I. Payment of U.N. Dues

Due to repeated withholdings and nonpayment during the 1980s and 1990s, by 1999 the United States had amassed a debt of $1.6 billion to the United Nations. Faced with the imminent prospect of losing its vote in the U.N. General Assembly pursuant to article 19 of the U.N. Charter, which is automatically triggered when a country's arrearage exceeds the amount of the contributions due from it for the preceding two full years,1 in November 1999, President Clinton signed into law the Helms-Biden Bill (part of the State Department Spending Bill), which authorizes $926 million2 over three years as payment of U.S. arrears owed to the United Nations.

The legislation permitted the immediate payment of $100 million in back dues to the United Nations (which was just enough to avoid loss of the U.S. vote in January 2000), but stipulates the following pre-conditions to payment of the rest of the money:

(1) The United Nations must accept the $926 million as payment in full and agree to write off the additional $800 million it calculates that the United States owes the organization in an uncollectible "contested arrears account."

(2) The United Nations must agree to reduce the U.S. share of the regular U.N. budget from twenty-five percent to twenty-two percent by 2001, and down to twenty percent by 2002. It must also agree to reduce the U.S. share of the peacekeeping budget from thirty-one percent to twenty-five percent by 2001.

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1. Under article 19 of the U.N. Charter, "[a] member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years." U.N. CHARTER art. 19.

2. The legislation authorizes $819 million in overdue payments to the U.N. and wipes out $107 million in debt the world organization owes to the U.S. government.
(3) The U.N. budget cannot include any growth in spending, even allowing for inflation.

In his speech to the U.N. Security Council on January 20, 2000, Senator Jesse Helms (R-NC) warned that if the United Nations does not accept these conditions for payment of U.S. arrears, not only will the U.N. forfeit hundreds of millions of U.S. dollars, but the United States might be forced to withdraw from the organization altogether.3

The unilateral, non-negotiable approach mandated by the Helms-Biden law is inconsistent with the U.S. legal obligations under article 17 of the U.N. Charter.4 The United States freely agreed to pay its assessments when it ratified the U.N. Charter and made the treaty part of the supreme law of the United States. At that time, the Unites States joined the other members of the organization in voting to set the U.S. assessment at twenty-five percent for the U.N.'s general budget and thirty-one percent for the peacekeeping budget, which reflected the U.S. share of the world economy.

It is worth noting that the current U.S. share of the world's gross domestic product (twenty-seven percent) is actually higher than its current assessed share of the U.N. regular budget (twenty-five percent). By way of comparison, the fifteen countries of the European Union together pay thirty-six percent of the U.N. budget, while the European Union's share of the world's gross domestic product is virtually the same as the United States (twenty-seven percent).

Moreover, at the insistence of the United States, the U.N. annual budgets are adopted by consensus, meaning the United States can unilaterally block U.N. spending if it chooses.5 Similarly, the United States wields control over the U.N.'s peacekeeping budget through the exercise of its veto power in the Security Council, which must approve all peacekeeping operations.

According to the negotiating record of the U.N. Charter, the decision of the International Court of Justice in the Certain Expenses case,6 and prevailing state practice (including frequent statements by the United States), once assessments are adopted under article 17, they are legally binding.7 The Vienna Convention on the Law of Treaties (which the United States recognizes as the authoritative guide to current treaty law and practice),8 states: "A State party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform the treaty." Although U.S. courts have held that a later act of Congress may supersede an earlier treaty obligation when the two conflict for purposes of domestic law, the treaty obligations nevertheless remain on the international plane, and violations of those obligations continue to be violations of international law.9

From 1945 to 1980, the U.S. Congress, Republicans and Democrats alike, adhered to a bipartisan consensus that the United States had a legal duty to pay for whatever assessments, to be used for whatever purpose, the collective membership of the United Nations deter-

mired are owing. During the Reagan administration, however, the United States first began to fall behind in its payments to the U.N., unilaterally withholding its share of funds budgeted for what it then considered objectionable organizations and programs. The Kasenbaum-Solomon amendment and the Gramm-Rudman-Hollings Act of 1985 resulted in further reductions in U.S. appropriations to the U.N. Recognizing that these withholdings were in violation of international law, the Bush administration had adopted a five-year repayment plan, but in 1994 Congress reneged. Although the Clinton administration has also recognized that it has an international obligation to pay its U.N. arrears, the U.S. debt to the United Nations has ballooned over the past eight years to over $1.6 billion.

Senator Biden himself recognized that the approach mandated by the Helms-Biden law is inconsistent with America’s international legal obligations, but felt that the current Congress would not have approved any payment of U.S. arrears to the U.N. without the stipulated conditions. When introducing the legislation, Senator Biden stated: “In an ideal world I’d like to pay our arrears to the United Nations in full with no conditions,” but “[o]ur choices are this or nothing.”

The United States has an international legal obligation to pay the money that it owes the United Nations in full and without condition. It is a violation of that obligation to require that the United Nations agree to write off fifty cents on every dollar of U.S. debt to the U.N., leaving the rest of the members to absorb the $800 million shortfall in the U.S. arrears payment. It is a violation of that obligation to require that the U.N. agree to maintain a zero-growth budget in perpetuity, even while the United States has pushed for the creation of expensive new U.N. institutions such as the International Criminal Tribunals for the Former Yugoslavia and Rwanda. And it is a violation of that obligation for a country to make its payment of arrears contingent on non-negotiable demands for a decrease in the percentage that it is assessed.

From a practical standpoint, the Helms-Biden legislation sets a dangerous precedent, whereby other countries will be encouraged to withhold dues in order to coerce the members of the U.N. to reduce their assessed share of the budget and forgive their arrears. Japan (which pays nineteen percent of the U.N.’s budget) is poised to follow the U.S. example. The Japanese Parliament is currently debating legislation similar to the Helms-Biden legislation, which would pressure the U.N. to reduce Japan’s assessment by several percentage points.

Though the United Nations is desperately in need of the money owed to it by the United States, the indications are that its members are unlikely to accept the conditions stipulated in the legislation. In that event, the bulk of U.S. arrears will not be paid, U.S. dues payments for 2000 will fall short of the assessment for that year, putting the United States further in arrears, and in January 2001, the United States will automatically forfeit its vote in the General Assembly.

12. See id.
16. In a Senate Foreign Relations Committee hearing on January 21, 2000, Joseph Connor, the U.N. Under Secretary General for Management, testified that the organization remains teetered at the edge of bankruptcy. “We borrow money from our regular budget to float peacekeeping operations. We then pay it back. The United Nations is running on empty, we’ve got many miles to go, and most of those miles are in emergency situations.” James Rosen, Senators Say U.N. Needs Overhaul, The News & Observer, Jan. 22, 2000.

SUMMER 2000
II. The United Nations Security Council

The Security Council's primary responsibility is the maintenance of international peace and security. When there is a concern over a threat to peace, the Security Council may make recommendations in an effort to resolve the dispute. If the dispute escalates, the Council may undertake such action as assigning peacekeeping forces, imposing economic and diplomatic sanctions, or authorizing the use of force. The three main crises faced by the Security Council in 1999 were the situations in Iraq, Kosovo, and East Timor. At the same time, the Security Council faced accusations of unfair treatment of different parts of the world, especially Africa.

A. Iraq

Iraq continued to be a dominant issue for the Security Council in 1999. The year began with Iraq's persistent refusal to comply with Security Council resolutions concerning its disarmament. In the aftermath of American and British air strikes in late 1998 and early 1999, Iraq terminated all cooperation with the United Nations Special Commission (UNSCOM), which was set up in 1991 to investigate suspected Iraqi chemical and biological weapons production.

In December 1999, after a year of negotiation, the Security Council adopted Resolution 1284 by a vote of eleven in favor, none against, and four abstaining. This resolution established the United Nations Monitoring, Verification, and Inspection Commission (UNMOVIC), which replaced UNSCOM.

Resolution 1284 authorizes UNMOVIC to take over UNSCOM's assets, liabilities, and archives. The resolution also mandates UNMOVIC to "establish and operate . . . a reinforced system of ongoing monitoring and verification . . . address unresolved disarmament issues . . . [and identify] as necessary . . . additional sites in Iraq to be covered by the new monitoring system." According to Resolution 1284, if UNMOVIC reports that Iraq is cooperating with the monitoring system, sanctions against Iraq would be suspended for 120 days.

Meanwhile, the Security Council continued to support the humanitarian "oil-for-food" program by adopting a series of resolutions in 1999, authorizing Iraq to sell a limited

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18. See id.
19. See id.
21. See id. Iraq claimed that it would be in the other countries' economic interest if they violated the embargo.
24. Id.
25. Id.
26. Id. Iraq would have to cooperate in all respects for 120 days, and if it was determined Iraq was not cooperating, the suspension of sanctions would be terminated.
amount of oil and to purchase humanitarian supplies with the revenue under U.N. supervision.\textsuperscript{27} On December 12, 1999, Resolution 1281 was adopted, permitting Iraq to sell $5.26 billion of oil and oil products for the next 180 days.\textsuperscript{28} The December extension came after Iraq rejected two prior extensions and cut off its exports in November.\textsuperscript{29} Although the program was aimed at improving the living conditions of the people of Iraq, this goal has not been achieved because of Iraq’s failure to pump the target amounts of oil and the existence of a slump in world oil prices.\textsuperscript{30}

B. Kosovo

Beginning in 1989, Serbia had instituted a repressive apartheid-like administration of its “autonomous” province of Kosovo, whose population was comprised of ninety percent Albanian Muslims and ten percent Serbs. In February 1999, internationally mediated peace negotiations between the government of the Federal Republic of Yugoslavia (FRY) and the Kosovo Albanians were held at Rambouillet, France. Despite international pressure and even overt threats of military action, the negotiations ended with the FRY’s refusal to sign the Rambouillet accords.\textsuperscript{31} Using several attacks by the Kosovo Liberation Army (KLA) as a pretext, the FRY began to ethnically cleanse the region, ultimately resulting in the displacement of over one million Kosovo Albanians.\textsuperscript{32}

When the North Atlantic Treaty Organization (NATO) began a wave of military strikes in March against Serb targets in response to this ethnic cleansing, the Security Council held an immediate meeting to discuss the situation.\textsuperscript{33} The Russian Federation expressed anger at the use of force without explicit Security Council authorization, which it contended was in violation of the U.N. Charter.\textsuperscript{34} Resolutions 1199 and 1203, which were adopted in 1998, had invoked Chapter VII of the U.N. Charter and recognized that the conflict in Kosovo was a threat to the peace and security in the region.\textsuperscript{35} The resolutions also expressed alarm at the “impending humanitarian catastrophe” and “reemphasiz[ed] the need to prevent this from happening.”\textsuperscript{36} They did not, however, employ the talismanic phrase “all


\textsuperscript{29} See Iraq to Resume Oil Sales at End of Week, Agence France Presse, Dec. 15, 1999.

\textsuperscript{30} See U.N. Panel Recommends Easing Sanctions on Iraq, Deutsche Presse-Agentur, Mar. 31, 1999. The U.N. uses about sixty percent of the revenues to purchase humanitarian goods; the rest goes to compensation for Gulf War victims and to pay for the cost of disarmament.

\textsuperscript{31} See One Year on, Kosovo No Closer to Peace, Agence France Presse, Mar. 14, 1999. Belgrade was willing to discuss an “international presence” in Kosovo if a “decent political accord” was reached. Kosovo wanted a referendum that would allow for independence after three years.

\textsuperscript{32} See id. Of the 230,000 people, 30,000 fled after the peace talks began in February.

\textsuperscript{33} See NATO Action Against Serbian Military Targets Prompts Divergent Views, M2 Presswire, Mar. 25, 1999.

\textsuperscript{34} See id. Article 103 of the U.N. Charter emphasizes Charter obligations take precedence over all other Charters, including NATO’s.


\textsuperscript{36} S.C. Res. 1203, supra note 35.
necessary means," which the Council has always used in the past when authorizing use of force.37

On the eve of the air strikes, Canadian Foreign Minister Lloyd Axworthy said NATO did not seek explicit Security Council authorization for air strikes because some members of the Council would have vetoed the plan.38 His forecast proved accurate. On the third day of the air strikes, the trio of Belarus, India, and Russia proposed a draft resolution charging that the NATO bombing violated articles 2(4), 24, and 53 of the U.N. Charter. This proposal, however, was defeated by a vote of twelve to three (with only China, Russia, and Namibia voting in favor).39

After nearly eighty days of bombing, on June 10, 1999, the Security Council adopted Resolution 1244, which was intended to facilitate the end to the violence in Kosovo.40 The resolution passed unanimously with only one country, China, abstaining.41 Resolution 1244 codifies the general principles adopted by the foreign ministers of the G-8, which were accepted by Belgrade after mediation by the president of Finland and the special representative of the president of the Russian Federation.42 Kofi Annan, Secretary-General of the United Nations, expressed immediate support for the resolution, stating: "[t]he United Nations is determined to lead the civilian implementation of the peace effectively and efficiently. But . . . we need the cooperation of all the parties. And . . . the means to carry out the mandate."43

Pursuant to Resolution 1244, the Security Council authorized member states and appropriate international organizations to institute an international presence in Kosovo.44 The responsibilities for this NATO-led peace operation included deterring renewed hostilities, demilitarizing (but not disarming) the KLA, setting up a safe environment for the return of refugees, and facilitating an environment where an international civil presence can function for at least one year.45

The Kosovo intervention set an unclear precedent for the United Nations. Some commentators concluded that the unauthorized use of force "undermined the authority of the

37. U.N. Charter art. 103.
42. See Security Council, supra note 41. The first document was adopted on May 6 and the second document was adopted on June 3. Both documents are included as annexes to Resolution 1244. The principles adopted include, but are not limited to: "an immediate and verifiable end to violence and repression in Kosovo; Withdrawal of the military, police and paramilitary forces; Deployment of effective international civil and security presences, [with substantial NATO participation in the security presence]; establishment of an interim political framework; The safe and free return of all refugees . . . ; A political process providing for substantial self-government, as well as the demilitarization of the Kosovo Liberation Army (KLA); and comprehensive approach to the economic development of the crisis region." S.C. Res. 1244, supra note 40.
43. See Gen says UN is Determined to Lead Civilian Implementation of Peace Effectively and Efficiently, M2 Presswire, June 11, 1999.
44. See S.C. Res. 1284, supra note 23.
45. See id.

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Security Council and diminished international respect for the rule of law." Others contend that "Council ratification after the fact in Resolution 1244—formal ratification by an affirmative vote of the Council—effectively ratified what earlier might have constituted unilateral action questionable as a matter of law." Still others view the precedent as a positive development, authorizing collective humanitarian intervention in the face of Security Council paralysis to respond to and prevent mass atrocities.

C. EAST TIMOR

East Timor has been on the U.N. agenda since 1960, when it was added as a Non-Self-Governing Territory. In 1974, civil war broke out when Portugal sought to establish a provisional government and unilaterally determine the status of East Timor. When Portugal could not control the fighting, it withdrew its forces. At this point, Indonesia intervened and integrated East Timor as one of Indonesia's provinces. Since 1974, the U.N. Security Council has repeatedly called for Indonesia's withdrawal from East Timor.

In 1998, talks began that would give East Timor limited autonomy from Indonesia, and by May 1999, Portugal and Indonesia had signed an autonomy agreement. The Security Council demonstrated its support for this agreement by adopting Resolution 1236. Indonesia and Portugal then looked to the U.N. to conduct the voting of the East Timorese people to determine if they would accept or reject the proposed special autonomy status.

In June 1999, the Security Council established the United Nations Mission in East Timor (UNAMET) by adopting Resolution 1246. UNAMET's mandate was to organize and conduct a popular referendum. On August 30, 1999, ninety-eight percent of East Timorese voters turned out to vote on the special autonomy proposal. The majority of the voters rejected the proposed special autonomy status, instead voting to begin the transition to full independence. The Security Council immediately extended the UNAMET man-

49. See Assembly Hails Onset of East Timor's Transitions to Independence, M2 PRESSWIRE, Dec. 20, 1999. In 1960, East Timor was administered by Portugal.
50. See id.
51. See id.
52. See id.
53. See Chronology of Developments in East Timor, AGENCIE FRANCE PRESSE, Sept. 20, 1999. The proposed autonomy arrangement would not include foreign affairs, finance, defense, or security.
55. See S.C. Res. 1244, supra note 40.
58. See S.C. Res. 1246, supra note 56. The vote was originally scheduled for August 8, 1999.
59. See S.C. Res. 1246, supra note 40. Of those who voted, 21.5 percent (94,388) voted for special autonomy while 78.5 percent (344,580) voted against special autonomy. Following the announcement, pro-integration militias started a campaign of violence across East Timor. As many as 500,000 people were displaced, including UNAMET officials.
date until the end of November by adopting Resolution 1262. After the announcement of the vote for independence, violence erupted between Indonesian forces and the East Timorese population and the Security Council adopted Resolution 1264, which established a multinational force to protect the people of East Timor. UNAMET was then expanded to increase its civilian police and military components.

In October 1999, the Indonesian People's Consultative Assembly formally accepted the result of the August referendum.

After Indonesia's acceptance of the decision of the East Timor people, the Security Council replaced UNAMET with the United Nations Transitional Administration in East Timor (UNTAET), which it authorized through the unanimous adoption of Resolution 1272. UNTAET was given responsibility for the temporary administration of East Timor, including complete legislative and executive authority. UNTAET was also mandated to work with the multinational force, which was deployed pursuant to Resolution 1264. UNTAET operates under the Security Council's authority and is supervised by a special representative who is responsible for the mission's political, managerial, and representational functions.

D. The Security Council Comes Under Criticism

The Security Council was repeatedly criticized in 1999 for lack of transparency and not treating each part of the world equally, especially Africa. In an October General Assembly session, Mexico blasted the Security Council for conducting meetings in private. The Security Council's own rules require public meetings, but allow private meetings in certain circumstances. In defending the Council, Germany expressed understanding for the need for private meetings, yet sympathized with the interests of third parties who are excluded from these informal deliberations. India felt this secrecy led to inadequate and unsatisfactory reporting. In the midst of this criticism, the Democratic People's Republic of Korea suggested adopting a system that would ultimately limit the Security Council's powers by giving the General Assembly the power to endorse or veto certain Security Council resolutions.
During an open Security Council debate, Secretary-General Kofi Annan stressed the importance of the Council avoiding the appearance of occasional or rhetorical reactions in Africa without follow-up.\textsuperscript{73} Nigeria attacked the Security Council for its slow responses to crises in Africa and not showing an adequate commitment when addressing Africa's problems.\textsuperscript{74} It was also stressed that the Council needs to focus on better and more efficient funding of peacekeeping operations.\textsuperscript{75} For example, in Kosovo, the international community spent about $1.50 each day for each refugee, while in Rwanda and Sierra Leone each refugee received an equivalent of $.11.\textsuperscript{76} The West was willing to spend $40 billion to fight a war in the Balkans, but was unwilling to spend one percent of that to save lives of millions in Africa.\textsuperscript{77}

Although Africa has not been a strong focus of the Security Council in the past years, Africa is expected to feature prominently in the Security Council's agenda in 2000.\textsuperscript{78} The Security Council began to take steps to show support for Africa in October 1999 by approving a peacekeeping force of 6,000 for Sierra Leone.\textsuperscript{79}

III. The International Law Commission

The International Law Commission (ILC) is a U.N. advisory group responsible for assisting the United Nations "to codify and progressively develop international law."\textsuperscript{80} The ILC is made up of "experts having recognized competence in international law."\textsuperscript{81} The ILC held its fifty-first session from May 3 to July 23, 1999 at the U.N. office at Geneva. The ILC discussed seven topics at this session. The topics gaining the most attention were "state responsibility," "nationality in relation to the succession of states," and "unilateral acts."

A. State Responsibility

The ILC received comments and observations from governments on the provisionally adopted draft articles concerning state responsibility. Chapter 3 of part I of the draft articles, dealing with a breach of an international obligation, was most criticized by governments and commentators.\textsuperscript{82} The Special Rapporteur acknowledged that the current provisions do not satisfactorily deal with the tension between conflicting treaty obligations and \textit{jus cogens}

\textsuperscript{74} See S.C. Res. 1264, supra note 61.
\textsuperscript{75} See S.C. Res. 1272, supra note 64.
\textsuperscript{77} See id.
\textsuperscript{81} M.R. Anderson et al., eds., The International Law Commission and the Future of International Law 22 (1998).
norms. As a result, "conflicts of obligations might arise that could not be resolved by general legal processes." 83

In 1969, when the Commission drafted the Vienna Convention on the Law of Treaties, it decided "that co-existing bilateral—or even, in some circumstances, multilateral—obligations by one State to different States did not result in the invalidity of the underlying treaty, but were to be resolved within the framework of State responsibility." 84 The inter-relationship between the law of state responsibility and the law of treaties was a strong concern of the Special Rapporteur. In order to solve the problem of a treaty obligation conflicting with a new peremptory norm of general international law (jus cogens), for example, by invoking Article 62 of the Vienna Convention on the Law of Treaties on a fundamental change of circumstances was to minimize the overriding importance and solemnity of jus cogens embodied in Articles 53 and 64. 85

Also, the Vienna Convention provided different consequences for nullification of a treaty as a result of conflict with a norm of jus cogens. 86

In addition, the law of treaties addresses treaties in their entirety. If a treaty was inconsistent with a jus cogens norm, the effect would be to invalidate the entire treaty. 87 During the debate over article 16, members of the Commission referred to the International Court of Justice decision in the Case concerning the Gabčíkovo-Nagymaros Project, 88 which noted "the law of treaties determined whether there was a treaty, who were the parties to the treaty and in respect of what provisions and whether the treaty was in force." 89 Along these lines, the scope of the law of treaties and of state responsibility was different, regardless if they were interrelated. 90

B. NATIONALITY IN RELATION TO SUCCESSION OF STATES

The Commission adopted a set of draft articles on the "nationality of natural persons in relation to the Succession of States." The articles address the loss and acquisition of nationality and the right of option concerning instances of succession of states. 91 The scope of the draft articles is limited to the nationality of individuals and does not address the nationality of legal persons (e.g., businesses and organizations). 92

The draft articles were adopted to meet the international community's concern as to the resolution of nationality problems dealing with succession of states. 93 Article I: Right to a Nationality, is the cornerstone and essence of the draft articles. It provides: "Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality

83. See id.
84. See id.
85. Id.
86. See id.
87. See id.
89. Id.
90. See id.
91. Id.
92. Id.
93. Id.

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of at least one of the States concerned, in accordance with the present draft articles.”94 The most important aspect of article I is that it recognizes an individual’s right to a nationality in the aftermath of a succession of States.95 “Article I applies the principle of article 15 of the Universal Declaration of Human Rights, which was the first international instrument embodying the right of everyone to a nationality.”96

The Commission acknowledged that the positive nature of article 15 of the Universal Declaration of Human Rights has been disputed. For example, it has been argued that “it is not possible to determine the State vis-a-vis which a person would be entitled to present a claim for nationality, i.e. the addressee of the obligation corresponding to such a right.”97 However, it is possible to identify such a State in the situation of a succession of States: it is either the successor State(s), or the predecessor State.98

In some cases of State succession, persons may have ties to multiple States. Conceivably, a person could end up with multiple nationalities, or he or she may choose only one. However, in the case of State succession, a person is not to be denied the right to the nationality of at least one of the States involved.99 This is the underlying purpose behind article I, as evidenced by the phrase, “has the right to the nationality of at least one of the States concerned.”100 However, the draft articles do not specifically address the issue of the possibility of multiple nationalities. The articles leave this issue for each State to decide.101

C. UNILATERAL ACTS OF STATES

The Commission believed that “unilateral acts of states” was an important aspect of everyday international law and that there was some uncertainty as to what law was applicable to them.102 The Commission acknowledged a need for the topic’s codification and development in order for there to be a specific aspect of international law that would serve to prevent such unilateral acts from becoming sources of disputes or conflicts.103 Yet, several members of the Commission believed that the proposed draft articles on Unilateral Acts of States too closely paralleled the articles of the 1969 Vienna Convention on the Law of Treaties.104 They did not believe “that a provision included in the Vienna Convention could automatically be transferred mutatis mutandis to the draft articles on unilateral acts, because of the divergent nature of these acts as against treaties.”105 There are many rules in the Vienna Convention as a result of the meeting of wills of States parties to a treaty, which was an element absent from unilateral acts.106

Other members of the Commission took the position that the 1969 Vienna Convention

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94. See Report of the ILC, supra note 82.
95. See id.
96. Id.
97. Id.
98. See id.
99. See id.
100. Id.
101. Id.
102. Id.
103. Id.
104. See id.
105. Id.
106. See id.
on the Law of Treaties was a very helpful and invaluable guideline. Some members of the Commission went so far as to say that it was not followed close enough in the draft articles and that the Special Rapporteur should also take into account the 1986 Vienna Convention on the Law of Treaties between States and International Organizations. Because many procedural and other relevant matters were not addressed in the present draft articles, following provisions of the law of treaties and on such issues as rules of interpretation, modification, suspension, termination, and others would appear to be warranted. The Special Rapporteur noted that there were important differences between treaty acts and unilateral acts. Treaty acts were based on an agreement involving two or more subjects of international law, but unilateral acts were based on an expression of will (individual or collective) intent on creating a new legal relationship that was not an aspect of the act. It should be taken into consideration that a State usually developed a unilateral act “when it could not or did not wish to negotiate a treaty act, i.e., when, for political reasons, it did not wish to enter into negotiations.” The Special Rapporteur expressed the view that the Commission needed to be wary of political realities and the views of States, in that they would probably result in the preference of rules that did not restrict States’ “political and legal freedom of action in the international field.”

IV. International Financial Institutions

The beginning of 1999 was marked by staunch criticism of the World Bank and the International Monetary Fund (IMF), especially for their respective roles in the Asian financial crisis. Critics accused the twin financial bodies of “promot[ing] policies designed to undermine the role of the state in social and economic activity,” which led to increased unemployment, inflation, and poverty in the region. In addition, the World Bank and the IMF were chastised for their lack of transparency and accountability to their client countries. Hence, 1999 began a year of reformation for the World Bank and the IMF.

In a tandem effort to polish their tarnished image, the World Bank and the IMF have proposed a new poverty reduction plan entitled “Poverty Reduction Strategy Paper” (PRSP). The purpose of PRSP is to provide total debt relief to developing countries that qualify. Likely recipients are Bolivia, Mauritania, Uganda, and Mozambique.

A. World Bank

In its struggle to regain credibility, the World Bank instituted reforms that would reassert its efforts to reduce poverty and improve living standards in developing countries.

108. See id.
109. See id.
110. See id.
111. Id.
112. Id.
114. Id.
115. See id.
116. See id.
118. See id.
119. See id.
its analytical phase, the World Bank issued a self-critical evaluation concerning its failure
to acknowledge rampant corruption as well as social and financial inequities in Indonesia.\textsuperscript{121} This report prompted the World Bank to reach beyond its fiscal concerns in order to
humanize itself by implementing programs that strengthen the social and economic structure of
developing countries, stimulate private sector growth, fight corruption, and assist
countries plagued by post-conflict instability.\textsuperscript{122}

1. \textit{Strengthening the Social and Economic Structure of Developing Countries}

By investing in such basic social services as education, nutrition, and maternal health care, the World Bank hopes to bring a better way of life to many rural poor and women.\textsuperscript{123} For example, some of the $40 billion targeted for social and economic improvements has
gone to the Balochistan Province in Pakistan where girls schools were built in rural villages,
female teachers were hired, and the attendance of girls in these schools continues to climb.\textsuperscript{124}

The year 1999 also illustrated once again that the goal of social and economic improve-
ment may conflict with other humanitarian objectives. In an effort to ameliorate the eco-
nomic plight of 58,000 impoverished Han Chinese farmers, in June 1999, the World Bank
granted China a $160 million loan to relocate the farmers from overworked land in the
east, to traditionally Tibetan lands in western China.\textsuperscript{125} This finance package was narrowly
approved over the opposition of Japan, the United States, and eleven of the twenty-four
executive directors of the World Bank, who expressed concern that China would seize the
opportunity to dilute the Tibetan population in the region.\textsuperscript{126}

2. \textit{Stimulation of Private Sector Growth}

In December 1999, the World Bank reorganized its private sector development capa-
bilities by creating a closer link between itself and its private sector arm, the International
Finance Corporation (IFC), in order to encourage small business enterprises in developing
countries.\textsuperscript{127} The new structure seeks to teach local financial institutions how to finance
small and medium size businesses.\textsuperscript{128} Moreover, the new unit will be equipped to advise
industries in developing countries involved in the mingling of public policy and private
sector transactions through three new product groups dealing with telecommunications,
oil, gas, petrochemicals, and mining.\textsuperscript{129} According to Peter Woicke, executive vice president
of the IFC and a managing director of the World Bank,

\[ \text{[the combination of the experience and expertise of the World Bank to help countries create}
\]
\[ \text{a strong enabling environment for the private sector, and IFC's private sector knowledge and} \]

\textsuperscript{121} See generally World Bank Criticizes Itself Over Indonesia, \textit{Seattle Times}, Feb. 12, 1999, available in 1999
WL 6256849.
\textsuperscript{122} See World Bank, supra note 120.
\textsuperscript{123} See id.
\textsuperscript{124} See id.
\textsuperscript{125} See generally Japan Not Yet Decided on World Bank Loan to China, \textit{Asian Econ. News}, June 28, 1999.
\textsuperscript{126} See generally id.
\textsuperscript{128} See id.
\textsuperscript{129} See id.

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ability to execute successful investments, will make for a much more powerful agent for private sector development in our member countries.\textsuperscript{130}

Recently, the World Bank, via the IFC, boosted private sector investments in Russia and China. Russia, which has been harshly reprimanded and denied financing by the World Bank in recent years, secured a $100 million loan to continue reforms and "ensure an efficient and economically viable coal-mining industry in Russia."\textsuperscript{131} Meanwhile, in China, the IFC invested $19 million in Shanxi International Casting, a former state factory that manufactures automobile body parts.\textsuperscript{132} The money is earmarked for modernization to keep the company competitive and to aid its expansion into the British, American, and Japanese markets.\textsuperscript{133}

3. Fighting Corruption and Assisting Countries Plagued by Conflict

The World Bank has implemented an anti-corruption program to assist developing nations to identify and execute institutional reforms affecting financial regulations, transparency in the public sector, and accountability of shareholder and creditor rights in the private sector.\textsuperscript{134} It has accomplished this goal by organizing workshops, courses, and training programs for public officials and society in general.\textsuperscript{135}

In addition, the World Bank is working to stabilize countries plagued by conflict by rebuilding infrastructure, supporting economic recovery, and reintegrating displaced populations.\textsuperscript{136} To date, the World Bank has assisted in the Balkans, Burundi, Cambodia, Sierra Leone, and Haiti.\textsuperscript{137}

B. The International Monetary Fund

Early in 1999, the IMF conceded, in a self-critical study, that it made mistakes in the Asian financial crisis of 1997, resulting in aggravated economic conditions in the region, especially in Indonesia.\textsuperscript{138} However, it refused to apologize for its tight money approach of forcing countries to inflate interest rates to fortify their currencies and keep inflation in check.\textsuperscript{139} The IMF cited increased capital outflows and optimistic projections, which led to a premature reduction in government spending, as the primary reasons for the failed bailout.\textsuperscript{140}

Indonesia was hit the hardest by the miscalculations of the IMF because early in the crisis the IMF decided to close sixteen of the 220 banks in Indonesia, which sent the monetary

\textsuperscript{130} Id.
\textsuperscript{132} See Mark O’Neill, IFC Reveals Commitment Via $19m Factory Loan, S. China Morning Post, Jan. 18, 2000.
\textsuperscript{133} See id.
\textsuperscript{134} See World Bank, supra note 120.
\textsuperscript{135} See id.
\textsuperscript{136} See id.
\textsuperscript{137} See id.
\textsuperscript{139} See id.
\textsuperscript{140} See id.
policy of the country spinning out of control. The closures created widespread panic, which led to unexpected withdrawals from the banking system. Another factor that contributed to Indonesia’s suffering was its political turmoil, which led to repeated modifications to the IMF’s recovery program. The IMF asserted that Thailand and South Korea were not as affected because they tightened monetary policies in accordance with IMF recommendations. The failed effort of the IMF to save Asia from financial catastrophe has spawned numerous reforms that have recently been evaluated. There are four main areas of reform: transparency, strengthening financial systems, private sector involvement, and systemic aspects.

1. Transparency
The purpose of this reform is to “foster improved decision-making, financial system stability, and economic performance. . . .” The proposal includes encouraging participants to release Public Information Notices (PIN) pertaining to the surveillance of member countries, IMF analysis of policy issues, the public release of Letters of Intent and other country documents that describe IMF-supported programs. The IMF has also begun to make financial information about itself available through its website.

2. Strengthening Financial Systems
The objective of this reform is to assist in the supervision of financial markets by strengthening banking regulations. Moreover, the IMF wants to encourage joint efforts between it and the World Bank, such as the PRSP mentioned above. Lastly, the IMF is “enhanc[ing] analysis of financial sector vulnerabilities . . . the preparation of economic adjustment programs, and technical assistance.”

3. Private Sector Involvement
The IMF will attempt to consult the private sector concerning issues of financial crisis management, while simultaneously maintaining the financial flow between nations. In addition, the IMF is attempting to strengthen the relationship between creditors and debtors through improved dialogue; in fact, so far this proposal has been effective with Mexico, Argentina, and South Africa.

4. Systemic Aspects
The IMF recognizes that it must continuously challenge itself to stay abreast of the ever-changing global marketplace. It can achieve this by increasing its involvement in exchange

141. See id.
142. See id.
143. See id.
144. See id.
146. Id.
147. See id.
148. See id. Currently Letters of Intent requests are being released eighty percent of the time.
150. See A Guide to Progress, supra note 145.
151. See id.
152. Id.
153. See id.
154. See id.
rate analysis and the liberalization of capital accounts. Furthermore, the IMF must continue its efforts to assist developing countries in efforts to reduce poverty by encouraging high-quality growth, improved social policies, and debt reduction for qualifying countries.

V. North American Regional Organizations

The North American Agreement on Environmental Cooperation (NAAEC) and the North American Agreement on Labor Cooperation (NAALC), the so-called "side agreements" to the North American Free Trade Agreement (NAFTA), created the first two North American regional organizations concerned with environmental and labor issues.

A. Commission for Environmental Cooperation

1. Background

In the NAAEC, the three North American countries undertook several environmental obligations. Most important, each party committed to "effectively enforce its environmental laws and regulations, . . ." and to "ensure that its laws and regulations provide for high levels of environmental protection. . . ."158 In large part to facilitate implementation of these general obligations, the NAAEC also created a regional environmental organization: the Commission for Environmental Cooperation (CEC).159

The CEC has three components: a Council composed of the parties' environmental ministers (or their equivalents),160 a Secretariat, and a Joint Public Advisory Committee. The Council is the governing body of the CEC. It has a broad mandate to promote and facilitate cooperation between the parties with respect to environmental matters,161 as well as specific responsibilities such as monitoring the environmental effects of NAFTA.162 The ministers meet formally only once a year, but their representatives meet more frequently.

155. See id.
156. See generally id.
159. See NAAEC, supra note 157, art. 8. See generally the CEC web page, <http://www.cec.org>, which contains Council decisions, Secretariat reports, press releases, and other information about CEC activities.
160. The U.S. government has named the EPA Administrator to be the U.S. representative to the Council. See Exec. Order No. 12,915 (1994).
161. See NAAEC, supra note 157, art. 10(1).
162. See id. arts. 10(3)-(9).
The Council chooses an executive director, who appoints and supervises the rest of the Secretariat staff.163 The Secretariat is based in Montreal. The current executive director is Janine Ferretti of Canada, who was appointed in June 1999 to a three-year term. Like secretariats of other international organizations, the CEC Secretariat takes instructions only from the Council rather than from individual parties.164 Its general responsibility is to provide technical and administrative support to the Council.165 The NAAEC also gives the Secretariat several specific mandates. In particular, the Secretariat may receive submissions from any non-governmental organization or person asserting that a party has failed to effectively enforce its environmental law.166 If a submission meets specific requirements, the Secretariat may recommend that the Council approve (by a two-thirds vote) preparation of a factual record on it.167 The Secretariat may also prepare a report on its own initiative on virtually any environmental issue other than those concerning parties' failures to effectively enforce their environmental laws.168

The Joint Public Advisory Committee (JPAC) is composed of five individuals from each country. Its mandate is to provide advice and information to the Council and Secretariat on matters within the scope of the Agreement.169 The current chair of the JPAC is Regina Barba of Mexico.

The NAAEC also creates a dispute resolution procedure, under which any party that believes that another party is engaging in a persistent pattern of failure to effectively enforce its environmental law may request the Council to convene (by a two-thirds vote) an arbitral panel to hear the claim. If the disputing parties are unable to agree on an action plan after receiving the panel report, the panel may impose an action plan or fines. If a party does not pay a fine, the other parties may suspend NAFTA benefits.170

2. 1999 Activities

The CEC divides its programs into four general areas. In the area of Environment, Economy, and Trade, the CEC published a methodology to evaluate the environmental effects of NAFTA. It also launched a market study of "shade coffee," i.e., coffee grown under the canopy of tropical forests rather than on clear-cut fields. In the area of Conservation of Biodiversity, the CEC worked with public and private organizations to identify a network of bird habitats throughout North America that should receive protection. In the program area of Pollutants and Health, the Council announced in June 1999 the development of a North American Regional Action Plan (NARAP) to reduce releases of dioxins, furans, and hexachlorobenzene. (NARAPs launched in previous years have made great strides in reducing regional production of DDT, mercury, and chlordane.) In August 1999, the Secretariat published the third annual "Taking Stock" report, which provides an overview of pollution by each state and province in the United States and Canada.

163. See id. arts. 11(1)-(2).
164. See id. art. 11(4).
165. See id. art. 11(5).
166. See id. art. 14. The submissions procedure may be seen as a way to promote compliance by each party with its obligation to "effectively enforce its environmental laws and regulations."
167. See id. art. 15.
168. See id. art. 13.
169. See id. art. 16.
170. See id. pt. 5.
In the Law and Policy program area, the Secretariat continued to administer the submissions procedure. Only two submissions were filed in 1999, both of which were against the United States. As of January 1, 2000, the CEC had received a total of twenty-two submissions, of which eight were directed at Canada, eight at Mexico, and six at the United States. Of the twenty-two submissions, eight had been dismissed by the Secretariat, one had been withdrawn by the submitter, and one had resulted in a 1997 factual record concerning Mexico. Of the other twelve submissions, the Secretariat was developing one factual record (concerning Canada); the Secretariat had recommended that the Council authorize development of two other factual records (both concerning Canada); and the remaining nine were under review at earlier points in the procedure.  

No party has ever requested consultations under part five of the NAAEC, the necessary first step for triggering the Agreement’s procedures for resolution of inter-state disputes. In fact, the Council has yet to approve the model rules that would govern dispute resolution proceedings.  

B. Commission for Labor Cooperation  

1. Background  

The NAALC is similar to the NAAEC in several respects. Like the NAAEC, the NAALC establishes several obligations concerning labor issues, of which the most important are probably each party’s commitments to “promote compliance with and effectively enforce its labor law” and to “ensure that its labor laws and regulations provide for high labor standards…” And like the NAAEC, the NAALC establishes a regional organization, the Commission for Labor Cooperation (CLC), to facilitate implementation of those obligations.  

The CLC has two components: a Council composed of the parties' labor ministers (or their equivalents), and a Secretariat. The Council directs the activities of the Secretariat and promotes cooperative activities among the parties on a wide range of labor issues. It chooses an executive director, who appoints and supervises the rest of the Secretariat staff. In addition to providing general support for the Council, the CLC Secretariat has a specific mandate to prepare reports on a wide range of labor issues at the request of the Council.  

The NAALC also requires each party to create a National Administrative Office (NAO) to serve as points of contact and sources of information for the Secretariat, the other parties, and the public. The NAO’s most important function may be to receive complaints from the public regarding labor practices in the other two countries. After reviewing a com-

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173. NAALC, supra note 157, arts. 2, 3.  
175. See id. arts. 10, 11.  
176. See id. art. 12.  
177. See id. art. 14.  
178. See id. art. 16.  
plaint, a NAO may recommend consultations at the Council level. Following consultations, any state party may request an Evaluation Committee of Experts (ECE) to examine patterns of practice by both parties (the requesting party as well as the subject of the communication) in the enforcement of their technical labor standards. ECEs may not investigate issues concerning the rights to organize, to bargain collectively, and to strike. Following an ECE report on enforcement of occupational safety and health, child labor, or minimum wage laws, a party may request the Council to convene (by a two-thirds vote) an arbitral panel to consider whether there has been a persistent failure to effectively enforce the labor standards. As under the NAAEC, the panel reports may lead to an action plan, fines, and, ultimately, suspension of NAFTA benefits.

2. 1999 Activities

At its annual meeting in October 1999, the Council appointed Dr. Alfonso Onate Laborde of Mexico to a three-year term as executive director. The Council also decided to move the headquarters of the Secretariat from Dallas to Washington, D.C. in 2000.

In past years, cooperative CLC activities have primarily addressed three areas: workplace safety and health; employment and training; and labor legislation and workers’ rights. In 1999, there were three conferences on safety and health, two in Mexico (one on workplace safety and health generally, and one on safety and health in the bottling industry), and one in Winnipeg (focusing on the mining industry).

As of the end of 1999, the NAOS had received a total of twenty-one submissions: three to the Canadian NAO (one concerning Mexico and two concerning the United States); five to the Mexican NAO (all concerning the United States); and thirteen to the U.S. NAO (eleven concerning Mexico and two concerning Canada). Two of the submissions were filed in 1999, one to the U.S. NAO (concerning Mexico), and one to the Canadian NAO (concerning the United States). Ten of the submissions had resulted in NAO requests for ministerial consultations. The consultations had generally led to workshops, conferences, and follow-up reports. For example, a 1997 submission to the U.S. NAO alleging employment discrimination based on pregnancy in certain Mexican maquiladoras led to a March 1999 conference in Mérida, Mexico on the “rights of women in North America,” and outreach sessions in border communities on women’s legal protections against discrimination. No party has ever requested an ECE or an arbitral panel.

180. See NAALC, supra note 157, art. 23.
181. See id. art. 29.