶ According to the arbitrator in the *Shufeldt* case (see footnote 87 above), "the *lucrum cessans* must be the direct fruit of the contract and not too remote or speculative" (p. 1099). See also *Amco Asia Corporation and Others* (footnote 565 above), where it was stated that "non-speculative profits" were recoverable (p. 612, para. 178). UNCC has also stressed the requirement for claimants to provide "clear and convincing evidence of ongoing and expected profitability" (see report and recommendations made by the panel of Commissioners concerning the first instalment of "E3" claims, 17 December 1998 (S/AC.26/1998/13), para. 147). In assessing claims for lost profits on construction contracts, Panels have generally required that the claimant's calculation take into account the risk inherent in the project (*ibid.*, para. 157; report and recommendations made by the panel of Commissioners concerning the fourth instalment of "E3" claims, 30 September 1999 (S/AC.26/1999/14), para. 126).

compared with tangible assets, profits (and intangible assets which are income-based) are relatively vulnerable to commercial and political risks, and increasingly so the further into the future projections are made. In cases where lost future profits have been awarded, it has been where an anticipated income stream has attained sufficient attributes to be considered a legally protected interest of sufficient certainty to be compensable.⁵⁶⁷ This has normally been achieved by virtue of contractual arrangements or, in some cases, a well-established history of dealings.⁵⁶⁸

(28) Three categories of loss of profits may be distinguished: first, lost profits from income-producing property during a period when there has been no interference with title as distinct from temporary loss of use; secondly, lost profits from income-producing property between the date of taking of title and adjudication;⁵⁶⁹ and thirdly, lost future profits in which profits anticipated after the date of adjudication are awarded.⁵⁷⁰

(29) The first category involves claims for loss of profits due to the temporary loss of use and enjoyment of the income-producing asset.⁵⁷¹ In these cases there is no interference with title and hence in the relevant period the loss compensated is the income to which the claimant was entitled by virtue of undisturbed ownership.

(30) The second category of claims relates to the unlawful taking of income-producing property. In such cases

⁵⁶⁷ In considering claims for future profits, the UNCC panel dealing with the fourth instalment of "E3" claims expressed the view that in order for such claims to warrant a recommendation, "it is necessary to demonstrate by sufficient documentary and other appropriate evidence a history of successful (i.e. profitable) operation, and a state of affairs which warrants the conclusion that the hypothesis that there would have been future profitable contracts is well founded" (S/AC.26/1999/14), para. 140 (see footnote 566 above).

⁵⁶⁸ According to Whiteman, "in order to be allowable, prospective profits must not be too speculative, contingent, uncertain, and the like. There must be proof that they were *reasonably* anticipated; and that the profits anticipated were probable and not merely possible" (*Damages in International Law* (Washington, D.C., United States Government Printing Office, 1943), vol. III, p. 1837).

⁵⁶⁹ This is most commonly associated with the deprivation of property, as opposed to wrongful termination of a contract or concession. If restitution were awarded, the award of lost profits would be analogous to cases of temporary dispossession. If restitution is not awarded, as in the *Factory at Chorzów, Merits* (see footnote 34 above) and *Norwegian Shipowners' Claims* (footnote 87 above), lost profits may be awarded up to the time when compensation is made available as a substitute for restitution.

⁵⁷⁰ Awards of lost future profits have been made in the context of a contractually protected income stream, as in *Amco Asia Corporation and Others v. The Republic of Indonesia, First Arbitration; Annulment; Resubmitted case* (see footnote 565 above), rather than on the basis of the taking of income-producing property. In the UNCC report and recommendations on the second instalment of "E2" claims, dealing with reduced profits, the panel found that losses arising from a decline in business were compensable even though tangible property was not affected and the businesses continued to operate throughout the relevant period (S/AC.26/1999/6, para. 76).

⁵⁷¹ Many of the early cases concern vessels seized and detained. In the *Montijo*, an American vessel seized in Panama, the Umpire allowed a sum of money per day for loss of the use of the vessel (see footnote 117 above). In the *Betsey*, compensation was awarded not only for the value of the cargo seized and detained, but also for demurrage for the period representing loss of use: Moore, *International Adjudications* (New York, Oxford University Press, 1933) vol. V, p. 47, at p. 113.

lost profits have been awarded for the period up to the time of adjudication. In the *Factory at Chorzów* case,⁵⁷² this took the form of re-invested income, representing profits from the time of taking to the time of adjudication. In the *Norwegian Shipowners' Claims* case,⁵⁷³ lost profits were similarly not awarded for any period beyond the date of adjudication. Once the capital value of income-producing property has been restored through the mechanism of compensation, funds paid by way of compensation can once again be invested to re-establish an income stream. Although the rationale for the award of lost profits in these cases is less clearly articulated, it may be attributed to a recognition of the claimant's continuing beneficial interest in the property up to the moment when potential restitution is converted to a compensation payment.⁵⁷⁴

(31) The third category of claims for loss of profits arises in the context of concessions and other contractually protected interests. Again, in such cases, lost future income has sometimes been awarded.⁵⁷⁵ In the case of contracts, it is the future income stream which is compensated, up to the time when the legal recognition of entitlement ends. In some contracts this is immediate, e.g. where the contract is determinable at the instance of the State,⁵⁷⁶ or where some other basis for contractual termination exists. Or it may arise from some future date dictated by the terms of the contract itself.

(32) In other cases, lost profits have been excluded on the basis that they were not sufficiently established as a legally protected interest. In the *Oscar Chinn* case⁵⁷⁷ a monopoly was not accorded the status of an acquired right. In the *Asian Agricultural Products* case,⁵⁷⁸ a claim for lost profits by a newly established business was rejected for lack of evidence of established earnings. Claims for lost profits are also subject to the usual range of limitations on the recovery of damages, such as causation, remoteness, evidentiary requirements and accounting principles,

⁵⁷² *Factory at Chorzów, Merits* (see footnote 34 above).

⁵⁷³ *Norwegian Shipowners' Claims* (see footnote 87 above).

⁵⁷⁴ For the approach of UNCC in dealing with loss of profits claims associated with the destruction of businesses following the Iraqi invasion of Kuwait, see S/AC.26/1999/4 (footnote 557 above), paras. 184–187.

⁵⁷⁵ In some cases, lost profits were not awarded beyond the date of adjudication, though for reasons unrelated to the nature of the income-producing property. See, e.g., *Robert H. May (United States v. Guatemala)*, 1900 For. Rel. 648; and Whiteman, *Damages in International Law*, vol. III (footnote 568 above), pp. 1704 and 1860, where the concession had expired. In other cases, circumstances giving rise to *force majeure* had the effect of suspending contractual obligations: see, e.g., *Gould Marketing, Inc. v. Ministry of Defence of the Islamic Republic of Iran*, Iran-U.S. C.T.R., vol. 6, p. 272 (1984); and *Sylvania Technical Systems, Inc. v. The Government of the Islamic Republic of Iran*, *ibid.*, vol. 8, p. 298 (1985). In the *Delagoa Bay Railway* case (footnote 561 above), and in *Shufeldt* (see footnote 87 above), lost profits were awarded in respect of a concession which had been terminated. In *Sapphire International Petroleum Ltd.* (see footnote 562 above), p. 136; *Libyan American Oil Company (LIAMCO)* (see footnote 508 above), p. 140; and *Amco Asia Corporation and Others v. The Republic of Indonesia, First Arbitration; Annulment; Resubmitted case* (see footnote 565 above), awards of lost profits were also sustained on the basis of contractual relationships.

⁵⁷⁶ As in *Sylvania Technical Systems, Inc.* (see the footnote above).

⁵⁷⁷ See footnote 385 above.

⁵⁷⁸ See footnote 522 above.

which seek to discount speculative elements from projected figures.

(33) If loss of profits are to be awarded, it is inappropriate to award interest under article 38 on the profit-earning capital over the same period of time, simply because the capital sum cannot be simultaneously earning interest and generating profits. The essential aim is to avoid double recovery while ensuring full reparation.

(34) It is well established that incidental expenses are compensable if they were reasonably incurred to repair damage and otherwise mitigate loss arising from the breach.⁵⁷⁹ Such expenses may be associated, for example, with the displacement of staff or the need to store or sell undelivered products at a loss.

Article 37. Satisfaction

1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.

Commentary

(1) Satisfaction is the third form of reparation which the responsible State may have to provide in discharge of its obligation to make full reparation for the injury caused by an internationally wrongful act. It is not a standard form of reparation, in the sense that in many cases the injury caused by an internationally wrongful act of a State may be fully repaired by restitution and/or compensation. The rather exceptional character of the remedy of satisfaction, and its relationship to the principle of full reparation, are emphasized by the phrase “insofar as [the injury] cannot be made good by restitution or compensation”. It is only in those cases where those two forms have not provided full reparation that satisfaction may be required.

(2) Article 37 is divided into three paragraphs, each dealing with a separate aspect of satisfaction. Paragraph 1 addresses the legal character of satisfaction and the types of injury for which it may be granted. Paragraph 2 describes, in a non-exhaustive fashion, some modalities of satisfaction. Paragraph 3 places limitations on the obliga-

⁵⁷⁹ Compensation for incidental expenses has been awarded by UNCC (report and recommendations on the first instalment of “E2” claims (S/AC.26/1998/7) where compensation was awarded for evacuation and relief costs (paras. 133, 153 and 249), repatriation (para. 228), termination costs (para. 214), renovation costs (para. 225) and expenses in mitigation (para. 183)), and by the Iran-United States Claims Tribunal (see *General Electric Company v. The Government of the Islamic Republic of Iran*, Iran-U.S. C.T.R., vol. 26, p. 148, at pp. 165–169, paras. 56–60 and 67–69 (1991), awarding compensation for items resold at a loss and for storage costs).

tion to give satisfaction, having regard to former practices in cases where unreasonable forms of satisfaction were sometimes demanded.

(3) In accordance with paragraph 2 of article 31, the injury for which a responsible State is obliged to make full reparation embraces “any damage, whether material or moral, caused by the internationally wrongful act of a State”. Material and moral damage resulting from an internationally wrongful act will normally be financially assessable and hence covered by the remedy of compensation. Satisfaction, on the other hand, is the remedy for those injuries, not financially assessable, which amount to an affront to the State. These injuries are frequently of a symbolic character, arising from the very fact of the breach of the obligation, irrespective of its material consequences for the State concerned.

(4) The availability of the remedy of satisfaction for injury of this kind, sometimes described as “non-material injury”,⁵⁸⁰ is well established in international law. The point was made, for example, by the tribunal in the “*Rainbow Warrior*” arbitration:

There is a long established practice of States and international Courts and Tribunals of using satisfaction as a remedy or form of reparation (in the wide sense) for the breach of an international obligation. This practice relates particularly to the case of moral or legal damage done directly to the State, especially as opposed to the case of damage to persons involving international responsibilities.⁵⁸¹

State practice also provides many instances of claims for satisfaction in circumstances where the internationally wrongful act of a State causes non-material injury to another State. Examples include situations of insults to the symbols of the State, such as the national flag,⁵⁸² violations of sovereignty or territorial integrity,⁵⁸³ attacks on ships or aircraft,⁵⁸⁴ ill-treatment of or deliberate attacks on heads of State or Government or diplomatic or consular representatives or other protected persons⁵⁸⁵ and violations of the premises of embassies or consulates or of the residences of members of the mission.⁵⁸⁶

⁵⁸⁰ See C. Dominicé, “De la réparation constructive du préjudice immatériel souffert par un État”, *L'ordre juridique international entre tradition et innovation: recueil d'études* (Paris, Presses Universitaires de France, 1997), p. 349, at p. 354.

⁵⁸¹ “*Rainbow Warrior*” (see footnote 46 above), pp. 272–273, para. 122.

⁵⁸² Examples are the *Magee* case (Whiteman, *Damages in International Law*, vol. I (see footnote 347 above), p. 64 (1874)), the *Petit Vaisseau* case (*La prassi italiana di diritto internazionale*, 2nd series (see footnote 498 above), vol. III, No. 2564 (1863)) and the case that arose from the insult to the French flag in Berlin in 1920 (C. Eagleton, *The Responsibility of States in International Law* (New York University Press, 1928), pp. 186–187).

⁵⁸³ As occurred in the “*Rainbow Warrior*” arbitration (see footnote 46 above).

⁵⁸⁴ Examples include the attack carried out in 1961 against a Soviet aircraft transporting President Brezhnev by French fighter planes over the international waters of the Mediterranean (RGDIP, vol. 65 (1961), p. 603); and the sinking of a Bahamian ship in 1980 by a Cuban aircraft (*ibid.*, vol. 84 (1980), pp. 1078–1079).

⁵⁸⁵ See F. Przetacznik, “La responsabilité internationale de l'État à raison des préjudices de caractère moral et politique causés à un autre État”, RGDIP, vol. 78 (1974), p. 919, at p. 951.

⁵⁸⁶ Examples include the attack by demonstrators in 1851 on the Spanish Consulate in New Orleans (Moore, *Digest*, vol. VI, p. 811, at p. 812), and the failed attempt of two Egyptian policemen, in 1888, to intrude upon the premises of the Italian Consulate at Alexandria

(5) Paragraph 2 of article 37 provides that satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality. The forms of satisfaction listed in the article are no more than examples. The appropriate form of satisfaction will depend on the circumstances and cannot be prescribed in advance.⁵⁸⁷ Many possibilities exist, including due inquiry into the causes of an accident resulting in harm or injury,⁵⁸⁸ a trust fund to manage compensation payments in the interests of the beneficiaries, disciplinary or penal action against the individuals whose conduct caused the internationally wrongful act⁵⁸⁹ or the award of symbolic damages for non-pecuniary injury.⁵⁹⁰ Assurances or guarantees of non-repetition, which are dealt with in the articles in the context of cessation, may also amount to a form of satisfaction.⁵⁹¹ Paragraph 2 does not attempt to list all the possibilities, but neither is it intended to exclude them. Moreover, the order of the modalities of satisfaction in paragraph 2 is not intended to reflect any hierarchy or preference. Paragraph 2 simply gives examples which are not listed in order of appropriateness or seriousness. The appropriate mode, if any, will be determined having regard to the circumstances of each case.

(6) One of the most common modalities of satisfaction provided in the case of moral or non-material injury to the State is a declaration of the wrongfulness of the act by a competent court or tribunal. The utility of declaratory relief as a form of satisfaction in the case of non-material injury to a State was affirmed by ICJ in the *Corfu Channel* case, where the Court, after finding unlawful a mine-sweeping operation (Operation Retail) carried out by the British Navy after the explosion, said:

[T]o ensure respect for international law, of which it is the organ, the Court must declare that the action of the British Navy constituted a violation of Albanian sovereignty.

(*La prassi italiana di diritto internazionale*, 2nd series (see footnote 498 above), vol. III, No. 2558). Also see cases of apologies and expressions of regret following demonstrations in front of the French Embassy in Belgrade in 1961 (RGDIP, vol. 65 (1961), p. 610), and the fires in the libraries of the United States Information Services in Cairo in 1964 (*ibid.*, vol. 69 (1965), pp. 130–131) and in Karachi in 1965 (*ibid.*, vol. 70 (1966), pp. 165–166).

⁵⁸⁷ In the “*Rainbow Warrior*” arbitration the tribunal, while rejecting New Zealand's claims for restitution and/or cessation and declining to award compensation, made various declarations by way of satisfaction, and in addition a recommendation “to assist [the parties] in putting an end to the present unhappy affair”. Specifically, it recommended that France contribute US\$ 2 million to a fund to be established “to promote close and friendly relations between the citizens of the two countries” (see footnote 46 above), p. 274, paras. 126–127. See also L. Migliorino, “Sur la déclaration d'illicéité comme forme de satisfaction: à propos de la sentence arbitrale du 30 avril 1990 dans l'affaire du *Rainbow Warrior*”, RGDIP, vol. 96 (1992), p. 61.

⁵⁸⁸ For example, the United States naval inquiry into the causes of the collision between an American submarine and the Japanese fishing vessel, the *Ehime Maru*, in waters off Honolulu, *The New York Times*, 8 February 2001, sect. 1, p. 1.

⁵⁸⁹ Action against the guilty individuals was requested in the case of the killing in 1948, in Palestine, of Count Bernadotte while he was acting in the service of the United Nations (Whiteman, *Digest of International Law*, vol. 8, pp. 742–743) and in the case of the killing of two United States officers in Tehran (RGDIP, vol. 80 (1976), p. 257).

⁵⁹⁰ See, e.g., the cases “*I'm Alone*”, UNRIAA, vol. III (Sales No. 1949.V.2), p. 1609 (1935); and “*Rainbow Warrior*” (footnote 46 above).

⁵⁹¹ See paragraph (11) of the commentary to article 30.

This declaration is in accordance with the request made by Albania through her Counsel, and is in itself appropriate satisfaction.⁵⁹²

This has been followed in many subsequent cases.⁵⁹³ However, while the making of a declaration by a competent court or tribunal may be treated as a form of satisfaction in a given case, such declarations are not intrinsically associated with the remedy of satisfaction. Any court or tribunal which has jurisdiction over a dispute has the authority to determine the lawfulness of the conduct in question and to make a declaration of its findings, as a necessary part of the process of determining the case. Such a declaration may be a preliminary to a decision on any form of reparation, or it may be the only remedy sought. What the Court did in the *Corfu Channel* case was to use a declaration as a form of satisfaction in a case where Albania had sought no other form. Moreover, such a declaration has further advantages: it should be clear and self-contained and will by definition not exceed the scope or limits of satisfaction referred to in paragraph 3 of article 37. A judicial declaration is not listed in paragraph 2 only because it must emanate from a competent third party with jurisdiction over a dispute, and the articles are not concerned to specify such a party or to deal with issues of judicial jurisdiction. Instead, article 37 specifies the acknowledgement of the breach by the responsible State as a modality of satisfaction.

(7) Another common form of satisfaction is an apology, which may be given verbally or in writing by an appropriate official or even the Head of State. Expressions of regret or apologies were required in the *"I'm Alone"*,⁵⁹⁴ *Kellett*⁵⁹⁵ and *"Rainbow Warrior"*⁵⁹⁶ cases, and were offered by the responsible State in the *Consular Relations*⁵⁹⁷ and *LaGrand*⁵⁹⁸ cases. Requests for, or offers of, an apology are a quite frequent feature of diplomatic practice and the tender of a timely apology, where the circumstances justify it, can do much to resolve a dispute. In other circumstances an apology may not be called for, e.g. where a case is settled on an *ex gratia* basis, or it may be insufficient. In the *LaGrand* case the Court considered that "an apology is not sufficient in this case, as it would not be in other cases where foreign nationals have not been advised without delay of their rights under article 36, paragraph 1, of the Vienna Convention and have been subjected to prolonged detention or sentenced to severe penalties".⁵⁹⁹

⁵⁹² *Corfu Channel, Merits* (see footnote 35 above), p. 35, repeated in the operative part (p. 36).

⁵⁹³ For example, *"Rainbow Warrior"* (see footnote 46 above), p. 273, para. 123.

⁵⁹⁴ See footnote 590 above.

⁵⁹⁵ Moore, *Digest*, vol. V, p. 44 (1897).

⁵⁹⁶ See footnote 46 above.

⁵⁹⁷ *Vienna Convention on Consular Relations (Paraguay v. United States of America), Provisional Measures, Order of 9 April 1998, I.C.J. Reports 1998*, p. 248. For the text of the United States' apology, see United States Department of State, Text of Statement Released in Asunción, Paraguay; Press statement by James P. Rubin, Spokesman, 4 November 1998. For the order discontinuing proceedings of 10 November 1998, see *I.C.J. Reports 1998*, p. 426.

⁵⁹⁸ See footnote 119 above.

⁵⁹⁹ *LaGrand, Merits (ibid.)*, para. 123.

(8) Excessive demands made under the guise of "satisfaction" in the past⁶⁰⁰ suggest the need to impose some limit on the measures that can be sought by way of satisfaction to prevent abuses, inconsistent with the principle of the equality of States.⁶⁰¹ In particular, satisfaction is not intended to be punitive in character, nor does it include punitive damages. Paragraph 3 of article 37 places limitations on the obligation to give satisfaction by setting out two criteria: first, the proportionality of satisfaction to the injury; and secondly, the requirement that satisfaction should not be humiliating to the responsible State. It is true that the term "humiliating" is imprecise, but there are certainly historical examples of demands of this kind.

Article 38. Interest

1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.

2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

Commentary

(1) Interest is not an autonomous form of reparation, nor is it a necessary part of compensation in every case. For this reason the term "principal sum" is used in article 38 rather than "compensation". Nevertheless, an award of interest may be required in some cases in order to provide full reparation for the injury caused by an internationally wrongful act, and it is normally the subject of separate treatment in claims for reparation and in the awards of tribunals.

(2) As a general principle, an injured State is entitled to interest on the principal sum representing its loss, if that sum is quantified as at an earlier date than the date of the settlement of, or judgement or award concerning, the claim and to the extent that it is necessary to ensure full reparation.⁶⁰² Support for a general rule favouring the award of interest as an aspect of full reparation is found in international jurisprudence.⁶⁰³ In the *S.S. "Wimbledon"*, PCIJ awarded simple interest at 6 per cent as from the date of judgment, on the basis that interest was only payable "from the moment when the amount of the sum due

⁶⁰⁰ For example, the joint note presented to the Chinese Government in 1900 following the Boxer uprising and the demand by the Conference of Ambassadors against Greece in the *Tellini* affair in 1923: see C. Eagleton, *op. cit.* (footnote 582 above), pp. 187–188.

⁶⁰¹ The need to prevent the abuse of satisfaction was stressed by early writers such as J. C. Bluntschli, *Das moderne Völkerrecht der zivilisierten Staaten als Rechtsbuch dargestellt*, 3rd ed. (Nördlingen, Beck, 1878); French translation by M. C. Lardy, *Le droit international codifié*, 5th rev. ed. (Paris, Félix Alcan, 1895), pp. 268–269.

⁶⁰² Thus, interest may not be allowed where the loss is assessed in current value terms as at the date of the award. See the *Lighthouses arbitration* (footnote 182 above), pp. 252–253.

⁶⁰³ See, e.g., the awards of interest made in the *Illinois Central Railroad Co. (U.S.A.) v. United Mexican States* case, UNRIAA, vol. IV (Sales No. 1951.V.1), p. 134 (1926); and the *Lucas* case, ILR, vol. 30, p. 220 (1966); see also administrative decision No. III of the United States-Germany Mixed Claims Commission, UNRIAA, vol. VII (Sales No. 1956.V.5), p. 66 (1923).

has been fixed and the obligation to pay has been established".⁶⁰⁴

(3) Issues of the award of interest have frequently arisen in other tribunals, both in cases where the underlying claim involved injury to private parties and where the injury was to the State itself.⁶⁰⁵ The experience of the Iran-United States Claims Tribunal is worth noting. In *The Islamic Republic of Iran v. The United States of America (Case A-19)*, the Full Tribunal held that its general jurisdiction to deal with claims included the power to award interest, but it declined to lay down uniform standards for the award of interest on the ground that this fell within the jurisdiction of each Chamber and related "to the exercise ... of the discretion accorded to them in deciding each particular case".⁶⁰⁶ On the issue of principle the tribunal said:

Claims for interest are part of the compensation sought and do not constitute a separate cause of action requiring their own independent jurisdictional grant. This Tribunal is required by [a]rticle V of the Claims Settlement Declaration to decide claims "on the basis of respect for law". In doing so, it has regularly treated interest, where sought, as forming an integral part of the "claim" which it has a duty to decide. The Tribunal notes that the Chambers have been consistent in awarding interest as "compensation for damages suffered due to delay in payment". ... Indeed, it is customary for arbitral tribunals to award interest as part of an award for damages, notwithstanding the absence of any express reference to interest in the *compromis*. Given that the power to award interest is inherent in the Tribunal's authority to decide claims, the exclusion of such power could only be established by an express provision in the Claims Settlement Declaration. No such provision exists. Consequently, the Tribunal concludes that it is clearly within its power to award interest as compensation for damage suffered.⁶⁰⁷

The tribunal has awarded interest at a different and slightly lower rate in respect of intergovernmental claims.⁶⁰⁸ It has not awarded interest in certain cases, for example where a lump-sum award was considered as reflecting full compensation, or where other special circumstances pertained.⁶⁰⁹

(4) Decision 16 of the Governing Council of the United Nations Compensation Commission deals with the question of interest. It provides:

1. Interest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award.

2. The methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time.

⁶⁰⁴ See footnote 34 above. The Court accepted the French claim for an interest rate of 6 per cent as fair, having regard to "the present financial situation of the world and ... the conditions prevailing for public loans".

⁶⁰⁵ In the *M/V "Saiga"* case (see footnote 515 above), ITLOS awarded interest at different rates in respect of different categories of loss (para. 173).

⁶⁰⁶ *The Islamic Republic of Iran v. The United States of America*, Iran-U.S. C.T.R., vol. 16, p. 285, at p. 290 (1987). Aldrich, *op. cit.* (see footnote 357 above), pp. 475-476, points out that the practice of the three Chambers has not been entirely uniform.

⁶⁰⁷ *The Islamic Republic of Iran v. The United States of America* (see footnote 606 above), pp. 289-290.

⁶⁰⁸ See C. N. Brower and J. D. Brueschke, *op. cit.* (footnote 520 above), pp. 626-627, with references to the cases. The rate adopted was 10 per cent, as compared with 12 per cent for commercial claims.

⁶⁰⁹ See the detailed analysis of Chamber Three in *McCullough and Company, Inc. v. Ministry of Post, Telegraph and Telephone*, Iran-U.S. C.T.R., vol. 11, p. 3, at pp. 26-31 (1986).

3. Interest will be paid after the principal amount of awards.⁶¹⁰

This provision combines a decision in principle in favour of interest where necessary to compensate a claimant with flexibility in terms of the application of that principle. At the same time, interest, while a form of compensation, is regarded as a secondary element, subordinated to the principal amount of the claim.

(5) Awards of interest have also been envisaged by human rights courts and tribunals, even though the compensation practice of these bodies is relatively cautious and the claims are almost always unliquidated. This is done, for example, to protect the value of a damages award payable by instalments over time.⁶¹¹

(6) In their more recent practice, national compensation commissions and tribunals have also generally allowed for interest in assessing compensation. However in certain cases of partial lump-sum settlements, claims have been expressly limited to the amount of the principal loss, on the basis that with a limited fund to be distributed, claims to principal should take priority.⁶¹² Some national court decisions have also dealt with issues of interest under international law,⁶¹³ although more often questions of interest are dealt with as part of the law of the forum.

(7) Although the trend of international decisions and practice is towards greater availability of interest as an aspect of full reparation, an injured State has no automatic entitlement to the payment of interest. The awarding of interest depends on the circumstances of each case; in particular, on whether an award of interest is necessary in order to ensure full reparation. This approach is compatible with the tradition of various legal systems as well as the practice of international tribunals.

(8) An aspect of the question of interest is the possible award of compound interest. The general view of courts and tribunals has been against the award of compound interest, and this is true even of those tribunals which hold claimants to be normally entitled to compensatory interest. For example, the Iran-United States Claims Tribunal has consistently denied claims for compound interest, including in cases where the claimant suffered losses through compound interest charges on indebtedness associated with the claim. In *R.J. Reynolds Tobacco Co. v. The Government of the Islamic Republic of Iran*, the tribunal failed to find:

any special reasons for departing from international precedents which normally do not allow the awarding of compound interest. As noted by one authority, "[t]here are few rules within the scope of the

⁶¹⁰ Awards of interest, decision of 18 December 1992 (S/AC.26/1992/16).

⁶¹¹ See, e.g., the *Velásquez Rodríguez*, Compensatory Damages case (footnote 516 above), para. 57. See also *Papamichalopoulos* (footnote 515 above), para. 39, where interest was payable only in respect of the pecuniary damage awarded. See further D. Shelton, *op. cit.* (footnote 521 above), pp. 270-272.

⁶¹² See, e.g., the Foreign Compensation (People's Republic of China), Order, Statutory Instrument No. 2201 (1987) (London, HM Stationery Office), para. 10, giving effect to the settlement Agreement between the United Kingdom and China (footnote 551 above).

⁶¹³ See, e.g., *McKesson Corporation v. The Islamic Republic of Iran*, United States District Court for the District of Columbia, 116 F. Supp. 2d 13 (2000).

subject of damages in international law that are better settled than the one that compound interest is not allowable" ... Even though the term "all sums" could be construed to include interest and thereby to allow compound interest, the Tribunal, due to the ambiguity of the language, interprets the clause in the light of the international rule just stated, and thus excludes compound interest.⁶¹⁴

Consistent with this approach, the tribunal has gone behind contractual provisions appearing to provide for compound interest, in order to prevent the claimant gaining a profit "wholly out of proportion to the possible loss that [it] might have incurred by not having the amounts due at its disposal".⁶¹⁵ The preponderance of authority thus continues to support the view expressed by Arbitrator Huber in the *British Claims in the Spanish Zone of Morocco* case:

the arbitral case law in matters involving compensation of one State for another for damages suffered by the nationals of one within the territory of the other ... is unanimous ... in disallowing compound interest. In these circumstances, very strong and quite specific arguments would be called for to grant such interest.⁶¹⁶

The same is true for compound interest in respect of State-to-State claims.

(9) Nonetheless, several authors have argued for a reconsideration of this principle, on the ground that "compound interest reasonably incurred by the injured party should be recoverable as an item of damage".⁶¹⁷ This view has also been supported by arbitral tribunals in some cases.⁶¹⁸ But given the present state of international law, it cannot be said that an injured State has any entitlement to compound interest, in the absence of special circumstances which justify some element of compounding as an aspect of full reparation.

(10) The actual calculation of interest on any principal sum payable by way of reparation raises a complex of issues concerning the starting date (date of breach,⁶¹⁹ date on which payment should have been made, date of claim or demand), the terminal date (date of settlement agreement or award, date of actual payment) as well as the applicable interest rate (rate current in the respondent State, in the applicant State, international lending rates). There

⁶¹⁴ Iran-U.S. C.T.R., vol. 7, p. 181, at pp. 191–192 (1984), citing Whiteman, *Damages in International Law*, vol. III (see footnote 568 above), p. 1997.

⁶¹⁵ *Anaconda-Iran, Inc. v. The Government of the Islamic Republic of Iran*, Iran-U.S. C.T.R., vol. 13, p. 199, at p. 235 (1986). See also Aldrich, *op. cit.* (footnote 357 above), pp. 477–478.

⁶¹⁶ *British Claims in the Spanish Zone of Morocco* (see footnote 44 above), p. 650. Cf. the *Aminoil* arbitration (footnote 496 above), where the interest awarded was compounded for a period without any reason being given. This accounted for more than half of the total final award (p. 613, para. 178 (5)).

⁶¹⁷ F. A. Mann, "Compound interest as an item of damage in international law", *Further Studies in International Law* (Oxford, Clarendon Press, 1990), p. 377, at p. 383.

⁶¹⁸ See, e.g., *Compañía del Desarrollo de Santa Elena, S.A. v. Republic of Costa Rica*, case No. ARB/96/1, *ICSID Reports* (Cambridge, Grotius, 2002), vol. 5, final award (17 February 2000), paras. 103–105.

⁶¹⁹ Using the date of the breach as the starting date for calculation of the interest term is problematic as there may be difficulties in determining that date, and many legal systems require a demand for payment by the claimant before interest will run. The date of formal demand was taken as the relevant date in the *Russian Indemnity* case (see footnote 354 above), p. 442, by analogy from the general position in European legal systems. In any event, failure to make a timely claim for payment is relevant in deciding whether to allow interest.

is no uniform approach, internationally, to questions of quantification and assessment of amounts of interest payable.⁶²⁰ In practice, the circumstances of each case and the conduct of the parties strongly affect the outcome. There is wisdom in the Iran-United States Claims Tribunal's observation that such matters, if the parties cannot resolve them, must be left "to the exercise ... of the discretion accorded to [individual tribunals] in deciding each particular case".⁶²¹ On the other hand, the present unsettled state of practice makes a general provision on the calculation of interest useful. Accordingly, article 38 indicates that the date from which interest is to be calculated is the date when the principal sum should have been paid. Interest runs from that date until the date the obligation to pay is fulfilled. The interest rate and mode of calculation are to be set so as to achieve the result of providing full reparation for the injury suffered as a result of the internationally wrongful act.

(11) Where a sum for loss of profits is included as part of the compensation for the injury caused by a wrongful act, an award of interest will be inappropriate if the injured State would thereby obtain double recovery. A capital sum cannot be earning interest *and* notionally employed in earning profits at one and the same time. However, interest may be due on the profits which would have been earned but which have been withheld from the original owner.

(12) Article 38 does not deal with post-judgment or moratory interest. It is only concerned with interest that goes to make up the amount that a court or tribunal should award, i.e. compensatory interest. The power of a court or tribunal to award post-judgment interest is a matter of its procedure.

Article 39. Contribution to the injury

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought.

Commentary

(1) Article 39 deals with the situation where damage has been caused by an internationally wrongful act of a State, which is accordingly responsible for the damage in accordance with articles 1 and 28, but where the injured State, or the individual victim of the breach, has materially

⁶²⁰ See, e.g., J. Y. Gotanda, *Supplemental Damages in Private International Law* (The Hague, Kluwer, 1998), p. 13. It should be noted that a number of Islamic countries, influenced by the sharia, prohibit payment of interest under their own law or even under their constitution. However, they have developed alternatives to interest in the commercial and international context. For example, payment of interest is prohibited by the Iranian Constitution, articles 43 and 49, but the Guardian Council has held that this injunction does not apply to "foreign governments, institutions, companies and persons, who, according to their own principles of faith, do not consider [interest] as being prohibited" (*ibid.*, pp. 38–40, with references).

⁶²¹ *The Islamic Republic of Iran v. The United States of America* (Case No. A-19) (see footnote 606 above).

contributed to the damage by some wilful or negligent act or omission. Its focus is on situations which in national law systems are referred to as “contributory negligence”, “comparative fault”, “faute de la victime”, etc.⁶²²

(2) Article 39 recognizes that the conduct of the injured State, or of any person or entity in relation to whom reparation is sought, should be taken into account in assessing the form and extent of reparation. This is consonant with the principle that full reparation is due for the injury—but nothing more—arising in consequence of the internationally wrongful act. It is also consistent with fairness as between the responsible State and the victim of the breach.

(3) In the *LaGrand* case, ICJ recognized that the conduct of the claimant State could be relevant in determining the form and amount of reparation. There, Germany had delayed in asserting that there had been a breach and in instituting proceedings. The Court noted that “Germany may be criticized for the manner in which these proceedings were filed and for their timing”, and stated that it would have taken this factor, among others, into account “had Germany’s submission included a claim for indemnification”.⁶²³

(4) The relevance of the injured State’s contribution to the damage in determining the appropriate reparation is widely recognized in the literature⁶²⁴ and in State practice.⁶²⁵ While questions of an injured State’s contribution to the damage arise most frequently in the context of compensation, the principle may also be relevant to other forms of reparation. For example, if a State-owned ship is unlawfully detained by another State and while under detention sustains damage attributable to the negligence of the captain, the responsible State may be required merely to return the ship in its damaged condition.

(5) Not every action or omission which contributes to the damage suffered is relevant for this purpose. Rather, article 39 allows to be taken into account only those actions or omissions which can be considered as wilful or negligent, i.e. which manifest a lack of due care on the part of the victim of the breach for his or her own property or rights.⁶²⁶ While the notion of a negligent action or

omission is not qualified, e.g. by a requirement that the negligence should have reached the level of being “serious” or “gross”, the relevance of any negligence to reparation will depend upon the degree to which it has contributed to the damage as well as the other circumstances of the case.⁶²⁷ The phrase “account shall be taken” indicates that the article deals with factors that are capable of affecting the form or reducing the amount of reparation in an appropriate case.

(6) The wilful or negligent action or omission which contributes to the damage may be that of the injured State or “any person or entity in relation to whom reparation is sought”. This phrase is intended to cover not only the situation where a State claims on behalf of one of its nationals in the field of diplomatic protection, but also any other situation in which one State invokes the responsibility of another State in relation to conduct primarily affecting some third party. Under articles 42 and 48, a number of different situations can arise where this may be so. The underlying idea is that the position of the State seeking reparation should not be more favourable, so far as reparation in the interests of another is concerned, than it would be if the person or entity in relation to whom reparation is sought were to bring a claim individually.

CHAPTER III

SERIOUS BREACHES OF OBLIGATIONS UNDER PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW

Commentary

(1) Chapter III of Part Two is entitled “Serious breaches of obligations under peremptory norms of general international law”. It sets out certain consequences of specific types of breaches of international law, identified by reference to two criteria: first, they involve breaches of obligations under peremptory norms of general international law; and secondly, the breaches concerned are in themselves serious, having regard to their scale or character. Chapter III contains two articles, the first defining its scope of application (art. 40), the second spelling out the legal consequences entailed by the breaches coming within the scope of the chapter (art. 41).

(2) Whether a qualitative distinction should be recognized between different breaches of international law has been the subject of a major debate.⁶²⁸ The issue was underscored by ICJ in the *Barcelona Traction* case, when it said that:

⁶²⁷ It is possible to envisage situations where the injury in question is entirely attributable to the conduct of the victim and not at all to that of the “responsible” State. Such situations are covered by the general requirement of proximate cause referred to in article 31, rather than by article 39. On questions of mitigation of damage, see paragraph (11) of the commentary to article 31.

⁶²⁸ For full bibliographies, see M. Spinedi, “Crimes of State: bibliography”, *International Crimes of State*, J. H. H. Weiler, A. Cassese and M. Spinedi, eds. (Berlin, De Gruyter, 1989), pp. 339–353; and N. H. B. Jørgensen, *The Responsibility of States for International Crimes* (Oxford University Press, 2000) pp. 299–314.

⁶²² See C. von Bar, *op. cit.* (footnote 315 above), pp. 544–569.

⁶²³ *LaGrand, Judgment* (see footnote 119 above), at p. 487, para. 57, and p. 508, para. 116. For the relevance of delay in terms of loss of the right to invoke responsibility, see article 45, subparagraph (b), and commentary.

⁶²⁴ See, e.g., B. Graefrath, “Responsibility and damages caused: relationship between responsibility and damages” (footnote 454 above) and B. Bollecker-Stern, *op. cit.* (footnote 454 above), pp. 265–300.

⁶²⁵ In the *Delagoa Bay Railway* case (see footnote 561 above), the arbitrators noted that: “[a]ll the circumstances that can be adduced against the concessionaire company and for the Portuguese Government mitigate the latter’s liability and warrant ... a reduction in reparation.” In *S.S. “Wimbledon”* (see footnote 34 above), p. 31, a question arose as to whether there had been any contribution to the injury suffered as a result of the ship harbouring at Kiel for some time, following refusal of passage through the Kiel Canal, before taking an alternative course. PCIJ implicitly acknowledged that the captain’s conduct could affect the amount of compensation payable, although it held that the captain had acted reasonably in the circumstances. For other examples, see Gray, *op. cit.* (footnote 432 above), p. 23.

⁶²⁶ This terminology is drawn from article VI, paragraph 1, of the Convention on International Liability for Damage Caused by Space Objects.



ICAO

Doc 9303

Machine Readable Travel Documents

Seventh Edition, 2015

Part 1: Introduction



Approved by the Secretary General and published under his authority

INTERNATIONAL CIVIL AVIATION ORGANIZATION



| ICAO

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INTERNATIONAL CIVIL AVIATION ORGANIZATION

Published in separate English, Arabic, Chinese, French, Russian
and Spanish editions by the
INTERNATIONAL CIVIL AVIATION ORGANIZATION
999 Robert-Bourassa Boulevard, Montréal, Quebec, Canada H3C 5H7

Downloads and additional information are available at www.icao.int/security/mrtd

Doc 9303, *Machine Readable Travel Documents*
Part 1 — *Introduction*
ISBN 978-92-9249-790-3

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AMENDMENTS

Amendments are announced in the supplements to the *Products and Services Catalogue*; the Catalogue and its supplements are available on the ICAO website at www.icao.int. The space below is provided to keep a record of such amendments.

RECORD OF AMENDMENTS AND CORRIGENDA

AMENDMENTS		
No.	Date	Entered by

CORRIGENDA		
No.	Date	Entered by

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1. FOREWORD

ICAO's work on machine readable travel documents began in 1968 with the establishment, by the Air Transport Committee of the Council, of a Panel on Passport Cards. This Panel was charged with developing recommendations for a standardized passport book or card that would be machine readable, in the interest of accelerating the clearance of passengers through passport controls. The Panel produced a number of recommendations, including the adoption of optical character recognition (OCR) as the machine reading technology of choice due to its maturity, cost-effectiveness and reliability. In 1980, the specifications and guidance material developed by the Panel were published as the first edition of Doc 9303, titled *A Passport with Machine Readable Capability*, which became the basis for the initial issuance of machine readable passports by Australia, Canada and the United States.

In 1984, ICAO established what is now known as the Technical Advisory Group on Machine Readable Travel Documents (TAG/MRTD), comprised of government officials who specialize in the issuance and border inspection of passports and other travel documents, in order to update and enhance the specifications which had been prepared by the Panel. Subsequently, this group's terms of reference were expanded to include, first, the development of specifications for a machine readable visa and, later, specifications for machine readable cards that may be used as official travel documents.

In 1998, the New Technologies Working Group of the TAG/MRTD began work to establish the most effective biometric identification system and associated means of data storage for use in MRTD applications, particularly in relation to document issuance and immigration considerations. The bulk of the work had been completed by the time the events of 11 September 2001 caused States to attach greater importance to the security of a travel document and the identification of its holder. The work was quickly finalized and endorsed by the TAG/MRTD and the Air Transport Committee.

The resulting Technical Reports on the employment of biometrics and contactless chip technology, Logical Data Structure (LDS), and Public Key Infrastructure (PKI) were incorporated into Volume 2 of the Sixth Edition of Doc 9303, Part 1 (*Machine Readable Passports*) in 2006, and Volume 2 of the Third Edition of Doc 9303, Part 3 (*Machine Readable Official Travel Documents*) in 2008.

2. SCOPE

The Seventh Edition of Doc 9303 represents a restructuring of the ICAO specifications for Machine Readable Travel Documents. Without incorporating substantial modifications to the specifications, in this new edition Doc 9303 has been reformatted into a set of specifications for Size 1 Machine Readable Official Travel Documents (TD1), Size 2 Machine Readable Official Travel Documents (TD2), and Size 3 Machine Readable Travel Documents (TD3), as well as visas. This set of specifications consists of various separate documents in which general (applicable to all MRTDs) as well as MRTD form factor specific specifications are grouped. See Section 5.1 "Doc 9303 Composition" for an overview.

These specifications are not intended to be a standard for national identity documents. However, a State whose identity documents are recognized by other States as valid travel documents shall design its identity documents such that they conform to the specifications of Doc 9303-3 and Doc 9303-4, Doc 9303-5 or Doc 9303-6.

Although the specifications in Doc 9303-4 are intended for particular application to the passport, these specifications apply equally to other TD3 size identity documents, for example, the laissez-passer, the seafarer's identity document and refugee travel documents.

The document at hand is Part 1. Part 1 introduces the Doc 9303 specifications. It describes the build-up of the twelve parts of Doc 9303, provides general information on ICAO, and guidance on the terminology and abbreviations used throughout the specifications.

3. GENERAL CONSIDERATIONS

3.1 ICAO's Leadership Role

ICAO's initiative to develop standard specifications for passports and other travel documents followed the tradition established by the League of Nations Passport Conferences of the 1920s and the work of the League's successor, the United Nations Organization. ICAO's mandate to continue in its leadership role stems from the Convention on International Civil Aviation (the "Chicago Convention") which covers the full range of requirements for efficient and orderly civil aviation operations, including provisions for clearance of persons through border controls, i.e.:

- a) the requirement for persons travelling by air and aircraft crews to comply with immigration, customs and passport regulations (Article 13);
- b) the requirement for States to facilitate border clearance formalities and prevent unnecessary delays (Article 22);
- c) the requirement that States collaborate in these matters (Article 23); and
- d) the requirement for States to develop and adopt internationally standard procedures for immigration and customs clearance (Article 37 j)).

Under this mandate, ICAO develops and maintains international Standards in Annex 9 — *Facilitation* to the Chicago Convention for implementation by Member States. In the development of such Standards, it is a fundamental precept that if public authorities are to facilitate inspection formalities for the vast majority of air travellers, those authorities must have a satisfactory level of confidence in the reliability of travel documents and in the effectiveness of inspection procedures. The production of standardized specifications for travel documents and the data contained therein is aimed at building that confidence.

In 2004, the Assembly of ICAO affirmed that cooperative work on specifications to strengthen the security and integrity of travel documents should be pursued by the Organization as a matter of high priority. In addition to the International Organization for Standardization (ISO), consultants to the TAG/MRTD include the International Air Transport Association (IATA), the Airports Council International (ACI), and the International Criminal Police Organization (INTERPOL).

In 2005, the then 188 Member States of ICAO approved a new Standard that all States must begin issuing machine readable passports in accordance with Doc 9303 no later than the year 2010. No later than the year 2015 all non-machine readable travel documents must have expired. This Standard is published in the 13th Edition (2011) of Annex 9 — *Facilitation*.

3.2 Relative Costs and Benefits of Machine Readable Travel Documents

Experience with the issuance of machine readable passports, in conformity with the specifications set forth in Doc 9303, indicates that the cost of producing MRTDs may be no greater than that of producing conventional documents, though the cost will be higher when biometric identification and electronic travel documents are implemented. As traffic volumes grow and more States focus on how they can rationalize their clearance processes with the employment of

computerized databases and electronic data interchange, the MRTD plays a pivotal part in modern, enhanced compliance systems. Equipment to read the documents and access the databases may entail a substantial investment, but this can be expected to be returned by the improvements in security, clearance speed and accuracy of verification which such systems provide. Use of MRTDs in automated clearance systems may also make it possible for States to eliminate both the requirement for paper documents, such as passenger manifests and embarkation/disembarkation cards, and the administrative costs associated with the related manual procedures.

3.3 Operations

The basic machine readable travel document, with its OCR readability, is designed for both visual and mechanical reading.

ICAO Member States have recognized that standardization is a necessity and that the benefits of adopting the Doc 9303 standard formats for passports and other travel documents extend beyond the obvious advantages for States that have the machine readers and databases for use in automated clearance systems. In fact, the physical characteristics and data security features of the documents themselves offer strong defence against alteration, forgery or counterfeit. Moreover, adoption of the standardized format for the visual zone of an MRTD facilitates inspection by airline and government officials, with the result that clearance of low-risk traffic is expedited, problem cases are more readily identified, and enforcement is improved. The optional introduction of biometric identification with data stored on a contactless integrated circuit will provide greater security and resistance to fraud and thus make it easier for the legitimate document holder to obtain visas for travel and to be processed through border inspection systems.

Note.— It is recognized that situations will arise where an eMRTD will not interface correctly with a reader at a border. There are several reasons why this might occur, of which a failure of the eMRTD is only one. ICAO emphasizes that an eMRTD which fails to read is nevertheless a valid document. However, a failure to read could be the result of fraudulent attack, and the receiving State should establish its own procedures for dealing with this possibility, which should involve more stringent inspection of the document and its holder but also allow that the failure involves no fraudulent intent.

3.4 Note on the Supplement

ICAO will issue from time to time a "Supplement to Doc 9303". The Supplement will contain information intended to clarify, amplify or elaborate on issues with respect to travel document specifications, as well as to correct errors encountered from implementation experiences. It is intended that the information contained in the Supplement will augment the existing guidance in Doc 9303 as well as in Technical Reports issued by ICAO. The Supplement will be issued on a continuing and consistent basis.

The specifications of Doc 9303 should always be read in conjunction with the additional information set out in the latest release of the Supplement which will be available on the ICAO web site at <http://www.icao.int/security/mrtd>.

3.5 Endorsement by ISO

The technical specifications sections of Doc 9303 have received the endorsement of the International Organization for Standardization as ISO Standard 7501. Such endorsement is made possible by means of a liaison mechanism through which manufacturers of travel documents, readers and other technologies provide technical and engineering advice to the TAG/MRTD under the auspices of ISO. Through this working relationship, the ICAO specifications have achieved, and are expected to continue to receive, the status of worldwide standards by means of a simplified procedure within ISO.

The liaison mechanism with ISO has been successfully applied not only to the endorsement of new specifications for travel documents as ISO standards but also to the approval of amendments to the specifications. Subsequent revisions to Doc 9303 will therefore be processed for ISO endorsement in the same manner as previously.

4. DEFINITIONS AND REFERENCES

4.1 Acronyms

Acronym	Full form
3DES	Triple DES
AA	Active Authentication
AFS	Anti-Fraud Specialist
AES	Advanced Encryption Standard
AID	Application Identifier
APDU	Application Protocol Data Unit
AO	Authorizing Officer
BAC	Basic Access Control
BER	Basic Encoding Rules
BLOB	Binary Large Object
CA	Certification Authority
CAN	Card Access Number
CBEFF	Common Biometric Exchange Format Framework
CID	Card Identifier
CRL	Certificate Revocation List
CSCA	Country Signing Certification Authority
DER	Distinguished Encoding Rule
DES	Data Encryption Standard
DH	Diffie Hellmann
DN	Distinguished Name
DO	Data Object
DOVID	Diffraction Optically Variable Image Device
DS	Document Signer
DSA	Digital Signature Algorithm
EAL	Evaluation Assurance Level
ECDH	Elliptic Curve Diffie Hellmann

Acronym	Full form
ECDSA	Elliptic Curve Digital Signature Algorithm
ECKA	Elliptic Curve Key Agreement
EEPROM	Electrically Erasable Programmable Read Only Memory
eMRP	Electronic Machine Readable Passport
eMRTD	Electronic Machine Readable Travel Document
eMROTD	Electronic Machine Readable Official Travel Document
ERZ	Effective Reading Zone
FAR	False Acceptance Rate
FIPS	Federal Information Processing Standard
FRR	False Rejection Rate
IC	Integrated Circuit
ICAO	International Civil Aviation Organization
ICC	Integrated Circuit Card
IFD	InterFace Device
IR	InfraRed light
IS	Inspection System
LDS	Logical Data Structure
MAC	Message Authentication Code
MRP	Machine Readable Passport
MRTD	Machine Readable Travel Document
MROTD	Machine Readable Official Travel Document in the form of a card
MRV-A	Full size (Format A) Machine Readable Visa
MRV-B	Small size (Format B) Machine Readable Visa
MRZ	Machine Readable Zone
NAD	Node ADdress
NIST	National Institute of Standards and Technology
NTWG	New Technologies Working Group
OCR	Optical Character Recognition
OCR-B	Optical Character Recognition font defined in ISO 1073-2
OID	Object IDentifier
OVD	Optically Variable Device
OVF	Optically Variable Feature
PACE	Password Authenticated Connection Establishment

Acronym	Full form
PCD	Proximity Coupling Device
PICC	Proximity Integrated Circuit Card
PIX	Proprietary Identifier eXtension (PIX).
PKD	Public Key Directory
PKI	Public Key Infrastructure
RID	Registered IDentifier (RID)
ROM	Read Only Memory
RSA	Rivest, Shamir and Adleman
SHA	Secure Hash Algorithm
SM	Secure Messaging
SO _D	Document Security Object
SSC	Send Sequence Counter
TAG/MRTD	Technical Advisory Group on Machine Readable Travel Documents
TD1	Size 1 Machine Readable Official Travel Document
TD2	Size 2 Machine Readable Official Travel Document
TD3	Size 3 Machine Readable Travel Document
TLV	Tag Length Value
UID	Unique IDentifier
UV	UltraViolet light
VIZ	Visual Inspection Zone
WSQ	Wavelet Scalar Quantization

4.2 Terms and Definitions

Term	Definition
Algorithm	A specified mathematical process for computation; a set of rules which, if followed, will give a prescribed result.
Anti-scan pattern	An image usually constructed of fine lines at varying angular displacement and embedded in the security background design. When viewed normally, the image cannot be distinguished from the remainder of the background security print but when the original is scanned or photocopied the embedded image becomes visible.
Application Identifier (AID)	Data element that identifies an application. eMRTD applications use a Standard AID that is one of four categories of AID. It consists of a registered application provider identifier (RID) and a proprietary application identifier extension (PIX).
Asymmetric	Different keys needed on each end of a communication link.

Term	Definition
Asymmetric algorithm	This type of cryptographic operation uses one key for encryption of plain text and another key for decryption of associated cipher text. These two keys are related to each other and are called a Key Pair.
Asymmetric keys	A separate but integrated user key pair comprised of one public key and one private key. Each key is one-way, meaning that a key used to encrypt information cannot be used to decrypt the same information.
Authentication	A process that validates the claimed identity of a participant in an electronic transaction.
Authenticity	The ability to confirm that the Logical Data Structure and its components were created by the issuing State or organization.
Authorization	A security process to decide whether a service can be given or not.
Authorized receiving organization	Organization authorized to process an official travel document (e.g. an aircraft operator) and, as such, potentially allowed in the future to record details in the optional capacity expansion technology.
Barcode	A means of storing data as a pattern of lines or dots.
Biographical data (biodata)	The personalized details of the bearer of the document appearing as text in the visual and machine readable zones on the MRTD, or on the chip if present.
Biometric	A measurable, unique, physical characteristic or personal behavioural trait used to recognize the identity, or verify the claimed identity, of an enrollee.
Biometric Data	The information extracted from the biometric and used either to build a reference template (template data) or to compare against a previously created reference template (comparison data).
Biometric Identification	A means of identifying or confirming the identity of the holder of an MRTD by the measurement of one or more properties of the holder's person.
Biometric matching	The process of using an algorithm that compares templates derived from the biometric reference and from the live biometric input, resulting in a determination of match or non-match.
Biometric reference template	A data set which defines a biometric measurement of a person which is used as a basis for comparison against a subsequently submitted biometric sample(s).
Biometric sample	Raw data captured as a discrete, unambiguous, unique and linguistically neutral value representing a biometric characteristic of an enrollee as captured by a biometric system (for example, biometric samples can include the image of a fingerprint as well as its derivative for authentication purposes).
Biometric system	An automated system capable of: <ol style="list-style-type: none">1. capturing a biometric sample from an end user for an MRP;2. extracting biometric data from that biometric sample;3. comparing that specific biometric data value(s) with that contained in one or more reference templates;4. deciding how well the data match, i.e. executing a rule-based matching process specific to the requirements of the unambiguous identification and person authentication of the enrollee with respect to the transaction involved; and

Term	Definition
	5. indicating whether or not an identification or verification of identity has been achieved.
Biometric template	Extracted and compressed data taken from a biometric sample.
Biometric verification	A means of identifying or confirming the identity of the holder of an MRTD by the measurement and validation of one or more unique properties of the holder's person.
Bit	A binary digit. The smallest possible unit of information in a digital code.
Black-line white-line design	A design made up of fine lines often in the form of a guilloche pattern and sometimes used as a border to a security document. The pattern migrates from a positive to a negative image as it progresses across the page.
Block	A string or group of bits that a block algorithm operates on.
Block algorithm	See: block cipher.
Block cipher	Algorithms that operate on plain text in blocks (strings or groups) of bits.
Bootstrapping	A method of testing the reliability of a data set.
Breeder Document	Documentation used as evidence of identity when applying for a travel document.
Brute-force attack	Trying every possible key and checking whether the resulting plain text is meaningful.
Byte	A sequence of eight bits usually operated on as a unit.
Caption	Printed word or phrase to identify a data field. In exceptional circumstances, when multiple different official languages do not fit in the data field, numbers can be used. These numbers must be accompanied by explanatory text at another location in the MRP.
Capture	The method of taking a biometric sample from the end user.
Card	Medium according to ISO/IEC 7810, ISO/IEC 7811, ISO 7812 used to carry information.
Certificate	A digital document which proves the authenticity of a public key.
Certificate Revocation List (CRL)	A list of revoked certificates within a given infrastructure.
Certification Authority (CA)	A trustworthy body that issues digital certificates for PKI.
Chemical sensitizers	Security reagents to guard against tampering by chemical erasure, such that irreversible colours develop when bleach and solvents come into contact with the document.
Cipher	Secret writing based on a key, or set of predetermined rules or symbols.
Collation marks	See: Index marks.
Colour shifting ink	Inks changing their visual characteristic depending on the viewing angle and/or the quality of a stimulating (light) source.
Comparison	The process of comparing a biometric sample with a previously stored reference template or templates. See also "One-to-many" and "One-to-one".

Term	Definition
Contactless integrated circuit	A semi-conductor device which stores MRTD data and which communicates with a reader using radio frequency energy according to ISO/IEC 14443.
Common Biometric Exchange Format Framework (CBEFF)	A common file format that facilitates exchange and interoperability of biometric data.
Control Number	A number assigned to a document at the time of its manufacture for record-keeping and security purposes.
Counterfeit	An unauthorized copy or reproduction of a genuine security document made by whatever means.
Country code	A two- or three-letter code as defined in ISO 3166-1, used to designate a document issuing authority or nationality of the document holder.
Cryptography	Science of transforming information into an enciphered, unintelligible form using an algorithm and a key.
Data Group	A series of related Data Elements grouped together within the Logical Data Structure.
Data Encryption Standard (DES)	A method of data encryption specified in FIPS 46-3.
Data Feature	The incorporation of encoded information into the document data or image structure, usually into the personalization data, especially the portrait.
Data Page	The page of the passport book, preferably the second or penultimate page, which contains the biographical data of the document holder. See "Biographical data".
Decryption	The act of restoring an encrypted file to its original state through the use of a key.
Deviation List	Signed list issued by an issuing State specifying non-conformities in travel documents and/or keys and certificates.
Deviation List Signer	An entity that digitally signs a Deviation List. The Deviation List signer is authorized by its national CSCA to perform this function through the issuance of a Deviation List Signer certificate.
Diffraction Optically Variable Device	A security feature containing a holographic or equivalent image within its construction, the image changing its appearance with angle of viewing or illumination.
Diffraction Optically Variable Image Device (DOVID) Laminate or Overlay	A laminate or overlay containing a DOVID either covering a whole area or located so as to protect key data on the document.
Digital signature	The result of a cryptographic operation enabling the validation of information by electronic means. This is NOT the displayed signature of the MRTD holder in digital form.
Digital Signature Algorithm (DSA)	Asymmetric algorithm published by NIST in FIPS 186. This algorithm only provides digital signature function.
Digital Watermark	See: Steganography.

Term	Definition
Displayed signature	The original written signature or the digitally printed reproduction of the original.
Directory/Public Key Directory (PKD)	A repository for storing information. Typically, a directory for a particular PKI is a repository for the public key encryption certificates issued by that PKI's Certification Authority, along with other client information. The directory also keeps cross-certificates, Certification Revocation Lists, and Authority Revocation Lists.
Document blanks	A document blank is a travel document that does not contain personalized data. Typically, document blanks are the base stock from which personalized travel documents are created.
Document number	A number that uniquely identifies a document. It is recommended that the document number and the control number be identical.
Document signer	A body which issues a biometric document and certifies that the data stored on the document is genuine in a way that will enable detection of fraudulent alteration.
Duplex design	A design made up of an interlocking pattern of small irregular shapes, printed in two or more colours and requiring very close register printing in order to preserve the integrity of the image.
Eavesdropping	The unauthorized interception of data communication.
Effective reading zone (ERZ)	A fixed-dimensional area, common to all MRTDs, in which the machine readable data in the MRZ can be read by document readers.
Electrically Erasable Programmable Read Only Memory (EEPROM)	A non-volatile memory technology where data can be electrically erased and rewritten.
Electronic Machine Readable Passport (eMRP)	A TD3 size MRTD conforming to the specifications of Doc 9303-4, that additionally incorporates a contactless integrated circuit including the capability of biometric identification of the holder. Commonly referred to as "ePassport".
Electronic Machine Readable Travel Document (eMRTD)	An MRTD (passport, visa or card) that has a contactless integrated circuit embedded in it and the capability of being used for biometric identification of the MRTD holder in accordance with the standards specified in the relevant Part of Doc 9303 — <i>Machine Readable Travel Documents</i> .
Electronic MROTD	A TD1 or TD2 size MROTD conforming to the specifications of Doc 9303-5 or Doc 9303-6, respectively, that additionally incorporates a contactless integrated circuit including the capability of biometric identification of the holder.
Embedded image	An image or information encoded or concealed within a primary visual image. Also see steganography.
Encryption	The act of disguising information through the use of a key so that it cannot be understood by an unauthorized person.
End user	A person who interacts with a biometric system to enroll or have his ¹ identity checked.

1. Throughout this document, the use of the male gender should be understood to include male and female persons.

Term	Definition
Enrollee	A human being, i.e. natural person, assigned an MRTD by an issuing State or organization.
Enrollment	The process of collecting biometric samples from a person and the subsequent preparation and storage of biometric reference templates representing that person's identity.
ePassport	Commonly used name for an eMRP. See Electronic Machine Readable Passport (eMRP).
Extraction	The process of converting a captured biometric sample into biometric data so that it can be compared to a reference template.
Failure to acquire	The failure of a biometric system to obtain the necessary biometric to enroll a person.
Failure to enroll	The failure of a biometric system to enroll a person.
False Acceptance	When a biometric system incorrectly identifies an individual or incorrectly verifies an impostor against a claimed identity.
False Acceptance Rate (FAR)	The probability that a biometric system will incorrectly identify an individual or will fail to reject an impostor. The rate given normally assumes passive impostor attempts. The false acceptance rate may be estimated as $FAR = NFA/NIIA$ or $FAR = NFA/NIVA$ where FAR is the false acceptance rate, NFA is the number of false acceptances, NIIA is the number of impostor identification attempts, and NIVA is the number of impostor verification attempts.
False match rate	Alternative to "false acceptance rate"; used to avoid confusion in applications that reject the claimant if his biometric data matches that of an enrollee. In such applications, the concepts of acceptance and rejection are reversed, thus reversing the meaning of "false acceptance" and "false rejection".
False non-match rate	Alternative to "false rejection rate"; used to avoid confusion in applications that reject the claimant if his biometric data matches that of an enrollee. In such applications, the concepts of acceptance and rejection are reversed, thus reversing the meaning of "false acceptance" and "false rejection".
False rejection	When a biometric system fails to identify an enrollee or fails to verify the legitimate claimed identity of an enrollee.
False rejection rate (FRR)	The probability that a biometric system will fail to identify an enrollee or verify the legitimate claimed identity of an enrollee. The false rejection rate may be estimated as follows: $FRR = NFR/NEIA$ or $FRR = NFR/NEVA$ where FRR is the false rejection rate, NFR is the number of false rejections, NEIA is the number of enrollee identification attempts, and NEVA is the number of enrollee verification attempts. This estimate assumes that the enrollee identification/verification attempts are representative of those for the whole population of enrollees. The false rejection rate normally excludes "failure to acquire" errors.
Fibres	Small, thread-like particles embedded in a substrate during manufacture.
Field	Specified space for an individual data element within a zone.
Fingerprint(s)	One (or more) visual representation(s) of the surface structure of the holder's fingertip(s).

Term	Definition
Fluorescent ink	Ink containing material that glows when exposed to light at a specific wavelength, usually UV.
Forgery	Fraudulent alteration of any part of the genuine document.
Fraudulent Alteration	Involves the alteration of a genuine document in an attempt to enable it to be used for travel by an unauthorized person or to an unauthorized destination. The biographical details of the genuine holder, particularly the portrait, form the prime target for such alteration.
Front-to-back (see-through) register	A design printed on both sides of an inner page of the document which, when the page is viewed by transmitted light, forms an interlocking image.
Full frontal (facial) image	A portrait of the holder of the MRTD produced in accordance with the specifications established in Doc 9303.
Full size (Format-A) machine readable visa (MRV-A)	An MRV conforming with the dimensional specifications contained in Doc 9303-7, sized to completely fill a passport visa page.
Gallery	The database of biometric templates of persons previously enrolled, which may be searched to find a probe.
Ghost Image	See: Shadow Image.
Global interoperability	The capability of inspection systems (either manual or automated) in different States throughout the world to obtain and exchange data, to process data received from systems in other States, and to utilize that data in inspection operations in their respective States. Global interoperability is a major objective of the standardized specifications for placement of both eye readable and machine readable data in all eMRTDs.
Globally Interoperable Biometric	Refers to Face Image as set forth in Doc 9303-9.
Guilloche design	A pattern of continuous fine lines, usually computer generated, and forming a unique image that can only be accurately re-originated by access to the equipment, software and parameters used in creating the original design.
Hash	A mathematical formula that converts a message of any length into a unique fixed-length string of digits known as "message digest" that represents the original message. A hash is a one-way function, that is, it is infeasible to reverse the process to determine the original message. Also, a hash function will not produce the same message digest from two different inputs.
Heat-sealed laminate	A laminate designed to be bonded to the biographical data page of a passport book by the application of heat and pressure.
Holder	A person possessing an MRTD, submitting a biometric sample for verification or identification whilst claiming a legitimate or false identity. A person who interacts with a biometric system to enroll or have his identity checked.

Term	Definition
Identification/Identify	The one-to-many process of comparing a submitted biometric sample against all of the biometric reference templates on file to determine whether it matches any of the templates and, if so, the identity of the eMRTD holder whose template was matched. The biometric system using the one-to-many approach is seeking to find an identity amongst a database rather than verify a claimed identity. Contrast with "Verification".
Identification card (ID-card)	A card used as an identity document.
Identifier	A unique data string used as a key in the biometric system to name a person's identity and its associated attributes. An example of an identifier would be an MRTD number.
Identity	The collective set of distinct personal and physical features, data and qualities that enable a person to be definitively identified from others. In a biometric system, identity is typically established when the person is registered in the system through the use of so-called "breeder documents" such as birth certificate and citizenship certificate.
Identity Document	Document used to identify its holder and issuer, which may carry data required as input for the intended use of the document.
Image	A representation of a biometric as typically captured via a video, camera or scanning device. For biometric purposes this is stored in digital form.
Impostor	A person who applies for and obtains a document by assuming a false identity, or a person who alters his physical appearance to represent himself as another person for the purpose of using that person's document.
Index marks	These marks are printed on the outside edge of each page in consecutive order starting from the top on the first page to a lower position on the following page and so on. The register mark of the last page appears at the bottom. This printing method leads to the appearance of a continuous stripe on the edge of the passport. Any page that has been removed will register as a gap. When printed in UV colour, this stripe becomes visible only under UV light. Also called collation marks.
Infra-red drop-out ink	An ink which forms a visible image when illuminated with light in the visible part of the spectrum and which cannot be detected in the infrared region.
Infra-red ink	An ink which is visible in the infrared light spectrum.
Initialization (of a smart card)	The process of populating persistent memory (EEPROM, etc.) with data that are common to a large number of cards while also including a minimal amount of card unique items (e.g. ICC serial number and Personalization keys).
Inspection	The act of a State or organization examining an MRTD presented to it by a traveller (the MRTD holder) and verifying its authenticity.
Inspection system	A system used for inspecting MRTDs by any public or private entity having the need to validate the MRTD, and using this document for identity verification, e.g. border control authorities, airlines and other transport operators, financial institutions.
Intaglio	A printing process used in the production of security documents in which high printing pressure and special inks are used to create a relief image with tactile feel on the surface of the document.

Term	Definition
Integrated Circuit (IC)	Electronic component designed to perform processing and/or memory functions.
Integrated Circuit Card (IC card, ICC)	A card into which been inserted one or more ICs.
Integrity	The ability to confirm that the Logical Data Structure and its components have not been altered from that created by the issuing State or organization.
Interface	A standardized technical definition of the connection between two components.
Interface device	Any terminal, communication device or machine to which the ICC is connected during operation.
Interoperability	The ability of several independent systems or sub-system components to work together.
Iris (printing)	See: Rainbow Printing.
Issuer data block	A series of Data Groups that are written to the optional capacity expansion technology by the issuing State or organization.
Issuing authority	The entity accredited for the issuance of an MRTD to the rightful holder.
Issuing State	The country issuing the MRTD.
Issuing organization	Organization authorized to issue an official MRTD (e.g. the United Nations Organization, issuer of the laissez-passer).
JPEG and JPEG2000	Standards for the data compression of images, used particularly in the storage of facial images.
Key exchange	The process for getting session keys into the hands of the conversants.
Key management	The process by which cryptographic keys are provided for use between authorized communicating parties.
Key pair	A pair of digital keys — one public and one private — used for encrypting and signing digital information.
Label	A self-adhesive sticker which is used as the data page within the passport. This is not a generally recommended practice, particularly for longer-term validity documents.
Laissez-passer	A document, generally similar to a passport, issued under the auspices of a supranational entity (e.g. United Nations).
Laminate	A clear material, which may have security features designed to be securely bonded to protect the biographical data or other page of the document.
Laser engraving	A process whereby personalized data are “burned” into the substrate with a laser. The data may consist of text, portraits and other security features.
Laser perforation	A process whereby numbers, letters or images are created by perforating the substrate with a laser.
Latent image	A hidden image formed within a relief image which is composed of line structures which vary in direction and profile resulting in the hidden image appearing at predetermined viewing angles, achieved by intaglio printing.

Term	Definition
Lenticular Feature	Security feature in which a lens structure is integrated in the surface of the document or used as a verification device.
Level 1 inspection	Cursory examination for rapid inspection at the point of usage (easily identifiable visual or tactile features).
Level 2 inspection	Examination by trained inspectors with simple equipment.
Level 3 inspection	Inspection by forensic specialists.
Live capture	The process of capturing a biometric sample by an interaction between an MRTD holder and a biometric system.
Logical Data Structure (LDS)	The Logical Data Structure describes how data are stored and formatted in the contactless IC of an eMRTD.
Machine Assisted Document Verification	A process using a device to assist in the verification of the authenticity of the document in respect to data and/or security.
Machine Readable Official Travel Document (MROTD)	A document, usually in the form of a card of TD1 or TD2 size, that conforms to the specifications of Doc 9303-5 and Doc 9303-6 and may be used to cross international borders by agreement between the States involved.
Machine Readable Passport (MRP)	A passport conforming with the specifications contained in Doc 9303-4. Normally constructed as a TD3 size book containing pages with information on the holder and the issuing State or organization and pages for visas and other endorsements. Machine readable information is contained in two lines of OCR-B text, each with 44 characters.
Machine Readable Travel Document (MRTD)	Official document, conforming with the specifications contained in Doc 9303, issued by a State or organization which is used by the holder for international travel (e.g. MRP, MRV, MROTD) and which contains mandatory visual (eye readable) data and a separate mandatory data summary in a format which is capable of being read by machine.
Machine Readable Visa (MRV)	A visa conforming with the specifications contained in Doc 9303-7. The MRV is normally attached to a visa page in a passport.
Machine Readable Zone (MRZ)	Fixed dimensional area located on the MRTD, containing mandatory and optional data formatted for machine reading using OCR methods.
Machine-verifiable biometric feature	A unique physical personal identification feature (e.g. facial image, fingerprint or iris) stored electronically in the chip of an eMRTD.
Master key	Root of the derivation chain for keys.
Master List Signer	An entity that digitally signs a Master List of CSCA certificates. The Master List signer is authorized by its national CSCA to perform this function through the issuance of a Master List Signer certificate.
Match/Matching	The process of comparing a biometric sample against a previously stored template and scoring the level of similarity. A decision to accept or reject is then based upon whether this score exceeds the given threshold.

Term	Definition
Message	The smallest meaningful collection of information transmitted from sender to receiver. This information may consist of one or more card transactions or card transaction-related information.
Message Authentication Code (MAC)	A MAC is a message digest appended to the message itself. The MAC cannot be computed or verified unless a secret is known. It is appended by the sender and verified by the receiver which is able to detect a message falsification.
Metallic ink	Ink exhibiting a metallic-like appearance.
Metameric inks	A pair of inks formulated to appear to be the same colour when viewed under specified conditions, normally daylight illumination, but which are a mismatch at other wavelengths.
Microprint	Printed text or symbols smaller than 0.25 mm/0.7 pica points.
MRP data page	A fixed-dimensional page within the MRP containing a standardized presentation of visual and machine readable data.
Multiple biometric	The use of more than one biometric.
Non-volatile memory	A semiconductor memory that retains its content when power is removed (i.e. ROM, EEPROM).
One-to-a-few	A hybrid of one-to-many identification and one-to-one verification. Typically the one-to-a-few process involves comparing a submitted biometric sample against a small number of biometric reference templates on file. It is commonly referred to when matching against a "watch list" of persons who warrant detailed identity investigation or are known criminals, terrorists, etc.
One-to-many	Synonym for "Identification".
One-to-one	Synonym for "Verification".
Operating system	A programme which manages the various application programmes used by a computer.
Optically Variable Device (OVD)	Security Feature displaying different colours or image appearance depending on viewing angle or verification conditions.
Optically Variable Feature (OVF)	An image or feature whose appearance in colour and/or design changes dependent upon the angle of viewing or illumination. Examples are: features including diffraction structures with high resolution (diffractive optically variable image device/DOVID), holograms, colour-shifting inks (e.g. ink with optically variable properties) and other diffractive or reflective materials.
Out-of-band	Refers to communications which occur outside of a previously established communication method or channel.
Overlay	An ultra-thin film or protective coating that may be applied to the surface of a document in place of a laminate.
Padding	Appending extra bits to either side of a data string up to a predefined length.
Penetrating numbering ink	Ink containing a coloured component, which penetrates deep into a substrate.

Term	Definition
Personal Identification Number (PIN)	A numeric security code used as a mechanism for local one-to-one verification with the purpose to ascertain whether the card holder is in fact the natural person authorized to access or use a specific service such as the right to unlock certain information on the card.
Personalization	The process by which the portrait, signature and biographical data are applied to the document.
Phosphorescent ink	Ink containing a pigment that glows when exposed to light of a specific wavelength, the reactive glow remaining visible and then decaying after the light source is removed.
Photochromic ink	An ink that undergoes a reversible colour change when exposed to light of a specified wavelength.
Photo-substitution	A type of forgery in which the portrait in a document is substituted for a different one after the document has been issued.
Physical security	The range of security measures applied during production and personalization to prevent theft and unauthorized access to the process.
PKD participant	An ICAO Member State or other entity issuing or intending to issue eMRTDs that follows the arrangements for participation in the ICAO PKD.
Portrait	A visual representation of the facial image of the holder of the document.
Private Key	A cryptographic key known only to the user, employed in public key cryptography in decrypting or signing information.
Probe	The biometric sample of the enrollee whose identity is sought to be established.
Public Key	The public component of an integrated asymmetric key pair, used in encrypting or verifying information.
Public key certificate	The public key information of an entity signed by the certification authority and thereby rendered unforgeable.
Public key cryptography	A form of asymmetric encryption where all parties possess a pair of keys, one private and one public, for use in encryption and digital signing of data.
Public Key Directory (PKD)	The central database serving as the repository of Document Signer Certificates, CSCA Master Lists, Country Signing CA Link Certificates and Certificate Revocation Lists issued by Participants, together with a system for their distribution worldwide, maintained by ICAO on behalf of Participants in order to facilitate the validation of data in eMRTDs.
Public Key Infrastructure (PKI)	A set of policies, processes and technologies used to verify, enrol and certify users of a security application. A PKI uses public key cryptography and key certification practices to secure communications.
Public key system	A cryptographic method using pairs of keys, one of which is private and one is public. If encipherment is done using the public key, decipherment requires application of the corresponding private key and vice versa.
Rainbow printing (iris or split fountain printing)	A technique whereby two or more colours of ink are printed simultaneously on a press to create a continuous merging of the colours similar to the effect seen in a rainbow. Also called prismatic, or iris printing.

Term	Definition
Random access	A means of storing data whereby specific items of data can be retrieved without the need to sequence through all the stored data.
Random Access Memory (RAM)	A volatile memory randomly accessible used in the IC that requires power to maintain data.
Reactive inks	Inks that contain security reagents to guard against attempts at tampering by chemical erasure (deletion), such that a detectable reaction occurs when bleach and solvents come into contact with the document.
Read only memory (ROM)	Non-volatile memory that is written once, usually during IC production. It is used to store operating systems and algorithms employed by the semiconductor in an integrated circuit card during transactions.
Read range	The maximum practical distance between the contactless IC with its antenna and the reading device.
Receiver data block	A series of Data Groups that are written to the optional capacity expansion technology by a receiving State or authorized receiving organization.
Receiving State	The country inspecting the holder's MRTD.
Registration	The process of making a person's identity known to a biometric system, associating a unique identifier with that identity, and collecting and recording the person's relevant attributes into the system.
Registration Authority (RA)	A person or organization responsible for the identification and authentication of an applicant for a digital certificate. An RA does not issue or sign certificates.
Relief (3-D) design (Medallion)	A security background design incorporating an image generated in such a way as to create the illusion that it is embossed or debossed on the substrate surface.
Response	A message returned by the slave to the master after the processing of a command received by the slave.
Rivest, Shamir and Adleman (RSA)	Asymmetric algorithm invented by Ron Rivest, Adi Shamir and Len Adleman. It is used in public-key cryptography and is based on the fact that it is easy to multiply two large prime numbers together, but hard to factor them out of the product.
Score	A number on a scale from low to high, measuring the success that a biometric probe record (the person being searched for) matches a particular gallery record (a person previously enrolled).
Secure hash algorithm (SHA)	Hash function specified by NIST and published as a federal information processing standard FIPS-180.
Secured message	A message that is protected against illegal alteration or origination.
Secondary image	A repeat image of the holder's portrait reproduced elsewhere in the document by whatever means.
Security thread	A thin strip of plastic or other material embedded or partially embedded in the substrate during the paper manufacturing process. The strip may be metallized or partially de-metallized.

Term	Definition
See-through register (front-to-back)	See: front-to-back register.
Sensitive Data	Finger and iris image data stored in the LDS Data Groups 3 and 4, respectively. These data are considered to be more privacy sensitive than data stored in the other Data Groups.
Shadow Image	Used as a synonym to Ghost Image: A second representation of the holder's portrait on the document, reduced in contrast and/or saturation and/or size.
Sheet	The individual piece of substrate in a passport which comprises more than one passport page.
Size 1 machine readable official travel document (TD1)	A card with nominal dimensions guided by those specified for the ID-1 type card (ISO/IEC 7810) (excluding thickness).
Size 2 machine readable official travel document (TD2)	A card or label conforming with the dimensions defined for the ID-2 type card (ISO/IEC 7810) (excluding thickness).
Skimming	Electronically reading the data stored in the contactless IC without authorizing this reading of the document.
Small size (Format-B) machine readable visa (MRV-B)	An MRV conforming with the dimensional specifications contained in Doc 9303-7, sized to maintain a clear area on the passport visa page.
Steganography	An image or information encoded or concealed within a primary visual image.
Structure feature	A structure feature involves the incorporation of a measurable structure into or onto the MRTD. The presence of the structure may be detected and measured by the detection machine.
Substance feature	A substance feature involves the incorporation into the MRTD of a material which would not normally be present and is not obviously present on visual inspection. The presence of the material may be detected by the presence and magnitude of a suitable property of the added substance.
Symmetric algorithm	A type of cryptographic operation using the same key or set of keys for encryption of plain text and decryption of associated cipher text.
Synthetic	A non-paper based material used for the biographical data page or cards. The term "synthetic" is used synonymously for "plastic", which encompasses materials like polycarbonate, PET and similar materials and combinations thereof.
System	A specific IT installation, with a particular purpose and operational environment.
System integration	The process by which cardholder-facing, internal and partner-facing systems and applications are integrated with each other.

Term	Definition
System security policy	The set of laws, rules and practices that regulate how sensitive information and other resources are managed, protected and distributed within a specific system.
Tactile feature	A surface feature giving a distinctive “feel” to the document.
Taggant	A not-naturally occurring substance that can be added to the physical components of an MRTD, and is typically a Level 3 feature, requiring special equipment for detection.
Tagged ink	Inks containing compounds that are not naturally occurring substances and which can be detected using special equipment.
Tamper resistance	The capability of components within a document to withstand alteration.
Template/Reference template	Data which represent the biometric measurement of an enrollee used by a biometric system for comparison against subsequently submitted biometric samples.
Template size	The amount of computer memory taken up by the biometric data.
Thermochromic ink	An ink which undergoes a reversible colour change when the printed image is exposed to a specific change in temperature.
Threshold	A “benchmark” score above which the match between the stored biometric and the person is considered acceptable or below which it is considered unacceptable.
Trust Anchor	In cryptographic systems with hierarchical structure this is an authoritative entity for which trust is assumed and not derived.
Token image	A portrait of the holder of the MRTD, typically a full frontal image, which has been adjusted in size to ensure a fixed distance between the eyes. It may also have been slightly rotated to ensure that an imaginary horizontal line drawn between the centres of the eyes is parallel to the top edge of the portrait rectangle if this has not been achieved when the original portrait was taken or captured.
Usual Mark	Symbol that replaces a holder’s written signature in case the holder is not able to sign.
UV dull substrate	A substrate that exhibits no visibly detectable fluorescence when illuminated with UV light.
Validation	The process of demonstrating that the system under consideration meets in all respects the specification of that system.
Variable laser image	A feature generated by laser engraving or laser perforation displaying changing information or images dependent upon the viewing angle.
Verification/verify	The process of comparing a submitted biometric sample against the biometric reference template of a single enrollee whose identity is being claimed, to determine whether it matches the enrollee’s template. Contrast with “Identification”.
Visual inspection zone (VIZ)	Those portions of the MRTD (data page in the case of MRP) designed for visual inspection, i.e. front and back (where applicable), not defined as the MRZ.
Watermark	A custom design, typically containing tonal gradation, formed in the paper or other substrate during its manufacture, created by the displacement of materials therein, and traditionally viewable by transmitted light.

Term	Definition
Wavelet Scalar Quantization (WSQ)	A means of compressing data used particularly in relation to the storage of fingerprint images.
Windowed or Transparent feature	Security feature created by the construction of the substrate, whereby part of the substrate is removed or replaced by transparent material, which can incorporate additional security features such as lenses or tactile elements.
X.509 v3 certificate	The internationally recognized electronic document used to prove identity and public key ownership over a communication network. It contains the issuer's name, user's identifying information, and issuer's digital signature.
Zone	An area containing a logical grouping of data elements on the MRTD. Seven (7) zones are defined for MRTDs.

4.3 Key Words

Key words are used to signify requirements.

The key words "MUST", "MUST NOT", "REQUIRED", "SHALL", "SHALL NOT", "SHOULD", "SHOULD NOT", "RECOMMENDED", "MAY", and "OPTIONAL" used in capitalized form in Doc 9303 are to be interpreted as described in [RFC 2119]:

MUST	This word, or the terms "REQUIRED" or "SHALL", means that the definition is an absolute requirement of the specification.
MUST NOT	This phrase, or the phrase "SHALL NOT", means that the definition is an absolute prohibition of the specification.
SHOULD	This word, or the adjective "RECOMMENDED", means that there may exist valid reasons in particular circumstances to ignore a particular item, but the full implications must be understood and carefully weighed before choosing a different course.
SHOULD NOT	This phrase, or the phrase "NOT RECOMMENDED" means that there may exist valid reasons in particular circumstances when the particular behaviour is acceptable or even useful, but the full implications should be understood and the case carefully weighed before implementing any behaviour described with this label.
MAY	This word, or the adjective "OPTIONAL", means that an item is truly optional. One user may choose to include the item because a particular application requires it or because the user feels that it enhances the application while another user may omit the same item. An implementation which does not include a particular option MUST be prepared to interoperate with another implementation which does include the option, though perhaps with reduced functionality. In the same vein an implementation which does include a particular option MUST be prepared to interoperate with another implementation which does not include the option (except, of course, for the feature the option provides).
CONDITIONAL	The usage of an item is dependent on the usage of other items. It is therefore further qualified under which conditions the item is REQUIRED or RECOMMENDED. This is an additional key word used in Doc 9303 (not part of RFC 2119).

Guidance in the use. Imperatives of the type defined here must be used with care and sparingly. In particular, they MUST be used only where it is actually required for interoperation or to limit behaviour which has potential for causing harm (e.g. limiting retransmissions). For example, they must not be used to try to impose a particular method on implementers where the method is not required for interoperability.

Security considerations. These terms are frequently used to specify behaviour with security implications. The effects on security of not implementing a MUST or SHOULD, or doing something the specification says MUST NOT or SHOULD NOT be done, may be very subtle. Document authors should take the time to elaborate the security implications of not following recommendations or requirements as most implementers will not have had the benefit of the experience and discussion that produced the specification.

In case OPTIONAL features are implemented, they MUST be implemented as described in Doc 9303.

4.4 Object Identifiers

In Parts 9303-10, 9303-11, and 9303-12 ICAO Object Identifiers are specified. This paragraph lists these actual ICAO Object Identifiers:

-- ICAO security framework

id-icao OBJECT IDENTIFIER ::= {2.23.136}

id-icao-mrtd OBJECT IDENTIFIER ::= {id-icao 1}

id-icao-mrtd-security OBJECT IDENTIFIER ::= {id-icao-mrtd 1}

-- LDS security object

id-icao-ldsSecurityObject OBJECT IDENTIFIER ::= {id-icao-mrtd-security 1}

-- CSCA master list

id-icao-cscaMasterList OBJECT IDENTIFIER ::= {id-icao-mrtd-security 2}

id-icao-cscaMasterListSigningKey OBJECT IDENTIFIER ::= {id-icao-mrtd-security 3}

-- Active Authentication protocol

id-icao-aaProtocolObject OBJECT IDENTIFIER ::= {id-icao-mrtd-security 5}

-- CSCA name change

id-icao-extensions OBJECT IDENTIFIER ::= {id-icao-mrtd-security 6}

id-icao-nameChange OBJECT IDENTIFIER ::= {id-icao-mrtd-security-extensions 1}

-- document type list, see TR "LDS and PKI Maintenance"

id-icao-documentTypeList OBJECT IDENTIFIER ::= {id-icao-mrtd-security-extensions 2}

-- Deviation List Base Object identifiers

id-icao-DeviationList OBJECT IDENTIFIER ::= {id-icao-mrtd-security 7}

id-icao-DeviationListSigningKey OBJECT IDENTIFIER ::= {id-icao-mrtd-security 8}

-- Deviation Object Identifiers and Parameter Definitions

id-Deviation-CertOrKey OBJECT IDENTIFIER ::= {id-icao-DeviationList 1}

id-Deviation-CertOrKey-DSSignature OBJECT IDENTIFIER ::= {id-Deviation-CertOrKey 1}

id-Deviation-CertOrKey-DSEncoding OBJECT IDENTIFIER ::= {id-Deviation-CertOrKey 2}

id-Deviation-CertOrKey-CSCAEncoding OBJECT IDENTIFIER ::= {id-Deviation-CertOrKey 3}

id-Deviation-CertOrKey-AAKeyCompromised OBJECT IDENTIFIER ::= {id-Deviation-CertOrKey 4}

id-Deviation-LDS OBJECT IDENTIFIER ::= {id-icao-DeviationList 2}

id-Deviation-LDS-DGMalformed OBJECT IDENTIFIER ::= {id-Deviation-LDS 1}

id-Deviation-LDS-SODSignatureWrong OBJECT IDENTIFIER ::= {id-Deviation-LDS 3}

id-Deviation-LDS-COMInconsistent OBJECT IDENTIFIER ::= {id-Deviation-LDS 4}

id-Deviation-MRZ OBJECT IDENTIFIER ::= {id-icao-DeviationList 3}

id-Deviation-MRZ-WrongData OBJECT IDENTIFIER ::= {id-Deviation-MRZ 1}

id-Deviation-MRZ-WrongCheckDigit OBJECT IDENTIFIER ::= {id-Deviation-MRZ 2}

id-Deviation-Chip OBJECT IDENTIFIER ::= {id-icao-DeviationList 4}

id-Deviation-NationalUse OBJECT IDENTIFIER ::= {id-icao-DeviationList 5}

-- LDS2 Object Identifiers

id-icao-lds2 OBJECT IDENTIFIER ::= {id-icao-mrtd-security 9}

id-icao-tsSigner OBJECT IDENTIFIER ::= {id-icao-mrtd-security-lds2 1}

id-icao-vSigner OBJECT IDENTIFIER ::= {id-icao-mrtd-security-lds2 2}

id-icao-bSigner OBJECT IDENTIFIER ::= {id-icao-mrtd-security-lds2 3}

-- SPOC Object Identifiers

```
id-icao-spoc OBJECT IDENTIFIER ::= {id-icao-mrtd-security 10}
```

```
id-icao-spocClient OBJECT IDENTIFIER ::= {id-icao-mrtd-security-spoc 1}
```

```
id-icao-spocServer OBJECT IDENTIFIER ::= {id-icao-mrtd-security-spoc 2}
```

4.5 The Use of Notes

While in ISO/IEC standards notes are informative, in Doc 9303 notes are part of the normative text and used to emphasize requirements or additional information.

5. GUIDANCE ON THE USE OF DOC 9303**5.1 Doc 9303 Composition**

Doc 9303 is comprised of twelve parts. Each part describes a specific aspect of the MRTD. The parts of Doc 9303 are composed in such way that the issuer of MRTDs can compose a complete set of relevant specifications, relevant to a specific type of MRTD (form factor). The relationship between these form factors and the parts of Doc 9303 is described in Section 5.2 of this Part 1.

The following parts form the complete Doc 9303 specifications for Machine Readable Travel Documents:

Part 1 — Introduction

The document at hand is Part 1.

Part 2 — Specifications for the Security of the Design, Manufacture and Issuance of MRTDs

Part 2 provides mandatory and optional specifications for the precautions to be taken by travel document issuing authorities to ensure that their MRTDs, and their means of personalization and issuance to the rightful holders, are secure against fraudulent attack. Mandatory and optional specifications are also provided for the physical security to be provided at the premises where the MRTDs are produced, personalized and issued and for the vetting of personnel involved in these operations.

Part 3 — Specifications common to all MRTDs

Part 3 of Doc 9303 is based on the Sixth Edition of Doc 9303, Part 1, Volume 1, *Machine Readable Passports – Passports with Machine Readable Data Stored in Optical Character Recognition Format* (2006) and the Third Edition of Doc 9303, Part 3, Volume 1, *Machine Readable Official Travel Documents – MRtds with Machine Readable Data Stored in Optical Character Recognition Format* (2008).

Part 3 defines specifications that are common to TD1, TD2 and TD3 size Machine Readable Travel Documents (MRTDs) including those necessary for global interoperability using visual inspection and machine readable (optical character recognition) means. Detailed specifications applicable to each document type appear in Doc 9303, Parts 4 through 7.

Part 4 — Specifications for Machine Readable Passports (MRPs) and other TD3 size MRTDs

Part 4 defines specifications that are specific to TD3 size Machine Readable Passports (MRPs) and other TD3 size Machine Readable Travel Documents (MRTDs). For brevity, the term MRP has been used throughout Part 4 and, except where stated, all the specifications herein shall apply equally to all other TD3 size MRTDs.

Part 5 — Specifications for TD1 size Machine Readable Official Travel Documents (MROTDs)

Part 5 defines specifications that are specific to TD1 size Machine Readable Official Travel Documents (MROTDs).

Part 6 — Specifications for TD2 size Machine Readable Official Travel Documents (MROTDs)

Part 6 defines specifications that are specific to TD2 size Machine Readable Official Travel Documents (MROTDs).

Part 7 — Machine Readable Visas

Part 7 defines the specifications for Machine Readable Visas (MRVs) which allow compatibility and global interchange using both visual (eye readable) and machine readable means. The specifications for visas can, where issued by a State and accepted by a receiving State, be used for travel purposes. The MRV shall, as a minimum, contain the data specified in a form that is legible both visually and by optical character recognition methods, as presented in Part 7.

Part 7 contains specifications for both Format-A as well as Format-B types of visas, and is based on the Third Edition of Doc 9303, Part 2, *Machine Readable Visas* (2005).

Part 8 — Emergency Travel Documents

Reserved for future use.

Part 9 — Deployment of Biometric Identification and Electronic Storage of Data in MRTDs

Part 9 defines the specifications, additional to those for the basic MRTD set forth in Parts 3, 4, 5, 6, and 7 of Doc 9303, to be used by States wishing to issue an electronic Machine Readable Travel Document (eMRTD) capable of being used by any suitably equipped receiving State to read from the document a greatly increased amount of data relating to the eMRTD itself and its holder. This includes mandatory globally interoperable biometric data that can be used as an input to facial recognition systems, and, optionally, to fingerprint or iris recognition systems. The specifications require the globally interoperable biometric data to be stored in the form of high-resolution images.

Part 10 — Logical Data Structure (LDS) for Storage of Biometrics and Other Data in the Contactless Integrated Circuit (IC)

Part 10 defines a Logical Data Structure (LDS) for eMRTDs required for global interoperability. The contactless integrated circuit capacity expansion technology contained in an eMRTD selected by an issuing State or organization SHALL allow data to be accessible by receiving States. Part 10 defines the specifications for the standardized organization of these data. This requires the identification of all mandatory and optional Data Elements and a prescriptive ordering and/or grouping of Data Elements that SHALL be followed to achieve global interoperability for reading of details (Data Elements) recorded in the capacity expansion technology optionally included on an MRTD (eMRTD).

Part 11 — Security Mechanisms for MRTDs

Part 11 provides specifications to enable States and suppliers to implement cryptographic security features for Machine Readable Travel Documents (eMRTDs) offering ICC read-only access.

Part 11 specifies cryptographic protocols to:

- prevent skimming of data from the contactless IC;
- prevent eavesdropping on the communication between the IC and reader;
- provide authentication of the data stored on the IC based on the PKI described in Part 12, and provide authentication of the IC itself.

Part 12 — Public Key Infrastructure for MRTDs

Part 12 defines the Public Key Infrastructure (PKI) for the eMRTD application. Requirements for issuing States or organizations are specified, including operation of a Certification Authority (CA) that issues certificates and CRLs. Requirements for receiving States and their Inspection Systems validating those certificates and CRLs are also specified.

5.2 Relationship between MRTD Form Factors and relevant Doc 9303 Parts

Table 1-1 describes which parts of Doc 9303 are relevant for specific types of MRTDs (form factors).

Table 1-1. Form factors cross-reference table

	Doc 9303 Part											
	1	2	3	4	5	6	7	8	9	10	11	12
TD3 size MRTD (MRP)	√	√	√	√								
TD3 size eMRTD (eMRP)	√	√	√	√					√	√	√	√
TD1 size MROTD	√	√	√		√							
TD1 size eMROTD	√	√	√		√				√	√	√	√
TD2 size MROTD	√	√	√			√						
TD2 size eMROTD	√	√	√			√			√	√	√	√
MRV	√	√	√				√					

6. REFERENCES (NORMATIVE)

Certain provisions of international Standards, referenced in this text, constitute provisions of Doc 9303. Where differences exist between the specifications contained in Doc 9303 and the referenced Standards, to accommodate specific construction requirements for machine readable travel documents, including machine readable visas, the specifications contained herein shall prevail.

Annex 9 Convention on International Civil Aviation (“Chicago Convention”), Annex 9 – *Facilitation*.

RFC 2119 RFC 2119, S. Bradner, “Key Words for Use in RFCs to Indicate Requirement Levels”, BCP 14, RFC2119, March 1997.

— END —

ISBN 978-92-9249-790-3



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ICAO

Doc 9303

Machine Readable Travel Documents

Seventh Edition, 2015

Part 2: Specifications for the Security of the Design,
Manufacture and Issuance of MRTDs



Approved by the Secretary General and published under his authority

INTERNATIONAL CIVIL AVIATION ORGANIZATION



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Published in separate English, Arabic, Chinese, French, Russian
and Spanish editions by the
INTERNATIONAL CIVIL AVIATION ORGANIZATION
999 Robert-Bourassa Boulevard, Montréal, Quebec, Canada H3C 5H7

Downloads and additional information are available at www.icao.int/security/mrtd

Doc 9303, *Machine Readable Travel Documents*
Part 2 — *Specifications for the Security of the Design, Manufacture and Issuance of MRTDs*
ISBN 978-92-9249-791-0

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AMENDMENTS

Amendments are announced in the supplements to the *Products and Services Catalogue*; the Catalogue and its supplements are available on the ICAO website at www.icao.int. The space below is provided to keep a record of such amendments.

RECORD OF AMENDMENTS AND CORRIGENDA

AMENDMENTS		
No.	Date	Entered by

CORRIGENDA		
No.	Date	Entered by

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1. SCOPE

The Seventh Edition of Doc 9303 represents a restructuring of the ICAO specifications for Machine Readable Travel Documents. Without incorporating substantial modifications to the specifications, in this new edition Doc 9303 has been reformatted into a set of specifications for Size 1 Machine Readable Official Travel Documents (TD1), Size 2 Machine Readable Official Travel Documents (TD2), and Size 3 Machine Readable Travel Documents (TD3), as well as visas. This set of specifications consists of various separate documents in which general (applicable to all MRTDs) as well as MRTD form factor specific specifications are grouped.

This Part provides mandatory and optional specifications for the precautions to be taken by travel document issuing authorities to ensure that their MRTDs, and their means of personalization and issuance to the rightful holders, are secure against fraudulent attack. Mandatory and optional specifications are also provided for the physical security to be provided at the premises where the MRTDs are produced, personalized and issued and for the vetting of personnel involved in these operations.

The worldwide increase in the number of people travelling and the expected continued growth, together with the growth in international crime, terrorism and illegal immigration have led to increasing concerns over the security of travel documents and calls for recommendations on what may be done to help improve their resistance to attack or misuse. Historically, Doc 9303 has not made recommendations on the specific security features to be incorporated in travel documents. Each issuing State has been free to incorporate such safeguards as it deemed appropriate to protect its nationally issued travel documents against counterfeiting, forgery and other forms of attack, as long as nothing was included which would adversely affect their OCR machine readability.

To meet the need of increased document security, ICAO's technical advisors decided it would be desirable to publish a set of "recommended minimum security standards" as a guideline for all States issuing machine readable travel documents. Thus,

- Appendix A to this Part describes security measures to be taken within the structure of the MRTD and of the premises in which it is produced;
- Appendix B describes optional means of achieving machine-assisted document verification;
- Appendix C describes the security measures to be taken to ensure the security of the personalization operations and of the documents in transit.

2. SECURITY OF THE MRTD AND ITS ISSUANCE

The MRTD, and its method of issuance, shall be designed to incorporate safeguards to protect the document against fraudulent attack during its validity period. Methods of fraudulent attack can be classified as follows:

- *Counterfeit* involves the creation of all or part of a document which resembles the genuine MRTD with the intention that it be used as if it were genuine. Counterfeits may be produced by attempting to duplicate or simulate the genuine method of manufacture and the materials used therein or by using copying techniques;
- *Fraudulent alteration, also known as forgery*, involves the alteration of a genuine document in an attempt to enable it to be used for travel by an unauthorized person or to an unauthorized destination. The biographical details of the genuine holder, particularly the portrait, form the prime target for such alteration; and

- *Impostors.* “Impostor” is defined as someone representing himself¹ to be some other person. Security features should be incorporated to facilitate the visual and/or automated detection of fraudulent use of the MRTD by an impostor.

There are established methods of providing security against the above types of fraudulent attack. These involve the use of materials which are not readily available, combined with highly specialized design systems and manufacturing processes requiring special equipment and expertise. Appendix A to this Part lists some of the techniques currently known to be available to provide security to an MRTD enabling an inspecting officer to detect a counterfeit or fraudulently altered document either visually or with the aid of simple equipment such as a magnifying glass or ultraviolet lamp.

All MRTDs that conform to Doc 9303 shall use the specified Basic Security Features listed in Table A-1 of Appendix A.

3. MACHINE ASSISTED DOCUMENT VERIFICATION

A travel document issuing authority may wish to incorporate into its MRTDs one or more security features which require the use of detection equipment to detect and verify their presence within the normal time for immigration clearance. This section provides advice on machine assisted authentication of security features incorporated in MRTDs made in accordance with the specifications set out in Doc 9303. Machine verifiable security features help confirm the authenticity of a genuine document made from genuine materials. Appendix B contains recommendations which cover machine authentication of the security features in the document itself (based on materials, on security printing and on copy protection techniques) as well as advice on reader technologies that apply to machine authentication of documents. Appendix A of this Part and the security standards recommended therein provide the basis for the considerations in this section, utilizing the security features recommended in the Appendix and expanding the capabilities of advanced readers already installed at the borders to accommodate electronic Machine Readable Travel Documents (eMRTDs) and their verification.

The worldwide success of ICAO's electronic document initiative has led to the issuance of millions of eMRTDs as specified in Doc 9303. These advanced document concepts require the deployment of travel document readers equipped for reading contactless ICs at the points of document authentication, usually the points of entry at one country's borders. Such advanced readers feature not only the contactless IC reading capability, but also the means for high resolution image acquisition in the visual, infrared and ultraviolet spectral range.

The aim of the recommendations in this chapter is to improve the security of machine readable travel documents worldwide by using machine assisted document authentication procedures completely in line with:

- the layout of machine readable travel documents as specified in Doc 9303 maintaining backward compatibility;
- the security features recommended in Appendix A of this Part; and
- making use of the technical capabilities of advanced readers installed worldwide to accommodate eMRTDs.

However, each State must conduct a risk assessment of the machine assisted document authentication features at its borders to identify their most beneficial aspects and minimize the risks. Doc 9303 does not specify any feature as a means of globally interoperable machine assisted document verification, as the use of a single feature worldwide would

¹ Throughout this document, the use of the male gender should be understood to include male and female persons.

make the feature highly vulnerable to fraudulent attack. Therefore, to minimize risk States should apply a variety of security features.

3.1 Feature Types

There are three main categories of machine-verifiable security features. These are described below along with examples of security features that are capable of machine verification.

3.1.1 Structure feature

A structure feature involves the incorporation of a measurable structure into or onto the MRTD data page. It is a security feature containing some form of verifiable information based on the physical construction of the feature. Examples include:

- the interference characteristic of a hologram or other optically variable device that can be uniquely identified by a suitable reader;
- retro-reflective images embedded within a security laminate; and
- controlled transmission of light through selective areas of the substrate.

3.1.2 Substance feature

A substance feature involves the incorporation into the MRTD of a material which would not normally be present and is not obviously present on visual inspection. The presence of the material may be detected by the presence and magnitude of a suitable property of the added substance. It involves the identification of a defined characteristic of a substance used in the construction of the feature. Examples include:

- the use of pigments, usually in inks, which respond in specific and unusual ways to specific wavelengths of light (which may include infrared or ultraviolet light) or have magnetic or electromagnetic properties; and
- the incorporation into a component of the data page of materials, e.g., fibres whose individual size or size distribution conform to a predetermined specification.

3.1.3 Data feature

The visible image of the MRTD data page may contain concealed information which may be detected by a suitable device built into the reader. The concealed information may be in the security printed data page but it is more usually incorporated into the personalization data especially the printed portrait.

Inserting the concealed information into the MRTD data page may involve the application of substance and/or structure features in a way which achieves several levels of security. The term steganography, in this context, describes a special class of data features typically taking the form of digital information which is concealed within an image, usually either the personalization portrait or the background security printing. The information may be decoded by a suitable device built into a full-page reader set to look for the feature in a specific location. The information might, for example, be the travel document number. The reader could then be programmed to compare the travel document number detected from

the feature with the travel document number appearing in the MRZ. Such a comparison involves no access to any data stored in the contactless IC of an eMRTD. Examples of this type of feature are:

- encoded data stored on the document in magnetic media such as special security threads; and
- designs incorporating the concealed data which only become detectable when viewed using a specific wavelength of light, optical filters, or a specific image processing software.

In more complex forms the amount of stored data can be significant, and this can be verified by electronic comparison with data stored in the contactless IC of the eMRTD.

3.2 Basic Principles

All three feature types, namely structure, substance and data, may be incorporated in travel documents and verified using suitably designed readers. Readers are now becoming available that can detect such features and use the responses to confirm the authenticity of the document. Appendix B concentrates on features that can be verified by detection equipment built into the MRTD reader, and used during the normal reading process.

Machine assisted document security verification uses automated inspection technology to assist in verifying the authenticity of a travel document. It should not be used in isolation to determine proof of authenticity, but when used in combination with visible document security features the technology provides the examiner with a powerful new tool to assist in verifying travel documents.

Machine assisted document security verification features are optional security elements that may be included on the MRTD at the discretion of the issuing authority.

The machine verifiable security features may vary in size from less than 1 mm (0.04 in) square up to the whole area of the document. Figure 1 provides guidance on the positions these features should occupy on a MRTD data page to facilitate interoperability. To maintain backward compatibility, it is recommended to deploy machine authentication features within the positions and areas indicated.

3.3 Machine Authentication and eMRTDS

The use of a fully compliant, contactless IC in an eMRTD offers excellent possibilities for machine authentication. However, machine authentication using the contactless IC fails if:

- the contactless IC is defective and fails to communicate; or
- there are no certificates available for checking the authenticity and integrity of the data on the contactless IC.

Therefore an alternative machine authentication is needed. This is especially relevant in automated border control (ABC) scenarios where the machine reader is used instead of a border official to read and validate the eMRTD. This alternative machine authentication establishes trust in the data used for decisions at the border.

A functioning contactless IC in an eMRTD can also aid machine authentication by storing the machine authentication features and its coordinates in the relevant Data Groups (DGs).

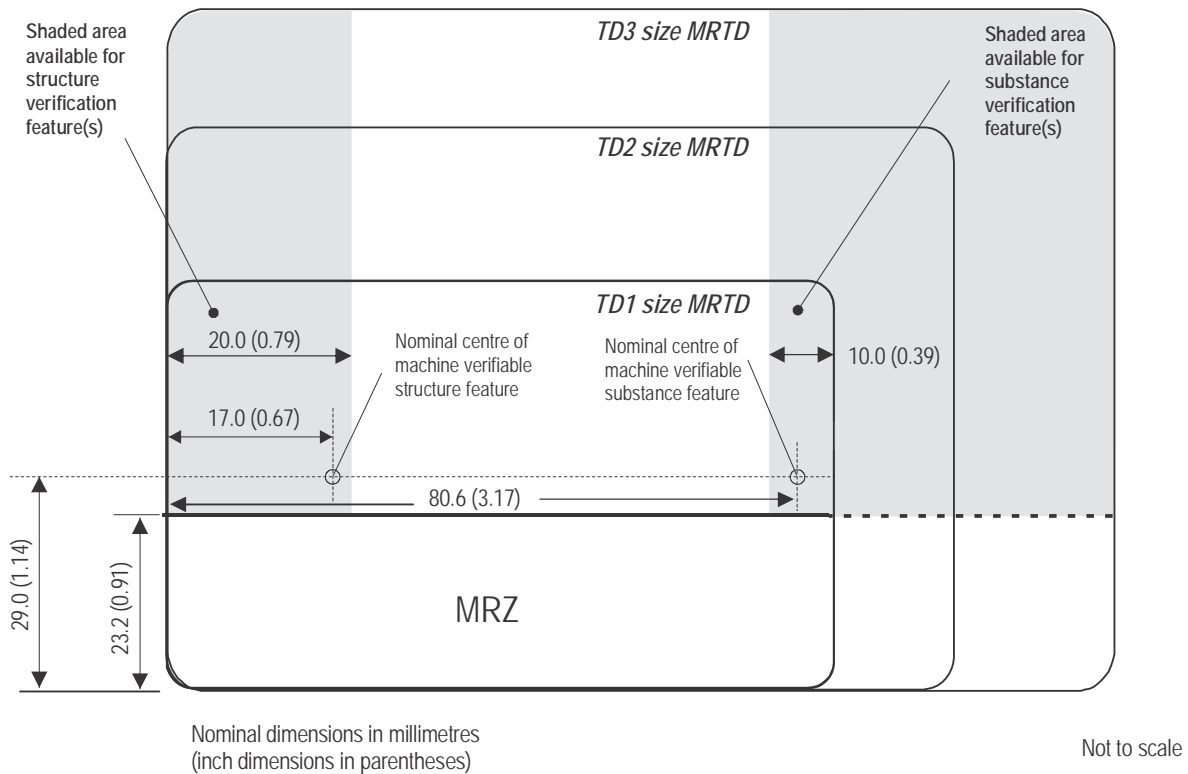


Figure 1. Three sizes of MRTD including the MRP (TD3 size) with recommended positions for machine assisted document verification features. The shaded area on the left is recommended for the incorporation of a structure feature and that on the right for the incorporation of a substance feature.

4. SECURITY OF MRTD PRODUCTION AND ISSUANCE FACILITIES

The State issuing the MRTD shall ensure that the premises in which the MRTD is printed, bound, personalized and issued are appropriately secure and that staff employed therein have an appropriate security clearance. Appropriate security shall also be provided for MRTDs in transit between facilities and from the facility to the MRTD's holder. Appendix C provides recommendations as to how these requirements can be met.

The following factors should be considered in the establishment of production and issuance facilities:

- 1) resilience;
- 2) physical security and access control;
- 3) production materials and MRTD accounting;
- 4) transport;

- 5) personnel; and
- 6) cyber security.

4.1 Resilience

States should take adequate steps to ensure that MRTD production can be maintained in the event of disaster situations such as flood, fire and equipment failure. Some considerations are:

- use of distributed production and issuing facilities;
- secondary production sites when production is centralized;
- emergency issuing facilities;
- rapid access to spare parts and support;
- second sourcing of all MRTD components.

States are recommended to consider possible failure modes in the design of production and issuance facilities, with the objective of eliminating common failures and single-points of failure.

4.2 Physical Security and Access Control

States should control access to production and issuance facilities. Control should be zoned and the requirements for access to each zone should be commensurate with value of the assets being protected.

Some examples of good practice for production facilities are:

- wire cages or solid walls to segregate production areas;
- strong rooms for storage of finished, un-personalized MRTDs and key security components for MRTD production;
- security pass-based access control between zones;
- video surveillance inside and outside the facility;
- perimeter security;
- full-time security personnel.

States should also consider the security that is in place at organizations providing MRTD components to the production facility because theft or sale of such components could make it easier to forge an MRTD.

Issuance facilities should separate back-office areas from public areas, with access control between the two. Staff should be afforded adequate protection, as determined by local circumstance.

4.3 Production Material Accounting

States should ensure that all material used in the production of MRTDs is accounted for and that MRTD production is reconciled with MRTD orders, so that it may be demonstrated that no MRTDs or MRTD components are missing.

Defective materials, MRTDs and MRTD components should be securely destroyed and accounted for.

Generally, reducing the number of issuance and production sites will make material accounting easier. However, this must be balanced against the need to provide resilience and acceptable customer service.

4.4 Transport

States are advised to use secure methods to transport MRTDs and MRTD components; cash-in-transit methods are normally adequate unless particularly high-value assets are being transported (e.g. holographic masters).

States should seek to minimize the amount of material transported in any one batch to reduce the effect of theft. In particular, States should not transport complete sets of printing plates in one operation.

4.5 Personnel

States should ensure that all personnel are subject to a security clearance process, which confirms their identity and suitability for employment in an environment where high-value assets are produced. Staff should be provided with credentials to enable them to identify themselves and to gain access to secure areas which they need to access in connection with their role.

4.6 Cyber Security

Production and issuance facilities are vulnerable to a variety of cyber attacks, such as:

- 1) viruses and other malware, both in conventional computing facilities and in production machinery;
- 2) denial-of-service attacks through online MRTD application channels and web services exposed by production and issuance systems;
- 3) compromise of issuing systems to enable attackers to issue passports or steal personal data or cryptographic assets (such as private keys for eMRTD production).

Countermeasures for these and related attacks are beyond the scope of this document. States should seek advice from their national technical authority.

5. PROVISION OF INFORMATION ON NEWLY ISSUED MRTDS

It is recommended that a State launching a new design of MRTD inform all other States of the details of the new MRTD including evident security features, preferably providing personalized specimens for use as a reference by the receiving State's department which is responsible for verifying the authenticity of such documents. The distribution of such specimens should be made to established contact points agreed by the receiving States.

6. PROVISION OF INFORMATION ON LOST AND STOLEN MRTDS

The exchange of information on lost, stolen or revoked travel documents is a key strategy to strengthen border control and mitigate the impacts of identity theft and immigration fraud. Accordingly, States should consider implementing the following operational procedures to offset the threats that work to undermine border management and national public safety:

1. communicating proactively with document holders;
2. maintaining national databases of lost, stolen and revoked travel documents;
3. sharing information about lost, stolen and revoked travel documents with INTERPOL and verifying documents against INTERPOL databases systematically at primary inspection;
4. installing checks to determine whether a holder is presenting a lost, stolen or revoked document at a border crossing.

6.1 Communicating Proactively with Document Holders

States should ensure that holders of travel documents are fully aware of their responsibilities regarding the use, safe-keeping and reporting procedures for lost or stolen travel documents. Guidelines for safe-keeping travel documents both at home and while travelling may assist in preventing the loss or theft of travel documents. At the time holders receive their documents, holders should be informed of the appropriate actions (including timely reporting) and channels for reporting lost or stolen documents. To assist in this process, States may consider providing travel document holders with multiple channels for securely reporting lost and stolen documents, including in person, telephone, physical mail and various ways of electronic communication including Internet.

States must also take appropriate measures to ensure that holders of travel documents are educated about the potential disruptions, inconveniences and added expenses that can arise when lost, stolen or revoked documents are presented at border control for the purposes of travel. This advice should highlight that once a travel document has been reported lost/stolen it is cancelled and can no longer be used and may be seized by authorities if an attempt is made to use it.

National legislation, or any suitable framework, should be in place to oblige holders of travel documents to report a lost or stolen travel document immediately. No new travel document should be issued until this report has been filed.

6.2 Maintaining National Databases of Lost, Stolen and Revoked Travel Documents

States that use national travel document databases to assist in the verification of the status of their nationally-issued travel documents should take measures to ensure that information is kept up to date. Reports about lost and stolen documents provided by the holders should be recorded into these systems in a timely fashion to ensure that risk assessments conducted using these systems are accurate. States may also wish to consider recording information about lost, stolen or revoked travel documents intercepts in these databases. In addition to updating these databases, States should ensure that border control and police authorities are able to access them easily.

6.3 Sharing Information about Lost, Stolen and Revoked Travel Documents with INTERPOL and Verifying Documents against INTERPOL Databases Systematically at Primary Inspection

States should participate in the global interchange of timely and accurate information concerning the status of travel documents to support in-country policing and border management, as well as efforts to mitigate the impacts of identity theft. Sharing information about lost, stolen and revoked travel documents serves to:

- a) improve the integrity of border management;
- b) assist in detecting identity theft or immigration fraud at the border, or in other situations where the document is presented as a form of identification;
- c) improve the chances of identifying terrorist operatives travelling on false documents;
- d) improve the chances of identifying criminal activity, including people smuggling;
- e) aid in the recovery of national documents; and
- f) limit the value and use of lost, stolen or revoked documents for illegal purposes.

INTERPOL's Automated Search Facility (ASF)/Stolen and Lost Travel Document Database (SLTD) provides States with a means to effectively and efficiently share information about lost, stolen and revoked travel documents in a timely fashion. States should share information about lost and stolen documents that have been issued, as well as blank documents that have been stolen from a production or issuance facility or in transit. Appendix D outlines the factors that must be considered prior to participating in the ASF/SLTD.

States should verify documents against INTERPOL databases systematically at primary inspection to ensure that only travellers holding valid travel documents are crossing border control checkpoints. Verifying the status of travel documents against these databases offers many of the same benefits afforded by sharing information about lost, stolen and revoked documents.

6.4 Installing Checks to Determine Whether a Holder is Presenting a Lost, Stolen or Revoked Document at Border Crossing

States must work within existing national laws and respect international agreements relating to the use of travel documents and border control when processing travellers at their borders. All travellers with reported travel documents (lost, stolen, revoked) shall be treated as if no illegal intention existed, until otherwise proven.

6.4.1 When a travel document gets a "hit" on INTERPOL's lost, stolen or revoked database

A traveller should not be refused entry or prevented exit solely based on the document appearing on the lost, stolen or revoked travel document database. There are many steps that States must take to support these actions. If a traveller is in possession of a travel document that has been recorded as lost, stolen, or revoked on the ASF/SLTD, States should, where possible, liaise with the issuing and reporting country to confirm that the document has been rightfully recorded as a lost, stolen or revoked travel document. States should also conduct an interview with the traveller to ascertain his true identity or nationality, and determine if he is the rightful bearer of the travel document.

If the document contains a chip, States should conduct biometric verifications to support their efforts to determine the true identity of the traveller. States should also make efforts to determine whether the data have been altered and whether the document is authentic.

6.4.2 Processing the rightful owner of the travel document through border control

In dealing with the rightful owners of travel documents, States should be cognizant that those identified as the rightful bearers of a travel document declared lost, stolen or revoked are not necessarily attempting to commit a criminal offense. Rather than focusing on penalizing these individuals, States should focus on identifying ways of removing these documents from circulation, while minimizing disruption to travel. Where permitted under national law, States may consider alternate methods of dealing with these travellers from ways of dealing with those that are intentionally attempting to illegally enter the country by committing identity fraud.

<p><i>Travellers entering a foreign country on a document declared lost, stolen or revoked as a result of a data error</i></p>	<p>Border control in the receiving State should contact the issuing authority to confirm the data error. Once confirmed, States may process the document as a valid travel document, but should advise the traveller to contact the issuing authority upon return to his country.</p> <p>Travel document issuing authorities in the issuing State should take all the necessary steps to have this document removed from the lost, stolen and revoked database. States should also consider replacing the affected document at no cost to the holder.</p>
<p><i>Nationals attempting to leave their country on a document declared lost or stolen</i></p>	<p>Where exit controls exist, border control should advise these travellers that their documents are not valid for travel, and that they must obtain a valid travel document before embarking on their journey, as lost, stolen and revoked travel documents are considered to be invalid.</p>
<p><i>Nationals attempting to leave their country on a revoked document</i></p>	<p>Where exit controls exist, border control should consult with national law enforcement to determine what measures/laws may be invoked to prevent the traveller from leaving the country. If permitted, border management/police authorities should prevent travellers from leaving the State.</p>
<p><i>Nationals attempting to leave a country and return to their country on a document declared lost, stolen or revoked</i></p>	<p>Where exit controls are in place and the identity and nationality of the holder have been confirmed, border control may allow the traveller to proceed, but should advise him that the document presented is not valid and that he may be refused boarding by the carrier.</p> <p>When a traveller is re-entering his country of origin on a document declared lost, stolen or revoked, border control may, where permitted by national law and/or international agreement, seize or impound the document to return it to the issuer. If their documents have been seized or impounded, travellers should be advised to obtain new valid travel documents.</p>
<p><i>Nationals attempting to leave a foreign country and continue to a third country on a document declared lost, stolen or revoked</i></p>	<p>Where exit controls are in place, border control should advise the travellers that their travel documents are invalid, that they may be refused boarding by the carrier, and that they may face difficulties upon arrival at their next destination.</p>

<i>Travellers entering a foreign country on a document declared lost, stolen or revoked</i>	Travellers who have been permitted to board should be advised by the receiving State to contact their consulate or embassy to obtain a valid travel document before attempting to continue on their journey. Travellers that have not been permitted to enter may be dealt with according to national law.
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6.4.3 Processing a traveller after determining that he is not the rightful owner of a document declared lost, stolen or revoked

Once it is determined that a traveller is not the rightful bearer of a document, border/police authorities from the sending or receiving State should seek to determine how the traveller came into possession of the document, including whether there was collusion with the rightful owner, and should domestic law permit, working in cooperation with the issuing State, determine whether additional fraudulent documents have been issued in that identity. If it is determined that the traveller has presented a lost, stolen or revoked travel document, States should investigate the traveller, and where applicable apply criminal charges and/or removal from their State.

States should confiscate documents for the purposes of legal proceedings, including immigration and refugee processing, but should return these to the issuing State once they have served this purpose. Efforts should also be made to provide the issuer with as much information about the interception as possible, should domestic law permit.

States should also ensure that inadmissible persons are documented in accordance with the provisions of ICAO Annex 9 — *Facilitation* to the Convention on International Civil Aviation.

APPENDIX A TO PART II — SECURITY STANDARDS FOR MRTDS (INFORMATIVE)

A.1 SCOPE

This Appendix provides advice on strengthening the security of machine readable travel documents made in accordance with the specifications set out in Doc 9303. The recommendations cover the security of the materials used in the document's construction, the security printing and copy protection techniques to be employed, and the processes used in the production of document blanks. Also addressed are the security considerations that apply to the personalization and the protection of the biographical data in the document. All travel document issuing authorities shall consider this Appendix.

A.2 INTRODUCTION

This Appendix identifies the security threats to which travel documents are frequently exposed and the counter-measures that may be employed to protect these documents and their associated personalization systems. The lists of security features and/or techniques offering protection against these threats have been subdivided into: 1) basic security features and/or techniques considered essential and; 2) additional features and/or techniques from which States are encouraged to select items which are recommended for providing an enhanced level of security.

This approach recognizes that a feature or technique that may be necessary to protect one State's documents may be superfluous or of minor importance to another State using different production systems. A targeted approach that allows States flexibility to choose from different document systems (paper-based documents, plastic cards, etc.) and a combination of security features and/or techniques most appropriate to their particular needs is therefore preferred to a "one size fits all" philosophy. However, to help ensure that a balanced set of security features and/or techniques is chosen, each State must conduct a risk assessment of its national travel documents to identify their most vulnerable aspects and select the additional features and/or techniques that best address these specific problems.

The aim of the recommendations in this Appendix is to improve the security of machine readable travel documents worldwide by establishing a baseline for issuing States. Nothing within these recommendations shall prevent or hinder States from implementing other, more advanced security features, at their discretion, to achieve a standard of security superior to the minimum recommended features and techniques set forth in this Appendix.

A summary table of typical security threats relating to travel documents and some of the security features and techniques that can help to protect against these threats is included.

A.3 BASIC PRINCIPLES

Production and storage of passport books and travel documents, including the personalization processes, should be undertaken in a secure, controlled environment with appropriate security measures in place to protect the premises against unauthorized access. If the personalization process is decentralized, or if personalization is carried out in a location geographically separated from where the travel document blanks are made, appropriate precautions should be taken when transporting the blank documents and any associated security materials to safeguard their security in transit and storage on arrival. When in transit, blank books or other travel documents should contain the unique document

number. In the case of passports the passport number should be on all pages other than the biographical data page where it can be printed during personalization.

There should be full accountability over all the security materials used in the production of good and spoiled travel documents and a full reconciliation at each stage of the production process with records maintained to account for all security material usage. The audit trail should be to a sufficient level of detail to account for every unit of security material used in the production and should be independently audited by persons who are not directly involved in the production. Records certified at a level of supervision to ensure accountability should be kept of the destruction of all security waste material and spoiled documents.

Materials used in the production of travel documents should be of controlled varieties, where applicable, and obtained only from reputable security materials suppliers. Materials whose use is restricted to high security applications should be used, and materials that are available to the public on the open market should be avoided.

Sole dependence upon the use of publicly available graphics design software packages for originating the security backgrounds should be avoided. These software packages may however be used in conjunction with specialist security design software.

Security features and/or techniques should be included in travel documents to protect against unauthorized reproduction, alteration and other forms of tampering, including the removal and substitution of pages in the passport book, especially the biographical data page. In addition to those features included to protect blank documents from counterfeiting and forgery, special attention must be given to protect the biographical data from removal or alteration. A travel document should include adequate security features and/or techniques to make evident any attempt to tamper with it.

The combination of security features, materials and techniques should be well chosen to ensure full compatibility and protection for the lifetime of the document.

Although this Appendix deals mainly with security features that help to protect travel documents from counterfeiting and fraudulent alteration, there is another class of security features (Level 3 features) comprised of covert (secret) features designed to be authenticated either by forensic examination or by specialist verification equipment. It is evident that knowledge of the precise substance and structure of such features should be restricted to very few people on a “need to know” basis. Among others, one purpose of these features is to enable authentication of documents where unequivocal proof of authenticity is a requirement (e.g., in a court of law). All travel documents should contain at least one covert security feature as a basic feature.

Important general standards and recommended practices for passport document validity period, one-person-one-passport principle, deadlines for issuance of Machine Readable Passports and withdrawal from circulation of non-MRPs and other guidance is found in ICAO Annex 9 — *Facilitation*.

There is no other acceptable means of data storage for global interoperability other than a contactless IC, specified by ICAO as the capacity expansion technology for use with MRTDs.

A.4 MAIN THREATS TO THE SECURITY OF TRAVEL DOCUMENTS

The following threats to document security, listed in no particular order of importance, are identified ways in which the document, its issuance and use may be fraudulently attacked:

- counterfeiting a complete travel document;
- photo substitution;

- deletion/alteration of data in the visual or machine readable zone of the MRP data page;
- construction of a fraudulent document, or parts thereof, using materials from legitimate documents;
- removal and substitution of entire page(s) or visas;
- deletion of entries on visa pages and the observations page;
- theft of genuine document blanks;
- impostors (assumed identity; altered appearance); and
- tampering with the contactless IC (where present) either physically or electronically.

Detection of security features can be at any or all of the following three levels of inspection:

- Level 1 – cursory examination for rapid inspection at the point of usage (easily identifiable visual or tactile features);
- Level 2 – Examination by trained inspectors with simple equipment; and
- Level 3 – Inspection by forensic specialists.

To maintain document security and integrity, periodic reviews and any resulting revisions of document design should be conducted. This will enable new document security measures to be incorporated and to certify the document's ability to resist compromise and document fraud attempts regarding:

- photo substitution;
- delamination or other effects of deconstruction;
- reverse engineering of the contactless IC as well as other components;
- modification of any data element;
- erasure or modification of other information;
- duplication, reproduction or facsimile creation;
- effectiveness of security features at all three levels: cursory examination, trained examiners with simple equipment and inspection by forensic specialists; and
- confidence and ease of second level authentication.

To provide protection against these threats and others, a travel document requires a range of security features and techniques combined in an optimum way within the document. Although some features can offer protection against more than one type of threat, no single feature can offer protection against them all. Likewise, no security feature is 100 per cent effective in eliminating any one category of threat. The best protection is obtained from a balanced set of features and techniques providing multiple integrated layers of security in the document that combine to deter or defeat fraudulent attack.

A.5 SECURITY FEATURES AND TECHNIQUES

In the sections that follow, security features, techniques and other security measures are categorized according to the phases passed through during the production and personalization processes and the components of the travel document created thereby with regard to:

- 1) substrate materials;
- 2) security design and printing;
- 3) protection against copying, counterfeiting or fraudulent alteration; and
- 4) personalization techniques.

Issuing States are recommended to incorporate all of the basic features/measures and to select a number of additional features/measures from the list having first completed a full risk assessment of their travel documents. Unless otherwise indicated, the security features may be assumed to apply to all parts of a travel document including the cover and the binding of the booklet and to all the interior pages of a passport, comprising the biographical data page, end leaves and visa pages. Care must be taken to ensure that features do not interfere with the machine readability of the travel document.

A.5.1 Substrate Materials

A.5.1.1 Paper forming the pages of a travel document

Basic features:

- UV dull paper, or a substrate with a controlled response to UV, such that when illuminated by UV light it exhibits a fluorescence distinguishable in colour from the blue-white luminescence used in commonly available materials containing optical brighteners;
- watermark comprising two or more grey levels in the biographical data page and visa pages;
- appropriate chemical sensitizers in the paper, at least for the biographical data page (if compatible with the personalization technique); and
- paper with appropriate absorbency, roughness and weak surface tear.

Additional features:

- watermark in register with printed design;
- a different watermark on the data page to that used on the visa pages to prevent page substitution;
- a cylinder mould watermark;
- invisible fluorescent fibres;
- visible (fluorescent) fibres;

- security thread (embedded or window) containing additional security features such as micro print and fluorescence;
- a taggant designed for detection by special equipment; and
- a laser-perforated security feature.

A.5.1.2 Paper or other substrate in the form of a label used as the biographical data page of a travel document

Basic features:

- UV dull paper, or a substrate with a controlled response to UV, such that when illuminated by UV light it exhibits a fluorescence distinguishable in colour from the blue-white luminescence used in commonly available materials containing optical brighteners;
- appropriate chemical sensitizers in the paper (not normally possible in a plastic label substrate);
- invisible fluorescent fibres;
- visible (fluorescent) fibres; and
- a system of adhesives and/or other characteristics that prevents the label from being removed without causing clearly visible damage to the label and to any laminates or overlays used in conjunction with it.

Additional features:

- security thread (embedded or window) containing additional security features such as micro print and fluorescence;
- a watermark can be used in the paper of a data page in paper label form;
- a laser-perforated security feature; and
- die cut security pattern within the label to create tamper evidence.

A.5.1.3 Security aspects of paper forming the inside cover of a passport book

Paper used to form the inside cover of a passport book need not have a watermark. Although definitely not recommended, if an inside cover is used as a biographical data page (see A.5.5.1), alternative measures must be employed to achieve an equivalent level of security against all types of attack as provided by locating the data page on an inside page.

The paper forming the inside cover should contain appropriate chemical sensitizers when an inside cover is used as a biographical data page. The chemically sensitized paper should be compatible with the personalization technique and the adhesive used to adhere the end paper to the cover material of the passport.

A.5.1.4 Synthetic substrates

Where the substrate used for the biographical data page (or inserted label) of a passport book or MRTD card is formed entirely of plastic or a variation of plastic, it is not usually possible to incorporate many of the security components described in 5.1.1 through 5.1.3. In such cases additional security properties shall be included, including additional security printed features, enhanced personalization techniques and the use of optically variable features over and above the recommendations contained in 5.2 to 5.5.2. States should preferably ensure that the plastic substrate is manufactured under controlled conditions and contains distinctive properties, e.g. controlled fluorescence, to differentiate it from standard financial card substrates.

Basic features:

- construction of the data page should be resistant to physical splitting into layers;
- UV dull substrate with a controlled response to UV, such that when illuminated by UV light it exhibits a fluorescence distinguishable in colour from the blue-white luminescence used in commonly available materials containing optical brighteners;
- appropriate measures should be used to incorporate the data page securely and durably into the machine readable travel document; and
- optically variable feature.

Additional features:

- windowed or transparent feature;
- tactile feature; and
- laser-perforated feature.

A.5.2 Security Printing

A.5.2.1 Background and text printing

Basic features (see Glossary of Terms in Doc 9303-1):

- two-colour guilloche security background design pattern¹;
- rainbow printing;
- microprinted text; and

1. Where the guilloche pattern has been computer-generated, the image reproduced on the document must be such that no evidence of a pixel structure shall be detectable. Guilloches may be displayed as positive images, where the image lines appear printed with white spaces between them, or as negative images, where the image lines appear in white, with the spaces between them printed. A two-colour guilloche is a design that incorporates guilloche patterns created by superimposing two elements of the guilloche, reproduced in contrasting colours.

- security background of the biographical data page printed in a design that is different from that of the visa pages or other pages of the document.

Additional features:

- single or multi-colour intaglio printing comprising a “black-line white-line” design on one or more of the end leaves or visa pages;
- latent (intaglio) image;
- anti-scan pattern;
- duplex security pattern;
- relief (3D) design feature;
- front-to-back (see-through) register feature;
- deliberate error (e.g. spelling);
- every visa page printed with a different security background design;
- tactile feature; and
- unique font(s).

A.5.2.2 Inks

Basic features:

- UV fluorescent ink (visible or invisible) on the biographical data page and all visa pages; and
- reactive ink, where the substrate of the document pages or of a label is paper, at least for the biographical data page (if compatible with the personalization technique).

Additional features:

- ink with optically variable properties;
- metallic ink;
- penetrating numbering ink;
- metameric ink;
- infrared drop-out ink;
- infrared absorbent ink;
- phosphorescent ink;

- tagged ink; and
- invisible ink which fluoresces in different colours when exposed to different wave lengths.

A.5.2.3 Numbering

It is strongly recommended that the unique document number be used as the passport number.

Basic features:

- the passport number should appear on all sheets of the document and on the biographical data page of the document;
- the number in a document shall be either printed and/or perforated;
- the document number on a label shall be in a special style of figures or typeface and be printed with ink that fluoresces under ultraviolet light in addition to having a visible colour;
- the number on a data page of a passport made of synthetic substrate or on an MRTD card can be incorporated using the same technique as is used for applying the biographical data in the personalization process; and
- for MRTD cards, the number should appear on both sides.

Additional features:

- if perforated, it is preferable that laser perforation be used. Perforate numbering of the data page is optional but, if used, care should be taken not to interfere with the clarity of the portrait or VIZ and not obstruct the MRZ in any way. It is desirable to perforate the cover of the passport; and
- if printed, it should ideally be in a special style of figures or typeface and be printed with an ink that fluoresces under ultraviolet light in addition to having a visible colour.

A.5.2.4 Special security measures for use with non-laminated biographical data pages

The surface of the data page should be protected against soiling in normal use including regular machine reading of the MRZ, and against tampering.

If a page of a document is used for biographical data that is not protected by a laminate or an overlay as a protective coating (see 5.3.2, 5.4.3 and 5.4.4), additional protection shall be provided by the use of intaglio printing incorporating a latent image and microprinting and preferably utilizing a colour-shifting ink (e.g. ink with optically variable properties).

A.5.2.5 Special security measures for use with cards and biographical data pages made of plastic

Where a travel document is constructed entirely of plastic, optically variable security features shall be employed which give a changing appearance with angle of viewing. Such devices may take the form of latent images, lenticular features, colour-shifting ink, or diffractive optically variable image features.

A.5.3 Protection Against Copying

A.5.3.1 Need for anti-copy protection

The current state of development of generally available digital reproduction techniques and the resulting potential for fraud mean that high-grade security features in the form of optically variable features or other equivalent devices will be required as safeguards against copying and scanning. Emphasis should be placed on the security of the biographical data page of a passport book, travel card or visa, based on an independent, complex optically variable feature technology or other equivalent devices complementing other security techniques. Particular emphasis should be given to easily identifiable, visual or tactile features which are examined at Level 1 inspection.

Appropriate integration of optically variable feature components or other equivalent devices into the layered structure of the biographical data page should also protect the data from fraudulent alteration. The optically variable components and all associated security materials used to create the layered structure must also be protected against counterfeiting.

A.5.3.2 Anti-copy protection methods

Subject to the minimum recommendations described in 5.4.3 and 5.4.4 on the need for lamination, optically variable features should be used on the biographical data page of a passport book, travel card or visa as a *basic feature*.

When a biographical data page of a passport book, travel card or visa is protected by a laminate film or overlay, an optically variable feature (preferably based on diffractive structure with tamper-evident properties) should be integrated into the page. Such a feature should not affect the legibility of the entered data.

When the biographical data page is an encapsulated paper label, or a page in a passport, the biographical data must be suitably protected by a protective laminate or measures providing equivalent security in order to deter alteration and/or removal.

When the machine readable biographical data page of a passport book is made entirely of synthetic substrate, an optically variable feature should be incorporated. The inclusion of a diffractive optically variable feature is recommended to achieve an enhanced level of protection against reproduction.

Devices such as a windowed or transparent feature, a laser-perforated feature, and others considered to offer equivalent protection may be used in place of an optically variable feature.

When the travel document has no overlay or laminate protection, an optically variable feature (preferably based on diffractive structure) with intaglio overprinting or other printing technique shall be used.

A.5.4 Personalization Technique

A.5.4.1 Document personalization

This is the process by which the portrait, signature and/or other biographical data relating to the holder of the document are applied to the travel document. These data record the personalized details of the holder and are at the greatest risk of counterfeit or fraudulent alteration. One of the most frequent types of document fraud involves the removal of the portrait image from a stolen or illegally obtained travel document and its replacement with the portrait of a different person. Documents with stick-in portrait photographs are particularly susceptible to photo substitution. Therefore, stick-in photographs are NOT permitted in MRTDs.

A.5.4.2 Protection against alteration

To ensure that data are properly secured against attempts at forgery or fraudulent alteration it is very strongly recommended to integrate the biographical data, including the portrait, signature (if it is included on the biographical data page) and main issue data, into the basic material of the document. A variety of technologies are available for personalizing the document in this way, including the following, but not precluding the development of new technologies, which are listed in no particular order of importance:

- laser toner printing;
- thermal transfer printing;
- ink-jet printing;
- photographic processes; and
- laser engraving.

The same personalizing technologies may also be used to apply data to the observations page of the passport. Laser toner should not be used to personalize visas or other security documents that are not protected by a secure laminate.

Authorities should carry out testing of their personalization processes and techniques against malfeasance.

A.5.4.3 Choice of document system

The choice of a particular technology is a matter for individual issuing States and will depend upon a number of factors, such as the volume of travel documents to be produced, the construction of the document and whether it is to be personalized during the document or passport book making process or after the document or book has been assembled and whether a country issues passports centrally or from decentralized sites.

Whichever method is chosen, it is essential that precautions be taken to protect the personalized details against tampering. This is important because, even though eliminating the stick-in portrait reduces the risk of photo substitution, the unprotected biographical data remains vulnerable to alteration and needs to be protected by the application of a heat-sealed (or equivalent) laminate with frangible properties, or equivalent technology that provides evidence of tampering.

A.5.4.4 Protection against photo substitution and alteration of data on the biographical data page of a passport book

Basic features:

- personalizing the portrait and all biographical data by integration into the basic material;
- the security printed background (e.g. guilloche) shall merge within the portrait area;
- use of reactive ink and chemical sensitizers in the paper;
- a visible security device should overlap the portrait without obstructing the visibility of the portrait; an optically variable feature is recommended; and

- use of a heat-sealed (or equivalent) secure laminate, or the combination of an personalizing technology and substrate material that provide an equivalent resistance to substitution and/or counterfeit of the portrait and other biographical data.

Additional features:

- displayed signature of the holder may be scanned and incorporated into the printing;
- steganographic image incorporated in the document;
- additional portrait image(s) of holder;
- machine-verifiable features as detailed in Doc 9303, Parts 9 through 12.

A.5.5 Additional Security Measures for Passport Books

A.5.5.1 Position of the biographical data page

It is recommended that States place the data page on an inside page (the second or penultimate page). When the data page is situated on the inside cover of an MRP, the normal method of construction used in the manufacture of passport covers has facilitated fraudulent attacks on the data page, typically photo substitution or whole-page substitution. However, an issuing State may place the data page on a cover provided that it ensures that the construction of the cover used in its passport offers a similar level of security against all types of fraudulent attack to that offered by locating the data page on an inside page. Placing the biographical data page on the cover is, nevertheless, strongly NOT recommended.

A.5.5.2 Whole-page substitution

Issuing States' attention is drawn to the fact that with integrated biographical data pages replacing stick-in photographs in passports, some cases of whole-page substitution have been noted in which the entire biographical data page of the passport has been removed and substituted with a fraudulent one. Although whole-page substitution is generally more difficult to effect than photo substitution of a stick-in photo, it is nevertheless important that the following recommendations be adopted to help in combating this category of risk. As with all other categories of document fraud, it is better to employ a combination of security features to protect against whole-page substitution rather than rely on a single feature which, if compromised, could undermine the security of the whole travel document.

Basic features:

- the sewing technology that binds the pages into the book must be such that it must be difficult to remove a page without leaving clear evidence that it has happened;
- security background of the biographical data page printed in a design that is different from that of the visa pages;
- page numbers integrated into the security design of the visa pages; and
- serial number on every sheet, preferably perforated.

Additional features:

- multi-colour and/or specifically UV fluorescent sewing thread;
- programmable thread-sewing pattern;
- UV cured glue applied to the stitching;
- index or collation marks printed on the edge of every visa page;
- laser-perforated security features to the biographical data page; and
- biographical data printed on an inside page in addition to the data page.

Where self-adhesive labels are used, additional security requirements as described in A.5.1.2 and A.5.2.4 are advised including linking the label to the machine readable travel document by the travel document number.

A.5.6 Quality Control

Quality checks and controls at all stages of the production process and from one batch to the next are essential to maintain consistency in the finished travel document. This should include quality assurance (QA) checks on all materials used in the manufacture of the documents and the readability of the machine readable lines. The importance of consistency in the finished travel document is paramount because immigration inspectors and border control officers rely upon being able to recognize fake documents from variations in their appearance or characteristics. If there are variations in the quality, appearance or characteristics of a State's genuine travel documents, detection of counterfeit or forged documents is made more difficult.

A.5.7 Security Control of Production and Product

A major threat to the security of the MRP of an issuing State can come from the unauthorized removal from the production facility of genuine finished, but unpersonalized, MRPs or the components from which MRPs can be made.

A.5.7.1 Protection against theft and abuse of genuine document blanks or document components

Blank documents should be stored in locked and appropriately supervised premises. The following measures should be adopted:

Basic measures:

- good physical security of the premises with controlled access to delivery/shipment and production areas, and document storage facilities;
- full audit trail, with counting and reconciliation of all materials (used, unused, defective or spoiled) and certified records of same;
- all document blanks and other security-sensitive components serially numbered with full audit trail for every document from manufacture to dispatch, as applicable;

- where applicable, tracking and control numbers of other principal document components (e.g. rolls or sheets of laminates, optically variable feature devices);
- secure transport vehicles for movement of blank documents and other principal document components (if applicable);
- details of all lost and stolen travel document blanks to be rapidly circulated between governments and to border control authorities with details sent to the INTERPOL lost and stolen database;
- appropriate controls to be in place to protect the production procedures from internal fraud; and
- security vetting of staff.

Additional measures:

- CCTV coverage/recording of all production areas, where permitted; and
- centralized storage and personalization of blank documents in as few locations as possible.

Table A-1. Summary of security recommendations

<i>Elements</i>	<i>Basic features</i>	<i>Additional features</i>
Substrate materials (A.5.1)		
Paper substrates (A.5.1.1)	<ul style="list-style-type: none"> – controlled UV response – two-tone watermark – chemical sensitizers – appropriate absorbency and surface characteristics 	<ul style="list-style-type: none"> – registered watermark – different watermark on the data page and visa page – cylinder mould watermark – invisible fluorescent fibres – visible (fluorescent) fibres – security thread – taggant – laser-perforated security feature
Paper or other substrate in the form of a label (A.5.1.2)	<ul style="list-style-type: none"> – controlled UV response – chemical sensitizers – invisible florescent fibres – visible (florescent) fibres – system of adhesives 	<ul style="list-style-type: none"> – security thread – watermark – laser-perforated security feature – die cut security pattern
Synthetic substrates (A.5.1.4)	<ul style="list-style-type: none"> – construction resistant to splitting – optically dull material – secure incorporation of data page – optically variable features – see 5.2 – 5.5, as appropriate 	<ul style="list-style-type: none"> – window or transparent feature – tactile feature – laser-perforated feature

<i>Elements</i>	<i>Basic features</i>	<i>Additional features</i>
Security printing (A.5.2)		
Background and text printing (A.5.2.1)	<ul style="list-style-type: none"> – two-colour guilloche background – rainbow printing – microprinted text – unique data page design 	<ul style="list-style-type: none"> – intaglio printing – latent image – anti-scan pattern – duplex security pattern – relief design feature – front-to-back register feature – deliberate error – unique design on every page – tactile feature – unique font(s)
Inks (A.5.2.2)	<ul style="list-style-type: none"> – UV florescent ink – reactive ink 	<ul style="list-style-type: none"> – ink with optically variable properties – metallic ink – penetrating numbering ink – metameric ink – infrared drop-out ink – infrared absorbent ink – phosphorescent ink – tagged ink – invisible ink
Numbering (A.5.2.3)	<ul style="list-style-type: none"> – numbering on all sheets – printed and/or perforated number – special typeface numbering for labels – identical technique for applying numbering and biographical data on synthetic substrates and cards 	<ul style="list-style-type: none"> – laser-perforated document number – special typeface
Personalization technique (A.5.4)		
Protection against photo substitution and alteration (A.5.4.4)	<ul style="list-style-type: none"> – integrated biographical data – security background merged within portrait area – reactive inks and chemical sensitizers in paper – visible security device overlapping portrait area – heat-sealed secure laminate or equivalent 	<ul style="list-style-type: none"> – displayed signature – steganographic image – additional portrait image(s) – biometric feature as per Part 9

Elements	Basic features	Additional features
Additional security measures for passport books (A.5.5)		
Page substitution (A.5.5.2)	<ul style="list-style-type: none"> – secure sewing technology – UV fluorescent sewing thread – unique data page design – page numbers integrated into security design – serial number on every sheet 	<ul style="list-style-type: none"> – multi-colour sewing thread – programmable sewing pattern – UV cured glue to stitching – index marks on every page – laser-perforated security feature – biographical data on inside page
Security control of production and product (A.5.7)		
Protection against theft and abuse (A.5.7.1)	<ul style="list-style-type: none"> – good physical security – full audit trail – serial numbers on blank documents, as applicable – tracking and control numbers of components, as applicable – secure transport of blank documents – international information exchange on lost and stolen documents – internal fraud protection procedures – security vetting of staff 	<ul style="list-style-type: none"> – CCTV in production areas – centralized storage and personalization

Note 1.— The list of additional features is not exhaustive, and issuing States and organizations are encouraged to adopt other security features not explicitly mentioned in this Appendix.

Note 2.— The descriptions in the table above are necessarily abbreviated from the main text. For ease of reference, the relevant sections of this Appendix are referenced by the paragraph numbers in parentheses in the “Elements” column of the above table.

Note 3.— Certain of the features are repeated one or more times in the table. This indicates that the particular feature protects against more than one type of threat. It is only necessary to include these features once within any particular document.

Note 4.— There are many other factors associated with passport security than are elaborated here. Appendices B and C provide additional guidance. Therefore, Appendices A, B and C need to be considered collectively to ensure document issuance integrity.

Note 5.— Any reference, direct or implied, to specific terms and/or technologies are solely intended to capture the terms and technologies in their generic form and do not have any association with specific vendors or technology providers.

APPENDIX B TO PART II — MACHINE ASSISTED DOCUMENT SECURITY VERIFICATION (INFORMATIVE)

B.1 SCOPE

This Appendix contains recommendations which cover machine authentication of the security features in the document itself (based on materials, on security printing and on copy protection techniques) as well as advice on reader technologies that apply to machine authentication of documents.

B.2 DOCUMENT READERS AND SYSTEMS FOR MACHINE AUTHENTICATION

In order to verify traditional as well as innovative security features of MRTDs, it is important to have reading technology in place which accommodates the wide variety of travel documents in circulation. These readers have to be equipped with the appropriate sensors for the more common and advanced machine authentication features. This, of course, is a worldwide cost and infrastructure issue.

B.2.1 Standard Readers

Standard readers which are deployed at borders usually have the following hardware sensors:

- VIS, UV, IR illumination and high resolution image grabbing capabilities (minimum resolution 300 dpi) – this allows for reading the MRZ (preferably in the IR spectral range) and image processing of other features (in the VIS spectral range); and
- ISO 14443 compliant contactless IC readers (@ 13.56 MHz frequency).

Generally, standard readers are able to detect and verify the following security features:

- MRZ read and check digit verification;
- Contactless IC read and Passive Authentication (and, optionally, Active Authentication); and
- generic security checks (UV dull paper, IR readable MRZ, ...).

Further “intelligence” of these readers solely depends on software, not on extra hardware sensors, and would therefore easily be deployed at the discretion of the receiving State without investing extra money for dedicated equipment. Software capabilities of readers may include:

- pattern recognition using databases (based on VIS, UV and IR images);
- read and authenticate digital watermarks (steganographic features) to check for authentic issuance;

- detect and read out (alphanumeric) displays and their future security features; and
- detect and read out LED-in-plastic based security features.

B.2.2 Advanced Readers

Additionally, advanced readers may have the following hardware sensors, suited to authenticate special security features:

- coaxial illumination for the verification of retro-reflective security overlays;
- laser diode or LED illumination for the verification of special structure features, e.g. for optically diffractive devices (DOVIDs);
- magnetic sensors for special substrate features, e.g. for the verification of magnetic fibres;
- spectral analysis or polarization detection devices; and
- transmission illumination of the MRP data page for the verification of registered watermarks, laser perforation, window-features and see-through registers – needs a special reader geometry to allow for the placement of the data page only (no cover behind) on the reader.

Usually, advanced reading capabilities are all based on national/bilateral/multilateral/proprietary agreements and require dedicated hardware.

B.2.3 Background Systems, Public Key Infrastructure (PKI)

To authenticate certain types of machine verifiable features, a background system or a PKI may be necessary. This could be the existing MRTD PKI (the ICAO PKD being the most prominent part) where States may exchange information on their security features within the logical data structure, secured by means of certificates.

B.3 SECURITY FEATURES AND THEIR APPLICATION FOR MACHINE AUTHENTICATION

The following paragraphs describe major security features and techniques as identified in Appendix A on Security Standards and explain how machine authentication could be deployed for these security mechanisms. Issuing Authorities which select security features from Appendix A may use the tables below to check which possibilities of machine authentication exist for such features.

B.3.1 Substrate Materials

B.3.1.1 Paper forming the pages of a travel document

Security Features	Sensor needed for Machine Authentication					Pattern fix/variable	Machine Authentication method
	Standard reader				Advanced reader		
	VIS	UV	IR	RF	Special sensor		
Basic features							
Controlled UV response		X					UV intensity
Two-tone watermark					Transmission	F	pattern matching
Chemical sensitizers							N/A
Appropriate absorbency and surface characteristics							N/A
Additional features							
Registered watermark					Transmission	F	pattern matching
Different watermark on the data page and visa page					Transmission	F	pattern matching*
Cylinder mould watermark					Transmission	F	pattern matching
Invisible fluorescent fibres		X	X			F/V	pattern matching
Visible (fluorescent) fibres	X	X				F/V	pattern matching
Security thread	X	X			Transmission, Magnetic	F	pattern matching
Taggant					Special	F/V	Depends on taggant
Laser-perforated security feature					Transmission	F/V	pattern matching

* User interaction required and not suitable for Automated Border Control systems

Security Features	Sensor needed for Machine Authentication					Pattern fix/variable	Machine Authentication method
	Standard reader				Advanced reader		
	VIS	UV	IR	RF	Special sensor		
See 5.2 – 5.5, as appropriate							
Additional features							
Window or transparent feature					Transmission	F	pattern matching
Tactile feature					Retro-reflective	F/V	pattern matching
Laser-perforated feature					Transmission	F/V	pattern matching
Surface characteristics	X		X		Retro-reflective	F	pattern matching

B.3.2 Security Printing

B.3.2.1 Background and text printing

Security Features	Sensor needed for Machine Authentication					Pattern fix/variable	Machine Authentication method
	Standard reader				Advanced reader		
	VIS	UV	IR	RF	Special sensor		
Basic features							
Two-colour guilloche background	X	X	X			F	Pattern matching
Rainbow printing	X	X			High res camera	F	Pattern matching
Microprinted text	X	X	X		High res camera	F	Pattern matching
Unique data page design	X					F	Pattern matching
Additional features							
Intaglio printing	X	X	X			F	Pattern matching*
Latent image							N/A
Anti-scan pattern	X				High res camera	F	Pattern matching
Duplex security pattern					Transmission	F	Pattern matching*
Relief design feature					Retro-reflective	F	pattern matching

Security Features	Sensor needed for Machine Authentication					Pattern fix/variable	Machine Authentication method
	Standard reader				Advanced reader		
	VIS	UV	IR	RF	Special sensor		
Front-to-back register feature					Transmission	F	Pattern matching
Deliberate error	X	X	X			F	OCR, Pattern matching
Unique design on every page	X	X				F	Pattern matching [#]
Tactile feature					Retro-reflective	F	pattern matching
Unique font(s)	X	X	X				Pattern matching

* Impractical implementation for passport readers

[#] User interaction required and not suitable for Automated Border Control systems

B.3.2.2 Inks

Security Features	Sensor needed for Machine Authentication					Pattern fix/variable	Machine Authentication method
	Standard reader				Advanced reader		
	VIS	UV	IR	RF	Special sensor		
Basic features							
UV florescent ink		X				F/V	Pattern matching
Reactive inks					Special		Depending on ink
Additional features							
Ink with optically variable properties	X				Variable illumination	F/V	Pattern matching
Metallic ink			X			F/V	Pattern matching
Penetrating numbering ink					Special	V	Pattern matching on both sides
Metameric inks	X	X	X			F	Optical filters and Pattern matching
Infrared dropout ink	X		X			F/V	Pattern matching
Infrared absorbent ink			X			F/V	Pattern matching
Phosphorescent ink		X	X			F/V	Pattern matching

Security Features	Sensor needed for Machine Authentication					Pattern fix/variable	Machine Authentication method
	Standard reader				Advanced reader		
	VIS	UV	IR	RF	Special sensor		
Tagged ink					Special	F	Pattern matching
Invisible ink		X	X			F	Pattern matching
Magnetic ink					Magnetic	F/V	Pattern matching
Anti-Stokes-Ink			X			F/V	Optical filters and pattern matching

B.3.2.3 Numbering

Security Features	Sensor needed for Machine Authentication					Pattern fix/variable	Machine Authentication method
	Standard reader				Advanced reader		
	VIS	UV	IR	RF	Special sensor		
Basic features							
Numbering on all sheets Printed and/or perforated number	X		X			F/V	OCR, Pattern matching
Special typeface numbering for labels	X		X			F/V	OCR, Pattern matching
Identical technique for applying numbering and biographical data on synthetic substrates and cards							N/A
Additional features							
Laser-perforated document number					Transmission	F/V	Pattern matching
Special typefonts	X					F/V	OCR, Pattern matching

B.3.3 Protection Against Copying

Security Features	Sensor needed for Machine Authentication					Pattern fix/variable	Machine Authentication method
	Standard reader				Advanced reader		
	VIS	UV	IR	RF	Special sensor		
Basic features							
Optically variable features on the biographical data page	X				Variable illumination	F/V	Pattern matching
OVD with intaglio overprint if no laminate							N/A
Additional features							
Machine readable diffractive optically variable feature					Laser	F/V	decoding
Laser-perforated security feature					Transmission	F/V	Pattern matching
Anti-scan pattern	X				High res camera	F	Pattern matching

B.3.4 Personalization Techniques**B 3.4.1 Protection against photo substitution and alteration**

Security Features	Sensor needed for Machine Authentication					Pattern fix/variable	Machine Authentication method
	Standard reader				Advanced reader		
	VIS	UV	IR	RF	Special sensor		
Basic features							
Integrated biographical data							N/A
Security background merged within portrait area							N/A
Reactive inks and chemical sensitizers in paper							N/A
Visible security device overlapping portrait area	X				Variable illumination	F/V	Pattern matching
Heat-sealed secure laminate or equivalent	X					F/V	Pattern matching

Security Features	Sensor needed for Machine Authentication					Pattern fix/variable	Machine Authentication method
	Standard reader				Advanced reader		
	VIS	UV	IR	RF	Special sensor		
Additional features							
Displayed signature							N/A
Steganographic feature	X	X	X			F/V	Decoding
Additional portrait image(s)	X	X	X	X		V	Pattern matching
Biometric feature as per Part 9				X		V	RF reader

B 3.5 Additional Security Measures for Passport Books

Security Features	Sensor needed for Machine Authentication					Pattern fix/variable	Machine Authentication method
	Standard reader				Advanced reader		
	VIS	UV	IR	RF	Special sensor		
Basic features							
Secure sewing technology							N/A
UV fluorescent sewing thread		X				F	Pattern matching
Unique data page design	X					F	Pattern matching
Page numbers integrated into security design	X	X			High res camera		Pattern matching
Serial number on every sheet							N/A
Additional features							
Multi-colour sewing thread	X	X				F	Pattern matching
Programmable sewing pattern	X	X				F	Pattern matching
UV cured glue to stitching							N/A
Index marks on every page							N/A
Laser-perforated security feature					Transmission	F/V	Pattern matching
Biographical data on inside page							N/A

B 3.6 Additional Security Measures Suited for Machine Authentication

The following security features are suited for machine authentication but are not listed in Appendix A.

Security Features	Sensor needed for Machine Authentication					Pattern fix/variable	Machine Authentication method
	Standard reader				Advanced reader		
	VIS	UV	IR	RF	Special sensor		
Basic features							
MRZ read and check digit verification	X		X			F/V	Checksum calculation
Contactless IC read and Passive Authentication (+AA)				X			RF reader
Detect and read out LED-in-plastic based security features	X	X	X	X		F/V	Use R/F to power LED in plastic
Detect and read out (alphanumeric) displays and their future security features	X	X	X	X		F/V	Use R/F to power display in plastic
Detect and verify retro-reflective foil material	X				Coaxial lighting	F/V	Pattern matching
Barcodes	X	X	X			V	Decoding

B.4 SELECTION CRITERIA FOR MACHINE VERIFIABLE SECURITY FEATURES

If an issuing State considers incorporating security features for machine authentication in its MRTDs or a receiving State plans to deploy reader systems that are able to machine authenticate MRTDs, various criteria for the selection of these features have to be considered.

Much like the selection process for the global interoperable biometric or the storage technology, these criteria comprise:

- security – the most important criterion;
- availability, but exclusiveness for security documents (preferably more than one supplier available);
- dual-use, i.e. additional purpose of the feature beyond machine authentication, e.g. general anti-copy property or visual inspection;
- potential of the Machine Authentication feature to be personalized (i.e. individualized) with information from the passport to secure the personal data (e.g. the passport number, name) in order to avoid re-use of parts of genuine passports;
- compatibility to issuing processes for MRTDs;

- compatibility (to existing and standardized properties of MRTDs);
- compatibility to control process at the border and elsewhere (e.g. no obstruction of basic security features, no extra time needed);
- interoperability;
- sensor availability;
- cost (for feature and sensor);
- Intellectual Property (IP) issues, e.g., patents;
- primary inspection vs. secondary;
- time required to actually utilize the feature;
- potential difficulties associated with the book manufacturing and/or the personalization processes; and
- durability, i.e. according to the relevant ISO and ICAO specifications for MRTDs.

APPENDIX C TO PART II — THE PREVENTION OF FRAUD ASSOCIATED WITH THE ISSUANCE PROCESS (INFORMATIVE)

C.1 SCOPE

This Appendix describes the fraud risks associated with the process of MRTD application and issuance. These risks are a consequence of the benefits that can accrue from the possession of an MRTD that can be used to confirm the identity and citizenship of the holder. The Appendix recommends precautions that an issuing State can take to prevent such fraud.

C.2 FRAUD AND ITS PREVENTION

Fraud perpetrated as part of the issuance process can be of several major types:

- theft of genuine blank MRTDs and completion to make them look valid;
- applying for the MRTD under a false identity using genuine evidence of nationality and/or identity stolen from another individual, or otherwise obtained improperly;
- applying for the MRTD under a false identity using manufactured false evidence of nationality and/or identity;
- using falsely declared or undeclared lost and/or stolen MRTDs that can be provided to people who might use them in look-alike fraud or with repetitive photo substitutions; and
- reliance on MRTD employees to manipulate the MRTD system to issue an MRTD outside the rules.

There are two additional categories in which the applicant applies under his own identity but with the intention to be complicit in the later fraudulent use of the MRTD by:

- altering a genuinely issued document to make it fit a bearer who is not the person to whom the MRTD was issued; and
- applying for an MRTD with the intention of giving or selling it to someone who resembles the true bearer.

C.3 RECOMMENDED MEASURES AGAINST FRAUD

To combat the above-mentioned threats, it is recommended that the MRTD-issuing authority of the State undertake the following measures, to the extent that adequate resources are available for their implementation.

A suitably qualified person should be appointed to be Head of Security directly responsible to the Chief Executive Officer of the issuing authority. The Head of Security should be responsible for ensuring that security procedures are laid down, observed and updated as necessary.

In each location where MRTDs are issued there should be a designated Security Manager. The Security Manager should be responsible for the implementation and updating of the security procedures and report directly to the Head of Security.

Vetting procedures should be established to ensure that all staff are recruited only after searches have verified their identity, ensured that they have no criminal record, and verified that their financial position is sound. Regular follow-up checks should also be made to detect staff whose changed circumstances mean they may succumb to temptations to engage in fraudulent activity.

All staff within the MRTD-issuing authority should be encouraged to adopt a positive attitude toward security matters. There should be a system of rewards for any staff member who reports incidents or identifies measures that prevent fraud.

Controls should be established that account for key components such as blank books and security laminates. Such items should each bear a unique serial number and should be kept locked in suitable secure storage. Only the required number should be issued at the start of each working day or shift. The counting of the items should be done and the figures agreed by two members of staff who should also record the unique numbers of the items. The person to whom they are issued must account for all items at the end of the shift in the form of either personalized documents or defective product. All items should be returned to the secure store at the end of the working period, again having been counted by two people and the unique numbers logged. The records should be kept at least for the life of the issued MRTDs.

Defective product or materials should be destroyed under controlled conditions and the unique numbers recorded.

The issuance process should be divided into discrete operations that are carried out in separate locations within the facility. The purpose is to ensure that no one person can carry out the whole issuance process without venturing into one or more areas that the person has no authorization to enter.

C.4 PROCEDURES TO COMBAT FRAUDULENT APPLICATIONS

The following procedures are recommended to prevent the issue of a genuine MRTD as a result of receipt of a fraudulent application.

The MRTD-issuing office should appoint an appropriate number of anti-fraud specialists (AFS) who have received a high level of training in the detection of all types of fraud used in MRTD applications. There should be at least one AFS present in each location in which MRTD applications and applicants are processed. An AFS should at all times be available to support those whose task it is to process applications (Authorizing Officers [AO]) and thus to provide assistance in dealing with any suspicious application. AFS personnel should regularly provide training to AOs to increase their awareness of potential fraud risks.

The MRTD-issuing authority should establish close liaisons with the issuers of breeder documents such as birth and marriage certificates and driving licences. Access to a database of death certificates assists in the prevention of fraud where an application for an MRTD is made in the name of a deceased person. The State should ensure that the departments holding records of births, marriages and deaths are reconciled and the data stored in a database, secure access to which should be available to the MRTD-issuing office. The aim is to facilitate rapid verification that submitted breeder documents are genuine and that an application is not being made, for example, in the name of a deceased person.

An applicant for an MRTD who has not held one previously should be required to present himself at an MRTD-issuing office with supporting breeder documentation for an interview with an AO and, where necessary, an AFS.

An interview may also be used to process applications for an MRTD to replace an expiring one. Alternatively, provided the MRTD-issuing office has an adequate database of personal information, including portraits, a replacement application may be processed by submission of the documentation, including a new portrait, by mail. In such cases it is desirable that the application and new portrait be endorsed by a responsible person. The return of the expiring MRTD with the new application should be required.

The MRTD-issuing office should initiate procedures that would prevent the fraudulent issue of more than one MRTD to an individual who may have attempted to assume more than one identity. Computer database checks of stored portraits using facial recognition and, where available, fingerprints can assist in this process.

Procedures in the MRTD-issuing office should prevent an applicant from selecting the AO who will serve him. Conversely the work flow should be such as to prevent any employee from selecting which applications he is to process.

The issuance of an MRTD to a young child should require the attendance at the issuing office of, preferably, both parents and of the child. This is to lower the risk of child smuggling or abduction of a child by one parent.

The replacement of an MRTD claimed to be lost or stolen should be made only after exhaustive checks including a personal interview with the applicant.

It is recommended that details, particularly document numbers, of lost or stolen MRTDs be provided to the database operated by INTERPOL. This database is available to all participating countries and can be used in the development of watch lists.

C.5 CONTROL OF ISSUING FACILITIES

A State should consider issuing all MRTDs from one or, at most, two centres. This reduces the number of places where blank documents and other secure components are stored. The control of such a central facility can be much tighter than is possible at each of many issuing centres. If central issuance is adopted, the provision of centres where applicants can attend interviews is required. Furthermore, since standard MRTDs cannot be issued instantly, a system should be established for the issue of emergency MRTDs.

APPENDIX D TO PART 2 — ASF/SLTD KEY CONSIDERATIONS (INFORMATIVE)

<p>Legislative requirements</p>	<p>Before States can begin uploading information to the INTERPOL ASF/SLTD, they must explore their legislation to determine whether they have the authority/mandate to provide international access to elements of citizens' travel document information. Should amendments to legislation be required, States should ensure that adequate coverage is provided for:</p> <ol style="list-style-type: none"> 1. collection and storage of data; 2. privacy provisions (including security); 3. authorization for disseminating data to the international community; and 4. data life cycle and non-repudiation.
<p>Data elements</p>	<p>A standard data set focusing on the document details rather than the holder of the document has been developed for the interchange of information pertaining to lost, stolen and revoked travel documents. States must meet the following required data fields when uploading to this database:</p> <ol style="list-style-type: none"> 1. travel document identification number*; 2. type of document (passport or other); 3. issuing State's ICAO Code; 4. status of the document (i.e. stolen blank); and 5. country of theft (only mandatory for stolen blank travel documents). <p>*Where the travel document has been personalized this should be the number contained in the MRZ; if dealing with a blank book, this number should be the serial number, if the numbers are not the same.</p>
<p>Information gathering</p>	<p>States should ensure that tools used to collect information about lost and stolen travel documents (i.e. telephone interviews, online forms) are comprehensive and conducive to securely gathering all the information required to complete the ASF/SLTD report.</p>
<p>Timely and accurate data provision</p>	<p>The strength of INTERPOL's ASF/SLTD rests on timely and accurate information. Accordingly, States should ensure that they have the systems and processes in place to share information in the most timely fashion to intercept attempts to use lost, stolen or revoked travel documents at border control. States should strive to share this information on a daily basis. Generally, once information is received that the travel document is no longer in the possession of the rightful holder or has been revoked, the issuing authority should officially record the information in its national database (if it runs and maintains one) and in the ASF/SLTD. States should also make ongoing efforts to ensure that data is accurate and reliable.</p>

	<p>Care must be taken to avoid input errors and to provide all the required document data, as accurate reporting is the responsibility of the issuing authority. Errors in reporting can be disruptive to travel and costly to both the traveller and issuing State. States must therefore take the necessary steps to ensure the accurate recording and reporting of lost, stolen and revoked travel documents.</p> <p>States should operate a round-the-clock response facility to promptly action requests for further information from INTERPOL on behalf of inquiring States.</p>
Leveraging national databases on lost, stolen and revoked travel documents	States maintaining national databases on lost, stolen and revoked travel documents should consider using automated ways to transmit this information to INTERPOL to leverage their efforts.

— END —

ISBN 978-92-9249-791-0



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7 FAM 416 CITIZENSHIP AND NATIONALITY ISSUES

7 FAM 416.1 Responsibilities

(CT:CON-643; 03-07-2016)

As consular officer your clientele in Arrest cases includes:

- (1) A U.S. citizen;
- (2) A U.S. non-citizen national who is not a citizen of the United States. INA 308(1) and (3) provides non-citizen U.S. nationality for the people born (or foundlings) in American Samoa and Swains Island. Persons who acquired non-citizen U.S. nationality should possess a U.S. passport with the appropriate endorsement code 09. (See [7 FAM 1125](#) and [7 FAM 1140](#) and [7 FAM 1320 Appendix B.](#))
- (3) Citizens of countries for which the United States provides certain protection under the Compact of Free Association between the United States and the former trust territories:
 - (a) The Freely Associated States of the Republic of the Marshall Islands;
 - (b) The Federated States of Micronesia;
 - (c) The Republic of Palau.
- (4) A "third country" national (TCN) for whom the United States has formally accepted responsibilities as protecting power. (See [7 FAM 1000.](#))

NOTE: In TCN cases, representation should initially be limited to providing emergency services, and the Department should be consulted for long-term services that the post might be expected to provide.

7 FAM 416.2 Determining Citizenship

(CT:CON-728; 08-18-2017)

- a. In the majority of cases, possession of a passport satisfactorily establishes both the identity and the citizenship of the individual.
- b. *In the absence of a valid passport*, the consular officer will have to *consult consular databases along with relying* upon secondary documentary evidence.
- c. If the prisoner *cannot provide any secondary* documentation, you should interview the prisoner regarding his family, residence in the United States, knowledge of U.S. culture, or other indications that he or she falls within one of the categories in [7 FAM 416.1](#).
- d. Be on the alert for altered or counterfeit documentation in arrest cases. Bear in mind, however, that false documents do not necessarily indicate that the prisoner is not an U.S. citizen or national.
- e. *Due to the limited access prisoners have to documentary evidence and the vulnerable position of U.S. citizen detainees overseas, consular officers should continue to provide assistance to prisoners who allege U.S. citizenship unless, upon reviewing documents provided by the prisoner and interviewing the prisoner, the consular officer wishes to recommend that consular assistance be stopped because the prisoner's claim to U.S. citizenship has not been established. In such a case,*

post should consult with CA/OCS/ACS and CA/OCS/L to get concurrence on that decision prior to any termination of consular assistance.

See 7 FAM 1100, "Acquisition and Retention of U.S. Citizenship," and [7 FAM 1200](#), "Loss and Restoration of U.S. Citizenship," for further information.

7 FAM 416.3 Dual Nationality

(CT:CON-643; 03-07-2016)

Providing consular protection to dual nationals sometimes poses complex problems because of the conflicting laws and regulations of the United States and other countries. Consular officers are required to open a case, file an arrest report and update the Department on your efforts to secure access and visitation.

7 FAM 416.3-1 Dual National Arrestees In The Non-U.S. Country Of Nationality

(CT:CON-379; 06-09-2011)

- a. The most complex problems regarding provision of protective services to dual nationals arise when the holder of dual nationality experiences difficulties with the law in his/her other (non-U.S.) country of nationality. While consular officers do not usually have a right to consular access to a dual national present in one of his or her countries of nationality, attempts should still be made to seek consular access on a courtesy basis from the host government.
- b. See page fourteen of the Consular Notification and Access Manual for information on dual nationals detained in the United States and Department of State instructions to law enforcement with respect to them.

7 FAM 416.3-2 Dual National Arrestees In A Third Country

(CT:CON-379; 06-09-2011)

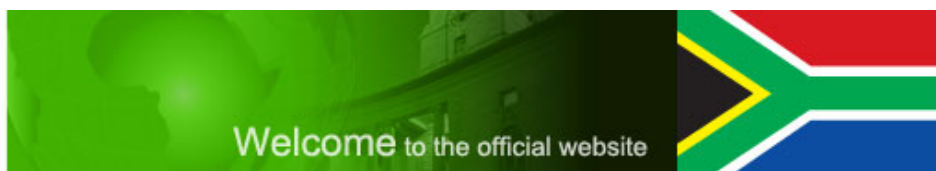
A dual national traveling in a third country on a U.S. passport is generally entitled to the full range of consular services related to arrest, unless this is not permitted by the host country.

7 FAM 417 U.S. LEGAL PERMANENT RESIDENT ALIENS

(CT:CON-379; 06-09-2011)

At times, you will come across arrest cases of individuals who are not U.S. citizens or nationals but who are legal permanent residents with strong ties to the United States. Their arrest may come to your attention from other family members in the United States, other prisoners, congressional offices, or even host government officials who on occasion are not quite clear on the exact status of a U.S. "green card" holder. The Department's general guidance in such cases is:

- (1) While consular officers do not have the right to demand consular access and visitation for U.S. Lawful Permanent Resident Aliens (LPRs), they may do so on a courtesy basis.
- (2) LPRs must turn to the country of their nationality or citizenship to request and receive consular services.



Consular Information

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**ANY
COMMENTS?**

Advice to South African Citizens in the Event a South African is Arrested or Jailed Abroad

Introduction / What Consular Officers can do for South Africans detained/arrested abroad / What Consular Officers cannot do for South Africans detained/arrested abroad / What to do when a South African citizen is arrested/detained abroad / Dual nationals / Legal Instrument / Location and contacts

Introduction

Under the Vienna Convention on Consular Relations (1963), which is the accepted standard for all member countries, persons who have been arrested outside their own country must have access to their consular representative. South Africans in this situation must immediately request the authorities to allow them to contact the South African Representative in that country. Alternatively, somebody can contact the [South African Representative](#) (South African Embassies/Consulates/High Commissions are referred to as "missions") in that country or the [Chief Directorate Consular Services](#) of the Department in Pretoria on your behalf.

Consular Officials seek to ensure that South African citizens arrested abroad are treated humanely while incarcerated. In this regard issues such as torture, inhumane or degrading treatment or punishment will be reported and taken up with the local authorities. The United Nations Standard Minimum Rules for the Treatment of Prisoners is used as a guide.

What Consular Officers can do for South Africans detained/arrested abroad:

- Establish contact with the detainee as soon as possible after verifying South African citizenship. (This service is rendered to ensure that South Africans who have been arrested, detained or imprisoned under foreign jurisdiction understand their rights and the services that can be provided by the South African Government. Depending on specific circumstances, contact can be in person, in writing, by telephone or through appropriate intermediaries);
- Provide general information about the legal system of the country of arrest. Information may include details on legal aid (if available) and prosecution, a list of lawyers (no recommendations may be made for a specific lawyer) remand, bail and appeal procedures so that he/she understands his/her rights and the processes involved;
- Maintain contact with the arrested South African citizens abroad with due observance of the laws and regulations of the arresting State.
- Undertake prison visits. The frequency of prison visits depends on current policy, the location, culture and laws of the arresting State, the prevailing security situation in the country and/or the prison and subject to the Mission's operational circumstances;
- Contact family or friends, to a maximum of three, only if authorised to do so by the detainee/ prisoner in writing. The detainee/ prisoner can change the people he/she wishes to receive information from the Department but must do so in writing. The Consular Desk at Head Office will then inform the person whose name has been removed or added to the list accordingly. A person whose name has been removed will no longer be authorised to receive information via the Department.
- Assistance with funds transfers: A maximum amount of R2 000, 00 per month per detainee/ prisoner may be deposited by family members/ friends. The funds must be deposited between the 1st and the 18th of the month in order for the Embassy/ High Commission/ Consulate General to have enough time to make the necessary arrangements for the payment to the detainee/ prisoner. Every effort is made to ensure prompt payment of funds received to detainees/prisoners.

Deposits received after the 18th of the month will be processed for payment in the month following the month in which the deposit was made. Family members/ friends are requested to assist the Department by making only one deposit per month per detainee. Should the detainee/prisoner receive money from more than one family member/ friend, arrangements should be made to consolidate the monies into one payment if possible. In all cases the amount of R2000.00 per month must not be exceeded.

If confirmation of funds transfers are received (at the mission from the Department) between the 1st and 18th the funds will be transferred to the prison account of the prisoner,

Advice to South African Citizens in the Event a South African is Arrested or Jailed Abroad

if such a facility is available, by the end of the month. Confirmation of funds transfers received (at the mission from the Department) after the 18th of a month will only be transferred to the prison account of the prisoner, if such a facility is available, by the end of the following month. Should such a facility not be available at the prison for direct transfer of funds the conveyance of received funds by the mission to the prisoner will be determined by operational requirements and the mission's prison visit schedule, i.e. funds will be conveyed to the prisoner during the next scheduled prison visit.

The Department assists (South African) families **within the borders of the Republic of South Africa** to forward money to their family member detained/ imprisoned abroad. This therefore does not include money transfers from another country.

- Ensure that medical problems are brought to the attention of the prison authorities;
- Family members are allowed to send prescription medication only to the detainee through the Department provided this is not contradictory to the rules of the detention facility in the arresting country. The medication together with the prescription must be hand delivered to the following address:

Physical Address

OR Tambo Building
NE2A-Ground Floor
460 Soutpansberg Road
Rietondale
Pretoria

The following requirements/stipulations regarding medication must be adhered to:

- (a) All medication must be accompanied by a certified copy of a prescription issued by a medical doctor and a certification that it is not available in the country of incarceration.
- (b) No "over the counter medication" (e.g. head ache tablets) are permitted.
- (c) **Only** tablets, powder and capsules are permitted.
- (d) **No** liquids, ointments or aerosol cans, including asthma pump canisters, are permitted in accordance with IATA regulations.

The package is then weighed and the cashier at the Department must be paid according to the weight of the package. The person bringing the medication will be assisted by the responsible Consular Desk Official and it is therefore important for an appointment to be made prior to arriving at the Department.

- Family members are allowed to mail letters to the detainees/prisoners through the Department. The letter must be put in an unsealed envelope with the name of detainee and the country where he/she is detained clearly written on the front and the return address of the sender on the back. That envelope should be put in a larger sealed envelope addressed to:

(Insert name of desk officer)

The Department of International Relations and Cooperation
Chief Directorate: Consular Services
Private Bag X152
Pretoria
0001

Please note that only letters of a personal nature and South African postage stamps for letters written by the detainee/prisoner can be included in the envelope. No other items are permitted. The reason for leaving the inner envelope unsealed is so that the Department can exercise its right to inspect the contents prior to forwarding the letter to the detainee/prisoner. The intention is not to read the contents of the letter but to ensure that no unauthorised items are included. If any unauthorised items are found or if the inner envelope is sealed then the envelope will be returned to the sender. After inspection the envelope will be sealed and forwarded to the mission. It is advisable to include South African stamps in the envelope to enable the detainee to post letters to the family in South Africa through the mission.

- Upon release and impending return to South Africa, family or friends (in South Africa) may deposit funds at the Department of Home Affairs to pay for the ticket. The South African Representative will arrange the purchase of the ticket once proof is received that the money was deposited.

Note: The Department and South African Representatives abroad make every effort to ensure that monies, letters and medication are forwarded without undue delay. Nonetheless it must be noted that, the operational priorities of the Department and Representatives abroad take precedence. Circumstances prevailing in a country may affect services at any time.

What Consular Officers CAN NOT do for South Africans detained/arrested abroad:

- Institute or intervene in court proceedings or judicial processes;
- Obtain or give legal advice;

Advice to South African Citizens in the Event a South African is Arrested or Jailed Abroad

- Organise a release from prison, bail or parole;
- Travel to dangerous areas or prisons for a prison visit;
- Investigate a crime;
- Negotiate better treatment in prison for SA Citizens than that provided for local nationals. In cases where the [United Nations Standard Minimum Rules for the Treatment of Prisoners](#) are not applied/ met, the mission will make representation to the relevant local authorities on behalf of the detainee/ prisoner;
- Instruct next-of-kin or friends to transfer money;
- Pay legal, medical or any other bills;
- Obtain accommodation, work, visas or residence permits;
- Undertake work done by travel agents, airlines, banks or car rental companies;
- Formally assist dual nationals in the country of their second nationality;
- In the unfortunate event of death, pay for the repatriation, transport, burial or cremation of the mortal remains of a South African citizen;

What to do when a South African citizen is arrested/detained abroad:

Contact your nearest [South African Representative](#) or the [Chief Directorate Consular Services](#) of the Department in Pretoria.

Dual nationals

Dual nationals arrested/detained in the country of their other nationality will not receive assistance from South African Consular Representatives. If a dual national is arrested/detained in another country, of which he/she is not a national, and he/she did not travel on a South African passport but on the passport of his/her second nationality, the dual national must contact the consular representative of the country on which passport he/she travelled.

Legal Instrument

- Article 36 of the Vienna Convention on Consular Relations (1963).
- Note: No Prisoner Transfer Agreements exist between South Africa and any other country.

Location and Contacts

Closest [South African Representation](#).

[Chief Directorate Consular Services](#) of the Department in Pretoria.

The Chief Directorate Consular Services of the Department is situated at:

Physical Address

OR Tambo Building
NE2A-Ground Floor
460 Soutpansberg Road
Rietondale
Pretoria

To add value and improve consular services to the public, this consular site is constantly under construction. For consular related services, information and enquiries you are not able to find on this site, please contact the [Chief Directorate Consular Services](#) or the [Webmaster](#).

Last updated: 14 May 2014

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Frequently Asked Questions

See also

- [The Court at a glance \(factsheet, 2017\) \(/files/the-court-at-a-glance/the-court-at-a-glance-en.pdf\)](#)
- [Handbook of the Court \(6th Edition, updated to 31 Dec 2013\) \(/files/publications/handbook-of-the-court-en.pdf\)](#)

What is the International Court of Justice?

The Court is the principal judicial organ of the United Nations. It was established by the United Nations Charter, signed in 1945 at San Francisco (United States), and began work in 1946 in the Peace Palace, The Hague (Netherlands).

The Court, which is composed of 15 judges, has a dual role: in accordance with international law, settling legal disputes between States submitted to it by them and giving advisory opinions on legal matters referred to it by duly authorized United Nations organs and specialized agencies.

The official languages of the Court are English and French.

Who may submit cases to the Court?

Only States are eligible to appear before the Court in contentious cases. At present, this basically means the 192 United Nations Member States.

The Court has no jurisdiction to deal with applications from individuals, non-governmental organizations, corporations or any other private entity. It cannot provide them with legal counselling or help them in their dealings with the authorities of any State whatever.

However, a State may take up the case of one of its nationals and invoke against another State the wrongs which its national claims to have suffered at the hands of the latter; the dispute then becomes one between States.

What differentiates the International Court of Justice from the International Criminal Court and the *ad hoc* international criminal tribunals?

The International Court of Justice has no jurisdiction to try individuals accused of war crimes or crimes against humanity. As it is not a criminal court, it does not have a prosecutor able to initiate proceedings.

This task is the preserve of national courts, the *ad hoc* criminal tribunals established by the United Nations (such as the [International Criminal Tribunal for the former Yugoslavia \(ICTY\)](#) (<http://www.un.org/icty>) and the [International Criminal Tribunal for Rwanda \(ICTR\)](#) (<http://http://www.unictr.org/>)) or in co-operation with it (such as the [Special Court for Sierra Leone](#) (<http://www.rscsl.org/>)), and also of the [International Criminal Court](#) (<http://www.icc-cpi.int>), set up under the Rome Statute.

How does the International Court of Justice differ from other international courts?

The International Court of Justice differs from the [European Court of Justice](#) (<http://curia.europa.eu>) (the seat of which is in Luxembourg), whose role is to interpret European Community legislation uniformly and rule on its validity, as well as from the [European Court of Human Rights](#) (<http://www.echr.coe.int/echr>) (in Strasbourg, France) and the [Inter-American Court of Human Rights](#) (<http://www.corteidh.or.cr>) (in San José, Costa Rica), which deal with allegations of violations of the human rights conventions under which they were set up. As well as applications from States, those three courts can entertain applications from individuals, which is not possible for the International Court of Justice.

The jurisdiction of the International Court of Justice is general and thereby differs from that of specialist international tribunals, such as the [International Tribunal for the Law of the Sea](#) (<http://www.itlos.org>) (ITLOS).

Lastly, the Court is not a supreme court to which national courts can turn; it does not act as a court of last resort for individuals. Nor is it an appeal court for any international tribunal. It can, however, rule on the validity of arbitral awards.

Why are some disputes between States not considered by the Court?

The Court can only hear a dispute when requested to do so by one or more States. It cannot deal with a dispute of its own motion. It is not permitted, under its Statute, to investigate and rule on acts of sovereign States as it chooses.

The States concerned must also have access to the Court and have accepted its jurisdiction, in other words they must consent to the Court's considering the dispute in question. This is a fundamental principle governing the settlement of international disputes, States being sovereign and free to choose the methods of resolving their disputes.

A State may manifest its consent in three ways:

- A *special agreement*: two or more States in a dispute on a specific issue may agree to submit it jointly to the Court and conclude an agreement for this purpose;
- A *clause in a treaty*: over 300 treaties contain clauses (known as compromissory clauses) by which a State party undertakes in advance to accept the jurisdiction of the Court should a dispute arise on the interpretation or application of the treaty with another State party;
- A *unilateral declaration*: the States parties to the Statute of the Court may opt to make a unilateral declaration recognizing the jurisdiction of the Court as binding with respect to any other State also accepting it as binding. This optional clause system, as it is called, has led to the creation of a group of States each having given the Court jurisdiction to settle any dispute that might arise between them in future. In principle, any State in this group is entitled to bring one or more other States in the group before the Court. Declarations may contain reservations limiting their duration or excluding certain categories of dispute. They are deposited by States with the Secretary-General of the United Nations.

Are decisions of the Court binding?

Judgments delivered by the Court (or by one of its Chambers) in disputes between States are binding upon the parties concerned. Article 94 of the United Nations Charter lays down that "each Member of the United Nations undertakes to comply with the decision of [the Court] in any case to which it is a party".

Judgments are final and without appeal. If either of the parties challenges their scope or meaning, it has the option to request an interpretation. In the event of the discovery of a fact hitherto unknown to the Court which might be a decisive factor, either party may apply for revision of the judgment.

As regards advisory opinions, it is usually for the United Nations organs and specialized agencies requesting them to give effect to them or not by whatever means are appropriate for them.

How does one attend hearings of the Court?



The hearings of the Court are public, unless it has been decided to hold a closed hearing. For information on the appropriate procedure, please refer to the "Visits" pages on our Internet site.

Representatives of the media wishing to cover the hearings must be duly accredited. For further information, please refer to the "Accreditation" page in the Press Room.

Is it possible to visit the Peace Palace, seat of the Court?

The [Carnegie Foundation \(http://www.vredespaleis.nl\)](http://www.vredespaleis.nl), which owns the Peace Palace, arranges guided tours on weekdays. There is a charge for such visits.

However, no tours are arranged when the International Court of Justice is holding hearings or when other events are taking place in the Peace Palace.

How does one apply for a job in the Registry of the Court?

For all information concerning job vacancies, please refer to the "Current vacancies" page on our Internet site.

Does the Court offer internships?

Yes. Further information on this subject may be found under "Internships" on our Internet site.

Does the Court issue official certificates or other documents to individuals?

The Court issues no such documents to individuals relating to the lottery, transfers of funds or certifying transactions. The Court regularly receives requests for information about documents bearing its logo or the crudely forged signature of certain senior officials. Members of the public are advised that these constitute fraud.

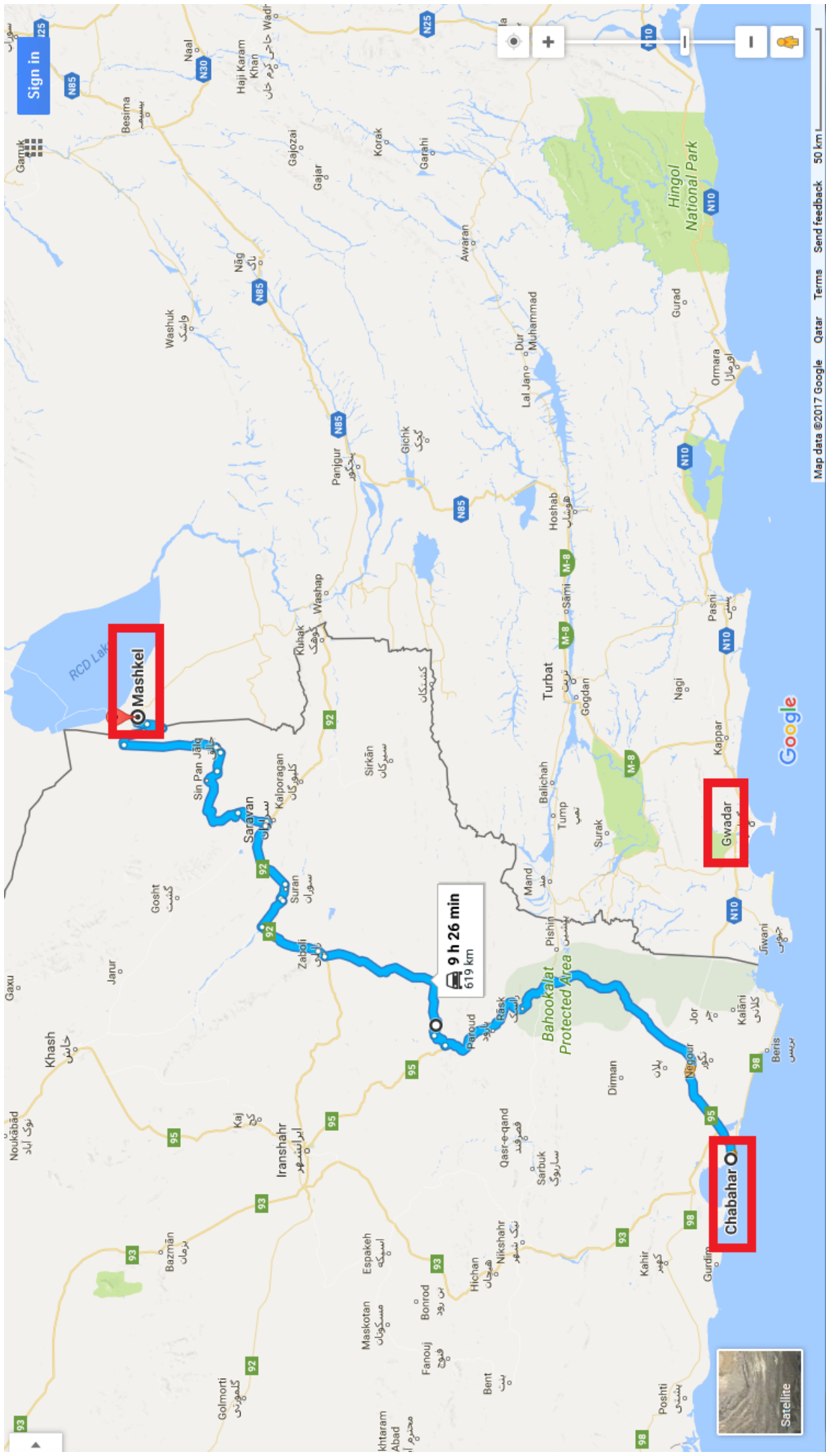
How to find out more about the Court

For further information on the Court, please refer to the section "Questions and Answers on the Court" in the Press Room or download the Handbook of the Court (updated to 31 December 2013).

You can also subscribe to the Mailing List in order to receive the Court's press releases by e-mail.

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Retirement age of Army, Navy and Air Force Staff

Submitted by admin on Sat, 07/19/2014 - 18:36

Retirement age of [Army \(http://www.7thcpc.in/pay-scale-calculator/army\)](http://www.7thcpc.in/pay-scale-calculator/army) , Navy and Air Force Staff

Details of the retirement age of various category of officers and soldiers in the [DEFENCE \(http://www.7thcpc.in/tag/armed-forces\)](http://www.7thcpc.in/tag/armed-forces) forces (excluding Armed Forces Medical Services) at present, are as under:

[Army \(http://www.7thcpc.in/pay-scale-calculator/army\)](http://www.7thcpc.in/pay-scale-calculator/army) :
Retirement age of Army Officers and other Ranks

Officers		Other Ranks	
General	62 years or 3 years of tenure whichever is earlier	Sub Major	54 years or 34 years* of service or 4 years of tenure whichever is earlier
Lt. Gen	60 years	Subedar	52 years or 30 years* of service
Maj. Gen	58 years	Naib Subedar	52 years or 28 years* of service
Brigadier	56 years	Havildar	49 years or 26 years* of service
Colonel	54 years	Naik	49 years or 24 years* of service
-	-	Sepoy Gp (X)	42 years or 19 years* of service
-	-	Sepoy Gp (Y)	48 years or 22 years* of service

* Service limit includes extension of 2 years by screening.

Note 1: In all categories below officer ranks, age limit or service limit whichever occurs earlier is applicable for retirement.

Note 2: Above information does not cover officers of certain specialised branches.

Navy: Retirement age of Nay Officers and Sailors

Officers		Sailors	
Admiral	62 years or 3 years of tenure whichever is earlier	Master Chief Petty Officer (MCPO) I and II	57 years
Vice Admiral	60 years	Chief Petty Officer (CPO) and below	52 years
Rear Admiral	58 years	-	-
Commodore/ Captain (Education)	57 years	-	-
Commodore/ Captain	56 years	-	-
Commander	54 years	-	-

Lt. Commander and below	52 years	-	-
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Air Force: Retirement age for Air Force Staff

Retirement age of Airmen is 57 years. Retirement age for officers is as given below:

(i) Permanent Commissioned Officers:

Air Chief Marshal	62 years or 3 years of tenure whichever is earlier
Air Marshal	60 years
Air Vice Marshal	58 years
Air Commodore	(i) 56 years for Flying Branch (ii) 57 years for other branches
Group Captain (Select)	(i) 54 years for Flying Branch (ii) 57 years for other branches
Wing Commander and Group Captain (Time Scale)	(i) 52 years for Flying Branch. (ii) 54 years for Ground Duty Branches other than education and meteorological branches. (iii) 57 years for Education and Meteorological branches.

(ii) Branch Commissioned Officers: 57 years.

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