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FOREWORD

By its resolution 1814 (XVII) of 18 December 1962, the General Assembly requested the Secretary-General to publish a *Juridical Yearbook* which would include certain documentary materials of a legal character concerning the United Nations and related intergovernmental organizations, and by its resolution 3006 (XXVII) of 18 December 1972 the General Assembly made certain changes in the outline of the *Yearbook*.

Chapters I and II of the present volume—the sixteenth of the series—contain legislative texts and treaty provisions relating to the legal status of the United Nations and related intergovernmental organizations. With a few exceptions, the legislative texts and treaty provisions which are included in these two chapters entered into force in 1978. Decisions given by international and national tribunals relating to the legal status of the various organizations are found in chapters VII and VIII.

Chapter III contains a general review of the legal activities of the United Nations and related intergovernmental organizations; each organization has prepared the section which relates to it.

Chapter IV is devoted to treaties concerning international law concluded under the auspices of the organizations concerned during the year in question, whether or not they entered into force in that year. This criterion has been used in order to reduce in some measure the difficulty created by the sometimes considerable time-lag between the conclusion of treaties and their publication in the United Nations *Treaty Series* following upon entry into force.

Finally, the bibliography, which is prepared, under the responsibility of the Office of Legal Affairs, by the Dag Hammarskjöld Library, lists works and articles of a legal character published in 1978 regardless of the period to which they refer. Some works and articles which were not included in the bibliographies of the *Juridical Yearbook* for previous years have also been listed.

All documents published in the *Juridical Yearbook* were supplied by the organizations concerned, with the exception of the legislative texts and judicial decisions in chapters I and VIII which, unless otherwise indicated, were communicated by Governments at the request of the Secretary-General.

ABBREVIATIONS

ACABQ	Advisory Committee on Administrative and Budgetary Questions
ECLA	Economic Commission for Latin America
ECWA	Economic Commission for Western Asia
ESCAP	Economic and Social Commission for Asia and the Pacific
FAO	Food and Agriculture Organization of the United Nations
ICAO	International Civil Aviation Organization
ICSC	International Civil Service Commission
ILO	International Labour Organisation
ITU	International Telecommunication Union
PAHO	Pan American Health Organization
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNIFIL	United Nations Interim Force in Lebanon
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization

Part One

LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter I

LEGISLATIVE TEXTS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

1. Botswana

DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT

(Cap. 39.01)

(*a*) DIPLOMATIC IMMUNITIES AND PRIVILEGES DESIGNATION OF ORGANIZATIONS AND CONFERMENT OF IMMUNITIES AND PRIVILEGES ORDER, 1978[1]

(Published on 26th May, 1978)

ARRANGEMENT OF PARAGRAPHS

Paragraph

1. Citation

2. Designation of organizations for purposes of section 4 of Cap. 39:01

3. Designated organizations to have certain immunities and privileges and legal capacities of body corporate

4. Revocation of Cap. 39:01 Sub. Leg.

IN EXERCISE of the powers conferred by section 4 (1) and (2) (*a*) of the Diplomatic Immunities and Privileges Act, His Excellency the President hereby makes the following Order—

1. This Order may be cited as the Diplomatic Immunities and Privileges Designation of Organizations and Conferment of Immunities and Privileges) Order, 1978

2. The organizations specified in the Schedule (hereinafter referred to as "the designated organizations"), each being an organization of which one or more sovereign powers or the government or governments thereof are members, are hereby designated for the purposes of section 4 of the Diplomatic Immunities and Privileges Act.

3. Each of the designated organizations shall have all the immunities and privileges set out in Part I of the Second Schedule to the Act[2] and can also have the legal capacities of a body corporate.

4. The Declaration of Organisations and Extension of Immunities and Privileges Order is revoked.

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[1] S. I. No. 59 of 1978.

[2] Reading as follows:

"Part I. *Immunities and Privileges of the Organization*

"1. Immunity from suit and legal process.

"2. The like inviolability of official archives and premises occupied as offices as is accorded in respect of the official archives and premises of an envoy of a foreign sovereign power accredited to Botswana.

"3. The like exemption or relief from taxes and rates, other than on the importation of goods, as is accorded to a foreign sovereign power.

"4. Exemption from taxes on the importation of goods directly imported by the organization for its official use in Botswana or for exportation, or on the importation of any publications of the organization

SCHEDULE

European Economic Community
Food and Agriculture Organization
International Red Locust Control Organisation for Central and Southern Africa
Organization of African Unity
United Nations Organization
World Health Organization
World Meteorological Organization

MADE this 18th day of May, 1978.

M. C. TIBONE,
Acting Permanent Secretary,
Office of the President

(*b*) DIPLOMATIC IMMUNITIES AND PRIVILEGES (CONFERMENT OF PERSONAL IMMUNITIES AND PRIVILEGES) ORDER, 1978[3]

(Published on 26th May, 1978)

ARRANGEMENT OF PARAGRAPHS

Paragraph

1. Citation
2. Conferment of certain personal immunities and privileges
3. Revocation of Cap. 39:01 Sub. Leg.

IN EXERCISE of the powers conferred by section 4(2) (*b*) and (*c*) of the Diplomatic Immunities and Privileges Act, His Excellency the President hereby makes the following Order—

1. This Order may be cited as the Diplomatic Immunities and Privileges (Conferment of Personal Immunities and Privileges) Order, 1978.

2. (1) The persons designated in Part I of the Schedule shall have all the immunities and privileges set out in Part II of the Second Schedule to the Act.[4]

(2) The persons designated in Part II of the Schedule shall have all the immunities and privileges set out in Part III of the Second Schedule to the Act.[5]

3. The Immunities and Privileges Conferment order is revoked.

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directly imported by it, such exemption to be subject to compliance with such conditions as the Minister for the time being responsible for finance may prescribe for the protection of the revenue.

"5. Exemption from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the organization for its official use and in the case of any publications of the organization directly imported or exported by it.

"6. The right to avail itself, for telegraph communications sent by it and containing only matter intended for publication by the press or for broadcasting (including communications addressed to or despatched from places outside Botswana), of any reduced rates applicable for the corresponding service in the case of press telegrams."

[3] S.I. No. 60 of 1978.

[4] Reading as follows:

"Part II. *Immunities and Privileges of Representatives, Members of Committees, High Officers and Persons on Missions*

"7. The like immunity from suit and legal process as is accorded to an envoy of a foreign sovereign Power accredited to Botswana.

"8. The like inviolability of residence as is accorded to such an envoy.

"9. The like exemption or relief from taxes as is accorded to such an envoy."

[5] Reading as follows:

"Part III. *Immunities and Privileges of other Officers and Servants*

"10. Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.

"11. Exemption from income tax in respect of emoluments received as an officer or servant of the organization."

SCHEDULE

PART I

European Economic Community

Resident Representative

Deputy Resident Representative

United Nations Commissioner for Namibia

Resident Representative

Deputy Resident Representative

United Nations Development Programme

Resident Representative

Deputy Resident Representative

United Nations High Commissioner for Refugees

Resident Representative

Deputy Resident Representative

PART II

United Nations Development Programme (Special Fund)

Contractors and personnel for project "Surveys and Training for Development of Water Resources and Agricultural Production"

World Food Programme

Project Officer

MADE this 18th day of May, 1978.

M. C. TIBONE,
Acting Permanent Secretary,
Office of the President

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2. Canada

PRIVILEGES AND IMMUNITIES (INTERNATIONAL ORGANIZATIONS) ACT

FAO Privileges and Immunities Order

P.C. 1978–3173 19 October, 1978

His Excellency the Governor General in Council, on the recommendation of the Secretary of State for External Affairs, pursuant to section 3 of the Privileges and Immunities (International Organizations Act,[6] is pleased hereby to make the annexed Order respecting the Privileges and Immunities in Canada of the Food and Agriculture Organization (FAO).

ORDER RESPECTING THE PRIVILEGES AND IMMUNITIES IN CANADA OF THE FOOD AND AGRICULTURE ORGANIZATION (FAO)

Short Title

1. This Order may be cited as the *FAO Privileges and Immunities Order*.

[6] See United Nations Legislative Series, *Legislative texts and treaty provisions concerning the legal status, privileges and immunities of international organizations* (ST/LEG/SER.B/10), p. 10, and *Juridical Yearbook*, 1965, p. 3.

Interpretation

2. In this Order,

"Convention" means the Convention on the Privileges and Immunities of the United Nations;[7]

"Organization" means the Food and Agriculture Organization.

Privileges and Immunities

3. (1) The Organization shall have in Canada the legal capacities of a body corporate and shall, to such extent as may be required for the performance of its functions, have the privileges and immunities set forth in Articles II and III of the Convention.

(2) Representatives of states and governments that are members of the Organization shall have in Canada, to such extent as may be required for the performance of their functions, the privileges and immunities set forth in Article IV of the Convention for representatives of Members.

(3) Officials of the Organization shall have in Canada, to such extent as may be required for the performance of their functions, the privileges and immunities set forth in Article V of the Convention for officials of the United Nations.

(4) Experts performing missions for the Organization shall have in Canada, to such extent as may be required for the performance of their functions, the privileges and immunities set forth in Article VI of the Convention for experts on missions for the United Nations.

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3. Philippines

NOTE NO. 78-2839 OF THE MINISTRY OF FOREIGN AFFAIRS

The Acting Minister of Foreign Affairs presents his compliments to Their Excellencies and Messieurs, the Chiefs of Diplomatic Missions, Heads of International Organizations and Principal Officers of Consular Establishments in the Philippines and has the honor to inform that, pursuant to the provisions of Chapter IX, Section 290-A(*b*) (ii) and (iii) of Presidential Decree No. 1457, embassies, consular offices and international organizations are not subject to the tax of ten (10%) per centum on the amount paid for overseas despatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication services.

For their guidance, quoted hereunder are the pertinent provisions of the above-mentioned Presidential Decree No. 1457:

> "(*b*) Exemptions. The tax imposed by this Section shall not apply to
>
> "(ii) Diplomatic services—Amounts paid for messages transmitted by any Embassy and consular offices of a foreign government.
>
> "(iii) International Organizations—Amounts for messages transmitted by a public international organization or any of its agencies based in the Philippines enjoying privileges, exemptions and immunities which the Government of the Philippines is committed to recognize pursuant to an international agreement."

The exemptions, it must be emphasized, refer solely to official messages of the embassies, consulates or international organizations sent to their Governments or Headquarters. Personal or private messages and telephone calls are not included in the exemptions.

The Acting Minister of Foreign Affairs avails himself of this opportunity to renew to Their Excellencies and Messieurs, the Chiefs of Diplomatic Missions, Heads of International Organiza-

[7] United Nations, *Treaty Series*, vol. 1, p. 15.

tions and Principal Officers of Consular Establishments in the Philippines the assurances of his highest consideration.

Manila, 17 October 1978

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4. United States of America

(a) AMENDMENTS TO THE UNITED STATES CODE OF FEDERAL REGULATIONS[8]

TITLE 8. ALIENS AND NATIONALITY

CHAPTER I.
IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE
Part 214—Non-immigrant classes
Part 299—Immigration forms

Application to accept or continue employment by G-4 non-immigrants

The following amendments are hereby prescribed to chapter I of title 8 of the Code of Federal Regulations: 8 CFR 214.2 (*g*) is amended by redesignating the existing paragraph as sub-paragraph (1) and by adding a new subparagraph (2). As amended, 8 CFR 214.2 (*g*) reads as follows:

214.2 Special requirements for admission, extension and maintenance of status.

. . .

(g) *Representatives to international organizations*

. . .

(2) *Employment.* The spouse, unmarried dependent son or unmarried dependent daughter habitually residing with an officer or employee of an international organization, classified as a G-4 non-immigrant under section 101 (*a*) (15) (G) (iv) of the Immigration and Nationality Act, may be granted permission to accept or continue employment in the United States if an application to do so has first been favorably recommended by an authorized representative of the Department of State and approved by the District Director of this Service as indicated below. To apply, the spouse or unmarried dependent son or unmarried dependent daughter shall first submit form I-566 to the Visa Office of the Department of State, or to the United States Mission to the United Nations if the principal G-4 alien is employed by the United Nations. The form shall be accompanied by a certification by the international organization that the applicant is the spouse or unmarried dependent son or unmarried dependent daughter of an officer or employee of that organization. The applicant shall also submit with the application a statement from the prospective employer describing the position and salary offered, the duties of the position and verification that the applicant possesses the necessary qualifications for the position. The application may be approved if both the authorized representative of the Department of State and the District Director of this Service at New York (if the principal alien is working for the United Nations) or at Washington, D.C. are satisfied that: (i) Both the principal alien and the applicant desiring employment are maintaining G-4 status; (ii) the proposed employment is not in an occupation listed in the Department of Labor schedule B (20 CFR Part 656) or otherwise determined by the Department of Labor to be one for which there is an oversupply of qualified U.S. workers in the area of proposed employment, except in the case of the employment of an unmarried dependent son or unmarried dependent daughter in G-4 status who is a full-time student, if the employment is part time, consisting of not more than 20 hours per week and/or if it is temporary employment of not more than 12 weeks at a time during school holiday periods; provided

[8] Published in the *Federal Register*, vol. 43, No. 147.

that if a G-4 alien was authorized to accept full-time employment in a schedule B occupation prior to the effective date of this regulation, he/she may continue in that employment for a period of 2 years following the effective date of this regulation; and (iii) the proposed employment would not be contrary to the interests of the United States. Employment of G-4 aliens who have criminal records, or who have violated the immigration and nationality laws or regulations, or who worked illegally, or who cannot establish that they paid income taxes on income from previous U.S. employment may be considered contrary to the interests of the United States.

However, a G-4 alien who is working without authorization on the effective date of this regulation must apply for authority to continue that work within 90 days of the effective date of this regulation. He/she must comply with the terms of this regulation in all respects except for the provision relating to illegal employment and the fact of such illegal employment will not be construed against him/her in considering that application for employment. Permission to accept employment may not be granted to G-4 spouses or unmarried dependents where the principal alien will be stationed in this country for a definite period of 6 months or less. Permission to accept or continue employment under this section shall be granted in increments of not more than 2 years each. There shall be no appeal from a denial of permission to accept or continue employment under this section. The Service will inform the G-4 applicant by letter whether his/her application has been granted or denied, and if denied, of the reasons therefor. When an application is approved, the Service shall inform the Internal Revenue Service and Department of Labor.

* * *

299.1 is amended to add the following form in numerical sequence:

299.1 Prescribed forms.

. . .

Form No.	*Title and Description*
. . .	
I-566 (8-30-78)	Application for Employment by a (G-4) Spouse or Unmarried Son or Daughter of an Official of an International Organization
. . .	

(Secs. 103 and 214; 8 U.S.C. 1103 and 1184)

Effective date: The amendments contained in this order become effective on August 30, 1978.

DATED: July 17, 1978.

Leon J. CASTILLO,
Commissioner of Immigration and Naturalization

DATED: July 24, 1978.

Barbara M. WATSON,
Assistant Secretary of State for Consular Affairs

(*b*) RULING RELATING TO INTERNAL REVENUE CODE SECTION 61[9] [10]

Issue

Is a "staff assessment" withheld by the employer, an international organization, from the salary paid the taxpayer, includible in the taxpayer's gross income?

[9] It is the practice of the Internal Revenue Service to answer inquiries of individuals and organizations, whenever appropriate in the interest of sound tax administration as to their status for tax purposes and as to the tax effects of their acts or transactions. One of the functions of the National Office of the Internal Revenue Service is to issue rulings on such matters. A "ruling" is a written statement issued to a taxpayer or his authorized representative by the National Office which interprets and applies the tax laws to a specific set of facts.

[10] [1978] *Standard Federal Tax Reporter* (CCH) § 6934 H.

Facts

The taxpayer, a citizen of the United States, is employed in a foreign country by the International Civil Aviation Organization (ICAO), an agency of the United Nations.

The taxpayer's gross salary is 30x dollars per annum. However, the gross salary is reduced by a "staff assessment" of 6x dollars, so that the taxpayer is actually paid a net salary of 24x dollars per annum. The taxpayer accepted the employment with the understanding that the net salary would be the only amount paid.

The ICAO "staff assessments" are subtracted from the ICAO budget before determining the amounts to be contributed by countries that finance the activities of ICAO.

With regard to United States citizens employed by ICAO, the "staff assessment" is never received by, or made available to, the employee under any circumstances, and is not payable as deferred compensation or pursuant to any pension or disability plan. Furthermore, the "staff assessment" cannot be used to offset any foreign tax liability or any other liability of United States citizens employed by ICAO.

Law and analysis

Section 61 of the Internal Revenue Code of 1954 and the Income Tax Regulations thereunder provide that, except as otherwise provided by law, gross income means all income from whatever source derived including compensation for service.

The only compensation received by the taxpayer is the net salary. At no time does the taxpayer have claim to or control over, or derive any economic benefit from the "staff assessment", and it is not otherwise made available to the taxpayer. See Rev. Rul. 78-139, 1978-15 I. R. B. 6, which holds that the amount of compensation to be included in the gross income of a taxpayer, who accepted a reduction in salary as a condition of employment, is limited to the reduced amount of compensation received.

Holding

The "staff assessment" of 6x dollars withheld by the taxpayer's employer, ICAO, is not includible in the taxpayer's gross income under section 61 of the Code.

Chapter II

TREATY PROVISIONS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Treaty provisions concerning the legal status of the United Nations

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS.[1] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 13 FEBRUARY 1946

The following States acceded to the Convention on the Privileges and Immunities of the United Nations in 1978:[2]

State	*Date of receipt of instrument of accession*[3]
Bangladesh	13 January 1978 d
Djibouti	6 April 1978 d

This brought up to 116 the number of States parties to this Convention.

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2. AGREEMENTS RELATING TO MEETINGS AND INSTALLATIONS

(*a*) Supplementary Agreement to the Convention on the Privileges and Immunities of the United Nations (with exchange of letters) between the United Nations and Belgium.[4] Done at Brussels on 22 January 1976

Article 1

This Agreement shall apply to any organ (hereinafter referred to as "the Office") which is subordinate to the United Nations or to a body forming an integral part of the United Nations and which, with the consent of the Belgian Government, is established on Belgian territory.

Article 2

The Belgian Government shall facilitate the entry into, sojourn in and departure from Belgium of persons invited to the Office on official business.

Article 3

1. The Head of the Office shall enjoy the advantages accorded to members of the diplomatic staff of diplomatic missions. The spouse and minor children of the Head of the Office forming part

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[1] United Nations, *Treaty Series*, vol. 1, p. 15.

[2] The Convention is in force with regard to each State which deposited an instrument of accession with the Secretary-General of the United Nations as from the date of its deposit.

[3] The symbol "d" immediately following the date appearing opposite the name of a State denotes a declaration by that State recognizing itself bound, as from the date of its independence, by the Convention, the application of which had been extended to its territory by a State then responsible for the conduct of its foreign relations. The date shown is the date of receipt by the Secretary-General of the notification to that effect.

[4] Came into force on 4 July 1978.

of his household shall enjoy the advantages accorded to the spouses and minor children of diplomatic staff.

2. Without prejudice to the provisions of article V of the general Convention on the Privileges and Immunities of the United Nations, the provisions of paragraph 1 shall not apply to Belgian nationals.

Article 4

Members of the staff of the Office who are covered by the Staff Regulations of the United Nations and who do not in Belgium practise for personal profit any occupation other than that required by their functions shall participate in the social security schemes of the United Nations in accordance with the regulations of those schemes.

RELATED EXCHANGE OF LETTERS

I

Brussels, 22 January 1976

Sir,

The signing this day of the Supplementary Agreement to the general Convention on the Privileges and Immunities of the United Nations, concluded between the Kingdom of Belgium and the United Nations, affords me the opportunity to confirm to you the functional nature of the privileges, immunities and facilities enjoyed by the Office and its staff pursuant to the above-mentioned instruments.

It follows that, *inter alia:*

(*a*) The Secretary-General of the United Nations shall waive the immunity from jurisdiction of the Director of the Office in the case of an action relating to a contract which was not concluded in his capacity as an agent of the United Nations;

(*b*) The persons referred to in article 1 of the Agreement shall enjoy no immunity from jurisdiction in respect of cases of violation of motor vehicle traffic regulations or of damage caused by a motor vehicle otherwise than in the course of acts performed in their official capacity;

(*c*) The Director and staff of the Office shall comply with all obligations imposed by Belgian laws and regulations with respect to third-party insurance for the use of any motor vehicle.

In addition, the United Nations shall ensure that the staff of the Office are effectively covered by an adequate social security scheme, having regard to the Belgian social security scheme.

Erik SUY

II

Brussels, 22 January 1976

Sir,

I have the honour to acknowledge receipt of your letter of today's date concerning the Supplementary Agreement to the general Convention on the Privileges and Immunities of the United Nations concluded between the Kingdom of Belgium and the United Nations. I have taken note of the contents of that communication, for which I thank you.

René VAN ELSLANDE

(*b*) Exchange of letters constituting an agreement between the United Nations and the Republic of Korea regarding the application by the Republic of Korea of the provisions of the Convention on the Privileges and Immunities of the United Nations.[5] New York, 6 June 1978

[5] Came into force on 6 July 1978.

I

Republic of Korea
Permanent Observer Mission
to the United Nations
6 June 1978

Excellency,

I have the honour to refer to the exchange of letters between the Republic of Korea and the United Nations constituting an agreement regarding privileges and immunities to be enjoyed by the United Nations in the Republic of Korea, Pusan, 21 September 1951[6] and to the discussions which took place between the representatives of the Republic of Korea and the United Nations with a view to the possible modification or termination of the said Agreement.

I have the honour to propose that the Republic of Korea and the United Nations terminate the Agreement of 21 September 1951 on the understanding that the Government of the Republic of Korea shall apply to the United Nations and its organs, its property, funds and assets, and to its officials in the Republic of Korea, the provisions of the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946.

It is further understood that, with respect to the application to the locally recruited United Nations officials of Section 18, Article V of the said Convention, the United Nations will assert only the privileges and immunities provided for in sub-paragraphs (*a*) and (*b*) of that Section.

This letter and Your Excellency's reply accepting the foregoing proposals shall constitute an agreement between the Government of the Republic of Korea and the United Nations in respect of the contents thereof, which shall enter into force upon the thirtieth day following the date of Your Excellency's reply, and may be terminated by either Party upon giving six months' written notice to the other.

(*Signed*) Duk Choo MOON
Ambassador

H.E. Mr. Kurt WALDHEIM
Secretary-General of the United Nations
New York

II

6 June 1978

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's letter of today's date, concerning the privileges and immunities to be enjoyed by the United Nations in the Republic of Korea, which reads as follows:

[*See letter I.*]

I further have the honour to inform Your Excellency that the foregoing proposals are acceptable to the United Nations and to confirm that Your Excellency's letter and this reply shall constitute an agreement between the United Nations and the Government of the Republic of Korea on the subject, which shall enter into force upon the thirtieth day following the date of this reply, i.e. on 6 July 1978.

Erik SUY
Under-Secretary-General
The Legal Counsel

His Excellency
Mr. Duk Choo MOON
Ambassador Extraordinary and Plenipotentiary
Permanent Observer of the Republic of Korea
to the United Nations
New York, N.Y.

[6] United Nations, *Treaty Series*, vol. 104, p. 323.

(*c*) Agreement between the United Nations and Portugal for the Office of the United Nations Information Centre for Portugal.[7] Signed at New York on 13 September 1978

The Government of Portugal and the Secretary-General of the United Nations,

Considering that the Government of Portugal (hereinafter referred to as "the Government") and the Secretary-General of the United Nations (hereinafter referred to as "the Secretary-General") have agreed to establish an Information Centre for Portugal (hereinafter referred to as "the Centre") in Lisbon, and considering that the Government undertakes to assist the United Nations in securing all the necessary facilities for its functioning;

Considering that the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946 (hereinafter referred to as "the General Convention") applies to the Offices of Public Information in the field which are hence an integral part of the Secretariat of the United Nations;

Considering that it is desirable to conclude an agreement to regulate questions arising as a result of the establishment of the United Nations Information Centre in Lisbon:

Have agreed as follows:

Article I

ESTABLISHMENT OF THE CENTRE

Section 1

A United Nations Information Centre will be established in Portugal to carry out the functions assigned to it by the Secretary-General, within the framework of the Office of Public Information.

Article II

STATUS OF THE UNITED NATIONS INFORMATION CENTRE

Section 2

The premises of the Centre and the residence of the Director shall be inviolable.

Section 3

The appropriate Portuguese authorities shall exercise due diligence to ensure the security and protection of the premises of the Centre and its staff.

Section 4

The appropriate Portuguese authorities shall exercise their respective powers to ensure that the Centre shall be supplied with the necessary public services and that such public services shall be supplied on equitable terms. The Centre shall enjoy privileged treatment for the use of telephone, radio-telegraph and mail communication facilities in the same conditions that are normally accorded and extended to diplomatic missions.

Article III

FACILITIES AND SERVICES

Section 5

The Government shall provide, free of cost, appropriate office space and will contribute 30 per cent of the cost of operating the Centre.

[7] Came into force on the date of signature.

Article IV

OFFICIALS OF THE CENTRE

Section 6

Officials of the Centre, except those who are locally recruited or have Portuguese nationality or are permanent foreign residents of Portugal shall enjoy, within and with respect to Portugal, the following privileges and immunities:

(*a*) Immunity from legal processes of any kind in respect of words spoken or written, and of acts performed by them in their official capacity; such immunity to continue notwithstanding that the persons concerned may have ceased to be officials of the United Nations;

(*b*) Immunity from seizure of their official baggage;

(*c*) Immunity from inspection of official baggage;

(*d*) Exemption from taxation in respect of the salaries, emoluments, indemnities and pensions paid to them by the United Nations for services past or present or in connection with their service with the Centre.

(*e*) Exemption from any form of taxation on income derived by them from sources outside Portugal;

(*f*) Exemption, with respect to themselves, their spouses, their dependents, relatives and other members of their households from immigration restrictions and alien registration;

(*g*) Immunity from national service obligations;

(*h*) The same privileges in respect of exchange facilities as are accorded to officials of comparable ranks forming part of diplomatic missions. In particular, United Nations officials shall have the right, at the termination of their assignment to Portugal, to take out of Portugal through authorized channels, without prohibition or restriction, their funds in the same amounts as they had brought into Portugal as well as any other funds for the lawful possession of which they can show good cause;

(*i*) The same protection and repatriation facilities with respect to themselves, their spouses, their dependents, relatives and other members of their households as are accorded in time of international crisis to diplomatic envoys; and

(*j*) The right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports:

(i) Their furniture and effects in one or more separate shipments, and thereafter to import necessary additions to the same, including motor vehicles, according to the Portuguese legislation applicable to diplomatic representatives accredited in Portugal;

(ii) Reasonable quantities of certain articles for personal use or consumption and not for gift or sale.

Section 7

In addition to the privileges and immunities specified in Section 6, the Director of the Centre shall enjoy, in respect of himself, his spouse, his dependent relatives and other members of his household, the privileges and immunities, exemptions and facilities normally accorded to diplomatic envoys of comparable rank. He shall for this purpose be incorporated by the Portuguese Ministry of Foreign Affairs into the diplomatic list.

Section 8

Officials of the Centre locally recruited, of Portuguese nationality or permanent foreign residents in Portugal shall enjoy only, within and with respect to Portugal, the privileges and immunities referred to in letters (*a*), (*b*), (*c*), (*d*), and (*g*) of Section 6 of this Agreement. However with respect to (*g*), this should not be interpreted as exempting officials of Portuguese nationality from complying with their military service obligations.

The conditions of work of these officials shall be solely governed by the provisions of the Staff Rules and Regulations of the United Nations. No staff member can claim additional rights than those defined on said Staff Rules and Regulations.

Section 9

The privileges and immunities for which provision is made in this Agreement are granted solely for the purposes of carrying out effectively the aims and purposes of the United Nations. The Secretary-General may waive the immunity of any staff member whenever in his opinion such immunity would impede the course of justice and can be waived without prejudice to the interests of his Office.

Section 10

Without prejudice to the privileges and immunities accorded by this Agreement, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of Portugal.

Article V

GENERAL PROVISIONS

Section 11

The provisions of the General Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946 shall fully apply to the Centre, and the provisions of this Agreement shall be complementary to those of the General Convention. In so far as any provision of this Agreement and any provision of the General Convention relate to the same subject matter, the two provisions shall, where possible, be treated as complementary, so that both provisions shall be applicable and neither shall restrict the effect of the other.

Section 12

This Agreement shall be constructed in the light of its primary purpose of enabling the United Nations Information Centre in Portugal fully and efficiently to discharge its responsibilities and fulfill its purposes.

Section 13

Consultation with respect to modifications of this Agreement shall be entered into at the request of either party; any such modifications shall be by mutual consent.

Section 14

This Agreement shall cease to be in force:

(i) by mutual consent of both parties; or

(ii) if the Centre is removed from the territory of Portugal, except for such provisions as may be applicable in connection with the orderly termination of the operations of the United Nations Information Centre in Portugal and the disposal of its property therein.

Section 15

This Agreement shall come into force upon signature by both parties.

IN WITNESS WHEREOF the undersigned, duly authorized representatives of the United Nations and the Government, respectively, have signed this Agreement in two copies, each in the English and Portuguese languages.

DONE at New York on September 13, 1978

For the United Nations
(*Signed*) Genichi AKATANI

For the Government of Portugal
(*Signed*) Vasco FUTSHER PEREIRA

(*d*) Agreement between the United Nations and the Federal Republic of Germany concerning the arrangements for the United Nations Conference on the Carriage of Goods by Sea to be held at Hamburg from 6 to 31 March 1978.[8] Signed at Geneva on 28 February 1978

[8] Came into force on the date of signature.

Article XII

PRIVILEGES AND IMMUNITIES

1. The Government shall grant, in respect of the Conference, the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations.

2. Representatives of States and of the United Nations Council for Namibia at the Conference, officials of the United Nations and experts on mission for the United Nations performing functions in connexion with the Conference shall enjoy the privileges and immunities provided under articles IV, V, VI and VII respectively, of the Convention on the Privileges and Immunities of the United Nations.

3. Observers from the specialized agencies at the Conference shall enjoy the privileges and immunities under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies. Observers from the International Atomic Energy Agency at the Conference shall enjoy the privileges and immunities provided under articles VI and IX of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency. Observers from other intergovernmental and non-governmental organizations invited to the Conference as observers shall enjoy the privileges and immunities provided under article VI of the Convention on the Privileges and Immunities of the United Nations.

4. Observers referred to in article I (*c*) and (*d*) shall enjoy the privileges and immunities provided under article VI of the Convention on the Privileges and Immunities of the United Nations. They shall be accorded such facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the Conference.

5. The personnel provided by the Government under Article X of the present Agreement, as specified in a separate exchange of communications under Article XVI of this Agreement, shall, with the exception of those assigned to hourly rates, enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity in connexion with the Conference. Such immunity shall, however, not apply in case of an accident caused by vehicle, vessel or aircraft.

6. In addition, all participants and all persons performing functions in connexion with the Conference shall enjoy such facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the Conference.

7. The Government shall ensure that no impediment is imposed on transit to and from the site of the Conference of the following categories of persons:

(*a*) the persons referred to in Article I, paragraph 1, of the present Agreement and their immediate families;

(*b*) representatives of the press or of other information media referred to in Article I, paragraph 2, of the present Agreement;

(*c*) members of the United Nations Secretariat and experts on mission for the United Nations performing functions in connexion with the Conference and their immediate families;

(*d*) other persons officially invited to the Conference by the Secretary-General of the United Nations.

They shall be permitted to enter or leave the country without delay. Any visa required by the law of the Federal Republic of Germany for such persons shall be granted promptly on application and without charge.

8. During the Conference, including the preparatory and final stages of the Conference, the buildings and areas referred to in Article II shall be deemed to constitute United Nations premises and access thereto shall be under the control and authority of the United Nations. In this respect, persons officially invited to the Conference by the Government shall be given access to the Conference area by the United Nations.

Article XIII

LIABILITY

1. The Government shall, either directly or through appropriate insurance coverage, be responsible for dealing with any actions, claims or other demands against the United Nations or its personnel and arising out of:

(*a*) injury or damage to person or property in the premises referred to in Articles II, III and IV above;

(*b*) injury or damage to person or property caused by, or incurred in using, the transport services referred to in Article IX above;

(*c*) the employment for the Conference of the personnel referred to in Article X above.

2. The Government shall hold harmless the United Nations and its personnel in respect of any such actions, claims or other demands.

Article XIV

CUSTOMS PROCEDURES, IMPORT DUTIES AND TAX

1. The Government shall allow the temporary importation of and shall waive import duties and taxes for all equipment and supplies necessary for the Conference. It shall issue without delay to the United Nations any necessary import and export permits.

2. The Government shall also be responsible for ensuring timely delivery to the Conference site of all such equipment and supplies and it shall expedite their return shipment from Hamburg to the United Nations Offices from which they were shipped.

(*e*) Agreement between the United Nations and India concerning the arrangements for the Seminar on Statistics for Rural Development to be held in New Delhi from 5 to 10 April 1978.[9] Signed at New Delhi and at Bangkok on 22 March 1978

Article VII

PRIVILEGES AND IMMUNITIES

1. Article V of the Convention on the Privileges and Immunities of the United Nations shall be fully applicable to officials of the United Nations attending the Seminar.

2. Officials of the specialized agencies shall enjoy the privileges and immunities provided under the Convention on the Privileges and Immunities of the Specialized Agencies.

3. Persons other than those referred to in paragraphs 1 and 2 above performing functions in connexion with the Seminar shall enjoy such facilities and courtesies, as are necessary for the independent exercise of their functions in connexion with the Seminar.

4. Representatives of Members and Associate Member States of the United Nations Economic and Social Commission for Asia and the Pacific and representatives from other States Members of the United Nations shall enjoy the privileges and immunities provided in Article IV of the Convention on the Privileges and Immunities of the United Nations.

5. All persons referred to in this article and all persons performing functions in connexion with the Seminar who are not nationals of India shall have the right of entry into and exit from India. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted as speedily as possible and not later than two weeks before the date of the opening of the Seminar when applications are made at least two and a half weeks before the opening of the Seminar. If the application for the visa is not made at least two and a half weeks before the opening of the Seminar, the visa shall be granted not later than three days from the receipt of the application. Arrangements will also be made to ensure that visas for the duration of the Seminar are delivered at the airport to participants who were unable to obtain them prior to their arrival. Exit permits, where

[9] Came into force on the date of signature.

required, shall be granted as speedily as possible, in any case not later than three days before the closing of the Seminar.

Article VIII

LIABILITY FOR CLAIMS

The Government shall be responsible for dealing with any actions, claims or other demands arising out of: (*a*) injury or damage to person or property in the premises referred to in Article II; (*b*) the employment of the personnel referred to in Article VI of this Agreement; and the Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands.

(*f*) Agreement between the United Nations and Jordan concerning the Seminar on the Integration of Women in Development, to be held at Amman from 28 May to 3 June 1978.[10] Signed at New York on 3 April 1978

Articles V and VI of this Agreement are similar to articles V and VI of an agreement between the United Nations and Nepal reproduced on p. 46 of the *Juridical Yearbook* 1976, except for the omission in article V of the words "Such immunity shall not apply in any case of accident caused by a vehicle, vessel or aircraft".

(*g*) Agreement between the United Nations and the Philippines concerning arrangements for the Asia and Pacific Regional Preparatory Meeting for the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders.[11] Signed at New York on 4 April 1978

Article VI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946, shall be applicable in respect of the Meeting. In particular, the representatives of States participating in the Meeting pursuant to Article I (*a*) and (*b*) of this Agreement shall enjoy the privileges and immunities provided under Article IV of the Convention, the officials of the United Nations participating in the Meeting pursuant to Article I (*c*) of this Agreement shall enjoy the privileges and immunities provided under Article V of the Convention, and the observers participating in the Meeting pursuant to Article I (*a*), (*f*) and (*g*) of this Agreement shall enjoy the privileges and immunities provided for experts on mission for the United Nations under Article VI of the Convention.

2. Participants attending the Meeting in pursuance of Article I (*d*) of this Agreement shall enjoy the privileges and immunities provided under the Convention dated 21 November 1947 on the Privileges and Immunities of the Specialized Agencies of the United Nations.

3. In addition, all participants and all persons performing functions in connexion with the Meeting shall, in accordance with applicable law, enjoy such facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the Meeting.

4. All participants referred to in Article I shall be granted entry and exit facilities which will permit them to arrange for speedy travel to and from the Meeting. In this connexion, exit and entry visas, when required, shall be granted free of charge, as speedily as possible. Exit permits, when required, shall be granted free of charge and without delay.

[10] Came into effect on the date of signature.

[11] Came into force on the date of signature.

Article VIII

LIABILITY FOR CLAIMS

Included among the costs to be borne by the Government is the cost of reasonable insurance premiums for appropriate insurance coverage contracted by the United Nations with respect to the following risks:

(*a*) Personal injury or damage to property in the premises referred to in Article IV, paragraph (2) (*a*);

(*b*) The recruitment and/or the exercise of the functions of the personnel of the Meeting referred to in Article IV, paragraph (*a*);

(*c*) The transport referred to in Article IV, paragraph (3) (*b*).

(*h*) Exchange of letters constituting an agreement between the United Nations and Austria concerning the arrangements for the meetings in Vienna of the Commission on Transnational Corporations (16–26 May 1978), the Committee on Crime Prevention and Control (5–16 June 1978) and the Preparatory Committee for the World Conference of the United Nations Decade for Women (19–30 June 1978).[12] Geneva, 10 and 4 May 1978

I

Palais des Nations
CH 1211 Geneva 10
10 May 1978

Sir,

I have the honour to give you below the text of arrangements between the United Nations and the Government of Austria (hereinafter referred to as "the Government") in connexion with the Meetings of:

—the Commission on Transnational Corporations, 16–26 May 1978;
—the Committee on Crime Prevention and Control, 5–16 June 1978;
—the Preparatory Committee for the World Conference of the United Nations Decade for Women, 19–30 June 1978

to be convened at the invitation of the Government in Vienna.

"Arrangements between the Government of Austria and the United Nations regarding the meetings of:

The Commission on Transnational Corporations, 16–26 May 1978;
The Committee on Crime Prevention and Control, 5–16 June 1978;
The Preparatory Committee for the World Conference of the United Nations Decade for Women, 19–30 June 1978, to be convened in Vienna

"His Excellency
Mr. Erik NETTEL
Ambassador
Permanent Representative of Austria
to the United Nations Office at Geneva

"1. Participants in the above-mentioned Meetings will be invited by or in the name of the Secretary-General of the United Nations in accordance with the respective rules of procedure.

"2. The Government shall impose no impediment to transit to and from the Meetings of any persons whose presence at the said Meetings is authorized by the United Nations and shall grant any visas required for such persons promptly and without charge. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations shall apply.

[12] Came into force on 11 May 1978.

"3. Representatives of States invited to attend the said Meetings, officials of the United Nations performing functions in connexion with the said Meetings, experts on mission for the United Nations at the said Meetings and representatives of the specialized agencies, the International Atomic Energy Agency and other intergovernmental organizations invited to attend the said Meetings shall enjoy the same privileges and immunities as are accorded to the representatives to meetings of the UNIDO and to officials of the UNIDO under the Agreement referred to in paragraph 13 below.

"4. Without prejudice to the provisions of paragraph 3 above, observers invited by the United Nations to attend the said Meetings shall enjoy immunity from legal process in respect of words spoken or written or any act performed by them in their official capacity in connexion with the said Meetings.

"5. Personnel provided by the Government under paragraph 9 below shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connexion with the said Meetings with the exception of those who are assigned to hourly rates. Such immunity shall, however, not apply in case of an accident caused by vehicle, vessel or aircraft.

"6. Without prejudice to the preceding paragraphs, representatives of nongovernmental organizations invited by the United Nations to the said Meetings shall enjoy immunity from legal process in respect of words spoken or written or any act performed by them in the exercise of their functions in connexion with the said Meetings.

". . .

"10. The Government shall be responsible for dealing with any actions, claims or other demands which may be brought against the United Nations for damages to facilities used in the course of the said Meetings, for damage or injury to persons or property caused to third parties, or arising out of employment of local personnel, and shall hold the United Nations and their officials harmless in respect of any such actions, claims or other demands.

"11. The rooms, offices and related localities and facilities put at the disposal of the said Meetings by the Government shall be the Meeting areas, which shall constitute United Nations premises within the meaning of Article II, Section 3, of the Convention of 13 February 1946.

"12. The Government shall notify the local police of the convening of the said Meetings and request appropriate police protection.

"13. In all other respects, the Agreement between the United Nations and the Republic of Austria regarding the Headquarters of the United Nations Industrial Development Organization, dated 13 April 1967,[13] shall apply *mutatis mutandis* to the said Meetings, it being understood that the word "offices" in Article XV, Section 45, of the above-mentioned Agreement shall apply for the purposes of these arrangements to the said Meetings."

I have the honour to propose that this letter and your affirmative answer shall constitute an Agreement between the United Nations and the Government of Austria which shall enter into force on the date of your reply and shall remain in force for the duration of the above-listed Meetings and for such additional period as is necessary for their preparation and winding up.

(*Signed*) L. COTTAFAVI

II

Permanent Mission of Austria
to the United Nations Office
and the Specialized Agencies
in Geneva
11 May 1978

Sir,

I have the honour to acknowledge receipt of your letter of 10 May 1978, containing the text of arrangements between the Government of Austria (hereinafter referred to as "the Government") and the United Nations in connexion with the Meetings of:

[13] United Nations, *Treaty Series*, vol. 600, p. 93. Also reproduced in the *Juridical Yearbook*, 1967, p. 44.

—the Commission on Transnational Corporations (16 to 26 May 1978);
—the Committee on Crime Prevention and Control (5 to 16 June 1978); and
—the Preparatory Committee for the World Conference of the United Nations Decade for Women (19 to 30 June 1978).

to be convened at the invitation of the Government in Vienna.

The text of the arrangements reads as follows:

[*See letter I.*]

I have the honour to confirm that your letter and my answer constitute an Agreement between the Government of Austria and the United Nations which shall enter into force on the date of this reply and shall remain in force for the duration of the above listed Meetings and for such additional period as is necessary for their preparation and winding up.

(*Signed*) Erik NETTEL
Ambassador

(*i*) Agreement between the United Nations and Mexico regarding the arrangements for the Fourth Session of the World Food Council.[14] Signed at Mexico City on 2 June 1978

Article X

LIABILITY

The Government shall be responsible for dealing with any actions, claims or other demands against the United Nations arising out of: (*a*) injury or damage to person or property in the premises referred to in Article III above; (*b*) injury or damage to person or property caused by, or incurred in using, the transport services referred to in Article VI above; (*c*) the employment for the Session of the personnel provided by the Government to perform functions in connexion with the Session. The Government shall indemnify and hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands, except if it is agreed by the parties that such injury or damage was caused by gross negligence or wilful misconduct by United Nations personnel.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 to which the Government acceded on 26 November 1962, shall be applicable to the Session.

2. Representatives of States attending the Session shall enjoy the privileges and immunities accorded to representatives of States by Article IV of the Convention.

3. Officials of the United Nations performing official duties at the Session shall enjoy the privileges and immunities provided by Articles V and VII of the Convention. The local personnel provided by the Government to perform functions in connexion with the Session shall enjoy only immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity in connexion with the Session.

4. Officials of the specialized agencies and of the International Atomic Energy Agency and representatives of other intergovernmental organizations participating in the Session shall enjoy the same privileges and immunities as are accorded to officials of the United Nations of a similar rank.

5. Without prejudice to the preceding paragraphs of this Article, all persons performing functions in connexion with the Session and all those invited to the Session shall enjoy the necessary privileges, immunities and facilities in connexion with their participation in the Session.

[14] Came into force on the date of signature.

6. The Government shall impose no impediment to transit to and from the Session of any persons whose presence at the Session is authorized by the United Nations and of any member of their immediate families. Any entry or exit visa required for such persons shall be granted immediately on application and without charge.

7. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the conference premises referred to in Article III above shall be deemed to constitute premises of the United Nations and access thereto shall be under the control and authority of the United Nations.

8. The participants in the Session, representatives of information media and officials of the Secretariat of the Session shall have the right to take out of Mexico at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into Mexico in connexion with the Session, or which they received during their presence at the Session, at the United Nations operational rate of exchange.

Article XII

IMPORT DUTIES AND TAX

1. The Government shall allow the temporary importation tax and duty-free of all equipment, including technical equipment accompanying representatives of information media, and shall waive import duties and taxes on supplies necessary for the Session.

2. The Government hereby waives import and export permits for the supplies needed for the Session and certified by the United Nations to be required for official use at the Session.

(*j*) Exchange of letters constituting an agreement between the United Nations and Austria concerning the privileges and immunities and other facilities to be accorded to UNRWA in Austria.[15] Beirut, 28 June 1978 and Vienna, 4 July 1978

I

28 June 1978

Sir,

I have the honour to refer to my letter of 9 June 1978, whereby I conveyed my acceptance of the offer of the Government of Austria that the Headquarters of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (Hereinafter referred to as "UNRWA") be relocated in Vienna.

It is my understanding that the Headquarters of UNRWA will be considered by the Government of Austria as an office of the United Nations coming within the purview of Section 45 of the Agreement between the United Nations and the Republic of Austria of 13 April 1967, regarding the Headquarters of the United Nations Industrial Development Organization, and that accordingly UNRWA and its staff will be granted the privileges and immunities set forth in the above-mentioned Agreement.

I have the honour to propose that this note and your note of confirmation shall constitute an Agreement between the Government of Austria and UNRWA entering into force on the date of your note of confirmation.

Thomas W. MCELHINEY
Commissioner-General

His Excellency
Dr. Willibald PAHR
The Federal Minister for Foreign Affairs
Vienna, Austria

[15] Came into force on 6 July 1978.

II

Vienna, July 4, 1978

Sir,

I have the honour to refer to your note of 28 June 1978 which reads as follows:

[*See letter I.*]

I have the honour to confirm that the Government of Austria concurs with the understanding contained in your letter and that UNRWA Headquarters is to be considered as an office of the United Nations coming within the purview of Section 45 of the Agreement between the United Nations and the Republic of Austria regarding the Headquarters of the United Nations Industrial Development Organization of 13 April 1967 and that your note and this reply will constitute an Agreement between the Government of Austria and UNRWA entering into force on the date hereof.

Willibald P. PAHR

Mr. Thomas W. McElhiney
Commissioner-General
UNRWA
Beyrouth

(*k*) Exchange of letters constituting an agreement between the United Nations and Austria concerning the refund to UNRWA of the value added tax levied in Austria.[16] Beirut, 28 June 1978 and Vienna, 4 July 1978

I

28 June 1978

Sir,

I have the honour to refer to Section 45 of the Agreement between the Republic of Austria and the United Nations of 13 April 1967 regarding the Headquarters of the United Nations Industrial Development Organization (UNIDO) and to the supplemental agreement thereunder, dated 22 January 1975, governing the refund to UNIDO of value added tax. As the UNRWA Headquarters in Vienna falls within the terms of Section 45 of the UNIDO Headquarters Agreement, as another office of the United Nations set up with the consent of the Republic of Austria, I assume that the provisions of the supplemental agreement of 22 January 1975 should apply also, *nutatis mutandis*, to UNRWA. To facilitate the processing of the Agency's claim for refund of value added tax I should be grateful if you would confirm that my assumption is correct.

Thomas W. MCELHINEY
Commissioner-General

His Excellency
Mr. Willibald PAHR
The Federal Minister for Foreign Affairs
Vienna, Austria

II

Vienna, July 4, 1978

Sir,

I have the honour to refer to your letter of 28 June 1978 which reads as follows:

[*See letter I.*]

In reply I wish to state that as the UNRWA Headquarters in Vienna falls within the terms of Section 45 of the UNIDO Headquarters Agreement, as another office of the United Nations set up

[16] Reproduced in the *Juridical Yearbook*, 1975, p. 13.

with the consent of the Republic of Austria, the provisions of the supplemental agreement of 22 January 1975 will be applied also, *mutatis mutandis,* to UNRWA.

Willibald P. PAHR

Mr. Thomas W. MCELHINEY
Commissioner-General
UNRWA
Beyrouth

(*l*) Exchange of notes constituting an agreement between the United Nations and Austria concerning the arrangements for the resumed session of the United Nations Conference on Succession of States in respect of Treaties. New York, 3 May and 7 July 1978

I

3 May 1978

Sir,

By its resolution 32/47 of 8 December 1977, the General Assembly . . . approved "the convening of a resumed session of the . . . Conference . . . at Vienna for a period of three weeks, from 31 July to 18 August 1978, with possible extension of up to one further week should this prove necessary in the view of the Conference."

The Agreement dated April 1, 1977, between the United Nations and the Austrian Federal Government regarding the arrangements for the Conference[17] covered only the 1977 session. The United Nations would be agreeable to extending, *mutatis mutandis,* the provisions of the 1977 Agreement to cover the arrangements for the resumed session to be held in 1978 on the understanding that the provisions of Article II, paragraph 1 and Article XIII, paragraph 2 of said Agreement include the representatives of the United Nations Council for Namibia.

If the Austrian Government agrees to this proposal I have the honour to propose that this note and your note of confirmation shall constitute the Agreement between the United Nations and the Austrian Federal Government regarding the arrangements for the resumed session of the United Nations Conference on Succession of States in Respect of Treaties.

Erik SUY
The Legal Counsel

His Excellency
Mr. Peter JANKOWITSCH
Ambassador Extraordinary and Plenipotentiary
Permanent Representative to the United Nations
Permanent Mission of Austria
to the United Nations
809 United Nations Plaza, 7th Floor
New York, N.Y. 10017

II

New York, July 7, 1978

Sir,

I have the honour to acknowledge receipt of your note dated May 3, 1978 which reads as follows:

[*See letter I.*]

I have the honour to inform you that the Austrian Federal Government accepts your proposal concerning the application—*mutatis mutandis*—of the Agreement of April 1, 1977 to the resumed

[17] See *Juridical Yearbook,* 1977, p. 18.

session of the United Nations Conference on Succession of States in Respect of Treaties and that your note and this note of confirmation constitute an agreement, which will enter into force on the date of this note.

Peter JANKOWITSCH
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Austria
to the United Nations

Mr. Erik SUY
Under-Secretary-General
The Legal Counsel
United Nations

(*m*) Agreement between the United Nations and India concerning the arrangements for the Meeting of ESCAP Ministers of Trade, to be held in New Delhi from 16 to 23 August 1978.[18] Signed at Bangkok on 14 July 1978

Article VIII

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, to which the Government became a party on 30 October 1945, shall be fully applicable with respect to the Conference.

2. Representatives of Members and Associate Members of the United Nations Economic and Social Commission for Asia and the Pacific and representatives or observers from other States Members of the United Nations shall enjoy privileges and immunities provided in Article IV of the Convention on the Privileges and Immunities of the United Nations. Observers of Members of the specialized agencies shall enjoy the privileges and immunities provided for representatives in Article V of the Convention on the Privileges and Immunities of the Specialized Agencies.

3. Officials of the United Nations and experts performing functions for the United Nations at the Conference shall enjoy the privileges and immunities set forth, respectively, in Articles V, VI and VII of the said Convention.

4. Representatives of the specialized agencies and of the International Atomic Energy Agency at the Conference shall enjoy the privileges and immunities provided respectively under Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies; representatives of other intergovernmental organizations invited to the Conference shall enjoy the same privileges and immunities as are accorded to officials of comparable rank of the specialized agencies.

5. Without prejudice to the provisions of the preceding paragraphs, all participants and all persons performing functions in connexion with the Conference shall enjoy such privileges and immunities, facilities and courtesies, as are necessary for the independent exercise of their functions in connexion with the Conference.

6. All persons referred to in this article and all persons performing functions in connexion with the Conference who are not nationals of India shall have the right of entry into and exit from India. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and not later than two weeks before the date of the opening of the Conference when applications are made at least two and half weeks before the opening of the Conference. If the application for the visa is not made at least two and half weeks before the opening of the Conference, the visa shall be granted not later than three days from the receipt of the application. Arrangements will also be made to ensure that visas for the duration of the Conference are delivered at the airport to participants who were unable to obtain them prior to their

[18] Came into force on the date of signature.

arrival. Exit permits, where required, shall be granted free of charge and as speedily as possible, in any case not later than three days before the closing of the Conference.

Article IX

LIABILITY FOR CLAIMS

The Government shall be responsible for dealing with any actions, claims or other demands arising out of:

(*a*) injury to person or damage to or loss of property in the premises referred to in Article II above;

(*b*) injury to person, or damage to or loss of property caused by, or incurred in using the transportation referred to in Article IV above;

(*c*) The employment of the personnel referred to in Article VI above;

and the Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands, except when it is agreed by the parties hereto that such injury, damage or loss is caused by the gross negligence or wilful misconduct of the United Nations personnel.

Article X

IMPORT DUTIES AND TAX

The Government shall allow the temporary importation and waive import duties and taxes for all equipment and supplies necessary for the Conference. It shall issue without delay to the United Nations any necessary import and export permits.

(*n*) Agreement between the United Nations and India concerning arrangements for the UN/FAO Training Seminar on Remote Sensing Applications for Agricultural Resources, to be held at Dehra Dun, Admedabad, and Hyderabad, India, from 6 to 25 November 1978.[19] Signed at New York on 3 August 1978

Article V

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the seminar. Accordingly, officials of the United Nations performing functions in connexion with the meeting shall enjoy the privileges and immunities provided under Articles V and VII of the said Convention.

2. Officials of the specialized agencies attending the meeting in pursuance of paragraph (*c*) of Article II of this Agreement shall enjoy the privileges and immunities provided under Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies.

3. Participants attending the meeting in pursuance of Article II (*a*) of this Agreement shall enjoy the privileges and immunities of experts on mission under Article VI of the Convention on the Privileges and Immunities of the United Nations.

4. All persons performing functions in connexion with the meeting will be extended necessary facilities and courtesies.

5. Entry and exit visas, if required, shall be granted free of charge and without delay to persons enumerated in Article II of this Agreement.

[19] Came into force on the date of signature.

Article VI

LIABILITY

The Government shall be responsible for dealing with any actions, claims or other demands arising out of (*a*) injury or damage to persons or property in the premises referred to in Article IV 3 (*a*) and (*b*) above; (*b*) injury or damage to persons or property during use of the transportation referred to in Article IV 3 (*h*) and (*i*); (*c*) recruitment for the seminar of the personnel referred to in Article IV 3 (*d*), (*e*) and (*f*) and Article IV 2 and 5 and the Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands, except when it is agreed by the parties hereto that such damage and injury is caused by the gross negligence or wilful misconduct of the United Nations personnel.

(*o*) Exchange of letters constituting an agreement between the United Nations and the Netherlands concerning arrangements for the *Ad Hoc* Meeting of Experts on a Training Programme for the Improvement of Slums and Squatter Areas in Urban and Rural Communities to be held in Enschede, Netherlands, from 22 to 30 August 1978.[20] New York, 25 July and 9 August 1978

I

25 July 1978

I have the honour to refer to the conversations and informal communications exchanged between authorities of the Dutch Government, the United Nations Centre for Human Settlements and the International Union of Local Authorities (JULA) regarding the possibility of having the Dutch Government host the *Ad Hoc* Meeting of Experts on a Training Programme for the Improvement of Slums and Squatter Areas in Urban and Rural Communities, scheduled to be held at the International Institute for Aerial Survey and Earth Sciences (I.T.C.), Enschede, Netherlands from 22 to 30 August 1978.

. . .

The obligations the Dutch Government would assume as host country are the following:

. . .

(*c*) The officials of the United Nations Secretariat performing functions in connexion with the meeting will enjoy such privileges and immunities as are provided for such individuals under the Convention for the Privileges and Immunities of the United Nations;

(*d*) The experts and other participants at the meeting shall enjoy such privileges and immunities as are provided for experts on mission for the United Nations in the Convention on the Privileges and Immunities of the United Nations;

(*e*) All participants shall enjoy the right of unimpeded transit to and from meetings;

(*f*) Visas and entry permits, when required, shall be granted as speedily as possible free of charge;

. . .

(*h*) The Government will be responsible for dealing with any actions, claims or other demands against the United Nations arising out of: (i) injury or damage to person or property in the conference or office premises provided for the Meeting, (ii) injury or damage to person or property caused by, or occurred in, using the transportation provided by the Government, and (iii) the employment for the Meeting of personnel provided or arranged by the Government; and the Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands.

. . .

[20] Came into force on 9 August 1978.

On the receipt of written confirmation by your Government of the contents of this letter, this exchange of correspondence will be taken as the agreement between the United Nations and the Netherlands covering the sponsorship of the *Ad Hoc* Meeting of Experts on a Training Programme for the Improvement of Slums and Squatter Areas in Urban and Rural Communities to be held in Enschede, Netherlands, 22–30 August 1978.

Sergey OZHEGOV
Officer in Charge
Centre for Human Settlements

Mr. Dieter A. VAN BUUREN
Acting Permanent Representative
to the United Nations
Permanent Mission of the Kingdom of the
Netherlands to the United Nations

II

New York, 9 August 1978

I am referring to your letter dated 25 July 1978, concerning the *Ad Hoc* Meeting of Experts on a Training Programme for the Improvement of Slums and Squatter Areas in Urban and Rural Communities scheduled to be held at the International Institute for Aerial Survey and Earth Sciences (I.T.C.) in Enschede, Netherlands from 22 to 30 August 1978, and have the honour to inform you that the Netherlands Government agrees to the following:

. . .

(*c*) and (*d*) That for the purposes of the Meeting the Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which the Kingdom of the Netherlands is a party, shall apply;

(*e*) That all participants shall enjoy the right of unimpeded transit to and from the Meeting;

(*f*) That visas and entry permits, where required, shall be granted as speedily as possible free of charge;

. . .

(*h*) That the Netherlands Government will be responsible for dealing with any actions, claims or other demands against the United Nations arising out of: (i) injury or damage to person or property in the conference or office premises provided for the Meeting, (ii) injury or damage to person or property caused by, or occurred in, using the transportation provided by the Government, and (iii) the employment for the Meeting of personnel provided or arranged by the Government; and the Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands.

T. P. HOFSTEE
Chargé d'Affaires a.i.

Mr. Sergey OZHEGOV
Officer-in-Charge
Centre for Human Settlements
United Nations

(*p*) Agreement between the United Nations and Kenya concerning arrangements for the United Nations Regional Training Seminar on Remote Sensing Applications, co-sponsored by the United Nations Environment Programme and Sweden, to be held in Nairobi from 4 to 16 September 1978.[21] Signed in New York on 10 August 1978

This Agreement contains provisions similar to articles V and VI of an agreement between the United Nations and Pakistan reproduced on p. 47 of the *Juridical Yearbook*, 1976.

[21] Came into force on the date of signature.

(*q*) Agreement between the United Nations and Argentina concerning the arrangements for the United Nations Conference on Technical Co-operation among Developing Countries to be held in Buenos Aires from 30 August to 12 September 1978.[22] Signed at New York on 14 August 1978

This Agreement contains provisions similar to articles IX, X and XI of an agreement between the United Nations and Argentina reproduced on pp. 15 and 16 of the *Juridical Yearbook*, 1977 except that the provision corresponding to article IX contains the following additional paragraph:

"3. The Government shall indemnify the United Nations for any damage to or loss of its property within Argentinian territory, except where it is agreed by the parties hereto that such damage or loss is caused by the wilful misconduct or gross negligence of United Nations personnel."

(*r*) Exchange of letters constituting an agreement between the United Nations and China concerning the ESCAP Workshop on Efficient Use and Maintenance of Irrigation Systems at the Farm Level in China, to be held from 24 August to 8 September 1978.[23] Bangkok, 18 and 21 August 1978

I

Bangkok, 18 August 1978

Excellency,

Referring to the correspondence and discussions between the officials of the Chinese Embassy and of the ESCAP Secretariat concerning the ESCAP Workshop on Efficient Use and Maintenance of Irrigation Systems at the Farm Level in China, I hereby confirm our agreement on the following points:

. . .

5. The Chinese Government shall provide the participants in the above Workshop with the diplomatic privileges and facilities necessary for the performance of their normal functions in accordance with usual practice.

Upon receipt of your confirmation of the above points, the present note and the reply from Your Excellency shall constitute an agreement between the Government of the People's Republic of China and the Economic and Social Commission for Asia and the Pacific on the above-mentioned project.

CHANG Wei-lieh
Ambassador to Thailand
and Permanent Representative to ESCAP
of the People's Republic of China

His Excellency
Mr. J. P. B. MARAMIS
Executive Secretary
Economic and Social Commission
for Asia and the Pacific

II

21 August 1978

I have the honour to acknowledge the receipt of your letter of 18 August 1978 regarding the ESCAP Workshop on Efficient Use and Maintenance of Irrigation Systems at the Farm Level in China and addressed to the Executive Secretary, who is away on mission.

[22] Came into force on the date of signature.
[23] Came into force on 21 August 1978.

I take pleasure in confirming the agreement of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) with the following points:

. . .

5. The Chinese Government will provide the participants in the above Workshop with the diplomatic privileges and facilities necessary for the performance of their normal functions in accordance with the usual practice.

I further confirm that your letter of 18 August 1978 and this reply will constitute an agreement between the Government of the People's Republic of China and the United Nations Economic and Social Commission for Asia and the Pacific on the above-mentioned project.

S. Masood HUSAIN
Officer-in-Charge
for the Executive Secretary

His Excellency
Mr. CHANG Wei-lieh
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of the
People's Republic of China to ESCAP
Chinese Embassy

(*s*) Agreement between the United Nations and the Philippines regarding the arrangements for the fifth session of the United Nations Conference on Trade and Development.[24] Signed at Geneva on 14 September 1978

SECTION XIII. PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall be applicable in respect of the Conference. In particular, the representatives of States members of UNCTAD and representatives of the United Nations Council for Namibia, as well as United Nations officials and experts on mission for the United Nations shall enjoy the privileges and immunities provided by, respectively, Articles IV, V, VI and VII of the said Convention.

2. The representatives of the specialized agencies, the International Atomic Energy Agency and other intergovernmental organizations attending the Conference shall enjoy the same privileges and immunities as are accorded to officials of the United Nations of a comparable rank.

3. The representatives of the organizations referred to in Section I, 1 (*c*), and the observers designated by the National Liberation Movements referred to in Section I, 1 (*d*), and observers of non-governmental organizations referred to in Section I, 1 (*h*), shall enjoy immunity from legal process in respect of words spoken or written and any action performed by them in their official capacity in connexion with the Conference.

4. The personnel provided by the Government under Section V above, with the exception of those assigned to hourly rates, shall enjoy immunity from legal process in respect of words spoken or written and any action performed by them in their official capacity in connexion with the Conference.

5. Without prejudice to the preceding paragraphs of this section, all persons performing functions in connexion with the Conference and all those invited to the Conference shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connexion with the Conference.

6. All persons referred to in Section I shall have the right of entry into and exit from the Philippines, and the Government shall ensure that no impediment is imposed on their transit to and from the conference premises. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and not later than two weeks before the date of the opening of the Conference when the applications are made at least two and a half weeks before the opening of the Conference. If the application for the visa is not

[24] Came into force on the date of signature.

made at least two and a half weeks before the opening of the Conference, the visa shall be granted not later than three days from the receipt of the application. Arrangements will also be made to ensure that visas for the duration of the Conference are delivered at the airport of arrival to participants who were unable to obtain them prior to their arrival. Exit or travel permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Conference.

7. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the Conference premises shall be deemed to constitute premises of the United Nations in the sense of Section 3 of the Convention and access thereto shall be subject to the authority and control of the United Nations. The premises shall be inviolable for the duration of the Conference including the preparatory stage and the winding-up.

8. All persons referred to in Section I shall have the right to take out of the Philippines at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into the Philippines in connexion with the Conference at the United Nations official rate of exchange prevailing when the funds were brought in.

9. The Government shall allow the temporary importation, tax- and duty-free, of all equipment, including technical equipment accompanying representatives of information media, and shall waive import duties and taxes on supplies necessary for the Conference. It shall issue without delay any necessary import and export permits for this purpose.

SECTION XV. LIABILITY FOR INJURY, PROPERTY LOSS OR DAMAGE

1. The Government shall be responsible for dealing with any actions, claims or other demands against the United Nations arising out of:

(*a*) Injury or damage to person or property in the premises referred to in Section II above;

(*b*) Injury or damage to person or property caused by, or incurred in using, the transport services referred to in Section VI, paragraph 2 above;

(*c*) The employment for the Conference of the personnel provided by the Government to perform functions in connexion with the Conference.

2. The Government shall indemnify and hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands. The United Nations shall co-operate with the Government to enable it to discharge its responsibilities under this Section

(*t*) Agreement between the United Nations and Brazil concerning arrangements for the United Nations Regional Seminar on the Use of Satellite Technology for Disaster Application, to be held at Sao Jose dos Campos, Brazil, from 2 to 13 October 1978.[25] Signed at New York on 27 September 1978

This agreement contains provisions similar to Articles V and VI of an agreement between the United Nations and Pakistan reproduced on page 47 of the *Juridical Yearbook* 1976.

(*u*) Memorandum of Understanding between the United Nations and Jordan concerning the arrangement for the fifth session of the United Nations Economic Commission for Western Asia, to be held in Amman from 2 to 6 October 1978.[26] Signed at Amman on 2 October 1978

This agreement contains an article similar to Article VII of an agreement between the United Nations and Qatar reproduced on pages 34 and 35 of the *Juridical Yearbook*, 976.

(*v*) Agreement between the United Nations and Austria to continue the European Centre for Social Welfare Training and Research.[27] Signed at New Yorl on 7 December 1978

[25] Came into force on the date of signature.
[26] Came into force on the date of signature.
[27] Came into force on the date of signature.

Article II

LEGAL STATUS OF THE CENTRE

1. The host Government shall take the necessary steps to ensure the Centre's status as an autonomous non-profitmaking entity having legal personality under Austrian law. The statutes of the Centre should be in accordance with the provisions of this Agreement, in particular the provisions relating to the purposes, functions and organization of the Centre.

2. As the statutes of the Centre have been communicated to the United Nations in accordance with Article II of the Agreement for the Establishment of the Centre, signed on 24 July 1974,[28] any proposed changes of the statutes shall be communicated to the United Nations before they may take effect.

Article VIII

ACCESS TO THE CENTRE

1. Subject to the normally applicable restrictions under Austrian law, the host Government shall grant such visas and permits as may be necessary in order to ensure adequate conditions of work and stay and access to the Centre to all foreign members of the staff of the Centre and all persons officially invited to the Centre or the meetings held there.

. . .

(*w*) Agreement between the United Nations and the Philippines concerning the arrangement for the thirty-fifth session of the Economic and Social Commission for Asia and the Pacific, to be held in Manila, Philippines, from 5 to 16 March 1979.[29] Signed at Bangkok on 8 December 1978

Article VII

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, to which the Government became a party on 24 October 1945, shall be fully applicable with respect to the Conference.

2. Representatives of Members and Associate Members of the United Nations Economic and Social Commission for Asia and the Pacific and representatives or observers from other States Members of the United Nations shall enjoy privileges and immunities provided in Article IV of the Convention on the Privileges and Immunities of the United Nations. Observers of Members of the specialized agencies shall enjoy the privileges and immunities provided for representatives in Article V of the Convention on the Privileges and Immunities of the Specialized Agencies.

3. Officials of the United Nations and experts performing functions for the United Nations at the Conference shall enjoy the privileges and immunities set forth, respectively, in Articles V, VI and VII of the said Convention.

4. Representatives of the specialized agencies and of the International Atomic Energy Agency at the Conference shall enjoy the privileges and immunities provided respectively under Articles VI and VII of the Convention on the Privileges and Immunities of the Specialized Agencies and under Articles VI and IX of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency; representatives of other intergovernmental organizations invited to the Conference shall enjoy the same privileges and immunities as are accorded to officials of comparable rank of the specialized agencies.

[28] See *Juridical Yearbook*, 1974, p. 21.

[29] Came into force on the date of signature.

5. Without prejudice to the provisions of the preceding paragraphs, al participants and all persons performing functions in connexion with the Conference shall enjoy su :h privileges and immunities, facilities and courtesies, as are necessary for the independent exercis· of their functions in connexion with the Conference.

6. All persons referred to in this article and all persons performing fu ıctions in connexion with the Conference who are not nationals of the Philippines shall have the ri ght of entry into and exit from the Philippines. They shall be granted facilities for speedy travel. Vis ıs and entry permits, where required, shall be granted free of charge, as speedily as possible and not later than two weeks before the date of the opening of the Conference when applications are made a : least two and a half weeks before the opening of the Conference. If the application for the visa is ı ot made at least two and a half weeks before the opening of the Conference, the visa shall be grante d not later than three days from the receipt of the application. Arrangements will also be made to en: ure that visas for the duration of the Conference are delivered at the airport to participants who w ere unable to obtain them prior to their arrival. Exit permits, where required, shall be granted f ee of charge and as speedily as possible, in any case not later than three days before the closing of the Conference.

Article VIII

LIABILITY FOR CLAIMS

The Government shall be responsible for dealing with any actions, clai ıs or other demands arising out of:

(*a*) injury to person or damage to or loss of property in the premises re ferred to in Article II above;

(*b*) injury to person, or damage to or loss of property caused by, or ir curred in using, the transportation referred to in Article IV above;

(*c*) the employment of the personnel referred to in Article VI above;

and the Government shall hold the United Nations and its personnel harmless i ı respect of any such actions, claims or other demands.

Article IX

IMPORT DUTIES AND TAX

The Government shall allow the temporary importation and waive impor duties and taxes for all equipment and supplies necessary for the Conference. It shall issue withou delay to the United Nations any necessary import and export permits.

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3. AGREEMENTS RELATING TO THE UNITED NATIONS DEVELOPMENT PROGRAMME: STANDARD BASIC AGREEMENT CONCI RNING ASSISTANCE BY THE UNITED NATIONS DEVELOPMENT PROGI AMME[30]

Article III

EXECUTION OF PROJECTS

. . .

5. . . . [See *Juridical Yearbook*, 1973, p. 24]

. . .

[30] Document UNDP/ADM/LEG/34 of 6 March 1973. The standard basic agree ment, prepared by the Bureau of Administration and Finance in consultation with the Executing Agencies of UNDP, represent a consolidation of the standard Special Fund, Technical Assistance, Operational Assistance ar d Office Agreements of the UNDP, which it is designed to replace.

Article IX

PRIVILEGES AND IMMUNITIES

[See *Juridical Yearbook*, 1973, p. 25]

Article X

FACILITIES FOR EXECUTION OF UNDP ASSISTANCE

[See *Juridical Yearbook*, 1973, pp. 25 and 26]

Article XI

GENERAL PROVISIONS

. . .

4. . . . [See *Juridical Yearbook*, 1973, p. 26]

. . .

Agreements between the United Nations (United Nations Development Programme) and the Governments of Maldives,[31] Viet Nam,[32] Nicaragua,[33] Greece,[34] the United Republic of Tanzania,[35] Bhutan,[36] Bahrain[37] and the Sudan[38] concerning assistance by the United Nations Development Programme. Signed, respectively, at Malé on 25 January 1978, at New York on 21 March 1978, at Managua on 4 May 1978, at Athens on 12 May 1978, at Dar es Salaam on 30 May 1978, at New Delhi on 10 July 1978, at Manema on 3 August 1978 and at Khartoum on 24 October 1978

These agreements contain provisions similar to Articles II, 5, IX, X and XIII of the standard basic agreement.

4. AGREEMENTS CONCERNING ASSISTANCE FROM THE WORLD FOOD PROGRAMME

Basic agreement between the United Nations and the Food and Agriculture Organization of the United Nations on behalf of the World Food Programme (WFP) and the Government of Sao Tomé and Principe concerning assistance from the World Food Programme.[39] Signed at Sao Tomé on 28 October 1977 and at Libreville on 4 November 1977

Article V

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Government shall afford to officials and consultants of the World Food Programme and to other persons performing services on behalf of the Programme such facilities as are afforded to those of the United Nations and specialized agencies.

[31] Came into force on the date of signature.
[32] Came into force on the date of signature.
[33] Came into force on the date of signature.
[34] Applied provisionally from 12 May 1979.
[35] Came into force on the date of signature.
[36] Came into force on the date of signature.
[37] Applied provisionally from 3 August 1978.
[38] Applied provisionally from 24 October 1978.
[39] Came into force on 4 November 1977.

2. The Government shall apply the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies to the World Food Programme, its property, funds and assets and to its officials and consultants.

3. The Government shall be responsible for dealing with any claims which may be brought by third parties against the World Food Programme or against its officials or consultants or other persons performing services on behalf of the World Food Programme under this Agreement and shall hold the World Food Programme and the above-mentioned persons harmless in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Government and the World Food Programme that such claims or liabilities arise from the gross negligence or wilful misconduct of such persons.

B. Treaty provisions concerning the legal status of intergovernmental organizations related to the United Nations

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES.[40] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

In 1978, no additional State acceded to the Convention or undertook by notification to apply the provisions of the Convention in respect of specific specialized agencies.[41]

As of 31 December 1978, 87 States were parties to the Convention.

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2. INTERNATIONAL LABOUR ORGANISATION

(*a*) Agreement between the International Labour Organisation and Belgium on the Establishment of the Office of the Organisation in Belgium.[42] Signed at Brussels on 4 November 1976

Article 1

1. The Director of the Office of the International Labour Organisation shall enjoy the benefits accorded to the members of the diplomatic staff of diplomatic missions. The spouse of the Director of the Office and his (or her) minor children living with him (or her) shall enjoy the benefits accorded to the spouse and minor children of members of the diplomatic staff.

2. Without prejudice to Article VI, Section 19 of the Convention, the provisions of paragraph 1 of this Article are not applicable to Belgian nationals.

Article 2

The Belgian Government shall facilitate the entry into and stay in Belgium of persons invited to the Office of the International Labour Organisation on official business, and their departure from the country.

Article 3

The members of the staff of the International Labour Office covered by the Staff Regulations who are not engaged in any private gainful employment in Belgium other than that required by their

[40] United Nations, *Treaty Series*, vol. 33, p. 261.

[41] The Convention is in force with regard to each State which deposited an instrument of accession and in respect of specialized agencies indicated therein or in a subsequent notification as from the date of deposit of such instrument or receipt of such notification.

[42] Came into force on 26 September 1978.

functions shall be affiliated to the social security schemes of the Organisation in accordance with the rules and regulations of such schemes.

3. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) Agreement between the Food and Agriculture Organization of the United Nations and the Government of the Republic of El Salvador concerning the Establishment of the Office of the FAO Representative in El Salvador.[43] Signed in Rome on 30 November 1977

. . .

5. The Government agrees to apply to the Organization, to its officials, and to its property, funds and assets, *mutatis mutandis*, the provisions of the Convention on the Privileges and Immunities of the United Nations. The FAO Representative in El Salvador shall enjoy the treatment accorded under international law to the Heads of Diplomatic Missions. The Government also agrees to accord to FAO, to the FAO Representative and to the officials under his orders, privileges and immunities no less favourable than those accorded to any other international organization and its officials in El Salvador.

6. The Government shall take all necessary steps to facilitate the entry into, sojourn in and departure from El Salvador of all individuals visiting the Office of the FAO Representative on official business, and travel by the staff of the relevant institutions of El Salvador, when this is necessary in connexion with FAO activities.

(*b*) Agreements based on the standard "Memorandum of Responsibilities" in respect of FAO Sessions

Agreements concerning specific sessions held outside FAO Headquarters and containing provisions on privileges and immunities of FAO and participants similar to the standard text (published in the *Juridical Yearbook*, 1972, p. 32) were concluded in 1978 with the governments of the following countries acting as hosts to such sessions:

Argentina, Belgium, Colombia,[44] France,[44] Germany, Federal Republic of,[44] Ghana, India, Indonesia, Iraq, Italy,[44] Japan,[44] Libyan Arab Jamahiriya, Malaysia, Mexico,[44] Nepal, Panama, Peru, Philippines, Portugal, Spain, Sudan, Switzerland,[44] Syrian Arab Republic, Thailand, Tunisia, United Republic of Tanzania, Uruguay, Venezuela, Zambia.

(*c*) Agreements based on the standard "Memorandum of Responsibilities" in respect of group seminars, workshops, training courses or related study tours

Agreements concerning specific training courses, etc., and containing provisions on privileges and immunities of FAO and participants similar to the standard text (published in the *Juridical Yearbook*, 1972, p. 33) were concluded in 1978 with the governments of the following countries acting as hosts to such training activities:

Cuba, Egypt, Fiji, Finland, France,[44] Honduras, India,[44] Indonesia,[44] Kenya, Morocco, Philippines, Senegal, Sri Lanka,[44] Thailand, Uruguay, United Kingdom, United Republic of Tanzania, United States of America.[44]

[43] Came into force on 7 March 1978.

[44] Certain departures from, or amendments to, the standard text were introduced at the request of the Host Government.

4. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Agreements relating to conferences, seminars and other meetings

(*a*) Agreement between the Government of Indonesia and the United Nations Educational, Scientific and Cultural Organization concerning the Regional Meeting of National Committees for the International Hydrological Programme. Signed at Paris on 2 August 1978

III. *Privileges and immunities*

The Government of Indonesia shall apply, in all matters relating to the meeting, the Convention on the Privileges and Immunities of the Specialized Agencies and Annex IV thereto relating to UNESCO, to which it has been a party since 8 March 1972. In particular, it shall ensure that no restriction is imposed upon the right of entry into, sojourn in and departure from its territory of all persons entitled to participate in this meeting without distinction of nationality.

(*b*) Agreements containing provisions similar to that referred to in paragraph (*a*) above were also concluded between UNESCO and the Governments of Algeria, Argentina, Austria, Belgium, Costa Rica, Cuba, Dominica, Finland, Ghana, Greece, India, Italy, the Ivory Coast, Luxembourg, Mexico, Nepal, Niger, Norway, Pakistan, Peru, Senegal, Spain, Sweden, the Syrian Arab Republic, Tunisia, the Union of Soviet Socialist Republics, Uruguay, Venezuela and Yugoslavia.

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5. WORLD HEALTH ORGANIZATION

Basic agreement between the World Health Organization and Portugal on technical advisory co-operation. Signed on 12 June 1979

This agreement contains provisions similar to Article I, paragraph 6, and Article V of the Agreement between the World Health Organization and Guyana reproduced on p. 56 of the *Juridical Yearbook*, 1968.

Part Two

LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter III

GENERAL REVIEW OF THE LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. General review of the legal activities of the United Nations

1. DISARMAMENT AND RELATED MATTERS[1]

(a) Special session of the General Assembly devoted to disarmament

(1) *Preparatory work for the special session*

(i) Work of the Preparatory Committee[2]

Pursuant to General Assembly resolution 32/88 B, the Preparatory Committee held two substantive sessions, one from 24 January to 24 February, and the other from 4 to 21 April. The sessions were mostly concerned with the substantive issue of preparing the draft final document or documents on the basis of various papers submitted by delegations. The Committee examined those papers in an attempt to consolidate the areas of agreement and resolve the areas of disagreement and submitted to the special session a unified draft final document which contained a number of agreed formulations, as well as all unresolved issues.

(ii) Consideration by the CCD

Further to a recommendation of the Preparatory Committee, the CCD prepared a report[3] consisting of two volumes: volume I briefly presented the basic facts concerning the establishment, work and specific achievements of the CCD from 1962 to the present date and described the current state of questions under consideration and volume II provided additional details on more recent views of delegations on questions under consideration and relevant developments.

(2) *Special session of the General Assembly devoted to disarmament*

The tenth special session of the General Assembly, the first devoted to disarmament, opened on 23 May 1978 and concluded its work on 30 June. The open-ended *Ad Hoc* Committee which was established to prepare the Final Document submitted the report on its work[4] to the General Assembly at the 27th plenary meeting on 30 June. The report contained two recommendations: one, that the General Assembly should adopt the draft resolution embodying the draft final document, and the other, that it should refer to its thirty-third session the consideration of the draft resolution on military and nuclear collaboration with Israel. Both recommendations were adopted by consensus although Israel stated that if the latter recommendation had been put to the vote, it would have voted against it. Thus, the work of the special session was finally brought to a successful conclusion. Before the session was formally closed, a number of statements were made, many of them by States wishing to give explanations of their positions on those provisions of the Final Document which were not to their full satisfaction.

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[1] This summary has been prepared on the basis of *The United Nations Disarmament Yearbook*, vol. 3: 1978 (United Nations publication, Sales No. E.79.IX.3).

[2] For the origin of the idea and the work of the Preparatory Committee in 1977, see *Juridical Yearbook*, 1977, p. 43 and the *United Nations Disarmament Yearbook*, vol. 2: 1977, p. 7.

[3] *Official Records of the General Assembly, Tenth Special Session, Supplement No. 2*, vols. I and II (A/S-10/2), and *ibid., Supplement No. 2A* (A/S-10/2/Add.1/Rev.1).

[4] *Ibid., Annexes*, agenda items 9, 10, 11 and 12, document A/S-10/23.

The text of the Final Document of the special session is reproduced below.

FINAL DOCUMENT OF THE TENTH SPECIAL SESSION OF THE GENERAL ASSEMBLY

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I. INTRODUCTION

1. The attainment of the objective of security, which is an inseparable element of peace, has always been one of the most profound aspirations of humanity. States have for a long time sought to maintain their security through the possession of arms. Admittedly, their survival has, in certain cases, effectively depended on whether they could count on appropriate means of defence. Yet the accumulation of weapons, particularly nuclear weapons, today constitutes much more a threat than a protection for the future of mankind. The time has therefore come to put an end to this situation, to abandon the use of force in international relations and to seek security in disarmament, that is to say, through a gradual but effective process beginning with a reduction in the present level of armaments. The ending of the arms race and the achievement of real disarmament are tasks of primary importance and urgency. To meet this historic challenge is in the political and economic interests of all the nations and peoples of the world as well as in the interests of ensuring their genuine security and peaceful future.

2. Unless its avenues are closed, the continued arms race means a growing threat to international peace and security and even to the very survival of mankind. The nuclear and conventional arms build-up threatens to stall the efforts aimed at reaching the goals of development, to become an obstacle on the road of achieving the new international economic order and to hinder the solution of other vital problems facing mankind.

3. The dynamic development of détente, encompassing all spheres of international relations in all regions of the world, with the participation of all countries, would create conditions conducive to the efforts of States to end the arms race, which has engulfed the world, thus reducing the danger of war. Progress on détente and progress on disarmament mutually complement and strengthen each other.

4. The Disarmament Decade solemnly declared in 1969 by the United Nations is coming to an end. Unfortunately, the objectives established on that occasion by the General Assembly appear to be as far away today as they were then, or even further because the arms race is not diminishing but increasing and outstrips by far the efforts to curb it. While it is true that some limited agreements have been reached, "effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament" continue to elude man's grasp. Yet the implementation of such measures is urgently required. There has not been any real progress either that might lead to the conclusion of a treaty on general and complete disarmament under effective international control. Furthermore, it has not been possible to free any amount, however modest, of the enormous resources, both material and human, which are wasted on the unproductive and spiralling arms race and which should be made available for the purpose of economic and social development, especially since such a race "places a great burden on both the developing and the developed countries."

5. The Members of the United Nations are fully aware of the conviction of their peoples that the question of general and complete disarmament is of utmost importance and that peace, security and economic and social development are indivisible, and they have therefore recognized that the corresponding obligations and responsibilities are universal.

6. Thus a powerful current of opinion has gradually formed, leading to the convening of what will go down in the annals of the United Nations as the first special session of the General Assembly devoted entirely to disarmament.

7. The outcome of this special session, whose deliberations have to a large extent been facilitated by the five sessions of the Preparatory Committee which preceded it, is the present Final Document. This introduction serves as a preface to the document which comprises also the following three sections: a Declaration, a Programme of Action and recommendations concerning the international machinery for disarmament negotiations.

8. While the final objective of the efforts of all States should continue to be general and complete disarmament under effective international control, the immediate goal is that of the elimination of the danger of a

nuclear war and the implementation of measures to halt and reverse the arms race and clear the path towards lasting peace. Negotiations on the entire range of those issues should be based on the trict observance of the purposes and principles enshrined in the Charter of the United Nations, with full recog ition of the role of the United Nations in the field of disarmament and reflecting the vital interest of all the peo les of the world in this sphere. The aim of the Declaration is to review and assess the existing situation, outlin the objectives and the priority tasks and set forth fundamental principles for disarmament negotiations.

9. For disarmament—the aims and purposes of which the Declaration proclaims—to become a reality, it was essential to agree on a series of specific disarmament measures, selected by comm ion accord as those on which there is a consensus to the effect that their subsequent realization in the short term appears to be feasible. There is also a need to prepare through agreed procedures a comprehensive disarmamen programme. That programme, passing through all the necessary stages, should lead to general and complete di armament under effective international control. Procedures for watching over the fulfilment of the obligations th us assumed had also to be agreed upon. That is the purpose of the Programme of Action.

10. Although the decisive factor for achieving real measures of disarmament is he "political will" of States, especially of those possessing nuclear weapons, a significant role can also be layed by the effective functioning of an appropriate international machinery designed to deal with the problems of disarmament in its various aspects. Consequently, it would be necessary that the two kinds of organs requi ed to that end, the deliberative and the negotiating organs, have the appropriate organization and procedures t at would be most conducive to obtaining constructive results. The last section of the Final Document, section IV, has been prepared with that end in view.

II. Declaration

11. Mankind today is confronted with an unprecedented threat of self-extinction a ising from the massive and competitive accumulation of the most destructive weapons ever produced. Exist ng arsenals of nuclear weapons alone are more than sufficient to destroy all life on earth. Failure of efforts to h lt and reverse the arms race, in particular the nuclear arms race, increases the danger of the proliferation of nu clear weapons. Yet the arms race continues. Military budgets are constantly growing, with enormous consumpt on of human and material resources. The increase in weapons, especially nuclear weapons, far from helping to strengthen international security, on the contrary weakens it. The vast stockpiles and tremendous build-up of arm s and armed forces and the competition for qualitative refinement of weapons of all kinds, to which scientific re ources and technological advances are diverted, pose incalculable threats to peace. This situation both reflec s and aggravates international tensions, sharpens conflicts in various regions of the world, hinders the process of détente, exacerbates the differences between opposing military alliances, jeopardizes the security of all States, heightens the sense of insecurity among all States, including the non-nuclear-weapon States, and increases the threat of nuclear war.

12. The arms race, particularly in its nuclear aspect, runs counter to efforts to achi ve further relaxation of international tension, to establish international relations based on peaceful coexistenc and trust between all States, and to develop broad international co-operation and understanding. The arms race impedes the realization of the purposes, and is incompatible with the principles, of the Charter of the United Na ions, especially respect for sovereignty, refraining from the threat or use of force against the territorial integrity o political independence of any State, the peaceful settlement of disputes and non-intervention and non-interferen e in the internal affairs of States. It also adversely affects the right of peoples freely to determine their systems of social and economic development, and hinders the struggle for self-determination and the elimination of colonial rule, racial or foreign domination or occupation. Indeed, the massive accumulation of armaments and he acquisition of armaments technology by racist régimes, as well as their possible acquisition of nuclear weap ns, present a challenging and increasingly dangerous obstacle to a world community faced with the urgent nee l to disarm. It is, therefore, essential for purposes of disarmament to prevent any further acquisition of arms or a ms technology by such régimes, especially through strict adherence by all States to relevant decisions of the S curity Council.

13. Enduring international peace and security cannot be built on the accumulatio n of weaponry by military alliances nor be sustained by a precarious balance of deterrence or doctrines of strate ic superiority. Genuine and lasting peace can only be created through the effective implementation of the securit system provided for in the Charter of the United Nations and the speedy and substantial reduction of arms and armed forces, by international agreement and mutual example, leading ultimately to general and complete disar nament under effective international control. At the same time, the causes of the arms race and threats to peace must be reduced and to this end effective action should be taken to eliminate tensions and settle disputes by pe aceful means.

14. Since the process of disarmament affects the vital security interests of all States, they must all be actively concerned with and contribute to the measures of disarmament and arms limita ion, which have an essential part to play in maintaining and strengthening international security. Therefore the role and responsibility of the United Nations in the sphere of disarmament, in accordance with its Charter, m st be strengthened.

15. It is essential that not only Governments but also the peoples of the world recognize and understand the dangers in the present situation. In order that an international conscience may develop and that world public opinion may exercise a positive influence, the United Nations should increase the dissemination of information on the armaments race and disarmament with the full co-operation of Member States.

16. In a world of finite resources there is a close relationship between expenditure on armaments and economic and social development. Military expenditures are reaching ever higher levels, the highest percentage of which can be attributed to the nuclear-weapon States and most of their allies, with prospects of further expansion and the danger of further increases in the expenditures of other countries. The hundreds of billions of dollars spent annually on the manufacture or improvement of weapons are in sombre and dramatic contrast to the want and poverty in which two thirds of the world's population live. This colossal waste of resources is even more serious in that it diverts to military purposes not only material but also technical and human resources which are urgently needed for development in all countries, particularly in the developing countries. Thus, the economic and social consequences of the arms race are so detrimental that its continuation is obviously incompatible with the implementation of the new international economic order based on justice, equity and co-operation. Consequently, resources released as a result of the implementation of disarmament measures should be used in a manner which will help to promote the well-being of all peoples and to improve the economic conditions of the developing countries.

17. Disarmament has thus become an imperative and most urgent task facing the international community. No real progress has been made so far in the crucial field of reduction of armaments. However, certain positive changes in international relations in some areas of the world provide some encouragement. Agreements have been reached that have been important in limiting certain weapons or eliminating them altogether, as in the case of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and excluding particular areas from the arms race. The fact remains that these agreements relate only to measures of limited restraint while the arms race continues. These partial measures have done little to bring the world closer to the goal of general and complete disarmament. For more than a decade there have been no negotiations leading to a treaty on general and complete disarmament. The pressing need now is to translate into practical terms the provisions of this Final Document and to proceed along the road of binding and effective international agreements in the field of disarmament.

18. Removing the threat of a world war—a nuclear war—is the most acute and urgent task of the present day. Mankind is confronted with a choice; we must halt the arms race and proceed to disarmament or face annihilation.

19. The ultimate objective of the efforts of States in the disarmament process is general and complete disarmament under effective international control. The principal goals of disarmament are to ensure the survival of mankind and to eliminate the danger of war, in particular nuclear war, to ensure that war is no longer an instrument for settling international disputes and that the use and the threat of force are eliminated from international life, as provided for in the Charter of the United Nations. Progress towards this objective requires the conclusion and implementation of agreements on the cessation of the arms race and on genuine measures of disarmament, taking into account the need of States to protect their security.

20. Among such measures, effective measures of nuclear disarmament and the prevention of nuclear war have the highest priority. To this end, it is imperative to remove the threat of nuclear weapons, to halt and reverse the nuclear arms race until the total elimination of nuclear weapons and their delivery systems has been achieved, and to prevent the proliferation of nuclear weapons. At the same time, other measures designed to prevent the outbreak of nuclear war and to lessen the danger of the threat or use of nuclear weapons should be taken.

21. Along with these measures, agreements or other effective measures should be adopted to prohibit or prevent the development, production or use of other weapons of mass destruction. In this context, an agreement on elimination of all chemical weapons should be concluded as a matter of high priority.

22. Together with negotiations on nuclear disarmament measures, negotiations should be carried out on the balanced reduction of armed forces and of conventional armaments, based on the principle of undiminished security of the parties with a view to promoting or enhancing stability at a lower military level, taking into account the need of all States to protect their security. These negotiations should be conducted with particular emphasis on armed forces and conventional weapons of nuclear-weapon States and other militarily significant countries. There should also be negotiations on the limitation of international transfer of conventional weapons, based in particular on the same principle, and taking into account the inalienable right to self-determination and independence of peoples under colonial or foreign domination and the obligations of States to respect that right, in accordance with the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, as well as the need of recipient States to protect their security.

23. Further international action should be taken to prohibit or restrict for humanitarian reasons the use of specific conventional weapons, including those which may be excessively injurious, cause unnecessary suffering or have indiscriminate effects.

24. Collateral measures in both the nuclear and conventional fields, together with other measures specifically designed to build confidence, should be undertaken in order to contribute to the creation of favourable conditions for the adoption of additional disarmament measures and to further the relaxation of international tension.

25. Negotiations and measures in the field of disarmament shall be guided by the fundamental principles set forth below.

26. All States Members of the United Nations reaffirm their full commitment to the purposes of the Charter of the United Nations and their obligation strictly to observe its principles as well as other relevant and generally accepted principles of international law relating to the maintenance of international peace and security. They stress the special importance of refraining from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or against peoples under colonial or foreign domination seeking to exercise their right to self-determination and to achieve independence; non-intervention and non-interference in the internal affairs of other States; the inviolability of international frontiers; and the peaceful settlement of disputes, having regard to the inherent right of States to individual and collective self-defence in accordance with the Charter.

27. In accordance with the Charter, the United Nations has a central role and primary responsibility in the sphere of disarmament. In order effectively to discharge this role and facilitate and encourage all measures in this field, the United Nations should be kept appropriately informed of all steps in this field, whether unilateral, bilateral, regional or multilateral, without prejudice to the progress of negotiations.

28. All the peoples of the world have a vital interest in the success of disarmament negotiations. Consequently, all States have the duty to contribute to efforts in the field of disarmament. All States have the right to participate in disarmament negotiations. They have the right to participate on an equal footing in those multilateral disarmament negotiations which have a direct bearing on their national security. While disarmament is the responsibility of all States, the nuclear-weapon States have the primary responsibility for nuclear disarmament and, together with other militarily significant States, for halting and reversing the arms race. It is therefore important to secure their active participation.

29. The adoption of disarmament measures should take place in such an equitable and balanced manner as to ensure the right of each State to security and to ensure that no individual State or group of States may obtain advantages over others at any stage. At each stage the objective should be undiminished security at the lowest possible level of armaments and military forces.

30. An acceptable balance of mutual responsibilities and obligations for nuclear and non-nuclear-weapon States should be strictly observed.

31. Disarmament and arms limitation agreements should provide for adequate measures of verification satisfactory to all parties concerned in order to create the necessary confidence and ensure that they are being observed by all parties. The form and modalities of the verification to be provided for in any specific agreement depend upon and should be determined by the purposes, scope and nature of the agreement. Agreements should provide for the participation of parties directly or through the United Nations system in the verification process. Where appropriate, a combination of several methods of verification as well as other compliance procedures should be employed.

32. All States, in particular nuclear-weapon States, should consider various proposals designed to secure the avoidance of the use of nuclear weapons, and the prevention of nuclear war. In this context, while noting the declarations made by nuclear-weapon States, effective arrangements, as appropriate, to assure non-nuclear-weapon States against the use or the threat of use of nuclear weapons could strengthen the security of those States and international peace and security.

33. The establishment of nuclear-weapon-free zones on the basis of agreements or arrangements freely arrived at among the States of the zone concerned and the full compliance with those agreements or arrangements, thus ensuring that the zones are genuinely free from nuclear weapons, and respect for such zones by nuclear-weapon States constitute an important disarmament measure.

34. Disarmament, relaxation of international tension, respect for the right to self-determination and national independence, the peaceful settlement of disputes in accordance with the Charter of the United Nations and the strengthening of international peace and security are directly related to each other. Progress in any of these spheres has a beneficial effect on all of them; in turn, failure in one sphere has negative effects on others.

35. There is also a close relationship between disarmament and development. Progress in the former would help greatly in the realization of the latter. Therefore resources released as a result of the implementation

of disarmament measures should be devoted to the economic and social development of all nations and contribute to the bridging of the economic gap between developed and developing countries.

36. Non-proliferation of nuclear weapons is a matter of universal concern. Measures of disarmament must be consistent with the inalienable right of all States, without discrimination, to develop, acquire and use nuclear technology, equipment and materials for the peaceful use of nuclear energy and to determine their peaceful nuclear programmes in accordance with their national priorities, needs and interests, bearing in mind the need to prevent the proliferation of nuclear weapons. International co-operation in the peaceful uses of nuclear energy should be conducted under agreed and appropriate international safeguards applied on a non-discriminatory basis.

37. Significant progress in disarmament, including nuclear disarmament, would be facilitated by parallel measures to strengthen the security of States and to improve the international situation in general.

38. Negotiations on partial measures of disarmament should be conducted concurrently with negotiations on more comprehensive measures and should be followed by negotiations leading to a treaty on general and complete disarmament under effective international control.

39. Qualitative and quantitative disarmament measures are both important for halting the arms race. Efforts to that end must include negotiations on the limitation and cessation of the qualitative improvement of armaments, especially weapons of mass destruction, and the development of new means of warfare so that ultimately scientific and technological achievements may be used solely for peaceful purposes.

40. Universality of disarmament agreements helps create confidence among States. When multilateral agreements in the field of disarmament are negotiated, every effort should be made to ensure that they are universally acceptable. The full compliance of all parties with the provisions contained in such agreements would also contribute to the attainment of that goal.

41. In order to create favourable conditions for success in the disarmament process, all States should strictly abide by the provisions of the Charter of the United Nations, refrain from actions which might adversely affect efforts in the field of disarmament, and display a constructive approach to negotiations and the political will to reach agreements. There are certain negotiations on disarmament under way at different levels, the early and successful completion of which could contribute to limiting the arms race. Unilateral measures of arms limitation or reduction could also contribute to the attainment of that goal.

42. Since prompt measures should be taken in order to halt and reverse the arms race, Member States hereby declare that they will respect the objectives and principles stated above and make every effort faithfully to carry out the Programme of Action set forth in section III below.

III. Programme of Action

43. Progress towards the goal of general and complete disarmament can be achieved through the implementation of a programme of action on disarmament, in accordance with the goals and principles established in the Declaration on disarmament. The present Programme of Action contains priorities and measures in the field of disarmament that States should undertake as a matter of urgency with a view to halting and reversing the arms race and to giving the necessary impetus to efforts designed to achieve genuine disarmament leading to general and complete disarmament under effective international control.

44. The present Programme of Action enumerates the specific measures of disarmament which should be implemented over the next few years, as well as other measures and studies to prepare the way for future negotiations and for progress towards general and complete disarmament.

45. Priorities in disarmament negotiations shall be: nuclear weapons; other weapons of mass destruction, including chemical weapons; conventional weapons, including any which may be deemed to be excessively injurious or to have indiscriminate effects; and reduction of armed forces.

46. Nothing should preclude States from conducting negotiations on all priority items concurrently.

47. Nuclear weapons pose the greatest danger to mankind and to the survival of civilization. It is essential to halt and reverse the nuclear arms race in all its aspects in order to avert the danger of war involving nuclear weapons. The ultimate goal in this context is the complete elimination of nuclear weapons.

48. In the task of achieving the goals of nuclear disarmament, all the nuclear-weapon States, in particular those among them which possess the most important nuclear arsenals, bear a special responsibility.

49. The process of nuclear disarmament should be carried out in such a way, and requires measures to ensure, that the security of all States is guaranteed at progressively lower levels of nuclear armaments, taking into account the relative qualitative and quantitative importance of the existing arsenals of the nuclear-weapon States and other States concerned.

50. The achievement of nuclear disarmament will require urgent negotiation of agreements at appropriate stages and with adequate measures of verification satisfactory to the States concerned for:

(*a*) Cessation of the qualitative improvement and development of nuclear-weapon systems;

(*b*) Cessation of the production of all types of nuclear weapons and their means of delivery, and of the production of fissionable material for weapons purposes;

(*c*) A comprehensive, phased programme with agreed time-frames, whenever feasible, for progressive and balanced reduction of stockpiles of nuclear weapons and their means of delivery, leading to their ultimate and complete elimination at the earliest possible time.

Consideration can be given in the course of the negotiations to mutual and agreed limitation or prohibition, without prejudice to the security of any State, of any types of nuclear armaments.

51. The cessation of nuclear-weapon testing by all States within the framework of an effective nuclear disarmament process would be in the interest of mankind. It would make a significant contribution to the above aim of ending the qualitative improvement of nuclear weapons and the development of new types of such weapons and of preventing the proliferation of nuclear weapons. In this context the negotiations now in progress on "a treaty prohibiting nuclear-weapon tests, and a protocol covering nuclear explosions for peaceful purposes, which would be an integral part of the treaty," should be concluded urgently and the result submitted for full consideration by the multilateral negotiating body with a view to the submission of a draft treaty to the General Assembly at the earliest possible date. All efforts should be made by the negotiating parties to achieve an agreement which, following endorsement by the General Assembly, could attract the widest possible adherence. In this context, various views were expressed by non-nuclear-weapon States that, pending the conclusion of this treaty, the world community would be encouraged if all the nuclear-weapon States refrained from testing nuclear weapons. In this connexion, some nuclear-weapon States expressed different views.

52. The Union of Soviet Socialist Republics and the United States of America should conclude at the earliest possible date the agreement they have been pursuing for several years in the second series of the strategic arms limitation talks. They are invited to transmit in good time the text of the agreement to the General Assembly. It should be followed promptly by further strategic arms limitation negotiations between the two parties, leading to agreed significant reductions of, and qualitative limitations on, strategic arms. It should constitute an important step in the direction of nuclear disarmament and, ultimately, of establishment of a world free of such weapons.

53. The process of nuclear disarmament described in the paragraph on this subject should be expedited by the urgent and vigorous pursuit to a successful conclusion of ongoing negotiations and the urgent initiation of further negotiations among the nuclear-weapon States.

54. Significant progress in nuclear disarmament would be facilitated both by parallel political or international legal measures to strengthen the security of States and by progress in the limitation and reduction of armed forces and conventional armaments of the nuclear-weapon States and other States in the regions concerned.

55. Real progress in the field of nuclear disarmament could create an atmosphere conducive to progress in conventional disarmament on a world-wide basis.

56. The most effective guarantee against the danger of nuclear war and the use of nuclear weapons is nuclear disarmament and the complete elimination of nuclear weapons.

57. Pending the achievement of this goal, for which negotiations should be vigorously pursued, and bearing in mind the devastating results which nuclear war would have on belligerents and non-belligerents alike, the nuclear-weapon States have special responsibilities to undertake measures aimed at preventing the outbreak of nuclear war, and of the use of force in international relations, subject to the provisions of the Charter of the United Nations, including the use of nuclear weapons.

58. In this context all States, in particular nuclear-weapon States, should consider as soon as possible various proposals designed to secure the avoidance of the use of nuclear weapons, the prevention of nuclear war and related objectives, where possible through international agreement, and thereby ensure that the survival of mankind is not endangered. All States should actively participate in efforts to bring about conditions in international relations among States in which a code of peaceful conduct of nations in international affairs could be agreed and which would preclude the use or threat of use of nuclear weapons.

59. In the same context, the nuclear-weapon States are called upon to take steps to assure the non-nuclear-weapon States against the use or threat of use of nuclear weapons. The General Assembly notes the declarations made by the nuclear-weapon States and urges them to pursue efforts to conclude, as appropriate, effective arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons.

60. The establishment of nuclear-weapon-free zones on the basis of arrangements freely arrived at among the States of the region concerned constitutes an important disarmament measure.

61. The process of establishing such zones in different parts of the world should be encouraged with the ultimate objective of achieving a world entirely free of nuclear weapons. In the process of establishing such zones, the characteristics of each region should be taken into account. The States participating in such zones

should undertake to comply fully with all the objectives, purposes and principles of the agreements or arrangements establishing the zones, thus ensuring that they are genuinely free from nuclear weapons.

62. With respect to such zones, the nuclear-weapon States in turn are called upon to give undertakings, the modalities of which are to be negotiated with the competent authority of each zone, in particular:

(*a*) To respect strictly the status of the nuclear-weapon-free zone;

(*b*) To refrain from the use or threat of use of nuclear weapons against the States of the zone.

63. In the light of existing conditions, and without prejudice to other measures which may be considered in other regions, the following measures are especially desirable:

(*a*) Adoption by the States concerned of all relevant measures to ensure the full application of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco), taking into account the views expressed at the tenth special session on the adherence to it;

(*b*) Signature and ratification of the Additional Protocols of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) by the States entitled to become parties to those instruments which have not yet done so;

(*c*) In Africa, where the Organization of African Unity has affirmed a decision for the denuclearization of the region, the Security Council of the United Nations shall take appropriate effective steps whenever necessary to prevent the frustration of this objective.

(*d*) The serious consideration of the practical and urgent steps, as described in the paragraphs above, required for the implementation of the proposal to establish a nuclear-weapon-free zone in the Middle East, in accordance with the relevant General Assembly resolutions, where all parties directly concerned have expressed their support for the concept and where the danger of nuclear-weapon proliferation exists. The establishment of a nuclear-weapon-free zone in the Middle East would greatly enhance international peace and security. Pending the establishment of such a zone in the region, States of the region should solemnly declare that they will refrain on a reciprocal basis from producing, acquiring or in any other way possessing nuclear weapons and nuclear explosive devices and from permitting the stationing of nuclear weapons on their territory by any third party, and agree to place all their nuclear activities under International Atomic Energy Agency safeguards. Consideration should be given to a Security Council role in advancing the establishment of a nuclear-weapon-free zone in the Middle East:

(*e*) All States in the region of South Asia have expressed their determination to keep their countries free of nuclear weapons. No action should be taken by them which might deviate from the objective. In this context the question of establishing a nuclear-weapon-free zone in South Asia has been dealt with in several resolutions of the General Assembly, which is keeping the subject under consideration.

64. The establishment of zones of peace in various regions of the world under appropriate conditions, to be clearly defined and determined freely by the States concerned in the zone, taking into account the characteristics of the zone and the principles of the Charter of the United Nations, and in conformity with international law, can contribute to strengthening the security of States within such zones and to international peace and security as a whole. In this regard, the General Assembly notes the proposals for the establishment of zones of peace, *inter alia*, in:

(*a*) South-East Asia where States in the region have expressed interest in the establishment of such a zone, in conformity with their views;

(*b*) The Indian Ocean, taking into account the deliberations of the General Assembly and its relevant resolutions and the need to ensure the maintenance of peace and security in the region.

65. It is imperative, as an integral part of the effort to halt and reverse the arms race, to prevent the proliferation of nuclear weapons. The goal of nuclear non-proliferation is on the one hand to prevent the emergence of any additional nuclear-weapon States besides the existing five nuclear-weapon States, and on the other progressively to reduce and eventually eliminate nuclear weapons altogether. This involves obligations and responsibilities on the part of both nuclear-weapon States and non-nuclear-weapon States, the former undertaking to stop the nuclear arms race and to achieve nuclear disarmament by urgent application of the measures outlined in the relevant paragraphs of this Final Document, and all States undertaking to prevent the spread of nuclear weapons.

66. Effective measures can and should be taken at the national level and through international agreements to minimize the danger of the proliferation of nuclear weapons without jeopardizing energy supplies or the development of nuclear energy for peaceful purposes. Therefore, the nuclear-weapon States and the non-nuclear-weapon States should jointly take further steps to develop an international consensus of ways and means, on a universal and non-discriminatory basis, to prevent the proliferation of nuclear weapons.

67. Full implementation of all the provisions of existing instruments on non-proliferation, such as the Treaty on the Non-Proliferation of Nuclear Weapons and/or the Treaty for the Prohibition of Nuclear Weapons in

Latin America (Treaty of Tlatelolco) by States parties to those instruments will be an important contribution to this end. Adherence to such instruments has increased in recent years and the hope has been expressed by the parties that this trend might continue.

68. Non-proliferation measures should not jeopardize the full exercise of the inalienable rights of all States to apply and develop their programmes for the peaceful uses of nuclear energy for economic and social development in conformity with their priorities, interests and needs. All States should also have access to and be free to acquire technology, equipment and materials for peaceful uses of nuclear energy, taking into account the particular needs of the developing countries. International co-operation in this field should be under agreed and appropriate international safeguards applied through the International Atomic Energy Agency on a non-discriminatory basis in order to prevent effectively the proliferation of nuclear weapons.

69. Each country's choices and decisions in the field of the peaceful uses of nuclear energy should be respected without jeopardizing their respective fuel cycle policies or international co-operation, agreements and contracts for the peaceful uses of nuclear energy, provided that the agreed safeguard measures mentioned above are applied.

70. In accordance with the principles and provisions of General Assembly resolution 32/50 of 8 December 1977, international co-operation for the promotion of the transfer and utilization of nuclear technology for economic and social development, especially in the developing countries, should be strengthened.

71. Efforts should be made to conclude the work of the International Nuclear Fuel Cycle Evaluation strictly in accordance with the objectives set out in the final communiqué of its Organizing Conference.

72. All States should adhere to the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925.

73. All States which have not yet done so should consider adhering to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.

74. States should also consider the possibility of adhering to multilateral agreements concluded so far in the disarmament field which are mentioned below in this section.

75. The complete and effective prohibition of the development, production and stockpiling of all chemical weapons and their destruction represents one of the most urgent measures of disarmament. Consequently, the conclusion of a convention to this end, on which negotiations have been going on for several years, is one of the most urgent tasks of multilateral negotiations. After its conclusion, all States should contribute to ensuring the broadest possible application of the convention through its early signature and ratification

76. A convention should be concluded prohibiting the development, production, stockpiling and use of radiological weapons.

77. In order to help prevent a qualitative arms race and so that scientific and technological achievements may ultimately be used solely for peaceful purposes, effective measures should be taken to avoid the danger and prevent the emergence of new types of weapons of mass destruction based on new scientific principles and achievements. Efforts should be appropriately pursued aiming at the prohibition of such new types and new systems of weapons of mass destruction. Specific agreements could be concluded on particular types of new weapons of mass destruction which may be identified. This question should be kept under continuing review.

78. The Committee on Disarmament should keep under review the need for a further prohibition of military or any other hostile use of environmental modification techniques in order to eliminate the dangers to mankind from such use.

79. In order to promote the peaceful use of and to avoid an arms race on the sea-bed and the ocean floor and the subsoil thereof, the Committee on Disarmament is requested—in consultation with the States parties to the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, and taking into account the proposals made during the 1977 Review Conference of the parties to that Treaty and any relevant technological developments—to proceed promptly with the consideration of further measures in the field of disarmament for the prevention of an arms race in that environment.

80. In order to prevent an arms race in outer space, further measures should be taken in appropriate international negotiations held in accordance with the spirit of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

81. Together with negotiations on nuclear disarmament measures, the limitation and gradual reduction of armed forces and conventional weapons should be resolutely pursued within the framework of progress towards general and complete disarmament. States with the largest military arsenals have a special responsibility in pursuing the process of conventional armaments reductions.

82. In particular the achievement of a more stable situation in Europe at a lower level of military potential

on the basis of approximate equality and parity, as well as on the basis of undiminished security of all States with full respect for security interests and independence of States outside military alliances, by agreement on appropriate mutual reductions and limitations would contribute to the strengthening of security in Europe and constitute a significant step towards enhancing international peace and security. Current efforts to this end should be continued most energetically.

83. Agreements or other measures should be resolutely pursued on a bilateral, regional and multilateral basis with the aim of strengthening peace and security at a lower level of forces, by the limitation and reduction of armed forces and of conventional weapons, taking into account the need of States to protect their security, bearing in mind the inherent right of self-defence embodied in the Charter of the United Nations and without prejudice to the principle of equal rights and self-determination of peoples in accordance with the Charter, and the need to ensure balance at each stage and undiminished security of all States. Such measures might include those in the following two paragraphs.

84. Bilateral, regional and multilateral consultations and conferences should be held where appropriate conditions exist with the participation of all the countries concerned for the consideration of different aspects of conventional disarmament, such as the initiative envisaged in the Declaration of Ayacucho subscribed to by eight Latin American countries on 9 December 1974.

85. Consultations should be carried out among major arms supplier and recipient countries on the limitation of all types of international transfer of conventional weapons, based in particular on the principle of undiminished security of the parties with a view to promoting or enhancing stability at a lower military level, taking into account the need of all States to protect their security as well as the inalienable right to self-determination and independence of peoples under colonial or foreign domination and the obligations of States to respect that right, in accordance with the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.

86. The United Nations Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, to be held in 1979, should seek agreement, in the light of humanitarian and military considerations, on the prohibition or restriction of use of certain conventional weapons including those which may cause unnecessary suffering or have indiscriminate effects. The Conference should consider specific categories of such weapons, including those which were the subject-matter of previously conducted discussions.

87. All States are called upon to contribute towards carrying out this task.

88. The result of the Conference should be considered by all States, especially producer States, in regard to the question of the transfer of such weapons to other States.

89. Gradual reduction of military budgets on a mutually agreed basis, for example, in absolute figures or in terms of percentage points, particularly by nuclear-weapon States and other militarily significant States, would be a measure that would contribute to the curbing of the arms race and would increase the possibilities of reallocation of resources now being used for military purposes to economic and social development, particularly for the benefit of the developing countries. The basis for implementing this measure will have to be agreed by all participating States and will require ways and means of its implementation acceptable to all of them, taking account of the problems involved in assessing the relative significance of reductions as among different States and with due regard to the proposals of States on all the aspects of reduction of military budgets.

90. The General Assembly should continue to consider what concrete steps should be taken to facilitate the reduction of military budgets, bearing in mind the relevant proposals and documents of the United Nations on this question.

91. In order to facilitate the conclusion and effective implementation of disarmament agreements and to create confidence, States should accept appropriate provisions for verification in such agreements.

92. In the context of international disarmament negotiations, the problem of verification should be further examined and adequate methods and procedures in this field be considered. Every effort should be made to develop appropriate methods and procedures which are non-discriminatory and which do not unduly interfere with the internal affairs of other States or jeopardize their economic and social development.

93. In order to facilitate the process of disarmament, it is necessary to take measures and pursue policies to strengthen international peace and security and to build confidence among States. Commitment to confidence-building measures could significantly contribute to preparing for further progress in disarmament. For this purpose, measures such as the following, and other measures yet to be agreed upon, should be undertaken:

(*a*) The prevention of attacks which take place by accident, miscalculation or communications failure by taking steps to improve communications between Governments, particularly in areas of tension, by the establishment of "hot lines" and other methods of reducing the risk of conflict;

(*b*) States should assess the possible implications of their military research and development for existing agreements as well as for further efforts in the field of disarmament;

(*c*) The Secretary-General shall periodically submit reports to the General Assembly on the economic and social consequences of the armaments race and its extremely harmful effects on world peace and security.

94. In view of the relationship between expenditure on armaments and economic and social development and the necessity to release real resources now being used for military purposes to economic and social development in the world, particularly for the benefit of the developing countries, the Secretary-General should, with the assistance of a group of qualified governmental experts appointed by him, initiate an expert study on the relationship between disarmament and development. The Secretary-General should submit an interim report on the subject to the General Assembly at its thirty-fourth session and submit the final results to the Assembly at its thirty-sixth session for subsequent action.

95. The expert study should have the terms of reference contained in the report of the *Ad Hoc* Group on the Relationship between Disarmament and Development appointed by the Secretary-General in accordance with General Assembly resolution 32/88 A of 12 December 1977. It should investigate the three main areas listed in the report, bearing in mind the United Nations studies previously carried out. The study should be made in the context of how disarmament can contribute to the establishment of the new international economic order. The study should be forward-looking and policy-oriented and place special emphasis on both the desirability of a reallocation, following disarmament measures, of resources now being used for military purposes to economic and social development, particularly for the benefit of the developing countries, and the substantive feasibility of such a reallocation. A principal aim should be to produce results that could effectively guide the formulation of practical measures to reallocate those resources at the local, national, regional and international levels.

96. Taking further steps in the field of disarmament and other measures aimed at promoting international peace and security would be facilitated by carrying out studies by the Secretary-General in this field with appropriate assistance from governmental or consultant experts.

97. The Secretary-General shall, with the assistance of consultant experts appointed by him, continue the study of the interrelationship between disarmament and international security requested in Assembly resolution 32/87 C of 12 December 1977 and submit it to the thirty-fourth session of the General Assembly.

98. At its thirty-third and subsequent sessions the General Assembly should determine the specific guidelines for carrying out studies, taking into account the proposals already submitted including those made by individual countries at the special session, as well as other proposals which can be introduced later in this field. In doing so, the Assembly would take into consideration a report on these matters prepared by the Secretary-General.

99. In order to mobilize world public opinion on behalf of disarmament, the specific measures set forth below, designed to increase the dissemination of information about the armaments race and the efforts to halt and reverse it, should be adopted.

100. Governmental and non-governmental information organs and those of the United Nations and its specialized agencies should give priority to the preparation and distribution of printed and audio-visual material relating to the danger represented by the armaments race as well as to the disarmament efforts and negotiations on specific disarmament measures.

101. In particular, publicity should be given to the Final Document of the tenth special session.

102. The General Assembly proclaims the week starting 24 October, the day of the foundation of the United Nations, as a week devoted to fostering the objectives of disarmament.

103. To encourage study and research on disarmament, the United Nations Centre for Disarmament should intensify its activities in the presentation of information concerning the armaments race and disarmament. Also, the United Nations Educational, Scientific and Cultural Organization is urged to intensify its activities aimed at facilitating research and publications on disarmament, related to its fields of competence, especially in developing countries, and should disseminate the results of such research.

104. Throughout this process of disseminating information about developments in the disarmament field of all countries, there should be increased participation by non-governmental organizations concerned with the matter, through closer liaison between them and the United Nations.

105. Member States should be encouraged to ensure a better flow of information with regard to the various aspects of disarmament to avoid dissemination of false and tendentious information concerning armaments, and to concentrate on the danger of escalation of the armaments race and on the need for general and complete disarmament under effective international control.

106. With a view to contributing to a greater understanding and awareness of the problems created by the armaments race and of the need for disarmament, Governments and governmental and non-governmental inter-

national organizations are urged to take steps to develop programmes of education for disarmament and peace studies at all levels.

107. The General Assembly welcomes the initiative of the United Nations Educational, Scientific and Cultural Organization in planning to hold a world congress on disarmament education and, in this connexion, urges that organization to step up its programme aimed at the development of disarmament education as a distinct field of study through the preparation, *inter alia*, of teachers' guides, textbooks, readers and audio-visual materials. Member States should take all possible measures to encourage the incorporation of such materials in the curricula of their educational institutes.

108. In order to promote expertise in disarmament in more Member States, particularly in the developing countries, the General Assembly decides to establish a programme of fellowships on disarmament. The Secretary-General, taking into account the proposal submitted to the special session, should prepare guidelines for the programme. He should also submit the financial requirements of twenty fellowships to the General Assembly at its thirty-third session for inclusion in the regular budget of the United Nations, bearing in mind the savings that can be made within the existing budgetary appropriations.

109. Implementation of these priorities should lead to general and complete disarmament under effective international control, which remains the ultimate goal of all efforts exerted in the field of disarmament. Negotiations on general and complete disarmament shall be conducted concurrently with negotiations on partial measures of disarmament. With this purpose in mind, the Committee on Disarmament will undertake the elaboration of a comprehensive programme of disarmament encompassing all measures thought to be advisable in order to ensure that the goal of general and complete disarmament under effective international control becomes a reality in a world in which international peace and security prevail and in which the new international economic order is strengthened and consolidated. The comprehensive programme should contain appropriate procedures for ensuring that the General Assembly is kept fully informed of the progress of the negotiations including an appraisal of the situation when appropriate and, in particular, a continuing review of the implementation of the programme.

110. Progress in disarmament should be accompanied by measures to strengthen institutions for maintaining peace and the settlement of international disputes by peaceful means. During and after the implementation of the programme of general and complete disarmament, there should be taken, in accordance with the principles of the Charter of the United Nations, the necessary measures to maintain international peace and security, including the obligation of States to place at the disposal of the United Nations agreed manpower necessary for an international peace force to be equipped with agreed types of armaments. Arrangements for the use of this force should ensure that the United Nations can effectively deter or suppress any threat or use of arms in violation of the purposes and principles of the United Nations.

111. General and complete disarmament under strict and effective international control shall permit States to have at their disposal only those non-nuclear forces, armaments, facilities and establishments as are agreed to be necessary to maintain internal order and protect the personal security of citizens and in order that States shall support and provide agreed manpower for a United Nations peace force.

112. In addition to the several questions dealt with in this Programme of Action, there are a few others of fundamental importance, on which, because of the complexity of the issues involved and the short time at the disposal of the special session, it has proved impossible to reach satisfactory agreed conclusions. For those reasons they are treated only in very general terms and, in a few instances, not even treated at all in the Programme. It should be stressed, however, that a number of concrete approaches to deal with such questions emerged from the exchange of views carried out in the General Assembly which will undoubtedly facilitate the continuation of the study and negotiation of the problems involved in the competent disarmament organs.

IV. Machinery

113. While disarmament, particularly in the nuclear field, has become a necessity for the survival of mankind and for the elimination of the danger of nuclear war, little progress has been made since the end of the Second World War. In addition to the need to exercise political will, the international machinery should be utilized more effectively and also improved to enable implementation of the Programme of Action and help the United Nations to fulfil its role in the field of disarmament. In spite of the best efforts of the international community, adequate results have not been produced with the existing machinery. There is, therefore, an urgent need that existing disarmament machinery be revitalized and forums appropriately constituted for disarmament deliberations and negotiations with a better representative character. For maximum effectiveness, two kinds of bodies are required in the field of disarmament—deliberative and negotiating. All Member States should be represented on the former, whereas the latter, for the sake of convenience, should have a relatively small membership.

114. The United Nations, in accordance with the Charter, has a central role and primary responsibility in the sphere of disarmament. Accordingly, it should play a more active role in this field and, in order to discharge its functions effectively, the United Nations should facilitate and encourage all disarmament measures—

unilateral, bilateral, regional or multilateral—and be kept duly informed through the General Assembly, or any other appropriate United Nations channel reaching all Members of the Organization, of all disarmament efforts outside its aegis without prejudice to the progress of negotiations.

115. The General Assembly has been and should remain the main deliberative organ of the United Nations in the field of disarmament and should make every effort to facilitate the implementation of disarmament measures. An item entitled "Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session" shall be included in the provisional agenda of the thirty-third and subsequent sessions of the General Assembly.

116. Draft multilateral disarmament conventions should be subjected to the normal procedures applicable in the law of treaties. Those submitted to the General Assembly for its commendation should be subject to full review by the Assembly.

117. The First Committee of the General Assembly should deal in the future only with questions of disarmament and related international security questions.

118. The General Assembly establishes, as successor to the Commission originally established by resolution 502 (VI) of 11 January 1952, a Disarmament Commission, composed of all States Members of the United Nations, and decides that:

(*a*) The Disarmament Commission shall be a deliberative body, a subsidiary organ of the General Assembly, the function of which shall be to consider and make recommendations on various problems in the field of disarmament and to follow up the relevant decisions and recommendations of the special session devoted to disarmament. The Disarmament Commission should, *inter alia*, consider the elements of a comprehensive programme for disarmament to be submitted as recommendations to the General Assembly and, through it, to the negotiating body, the Committee on Disarmament;

(*b*) The Disarmament Commission shall function under the rules of procedure relating to the committees of the General Assembly with such modifications as the Commission may deem necessary and shall make every effort to ensure that, in so far as possible, decisions on substantive issues be adopted by consensus;

(*c*) The Disarmament Commission shall report annually to the General Assembly and will submit for consideration by the Assembly at its thirty-third session a report on organizational matters; in 1979, the Disarmament Commission will meet for a period not exceeding four weeks, the dates to be decided at the thirty-third session of the Assembly;

(*d*) The Secretary-General shall furnish such experts, staff and services as are necessary for the effective accomplishment of the Commission's functions.

119. A second special session of the General Assembly devoted to disarmament should be held on a date to be decided by the Assembly at its thirty-third session.

120. The General Assembly is conscious of the work that has been done by the international negotiating body that has been meeting since 14 March 1962 as well as the considerable and urgent work that remains to be accomplished in the field of disarmament. The Assembly is deeply aware of the continuing requirement for a single multilateral disarmament negotiating forum of limited size taking decisions on the basis of consensus. It attaches great importance to the participation of all the nuclear-weapon States in an appropriately constituted negotiating body, the Committee on Disarmament. The Assembly welcomes the agreement reached following appropriate consultations among the Member States during the special session of the General Assembly devoted to disarmament, that the Committee on Disarmament will be open to the nuclear-weapon States, and thirty-two to thirty-five other States to be chosen in consultation with the President of the thirty-second session of the Assembly; that the membership of the Committee on Disarmament will be reviewed at regular intervals; that the Committee on Disarmament will be convened in Geneva not later than January 1979 by the country whose name appears first in the alphabetical list of membership; and that the Committee on Disarmament will:

(*a*) Conduct its work by consensus;

(*b*) Adopt its own rules of procedure;

(*c*) Request the Secretary-General of the United Nations, following consultations with the Committee on Disarmament, to appoint the Secretary of the Committee, who shall also act as his personal representative, to assist the Committee and its Chairman in organizing the business and time-tables of the Committee;

(*d*) Rotate the chairmanship of the Committee among all its members on a monthly basis;

(*e*) Adopt its own agenda taking into account the recommendations made to it by the General Assembly and the proposals presented by the members of the Committee;

(*f*) Submit a report to the General Assembly annually, or more frequently as appropriate, and provide its formal and other relevant documents to the States Members of the United Nations on a regular basis;

(*g*) Make arrangements for interested States, not members of the Committee, to submit to the Committee written proposals or working documents on measures of disarmament that are the subject of negotiation in the

Committee and to participate in the discussion of the subject-matter of such proposals or working documents;

(*h*) Invite States not members of the Committee, upon their request, to express views in the Committee when the particular concerns of those States are under discussion;

(*i*) Open its plenary meetings to the public unless otherwise decided.

121. Bilateral and regional disarmament negotiations may also play an important role and could facilitate negotiations of multilateral agreements in the field of disarmament.

122. At the earliest appropriate time, a world disarmament conference should be convened with universal participation and with adequate preparation.

123. In order to enable the United Nations to continue to fulfil its role in the field of disarmament and to carry out the additional tasks assigned to it by this special session, the United Nations Centre for Disarmament should be adequately strengthened and its research and information functions accordingly extended. The Centre should also take account fully of the possibilities offered by specialized agencies and other institutions and programmes within the United Nations system with regard to studies and information on disarmament. The Centre should also increase contacts with non-governmental organizations and research institutions in view of the valuable role they play in the field of disarmament. This role could be encouraged also in other ways that may be considered as appropriate.

124. The Secretary-General is requested to set up an advisory board of eminent persons, selected on the basis of their personal expertise and taking into account the principle of equitable geographical representation, to advise him on various aspects of studies to be made under the auspices of the United Nations in the field of disarmament and arms limitation, including a programme of such studies.

* * *

125. The General Assembly notes with satisfaction that the active participation of the Member States in the consideration of the agenda items of the special session and the proposals and suggestions submitted by them and reflected to a considerable extent in the Final Document have made a valuable contribution to the work of the special session and to its positive conclusion. Since a number of those proposals and suggestions, which have become an integral part of the work of the special session of the General Assembly, deserve to be studied further and more thoroughly, taking into consideration the many relevant comments and observations made in both the general debate in plenary meeting and the deliberations of the *Ad Hoc* Committee of the Tenth Special Session, the Secretary-General is requested to transmit, together with this Final Document, to the appropriate deliberative and negotiating organs dealing with the questions of disarmament all the official records of the special session devoted to disarmament, in accordance with the recommendations which the Assembly may adopt at its thirty-third session. Some of the proposals put forth for the consideration of the special session are listed below:

(*a*) Text of the decision of the Central Committee of the Romanian Communist Party concerning Romania's position on disarmament and, in particular, on nuclear disarmament, adopted on 9 May 1978;

(*b*) Views of the Swiss Government on problems to be discussed at the tenth special session of the General Assembly;

(*c*) Proposals of the Union of Soviet Socialist Republics on practical measures for ending the arms race;

(*d*) Memorandum from France concerning the establishment of an International Satellite Monitoring Agency;

(*e*) Memorandum from France concerning the establishment of an International Institute for Research on Disarmament;

(*f*) Proposal by Sri Lanka for the establishment of a World Disarmament Authority;

(*g*) Working paper submitted by the Federal Republic of Germany entitled "Contribution to the seismological verification of a comprehensive test ban";

(*h*) Working paper submitted by the Federal Republic of Germany entitled "Invitation to attend an international chemical-weapon verification workshop in the Federal Republic of Germany";

(*i*) Working paper submitted by China on disarmament;

(*j*) Working paper submitted by the Federal Republic of Germany concerning zones of confidence-building measures as a first step towards the preparation of a world-wide convention on confidence-building measures;

(*k*) Proposal by Ireland for a study of the possibility of establishing a system of incentives to promote arms control and disarmament;

(*l*) Working paper submitted by Romania concerning a synthesis of the proposals in the field of disarmament;

(*m*) Proposal by the United States of America on the establishment of a United Nations Peace-keeping Reserve and on confidence-building measures and stabilizing measures in various regions including notification of manœuvres, invitation of observers to manœuvres, and United Nations machinery to study and promote such measures;

(*n*) Proposal by Uruguay on the possibility of establishing a polemological agency;

(*o*) Proposal by Belgium, Canada, Denmark, Germany, Federal Republic of, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America on the strengthening of the security role of the United Nations in the peaceful settlement of disputes and peace-keeping;

(*p*) Memorandum from France concerning the establishment of an International Disarmament Fund for Development;

(*q*) Proposal by Norway entitled "Evaluation of the impact of new weapons on arms control and disarmament efforts";

(*r*) Note verbale transmitting the text, signed in Washington on 22 June 1978 by the Ministers for Foreign Affairs of Argentina, Bolivia, Chile, Colombia, Ecuador, Panama, Peru and Venezuela, reaffirming the principles of the Declaration of Ayacucho with respect to the limitation of conventional weapons;

(*s*) Memorandum from Liberia entitled "Declaration of a new philosophy on disarmament";

(*t*) Statements made by the representatives of China, on 22 June 1978, on the draft Final Document of the tenth special session;

(*u*) Proposal by the President of Cyprus for the total demilitarization and disarmament of the Republic of Cyprus and the implementation of the resolutions of the United Nations;

(*v*) Proposal by Costa Rica on economic and social incentives to halt the arms race;

(*w*) Amendments submitted by China to the draft Final Document of the tenth special session;

(*x*) Proposals by Canada for the implementation of a strategy of suffocation of the nuclear arms race;

(*y*) Draft resolution submitted by Cyprus, Ethiopia and India on the urgent need for cessation of further testing of nuclear weapons;

(*z*) Draft resolution submitted by Ethiopia and India on the non-use of nuclear weapons and prevention of nuclear war;

(*aa*) Proposal by the non-aligned countries on the establishment of a zone of peace in the Mediterranean;

(*bb*) Proposal by the Government of Senegal for a tax on military budgets;

(*cc*) Proposal by Austria for the transmission to Member States of working paper A/AC.187/109 and the ascertainment of their views on the subject of verification;

(*dd*) Proposal by the non-aligned countries for the dismantling of foreign military bases in foreign territories and withdrawal of foreign troops from foreign territories;

(*ee*) Proposal by Mexico for the opening, on a provisional basis, of an *ad hoc* account in the United Nations Development Programme to use for development the funds which may be released as a result of disarmament measures;

(*ff*) Proposal by Italy on the role of the Security Council in the field of disarmament in accordance with Article 26 of the Charter of the United Nations;

(*gg*) Proposal by the Netherlands for a study on the establishment of an international disarmament organization.

126. In adopting this Final Document, the States Members of the United Nations solemnly reaffirm their determination to work for general and complete disarmament and to make further collective efforts aimed at strengthening peace and international security; eliminating the threat of war, particularly nuclear war; implementing practical measures aimed at halting and reversing the arms race; strengthening the procedures for the peaceful settlement of disputes; and reducing military expenditures and utilizing the resources thus released in a manner which will help to promote the well-being of all peoples and to improve the economic conditions of the developing countries.

127. The General Assembly expresses its satisfaction that the proposals submitted to its special session devoted to disarmament and the deliberations thereon have made it possible to reaffirm and define in this Final Document fundamental principles, goals, priorities and procedures for the implementation of the above purposes, either in the Declaration or the Programme of Action or in both. The Assembly also welcomes the important decisions agreed upon regarding the deliberative and negotiating machinery and is confident that these organs will discharge their functions in an effective manner.

128. Finally, it should be borne in mind that the number of States that participated in the general debate, as well as the high level of representation and the depth and scope of that debate, are unprecedented in the history

of disarmament efforts. Several Heads of State or Government addressed the General Assembly. In addition, other Heads of State or Government sent messages and expressed their good wishes for the success of the special session of the Assembly. Several high officials of specialized agencies and other institutions and programmes within the United Nations system and spokesmen of twenty-five non-governmental organizations and six research institutes also made valuable contributions to the proceedings of the session. It must be emphasized, moreover, that the special session marks not the end but rather the beginning of a new phase of the efforts of the United Nations in the field of disarmament.

129. The General Assembly is convinced that the discussions of the disarmament problems at the special session and its Final Document will attract the attention of all peoples, further mobilize world public opinion and provide a powerful impetus for the cause of disarmament.

(3) *Follow-up of the special session of the General Assembly devoted to disarmament*

Adequate continuation of the work of the session is ensured by the Final Document which provides for a follow-up system resting upon three basic documents: the first deals with machinery for elaboration of specific measures outlined in the Programme of Action, the second with means to supplement the Programme with additional proposals and initiatives and the third provides for Member States to observe and influence the process of implementation.

(i) Consideration by the CCD

The fact that the summer session was the last session of the Conference of the Committee on Disarmament, and the functioning of the Committee on Disarmament was to begin early in 1979, influenced its work following the special session. In view of the relatively short time at its disposal, and the several issues on its agenda which were still awaiting solution, the Committee was not able to complete the work on the subjects under consideration or to initiate work on proposals or measures emanating from the Final Document.[5] Member States did however make general statements reiterating their views on disarmament problems in general as well as on specific measures recalling, in particular, various proposals which they had put forward to promote solution of outstanding problems in the field of disarmament.[6]

(ii) Consideration by the General Assembly

In the General Assembly, consideration of the matter of follow-up to the special session was conducted under the item "Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session", included in the agenda of the thirty-third regular session in pursuance of the provisions of the Final Document. The discussions took place both in the general debate and during the consideration of specific proposals emanating from the proceedings of the special session.[7]

Fourteen draft resolutions were submitted in the First Committee, all of which were later adopted by the General Assembly as resolutions 33/71 A to 33/71 N. Six of them (resolutions 33/71 B, 33/71 C, 33/71 E, 33/71 G, 33/71 I and 33/71 M) shall be reviewed in other sections of the present summary, as will also parts II and III of resolution 33/71 H.

Resolution 33/71 A, on the matter of military and nuclear collaboration with Israel, was one of those deferred from the special session. After considerable discussion in the plenary of the Assembly, it was decided by a recorded vote of 70 to 38, with 26 abstentions, that a two-thirds majority was not required. The draft resolution was then adopted by a recorded vote of 72 to 30 with 37 abstentions. The resolution *inter alia* requested the Security Council, in particular, to call upon all States, under Chapter VII of the Charter and irrespective of any existing contracts, to refrain from any supply of arms to Israel and to end all transfer of nuclear equipment or fissionable material or technology to Israel.

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[5] See para. 120 of the Final Document reproduced above.

[6] See *Official Records of the General Assembly, Thirty-third Session, Supplement No. 27* (A/33/27), vol. I, particularly paras. 276-293.

[7] *Ibid., Thirty-third Session, Plenary Meetings,* particularly 6th to 34th and 84th meetings; *ibid., Thirty-third Session, First Committee,* 4th to 19th and 29th to 53rd meetings, and *ibid., First Committee, Sessional Fascicle,* corrigendum.

Resolution 33/71 D, which was adopted by consensus *inter alia* invited States to carry out effective measures to expose the danger of the arms race and increase public understanding of the urgent tasks in the field of disarmament.

Resolution 33/71 F, also adopted by consensus, *inter alia* urgently called upon all States, in particular the nuclear-weapon States, to make every effort to proceed along the road of binding and effective international agreements in the field of disarmament, in order to translate into practical terms the measures called for in the Programme of Action.

Resolution 33/71 H was adopted by a recorded vote of 129 to none, with 13 abstentions. In its part I it *inter alia* called upon the nuclear-weapon States involved in the negotiations on the conclusion of a treaty on the prohibition of all nuclear weapon tests to submit to the Committee on Disarmament a draft treaty at the beginning of its 1979 session, called upon the Soviet Union and the United States to speed up their negotiations on the second series of the strategic arms limitation talks and urged all nuclear-weapon States to proceed to consultations regarding an early initiation of urgent negotiations on the halting of the nuclear arms race and on a progressive and balanced reduction of stockpiles of nuclear weapons and their means of delivery. Under part III of the resolution the Assembly decided to convene a second special session of the General Assembly devoted to disarmament in 1982 at United Nations Headquarters in New York.

Resolution 33/71 J, adopted by a recorded vote of 121 to none, with 18 abstentions, dealt with the proposal to establish an international satellite monitoring agency and requested the preparation of a study on this question. Resolution 33/71 K, which was adopted by consensus, related to the proposal for the establishment, under the auspices of the United Nations, of an international institute for disarmament research.

Resolutions 33/71 L and M, which were also adopted by consensus, respectively called for the transmission to the organs dealing with the question of disarmament of the proposals and suggestions listed in paragraph 125 of the Final Document and for the formulation into a new philosophy on disarmament of the new ideas, proposals and strategies set forth at the special session.

(*b*) Other comprehensive approaches to disarmament

(1) *Consideration of general and complete disarmament*

(i) Tenth special session of the General Assembly

General and complete disarmament under effective international control was referred to repeatedly during the special session in one context or another as the essential goal to strive towards.[8] The concept of general and complete disarmament as the desired goal and the difficulty of its attainment are both reflected in the Final Document, particularly in paragraphs 42 to 45, 83, 93 and 111 thereof.

(ii) Consideration by the CCD

Most States represented in the principal disarmament negotiating body in 1978 continued to refer to general and complete disarmament as the final goal of their efforts. The Committee, in accordance with a decision it had taken in 1977 established an *ad hoc* Working Group early in the session to deal with the elaboration of the comprehensive programme of disarmament called for in connexion with the Disarmament Decade. At the conclusion of its spring session, the *Ad Hoc* Working Group on a comprehensive disarmament programme submitted a report[9] to the Committee.

Following the special session on disarmament, the *Ad Hoc* Working Group was not reconvened since the General Assembly had recommended that the Disarmament Commission should consider the elements of a comprehensive programme of disarmament to be submitted as recommendations to the General Assembly and, through it, to the Committee on Disarmament.

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[8] See *Official Records of the General Assembly, Tenth Special Session, Plenary Meetings*, 1st to 25th and 27th meetings; *ibid.*, Ad Hoc *Committee of the Tenth Special Session*, 3rd to 16th meetings and *ibid.*, Ad Hoc *Committee of the Tenth Special Session, Sessional Fascicle*, corrigendum.

[9] *Official Records of the General Assembly, Thirty-third Session, Supplement No. 2'* (A/33/27), vol. II, document CCD/571.

(iii) The Disarmament Commission[10]

As indicated above, the Disarmament Commission is *inter alia* to consider the elements of a comprehensive programme for disarmament. It held its first meetings, of an essentially organizational nature, from 9 to 13 October 1978 and submitted a report to the General Assembly.[11]

(iv) Consideration by the General Assembly at its thirty-third session

The General Assembly adopted nine resolutions under the agenda item "General and complete disarmament".

Those resolutions relating to strategic arms limitation talks (resolution 33/91 C), the carrying out of a study on nuclear weapons (resolution 33/91 D), the carrying out of a study on regional disarmament (resolution 33/91 E), the question of the non-stationing of nuclear weapons on the territories of States where there are no such weapons at present (resolution 33/91 F), the prohibition of the production of fissionable material for weapons purposes (resolution 33/91 H) and the relationship between disarmament and international security (resolution 33/91 I) will be reviewed under the relevant sections of this summary.

As to the remaining four resolutions, they related respectively to the continuation of the work of the Disarmament Commission in accordance with its mandate as set down in paragraph 118 of the Final Document of the Tenth Special Session (resolution 33/91 A[12]), the consideration by all States on a regional basis of arrangements for specific confidence building measures, taking into account the specific conditions and requirements of each region (resolution 33/91 B[13]) and the participation of States in the work of the Committee on Disarmament (resolution 33/91 G[14]).

In relation to the question of general and complete disarmament the General Assembly also adopted resolution 33/71 H, parts I and III of which have been reviewed above: part II of the resolution recommended the inclusion in the agenda of the Disarmament Commission of two questions related to disarmament, namely consideration of various aspects of the arms race and harmonization of views on steps regarding a reduction of military budgets and part IV requested the Committee on Disarmament to undertake on a priority basis negotiations concerning a treaty on the complete prohibition of nuclear-weapon tests and a treaty on the complete prohibition of the development, production and stockpiling of all types of chemical weapons and on their destruction.

Finally, mention should be made of resolution 33/75[15] which dealt in fact with the question of the dismantling of foreign military bases and comes as such under the topic of general and complete disarmament.

(2) *Disarmament decade*

In 1979, considerable disappointment was expressed during the tenth special session[16] and the thirty-third session[17] of the General Assembly as well as in the CCD[18] concerning lack of results in fulfilment of the purposes and objectives of the Disarmament Decade, both in the area of channel-

[10] The General Assembly, in its resolution 502 (VI), created the United Nations Disarmament Commission under the Security Council. Its membership, which originally embraced that of the Atomic Energy Commission and the Commission for Conventional Armaments (i.e. the members of the Security Council and Canada), was expanded by an additional 14 States in 1957 (General Assembly resolution 1150 (XII)). In 1958, the General Assembly decided (resolution 1252 D (XIII)) that the Commission should, for 1959 and on *ad hoc* basis, be composed of all States Members of the United Nations. Since the universalization of its membership, however, the Commission met only twice in 1960 and in 1965. The new Disarmament Commission, composed of all Members of the United Nations, was established as a successor to the original body in accordance with paragraph 118 of the Final Document of the tenth special session.

[11] *Official Records of the General Assembly, Thirty-third Session, Supplement No. 42* (A/33/42).

[12] Adopted by consensus.

[13] Adopted by a recorded vote of 132 to none, with 2 abstentions.

[14] Adopted by a vote of 106 to 9, with one abstention.

[15] Adopted by a vote of 114 to 2, with 19 abstentions.

[16] See *Official Records of the General Assembly, Tenth Special Session, Plenary Meetings,* 1st to 25th and 27th meetings; *ibid., Tenth Special Session,* Ad Hoc *Committee of the Tenth Special Session,* 3rd to 16th meetings and *ibid.,* Ad Hoc *Committee of the Tenth Special Session, Sessional Fascicle,* corrigendum.

[17] *Ibid., Thirty-third Session, Plenary Meetings,* 6th to 34th and 84th meetings; *ibid., Thirty-third Session, First Committee,* 4th to 50th and 54th meetings and *ibid., First Committee, Sessional Fascicle,* corrigendum.

[18] *Ibid., Supplement No. 27* (A/33/27), particularly vol. I, paras. 251-275.

ling resources freed by disarmament measures to promote economic development of developing countries and that of the elaboration of a comprehensive programme dealing with all aspects of the disarmament problem. In its resolution 33/62, which was adopted by consensus, the General Assembly *inter alia* expressed concern at this lack of results and noted with satisfaction the convening of the Group of Governmental Experts on the Relationship between Disarmamen and Development.

(3) *World Disarmament Conference*

In 1978, the question of a world disarmament conference was considered largely in connexion with the preparations for the special session of the General Assembly and its results. In the Preparatory Committee for the Special Session of the General Assembly[19] and in the *Ad Hoc* Committee on the World Disarmament Conference[20] as well as during the tenth special session[21] and thirty-third session[22] of the General Assembly, and in the CCD,[23] the USSR and other Eastern European States continued to urge the preparation and early convening of a world disarmament conference at which actual disarmament agreements might be reached, while most Western States continued to hold restrained attitudes towards such a conference under current conditions. The non-aligned countries generally supported the idea with the proviso, however, that all nuclear-weapon States should participate. By its resolution 33/69, which was adopted without a vote, the General Assembly requested the *Ad Hoc* Committee to remain currently informed of the attitudes of nuclear-weapon States and of all other States and to consider relevant observations, having especially in mind paragraph 122 of the Final Document of the Tenth Special Session.

(*c*) Nuclear disarmament

(1) *Nuclear arms limitation and disarmament*

In 1978, the special session of the General Assembly devoted to disarmament provided an opportunity for stock-taking and thorough discussion of both old and new ideas in the area of nuclear arms limitation and disarmament. With respect to specific measures relating to the cessation of the nuclear arms race and nuclear disarmament, a number of proposals were put forward in the context of preparations for the special session[24]. The draft final document contained in the report of the Preparatory Committee[25] clearly indicated the existence of divergent views regarding the manner in which the process of nuclear disarmament should be carried out and the specific measures that should be adopted. The painstaking and laborious efforts which were made at the tenth special session in order to arrive at a generally acceptable wording of the texts relating to the whole complex of problems regarding the cessation of the nuclear arms race and nuclear disarmament resulted in the inclusion in the Final Document of paragraphs 20 and 32 (Declaration) and 45 to 50 and 53 to 58 (Programme of Action).

Within the CCD, questions relating to the cessation of the nuclear arms race and nuclear disarmament continued to figure prominently in the deliberations.[26] As in previous years, the statements generally stressed the overriding importance and urgency of early and substantial progress towards the goal of nuclear disarmament.

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[19] *Ibid., Tenth Special Session, Supplement No. 1* (A/S-10/1), vol. V, document A/AC.187/114, para. 3, and vol. VII, 21st to 42nd meetings.

[20] *Ibid., Supplement No. 3* (A/S-10/3 and Corr.1), and *ibid., Thirty-third Session, Supplement No. 28* (A/33/28).

[21] *Ibid., Tenth Special Session, Plenary Meetings,* 1st to 25th and 27th meetings; *ibid., Tenth Special Session,* Ad Hoc *Committee of the Tenth Special Session,* 3rd to 16th meetings and *ibid.,* Ad Hoc *Committee of the Tenth Special Session, Sessional Fascicle,* corrigendum.

[22] *Ibid., Thirty-third Session, First Committee,* 4th to 50th and 59th meetings, and *ibid., First Committee, Sessional Fascicle,* corrigendum.

[23] *Ibid., Supplement No. 27* (A/33/27), vol. I, para. 293.

[24] See *The United Nations Disarmament Yearbook,* vol. 2: 1977 (United Nations publication, Sales No. E.78.IX.4), p. 72-73.

[25] *Official Records of the General Assembly, Tenth Special Session, Supplement No. 1* (A/S-10/1), vol. I.

[26] See *Official Records of the General Assembly, Thirty-third Session, Supplement No. 27* (A/33/27), vol. I, paras. 20-156.

At the thirty-third session of the General Assembly, consideration of problems of nuclear arms limitation and disarmament was resumed both in the general debate and in the First Committee.[27] Statements of delegations generally reaffirmed the priority of nuclear disarmament. Beyond comments of a general nature, there was a discussion of specific questions relating to the cessation of the nuclear arms race and nuclear disarmament—including the prohibition of the manufacture of nuclear weapons systems and their gradual reduction with a view to their elimination, the non-use of nuclear weapons and the prevention of nuclear war and the question of a suitable framework for negotiations on nuclear disarmament.

By its resolution 33/91 F, adopted by a recorded vote of 105 to 18, with 12 abstentions, the General Assembly called upon all nuclear-weapon States to refrain from stationing nuclear weapons on the territories of States where there are no such weapons at present and upon all non-nuclear-weapon States which do not have nuclear weapons on their territory to refrain from any steps which would directly or indirectly result in the stationing of such weapons on their territories.

By its resolution 33/91 H, adopted by a recorded vote of 108 to 10, with 16 abstentions, the Assembly requested the Committee on Disarmament to consider urgently the question of an adequately verified cessation and prohibition of the production of fissionable material for nuclear weapons and other nuclear explosive devices.

By its resolution 33/71 B, adopted by a recorded vote of 103 to 18, with 18 abstentions, the General Assembly *inter alia* declared that (*a*) the use of nuclear weapons will be a violation of the Charter of the United Nations and a crime against humanity and (*b*) the use of nuclear weapons should therefore be prohibited, pending nuclear disarmament.

Finally, by its resolution 33/91 D, adopted by a recorded vote of 117 to none, with 21 abstentions, the General Assembly *inter alia* requested the Secretary-General to carry out a comprehensive study providing factual information on present nuclear arsenals, trends in the technological development of nuclear weapon systems, the effects of their use and the implications for international security as well as for negotiations on disarmament of the doctrines of deterrence and other theories concerning nuclear weapons and the continued quantitative increase and qualitative improvement and development of nuclear weapon systems.

(2) *Strategic Arms Limitation Talks*

The SALT negotiations were one of the issues which received the greatest attention in the course of the special session of the General Assembly,[28] both in the context of nuclear disarmament in general and specific measures of the Programme of Action which required urgent implementation. They were also referred to within the CCD in the context of the debate on measures relating to the cessation of the nuclear arms race.[29] At the thirty-third session of the General Assembly, the SALT II negotiations attracted considerable attention in the general debate as well as in the First Committee.[30]

By its resolution 33/91 C, adopted by a recorded vote of 127 to 1, with 10 abstentions, the General Assembly *inter alia* stressed once again with the greatest emphasis the necessity that the Union of Soviet Socialist Republics and the United States of America strive to implement as soon as possible the declarations made in 1977 by their respective heads of State and reiterated its invitation to the Governments of both countries to adopt without delay all relevant measures to achieve that objective.

(3) *Cessation of nuclear weapon tests*

At its tenth special session, the General Assembly had before it a special report prepared by the CCD in response to the request of the Assembly in resolution 32/88 B, in which the Committee

[27] *Ibid., Plenary Meetings,* 6th to 34th, 84th and 86th meetings; *ibid., First Committee,* 4th to 51st, 55th and 57th meetings and *ibid., First Committee, Sessional Fascicle,* corrigendum.

[28] See *Official Records of the General Assembly, Tenth Special Session, Plenary Meetings,* 1st to 25th and 27th meetings; *ibid.,* Ad Hoc *Committee of the Tenth Special Session,* 3rd to 16th meetings, and *ibid.,* Ad Hoc *Committee of the Tenth Special Session, Sessional Fascicle,* corrigendum.

[29] *Ibid., Thirty-third Session, Supplement No. 27* (A/33/27), vol. I, paras. 20-53.

[30] *Ibid., Plenary Meetings,* 4th to 34th and 86th meetings; *ibid., First Committee,* 4th to 50th and 56th meetings, and *ibid., First Committee, Sessional Fascicle,* corrigendum.

stated that its highest priority remained the conclusion of a comprehensive test ban and described the state of the bipartite negotiations being conducted by the USSR, the United Kingdom and the United States with a view to reaching agreement on the provisions of a treaty prohibiting nuclear weapon tests and a protocol covering nuclear explosions for peaceful purposes.[31] The question of the cessation of nuclear-weapon testing was dealt with in paragraph 51 of the Final Document of the Tenth Special Session.

At its thirty-third session,[32] the General Assembly adopted two resolutions on this question. By its resolution 33/71 C, adopted by 130 votes to 2, with 8 abstentions, it called upon all States, in particular the nuclear-weapon States, to refrain from conducting any testing of nuclear weapons and other nuclear explosive devices and by its resolution 33/60 which was adopted by a recorded vote of 134 to 1, with 5 abstentions, it *inter alia* reaffirmed its conviction that a comprehensive test ban treaty was a matter of the highest priority and urged the three above-mentioned States to expedite their negotiations on the matter.

(4) *Nuclear neutron weapon or reduced blast and enhanced radiation weapon (neutron bomb)*

Within the CCD, the Soviet Union submitted, on 9 March 1978, a draft convention on the prohibition of the production, stockpiling, deployment and use of nuclear neutron weapons.[33] At the tenth special session,[34] the question of the neutron bomb was dealt with mostly in general statements in the debate at the plenary meetings. No specific paragraph or mention of the neutron weapon was included in the Final Document although a proposal to that effect was submitted by the Soviet Union.[35]

At the thirty-third session of the General Assembly,[36] the debate confirmed the existence of two main approaches to the question of the nuclear neutron weapon, namely that of the Eastern European States and a number of non-aligned countries which regard the weapon in question as a separate issue, and that of the Western States which treat it in the context of the general question of nuclear disarmament.

(5) *Strengthening of the security of non-nuclear-weapon States*

At the tenth special session,[37] this question was mostly dealt with in statements on the questions of non-proliferation of nuclear weapons and of nuclear-weapon-free zone. It is referred to in paragraphs 32 and 59 of the Final Document.

At the thirty-third session of the General Assembly, an item entitled "Conclusion of an international convention on the strengthening of guarantees of the security of non-nuclear States" was included in the agenda further to an initiative of the Soviet Union.[38] It received considerable attention from Member States both during the general debate in the Assembly and in the First Committee.[39]

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[31] The CCD continued consideration of the matter after the conclusion of the tenth special session and reported to the General Assembly at its thirty-third session on its work (see *Official Records of the General Assembly, Thirty-third Session, Supplement No. 27* (A/33/27), vol. I, paras. 54-115).

[32] See *Official Records of the General Assembly, Thirty-third Session, Plenary Meetings*, 4th to 34th and 84th meetings, particularly 8th, 10th and 14th meetings; *ibid., First Committee*, 4th to 50th, 52nd and 57th meetings, and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[33] See *ibid., Supplement No. 27* (A/33/27), vol. II, document CCD/559.

[34] *Ibid., Tenth Special Session, Plenary Meetings*, 1st to 25th and 27th meetings.

[35] See A/S-10/AC.1/18, annex.

[36] See *Official Records of the General Assembly, Thirty-third Session, Plenary Meetings*, 6th to 34th meetings; *ibid., Thirty-third Session, First Committee*, 4th to 50th meetings; and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[37] *Ibid., Tenth Special Session, Plenary Meetings*, 1st to 27th meetings; *ibid., Tenth Special Session*, Ad Hoc *Committee of the Tenth Special Session*, 3rd to 16th meetings; and *ibid.*, Ad Hoc *Committee of the Tenth Special Session, Sessional Fascicle*, corrigendum.

[38] See A/33/241, annex.

[39] See *Official Records of the General Assembly, Thirty-third Session*, Plenary Meetings, 6th to 34th and 84th meetings; *ibid., First Committee*, 20th to 28th and 58th to 61st meetings; and *ibid., First Committee, Sessional Fascicle*, corrigendum.

By its resolution 33/72 A adopted by a recorded vote of 117 to 2, with 6 abstentions, the General Assembly *inter alia* considered it necessary to take effective measures for the security of non-nuclear-weapon States through appropriate international arrangements and requested the Committee on Disarmament to consider to that end the drafts of an international convention on the subject, as well as all proposals concerning effective political and legal measures to assure the non-nuclear-weapon States against the use or threat of use of nuclear weapons.

By its resolution 33/72 B, which was adopted by a recorded vote of 124 to none, with 14 abstentions, the General Assembly *inter alia* urged that urgent efforts should be made to conclude effective arrangements to assure the non-nuclear-weapon States against the use or threat of use of nuclear weapons.

(6) *Treaty on the Non-Proliferation of Nuclear Weapons*[40]

The different views held by Member States with respect to the nature and source of the threat of nuclear weapons proliferation and the measures needed to avert that threat, including the role of the non-proliferation Treaty, were reflected in the draft final document contained in the report of the Preparatory Committee for the Special Session[41] and in the statements[42] and proposals made at the special session itself. They were also reflected in the Final Document where two separate paragraphs (65 and 67) were included on the matter in order to permit the adoption of the Document by consensus.

The question was also discussed in the CCD.[43]

At the thirty-third session of the General Assembly in the plenary and in the First Committee,[44] much of the discussion took place in connexion with the consideration of preparations for the Second Review Conference of the Parties to the Treaty in light of the recommendation of the First Review Conference held in 1975 which proposed to the depositary Governments that another conference to review the operation of the Treaty be held in 1980. On this question, the General Assembly adopted resolution 33/57 by a vote of 122 to one, with 16 abstentions.

(7) *Nuclear-weapon-free zones*

During the general debate in the plenary meetings of the tenth special session,[45] there was general support for the concept of nuclear-weapon-free zones. This common view is reflected in paragraphs 33 and 60 to 62 of the Final Document. The question was also referred to in the CCD[46] and in the General Assembly at its thirty-third session.[47]

Regarding the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco), the General Assembly adopted without a vote two resolutions, namely with respect to Additional Protocol I, resolution 33/58 in which it *inter alia* invited the United States and France to become parties as soon as possible and, with respect to Additional Protocol II, resolution 33/61 in which it *inter alia* noted with satisfaction that the USSR had announced its intention to become party in the nearest future.[48] [49]

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[40] Resolution 2723 (XXII), annex. Also reproduced in the *Juridical Yearbook*, 1968, p. 156.

[41] *Official Records of the General Assembly, Tenth Special Session, Supplement No. 1* (A/S-10/1), vol. I.

[42] *Ibid., Plenary Meetings*, 1st to 25th and 27th meetings; *ibid.*, Ad Hoc *Committee of the Tenth Special Session*, 3rd to 16th meetings, and *ibid.*, Ad Hoc *Committee of the Tenth Special Session, Sessional Fascicle*, corrigendum.

[43] See *Official Records of the General Assembly, Thirty-third Session, Supplement No. 27* (A/33/27), vol. I, paras. 136-151.

[44] *Ibid., Plenary Meetings*, 6th to 34th and 84th meetings; *ibid., First Committee*, 4th to 50th and 59th meetings; and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[45] See *Official Records of the General Assembly, Tenth Special Session, Plenary Meetings*, 1st to 25th and 27th meetings.

[46] *Ibid., Thirty-third Session, Supplement No. 27* (A/33/27), vol. I, paras. 152-156.

[47] *Ibid., Plenary Meetings*, 6th to 34th and 84th meetings; *ibid., First Committee*, 4th to 50th, 54th and 55th meetings, and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[48] The Soviet Union deposited its instrument of ratification on 8 January 1979 accompanied by a Statement, the text of which is reproduced on p. 493 of the *United Nations Disarmament Yearbook*, vol. 3: 1978 (United Nations publication, Sales No. E.79.IX.3).

[49] With respect to the question of nuclear-weapon-free zones, reference is also made to General Assembly

(*d*) Prohibition of other weapons

(1) *Chemical and bacteriological (biological) weapons*

(i) Chemical weapons

Proposals concerning the prohibition of chemical weapons were included in a large number of the working papers which were submitted by delegations during the course of the work of the Preparatory Committee for the Special Session of the General Assembly devoted to disarmament.[50] Almost all of the papers which addressed themselves to the issue took the position that an early conclusion of a convention on the prohibition of chemical weapons was a most urgent matter which the international community must attend to in an expeditious manner. Consideration of the question at the tenth special session itself[51] resulted in the inclusion in the Final Document of paragraphs 21 and 75.

Within the CCD,[52] the discussion on chemical weapons was rather truncated due to the feeling on the part of most members that further papers on the area depended on the outcome of the bilateral negotiations taking place outside the framework of the Committee between the United States and the Soviet Union.

At its thirty-third session,[53] the General Assembly adopted without a vote resolution 33/59 A in which it *inter alia* urged all States to reach early agreement on the effective prohibition of the development, production and stockpiling of all chemical weapons and on their destruction, urged the Soviet Union and the United States to submit their joint initiative to the Committee on Disarmament in order to assist it in achieving early agreement on the prohibition of the development, production and stockpiling of all chemical weapons and on their destruction and invited all States to become parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction[54] as well as to the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases.[55]

(ii) Bacteriological (biological) weapons

The Final Document which emerged from the tenth special session of the General Assembly contains two paragraphs—17 and 73—on this question.

At the thirty-third session of the Assembly, the major part of the debate[56] concerned the holding of a review conference of the parties to the biological weapons convention. In resolution 33/59 B which it adopted without a vote, the Assembly, bearing in mind that the Convention would have been in force for five years on 26 March 1980 and expecting that the Review Conference called for in article XII of the above-mentioned Convention would take place near that date noted that, after appropriate consultations, a preparatory committee of parties to the Convention was to be arranged. Reference should also be made in this context to resolution 33/59 A summarized in subsection (i) above.

(2) *New weapons of mass destruction*

In the course of consideration of the question of the prohibition of the development and manufacture of new weapons of mass destruction and new systems of such weapons at the tenth special

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resolutions 33/63, 33/64 and 33/65, entitled respectively "Implementation of the Declaration on the Denuclearization of Africa", "Establishment of a nuclear-weapon-free zone in the region of the Middle East" and "Establishment of a nuclear-weapon-free zone in South Asia".

[50] See *Official Records of the General Assembly, Tenth Special Session, Supplement No. 1* (A/S-10/1), vol. III-VI.

[51] *Ibid., Plenary Meetings,* 1st to 25th and 27th meetings; *ibid.,* Ad Hoc *Committee of the Tenth Special Session,* 3rd to 16th meetings and *ibid.,* Ad Hoc *Committee of the Tenth Special Session, Sessional Fascicle,* corrigendum.

[52] *Ibid., Thirty-third Session, Supplement No. 27* (A/33/27), vol. I, paras. 157-187.

[53] *Ibid., First Committee,* 4th to 50th and 58th meetings and *ibid., First Committee, Sessional Fascicle,* corrigendum.

[54] Resolution 2826 (XXVI), annex. Also reproduced in the *Juridical Yearbook,* 1971, p. 118.

[55] League of Nations, *Treaty Series,* vol. XCIV, p. 65.

[56] See *Official Records of the General Assembly, Thirty-third Session, First Committee,* 4th to 50th and 59th meetings; and *ibid., First Committee, Sessional Fascicle,* corrigendum.

session,[57] in the CCD[58] and at the thirty-third session of the General Assembly,[59] the necessity for action aimed at prohibition of such weapons received wide recognition.

At the tenth special session, an agreed formulation on new weapons of mass destruction was worked out for the Final Document (see paragraphs 21, 39 and 77 thereof) and accepted by consensus by all participating countries. Two divergent approaches on the issue were however apparent: one, held in particular by the Eastern European States, favours the conclusion of a general agreement banning the development and manufacture of new types of weapons of mass destruction and new systems of such weapons and is reflected in resolution 33/66 B which the Assembly adopted by a vote of 118 to none, with 24 abstentions; the other, held in particular by the Western States, advocates conclusion of separate conventions concerning specific new types of weapons of mass destruction which might emerge on the basis of new scientific principles and achievements and is reflected in resolution 33/66 A which was adopted by a vote of 117 to none, with 24 abstentions.

(3) *Radiological weapons*

Within the CCD[60] and at the tenth special session,[61] the question of a prohibition of radiological weapons was considered in the more general context of the prohibition of the development and manufacture of new types of weapons of mass destruction and of new systems of such weapons. It however is the subject of a specific paragraph—76—of the Final Document of the Tenth Special Session. This paragraph reflects the generally accepted view that the conclusion of a convention on the prohibition of radiological weapons is an attainable measure among disarmament issues, different approaches to the question of the prohibition of new types of weapons of mass destruction notwithstanding.

At its thirty-third session, the General Assembly,[62] although it did not have before it any draft resolutions on radiological weapons made reference to the negotiations on the subject in paragraph 1 of its resolution 33/66 A and in the fifth preambular paragraph of its resolution 33/66 B.

(4) *Certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects*

Within the United Nations, this question has been discussed under various topics. For instance at its twenty-seventh session in 1972, the Assembly considered the question under general and complete disarmament. The following year, the Assembly discussed it as a separate agenda item entitled "Napalm and other incendiary weapons and all aspects of their possible use" and adopted resolution 3076 (XXVIII) by which it invited the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which held four sessions from 1974 to 1977, to consider the question of the use of napalm and other incendiary weapons, as well as other specific conventional weapons which might be deemed to cause unnecessary suffering or to have indiscriminate effects and to seek agreement on rules prohibiting or restricting the use of such weapons.

At its thirty-second session in 1977, the General Assembly endorsed in its resolution 32/152, the recommendation of that Conference that a United Nations Conference be convened not later than 1979 with a view to reaching agreement on prohibitions or restrictions of use of the weapons in question.

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[57] *Ibid., Tenth Special Session, Plenary Meetings,* 1st to 25th and 27th meetings; *ibid.,* Ad Hoc *Committee of the Tenth Special Session,* 4th to 9th and 13th meetings and *ibid.,* Ad Hoc *Committee of the Tenth Special Session, Sessional Fascicle,* corrigendum.

[58] *Ibid., Thirty-third Session, Supplement No. 27* (A/33/27), vol. I, paras. 188-211.

[59] *Ibid., Plenary Meetings,* 6th to 34th and 84th meetings; *ibid., First Committee,* 4th to 50th and 55th meetings and *ibid., First Committee, Sessional Fascicle,* corrigendum.

[60] *Ibid., Tenth Special Session, Supplement No. 2* (A/S-10/2), vol. II, paras. 244-246; and *ibid., Thirty-third Session, Supplement No. 27* (A/33/27), vol. I, paras. 212-217.

[61] *Ibid., Plenary Meetings,* 2nd to 24th meetings; *ibid.,* Ad Hoc *Committee of the Tenth Special Session,* 6th and 13th meetings; and *ibid.,* Ad Hoc *Committee of the Tenth Special Session, Sessional Fascicle,* corrigendum.

[62] *Ibid., Thirty-third Session, First Committee,* 29th to 50th meetings, and *ibid., First Committee, Sessional Fascicle,* corrigendum.

In 1978 the question was examined during the tenth special session and the thirty-third session of the General Assembly as well as in the framework of the Preparatory Conference for the 1979 United Nations Conference called for in resolution 32/152.

At the tenth special session, a number of countries of all continents welcomed the decision of the Assembly to convene the above-mentioned conference, an attitude which is reflected in paragraphs 86 to 88 of the Final Document.

The Preparatory Conference was convened on 28 August 1978 at Geneva for a three-week session. In the course of its work, 12 documents dealing with substantive issues were submitted, namely three draft proposals on incendiary weapons,[63] a draft proposal on fuel-air explosives,[64] a working paper on certain small-calibre weapons and projectiles,[65] draft clauses relating to the prohibition of the use of incendiary weapons,[66] the prohibition of the use of especially injurious small-calibre projectiles,[67] the prohibition of the use of anti-personnel fragmentation weapons[68] and the prohibition of the use of flechettes,[69] a preliminary outline of a treaty,[70] a proposal on the regulation of the use of landmines and other devices[71] and a draft proposal concerning non-detectable fragments.[72] At its closing meeting, the Preparatory Conference decided to hold another session.

At its thirty-third session, the General Assembly had before it the report of the Preparatory Conference.[73] During the discussions, both in plenary meetings and in the First Committee,[74] which concluded with the adoption of resolution 33/70, it appeared that while most countries support the concept of prohibitions or limitations on the use of certain conventional weapons because of their excessively injurious or indiscriminate effects, the possible areas of agreement and the scope of agreement which may be reached remain in doubt.

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2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) Declaration on the Preparation of Societies for Life in Peace

In its resolution 33/73, entitled "Declaration on the Preparation of Societies for Life in Peace", which it adopted on the recommendation of the First Committee,[75] the General Assembly solemnly invited all States to guide themselves in their activities by the recognition of the supreme importance and necessity of establishing, maintaining and strengthening a just and durable peace for present and future generations and, in particular, to observe the following principles:

1. Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace. Respect for that right, as well as for the other human rights, is in the common interest of all mankind and an indispensable condition of advancement of all nations, large and small, in all fields.

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[63] *Official Records of the General Assembly, Thirty-third Session, Supplement No 44* (A/33/44), annex, sects. A, K and L.

[64] *Ibid.*, sect. B.

[65] *Ibid.*, sect. C.

[66] *Ibid.*, sect. D.

[67] *Ibid.*, sect. E.

[68] *Ibid.*, sect. F.

[69] *Ibid.*, sect. G.

[70] *Ibid.*, sect. H.

[71] *Ibid.*, sect. I.

[72] *Ibid.*, sect. J.

[73] *Official Records of the General Assembly, Thirty-third Session, Supplement No 44* (A/33/44).

[74] *Ibid., Plenary Meetings*, 6th to 33rd and 84th meetings; *ibid., First Committee*, 4th to 50th and 57th meetings; and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[75] See the report of the First Committee to the thirty-third session of the General Assembly on agenda item 50 (A/33/486).

2. A war of aggression, its planning, preparation or initiation are crimes against peace and are prohibited by international law.

3. In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

4. Every State, acting in the spirit of friendship and good-neighbourly relations, has the duty to promote all-round, mutually advantageous and equitable political, economic, social and cultural co-operation with other States, notwithstanding their socio-economic systems, with a view to securing their common existence and co-operation in peace, in conditions of mutual understanding of and respect for the identity and diversity of all peoples, and the duty to take up actions conducive to the furtherance of the ideals of peace, humanism and freedom.

5. Every State has the duty to respect the right of all peoples to self-determination, independence, equality, sovereignty, the territorial integrity of States and the inviolability of their frontiers, including the right to determine the road of their development, without interference or intervention in their internal affairs.

6. A basic instrument of the maintenance of peace is the elimination of the threat inherent in the arms race, as well as efforts towards general and complete disarmament, under effective international control, including partial measures with that end in view, in accordance with the principles agreed upon within the United Nations and relevant international agreements.

7. Every State has the duty to discourage all manifestations and practices of colonialism, as well as racism, racial discrimination and *apartheid*, as contrary to the right of peoples to self-determination and to other human rights and fundamental freedoms.

8. Every State has the duty to discourage advocacy of hatred and prejudice against other peoples as contrary to the principles of peaceful coexistence and friendly co-operation.

(*b*) Non-interference in the internal affairs of States

In its resolution 33/74, which it adopted on the recommendation of the First Committee,[76] the General Assembly *inter alia* urged all States to abide by the provisions of resolutions 31/91 and 32/153, which denounced any form of interference in the internal or external affairs of States and called for all States to undertake measures to prevent any hostile or aggressive act or activities from taking place within their territory and directed against the sovereignty, territorial integrity and political independence of another State; and reaffirmed that a declaration on non-interference in the internal affairs of States would be an important contribution to the further elaboration of the principles for strengthening equitable cooperation and friendly relations among States, based on sovereign equality and mutual respect.

(*c*) Implementation of the Declaration on the Strengthening of International Security[77]

In its resolution 33/75, which it adopted on the recommendation of the First Committee,[78] the General Assembly *inter alia* called upon all States to adhere fully, in international relations, to the purposes and principles of the Charter of the United Nations; urged all members of the Security Council, including its permanent members to consider and to take, as a matter of urgency, all the necessary measures for ensuring the implementation of the decisions of the United Nations on the maintenance of international peace and security; reaffirmed the legitimacy of the struggle of peoples under colonial and alien domination to achieve self-determination and independence; reaffirmed its opposition to any threat or use of force, intervention, aggression, foreign occupation or measure of political and economic coercion which attempted to violate the sovereignty, territorial integrity, independence and security of States or their right freely to dispose of their natural resources; and

[76] *Ibid.*

[77] Resolution 2734 (XXV). Also reproduced in the *Juridical Yearbook*, 1970, p. 62.

[78] See the report of the First Committee to the thirty-third session of the General Assembly on agenda item 50 (A/33/486).

considered that the implementation of the new international economic order assuring a speedy development of the developing countries, narrowing and overcoming the existing gap between the developed and the developing countries and the democratization of the process of decision-making, constituted an inseparable part of the efforts for the strengthening of international peace and security.

(*d*) Legal aspects of the peaceful uses of outer space

The Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space held its seventeenth session from 13 March to 7 April 1978 in Geneva.[79] It concentrated on the three priority items of its agenda, namely: a draft treaty relating to the moon; the elaboration of principles governing the use by States of artificial earth satellites for direct television broadcasting; and the legal implications of remote sensing of the earth from space.

Working Group II (on direct satellite broadcasting) considered in detail the text of a principle on "consultations and agreements between States" as contained in annex V of the report of the Committee on the Peaceful Uses of Outer Space.[80] The general exchange of views which took place on this point indicated that the principle in question continued to be of fundamental importance for the international instrument under consideration but no final agreement on a specific text could be reached.

Working Group III (on remote sensing) gave consideration to the formulation of five additional draft principles on the key issues involved but, due to lack of consensus, the texts of those draft principles had to be placed between square brackets.

Working Group I continued to give priority to the question of the natural resources of the moon, which was widely considered as the key issue whose solution could facilitate an agreement on the other remaining issues. The exchange of views in the Working Group and informal consultations under the chairmanship of the representative of Austria led to the preparation of the text of a tentative draft treaty, which could however not be considered within the Working Group for lack of time.[81]

In addition to reviewing the work of its Working Groups, the Legal Sub-Committee devoted some time to the question of the definition and/or delimitation of outer space and questions relating to the geostationary orbit as well as to the legal aspects of the use of nuclear power sources in outer space, on which a working paper was circulated by a number of delegations.[82]

The report of the Legal Sub-Committee was considered by the Committee on the Peaceful Uses of Outer Space at its twenty-first session, held at United Nations Headquarters from 26 June to 7 July 1978.[83] The Committee requested the Legal Sub-Committee to make every effort to accelerate its work on the three priority issues on its agenda (direct satellite broadcasting, remote sensing and elaboration of the draft treaty relating to the moon). It also recommended that at its eighteenth session, the Legal Sub-Committee should pursue its work on the questions related to definition and/or delimitation of outer space and outer space activities, bearing in mind also questions relating to the geostationary orbit.

At its thirty-third session, the General Assembly adopted, on the recommendation of the Special Political Committee,[84] resolution 33/16 in which it *inter alia* endorsed the recommendations of the Committee on the Peaceful Uses of Outer Space concerning the future work of its Legal Sub-Committee.

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[79] For the report of the Legal Sub-Committee see document A/AC.105/218.

[80] See *Official Records of the General Assembly, Thirty-second Session, Supplement No. 20* (A/32/20).

[81] *Ibid., Thirty-third Session, Supplement No. 20* (A/33/20), Annex II.

[82] See document A/AC.105/218, Annex IV.

[83] For the report of the Committee, see *Official Records of the General Assembly, Thirty-third Session, Supplement No. 20* (A/33/20).

[84] See the report of the Special Political Committee to the thirty-third session of the General Assembly on agenda items 51 and 52 (A/33/344).

3. ECONOMIC, SOCIAL AND HUMANITARIAN QUESTIONS

(*a*) Economic questions

(1) *Code of conduct on the transfer of technology*

At its thirty-first session in 1976, the General Assembly, by its resolution 31/159, endorsed resolution 89 (IV) of 30 May 1976 of the United Nations Conference on Trade and Development relating to the establishment within the Conference of an intergovernmental group of experts which should elaborate the draft of an international code of conduct on the transfer of technology as soon as possible and decided to convene a United Nations conference under the auspices of the United Nations Conference on Trade and Development, to be held early in 1978, to negotiate on the draft elaborated by the jury of experts mentioned above and to take all decisions necessary for the adoption of the final document embodying the code of conduct for the transfer of technology, including the decision on its legal character.

Pursuant to General Assembly resolution 32/188, the Conference met from 16 October to 10 November 1978. It had before it the report of the Intergovernmental Group of Experts, which contained a draft international code of conduct on the transfer of technology.[85]

The Conference did not complete its mandate and requested the Secretary-General of UNCTAD to convene a second session of the Conference in 1979.[86]

By its resolution 33/157, adopted on the recommendation of the Second Committee,[87] the General Assembly strongly urged intensified effort towards a successful conclusion of the Conference and requested the Secretary-General to take the necessary measures for convening a resumed session as well as a subsequent session if necessary.

(2) *Questions relating to transnational corporations*[88]

The Commission on Transnational Corporations, established by Economic and Social Council resolution 1913 (LVII) of 5 December 1974, has assigned the highest priority among its various tasks to the formulation of a code of conduct.[89] In 1976, the Commission established an Intergovernmental Working Group on a Code of Conduct which held its first, second, third and fourth sessions in 1976, 1977, and 1978 respectively.

At its fourth session in 1978, the Commission on Transnational Corporations had before it the report of the Intergovernmental Working Group on its third and fourth sessions (E/C.10/36), in which reference was made to a document containing the Chairman's suggestions for an annotated outline of a code of conduct (E/C.10/31).

The Commission instructed the Working Group to continue its work and addressed to the Economic and Social Council recommendations on the time-table of the Working Group, which the Council endorsed in its resolution 1978/71. The documentation which was prepared for the sixth session of the Working Group to be held early in 1979 included a paper entitled "Transnational Corporations: Code of conduct; formulations by the Chairman"[90] and a report of the Secretariat on certain modalities for the implementation of a code of conduct in relation to its possible legal nature.

By its resolution 1978/71, the Economic and Social Council also decided to establish a Committee on an International Agreement on Illicit Payments and to convene if possible in 1980 a conference of plenipotentiaries to conclude an international agreement on illicit payments.

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[85] TD/CODE TOT/1.

[86] TD/CODE TOT/10 and Add.1.

[87] See the report of the Second Committee to the thirty-third session of the General Assembly on agenda item 59 (A/33/526).

[88] For the background to the work carried out within the United Nations on the question, see a report of the Secretariat entitled "Transnational Corporations: Issues involved in the Formulation of a Code of Conduct" (E/C.10/17).

[89] E/C.10/AC.2/8.

[90] E/C.10/AC.2/9.

(3) *Restrictive business practices*

At its fourth session in 1976, the United Nations Conference on Trade and Development (UNCTAD) decided in section III, paragraph 3, of resolution 96 (IV) that action should be taken at the international level, particularly within the framework of UNCTAD, including negotiations with the objective of formulating a set of multilaterally agreed equitable principles and rules for the control of restrictive business practices having adverse effects on international trade, particularly that of developing countries, and on the economic development of those countries.

The *Ad Hoc* Group of Experts on Restrictive Practices which was convened pursuant to that resolution held five sessions between 1976 and 1978. Its report on its fifth session held from 10 to 21 July 1978 contained the text of agreed provisions and of proposals for additional provisions.[91]

On the elaboration of a model law or laws on restrictive business practices, the Secretariat of UNCTAD submitted to the *Ad Hoc* Group of Experts at its fifth session the first draft of a model law or laws to assist developing countries in devising appropriate legislation.[92]

At its eighteenth session, in 1978, the Trade and Development Board took note of the report of the *Ad Hoc* Group of Experts and decided to convene a further session of the Group before the fifth session of UNCTAD to be held in 1979, in order to enable the Group to complete its work on the set of principles and rules and to make further progress on a model law or laws on restrictive business practices.

By its resolution 33/153 adopted on the recommendation of the Second Committee,[93] the General Assembly, taking into account the progress made within UNCTAD towards the formulation of a set of principles and rules, as well as on a model law or laws, concerning restrictive business practices, decided to convene in the period between September 1979 and April 1980 a United Nations Conference on Restrictive Business Practices to negotiate on the basis of the work already done within UNCTAD, and to take all decisions necessary for the adoption of a set of multilaterally agreed equitable principles and rules for the control of restrictive business practices having adverse effects on international trade, particularly that of developing countries, and on the economic development of those countries, including a decision on the legal character of the principles and rules.

(*b*) Office of the United Nations High Commissioner for Refugees[94]

In 1978, the international community's growing humanitarian concern for refugees and displaced persons and its correspondingly increased level of support for UNHCR has enabled the Office's international protection activities to attain an unprecedented level. Furthermore, there has been a growing realization of the importance of international solidarity as the necessary framework for the effective exercise of the international protection.

The High Commissioner has been frequently called upon to intervene with Governments in order to ensure that basic refugees' rights (particularly in relation to asylum, *non refoulement*, expulsion, personal safety, detention and the right to take up employment) are respected. The Office has also been active in the areas of issuance of travel and identity documents, naturalization, determination of refugee status, voluntary repatriation and family reunification.

In the promotional field, the High Commissioner's efforts have been directed essentially towards (*a*) encouraging further accessions to the basic international refugee instruments, namely the 1951 Convention[95] and the 1967 Protocol relating to the Status of Refugees;[96] and (*b*) encourag-

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[91] Document TD/B/C.2/AC.6/18. The report of the *Ad Hoc* Group of Experts on its previous four sessions are to be found in documents TD/B/C.2/AC.6/7 (first and second sessions), TD/B/C.2/AC.6/10 and TD/B/C.2/AC.6/13.

[92] Document TD/B/C.2/AC.6/16/Rev.1.

[93] See the report of the Second Committee to the thirty-third session of the General Assembly on agenda item 59 (A/33/526).

[94] For detailed information, see *Official Records of the General Assembly, Thirty-third Session, Supplement No. 12 and 12A* (A/33/12 and Add.1) and *ibid., Thirty-fourth Session, Supplement No. 12 and 12A* (A/34/12 and Add.1).

[95] United Nations, *Treaty Series*, vol. 189, p. 137.

[96] *Ibid.*, vol. 606, p. 267. Also reproduced in the *Juridical Yearbook*, 1967, p. 265.

ing the adoption by States of appropriate legislation and/or administration measures to ensure that the provisions of these international instruments are effectively implemented.

During 1978, four more States acceded to the 1951 Convention and to the 1967 Protocol. It should also be noted that the American Convention on Human Rights of 1969 (the "Pact of San José, Costa Rica"), which contains important provisions relating to asylum and gives expression to the fundamental principle of *non-refoulement* entered into force on 18 July 1978 and that one additional State acceded to the 1961 Convention on the Reduction of Statelessness. On the other hand the status of the OAU Convention of 1969 Governing the Specific Aspects of Refugee problems in Africa,[97] the 1954 Convention relating to the Status of Stateless Persons,[98] the 1957 Agreement[99] and 1973 Protocol relating to Refugee Seamen and the European Agreement of 1959 on the Abolition of Visas for Refugees, remained unchanged.

At its thirty-third session, the General Assembly, by its resolution 33/26 adopted on the recommendation of the Third Committee,[100] *inter alia* deplored the fact that refugees often faced the threat of *refoulement,* arbitrary detention and the denial of asylum; noted that it was necessary to ensure their basic human rights, protection and safety, *inter alia,* through further accessions to and a more effective implementation of international instruments; and urged Governments to continue to facilitate the work of the High Commissioner in the field of international protection by considering accessions to relevant instruments, the effective implementation of these instruments and the scrupulous observance of humanitarian principles with respect to the granting of asylum and the *non-refoulement* of refugees.

(*c*) International drug control

A note entitled "Implementation of the international treaties on the control of narcotic drugs" (E/CN.7/624 and Add.1-2) prepared by the Secretary-General for the twenty-eighth session of the Commission on Narcotic Drugs held at Geneva from 12 to 23 February 1979, provided information on the status of the Single Convention on Narcotic Drugs, 1961,[101] of that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961,[102] and of the Convention on Psychotropic Substances 1971.[103]

The note also dealt with (*a*) communication by governments of national laws and regulations under relevant international treaties, (*b*) notifications and notes verbales received from governments concerning the implementation of international drug control treaties in general; (*c*) the question of the simplification of existing procedures for the international transfer of samples of seized drugs; (*d*) notifications concerning the scope of control of the Single Convention, 1961 and of that Convention as amended by the 1972 Protocol, and (*e*) various questions concerning the implementation of the 1971 Convention on Psychotropic Substances such as the scope of control of the Convention, the forms for import and export authorizations and for export declarations, import prohibitions, guidelines for the exemption of preparations from certain control measures and the carrying by international travellers of small quantities of preparations for personal use.

At its thirty-third session, the General Assembly, by its resolution 33/169 adopted on the recommendation of the Third Committee,[104] *inter alia* reiterated its appeal to all States not yet parties to the above-mentioned instruments to take steps to accede to treaties in order to achieve their universal application.

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[97] Organization of African Unity, document CM/267/Rev.1.

[98] United Nations, *Treaty Series,* vol. 360, p. 117.

[99] *Ibid.*, vol. 506, p. 125.

[100] See the report of the Third Committee to the thirty-third session of the General Assembly on agenda item 85 (A/33/378).

[101] United Nations, *Treaty Series,* vol. 520, p. 151.

[102] United Nations publication, Sales No. E.77.XI.3, p. 13.

[103] United Nations publication, Sales No. E.78.XI.3, p. 7.

[104] See the report of the Third Committee to the thirty-third session of the General Assembly on agenda item 12 (A/33/509).

(*d*) Crime prevention and criminal justice

(1) *Code of conduct for law enforcement officials*

In 1975, the General Assembly, by its resolution 3453 (XXX), requested the Committee on Crime Prevention and Control to elaborate a code of conduct for law enforcement officials. In 1976, the Committee adopted a draft code of conduct for law enforcement officials, consisting of 10 articles, each accompanied by a commentary.[105] The Committee recommended that its parent body, the Commission for Social Development, transmit the draft code through the Economic and Social Council to the General Assembly for adoption.

At its thirty-third session, the General Assembly allocated the question to the Third Committee, which referred it to an open-ended informal working group.[106] On 20 December 1978 the Assembly adopted, on the recommendation of the Third Committee, resolution 33/179, to which the results of the proceedings of the working group were annexed, and by which it recommended that a working group be established at the beginning of the thirty-fourth session of the Assembly to continue the elaboration of the code.

(2) *Fifth session of the Committee on Crime Prevention and Control*

The topics of legal interest which were considered by the Committee on Crime Prevention and Control at its fifth session held in Vienna from 5 to 16 June 1978[107] included the questions of capital punishment, terrorism and the expeditious and equitable handling of criminal cases; in relation to the last question the Committee had before it draft guidelines prepared by an *ad hoc* expert meeting, which it instructed the Secretariat to revise in the light of the observations made thereon.

(*e*) Human rights questions[108]

(1) *Status and implementation of international instruments*

(i) International Covenants on Human Rights[109]

In 1978, 12 more States became parties to the International Covenant on Economic, Social and Cultural Rights, eleven more States became parties to the International Covenant on Civil and Political Rights and five more States became parties to the Optional Protocol to the International Covenant on Civil and Political Rights.

By its resolution 33/151, adopted on the recommendation of the Third Committee,[110] the General Assembly *inter alia* noted with appreciation the report of the Human Rights Committee on its third to fifth sessions;[111] invited all States which had not yet done so to become parties to the two Covenants and to consider acceding to the Optional Protocol; invited the States parties to the International Covenant on Civil and Political Rights to consider making the declaration provided for in article 41 of the Covenant;[112] and emphasized the importance of the strictest compliance by the States parties to the International Covenant on Civil and Political Rights with their obligations under the Covenant.

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[105] See document E/CN.5/536, chap. V.

[106] See the report of the Third Committee to the thirty-third session of the General Assembly on agenda item 83 (A/37/471).

[107] See the report of the Committee on Crime Prevention Control to the Commission for Social Development (E/CN.5/558).

[108] For detailed information, see the report of the Commission on Human Rights on its thirty-fourth session (*Official Records of the Economic and Social Council, 1978, Supplement No. 4* (E/1978/34)).

[109] See General Assembly resolution 2200 A (XXI), annex. Also reproduced in the *Juridical Yearbook*, 1966, p. 170 *et seq.*

[110] See the report of the Third Committee to the thirty-third session of the General Assembly on agenda item 84 (A/33/472).

[111] *Official Records of the General Assembly, Thirty-third Session, Supplement No. 40* (A/33/40).

[112] Under article 41, a State Party to the Covenant may at any time declare that it recognizes the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.

(ii) International Convention on the Elimination of All Forms of Racial Discrimination[113]

In 1978, four more States became parties to the Convention. In its resolution 33/101 adopted on the recommendation of the Third Committee,[114] the General Assembly *inter alia* requested States which had not yet become parties to the Convention to ratify it or accede thereto and appealed to States parties to the Convention to study the possibility of making the declaration provided for in article 14 of the Convention.[115]

The General Assembly further adopted, also on the recommendation of the Third Committee,[116] resolution 33/102 in which it *inter alia* took note with appreciation of the report of the Committee on the Elimination of Racial Discrimination,[117] welcomed the Committee's intention to resume the consideration of the implementation of article 7 of the Convention[118] with a view to formulating general guidelines that might assist the States parties to implement article 7 of the Convention and urged all States to be guided by the basic provisions of the Convention.

(iii) International Convention on the Suppression and Punishment of the Crime of *Apartheid*[119]

In 1978, 11 more States became parties to the Convention. By its resolution 33/103, adopted on the recommendation of the Third Committee,[120] the General Assembly urged States to submit reports under article VII of the Convention,[121] taking into account the guidelines prepared by the Working Group on the implementation of the International Convention on the Suppression and Punishment of the Crime of *Apartheid* established in accordance with article IX of the Convention;[122] appealed to all States which had not yet become parties to the Convention to ratify it or accede to it without delay; and welcomed the efforts of the Commission on Human Rights to undertake the functions set out in article X of the Convention.

(2) *Rights of migrant workers*

By its resolution 33/163, adopted on the recommendation of the Third Committee,[123] the General Assembly, considering the Migrant Workers (Supplementary Provisions) Convention, 1975,[124] and the Recommendation concerning Migrant Workers, 1975,[125] adopted by the General Conference of the International Labour Organisation, *inter alia* called upon all States, taking into account the provisions of the relevant instruments adopted by the International Labour Organisation and of the International Convention on the Elimination of All Forms of Racial Discrimination,[126]

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[113] General Assembly resolution 2106 A (XX), annex. Also reproduced in the *Juridical Yearbook*, 1965, p. 63.

[114] See the report of the Third Committee to the thirty-third session of the General Assembly on agenda item 81 (A/33/381).

[115] Under article 14, a State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals and groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in the Convention.

[116] See foot-note 116 above.

[117] *Official Records of the General Assembly, Thirty-third Session, Supplement No. 18* (A/33/18).

[118] Article 7 reads as follows:

"States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention."

[119] General Assembly resolution 3068 (XXVIII), annex. Also reproduced in the *Juridical Yearbook*, 1973, p. 70.

[120] See the report of the Third Committee to the thirty-third session of the General Assembly on agenda item 81 (A/33/381).

[121] Under article VII, States Parties undertake to submit periodic reports on the legislative, judicial, administrative or other measures that they have adopted and that give effect to the provisions of the Convention.

[122] E/CN.4/1286, annex.

[123] See the report of the Third Committee to the thirty-third session of the General Assembly on agenda item 12 (A/33/509).

[124] International Labour Office, *Official Bulletin*, vol. LVIII, 1975, series A, No. 1, Convention No. 143.

[125] *Ibid.*, No. 1, Recommendation No. 151.

[126] Resolution 2106 A (XX), annex. Also reproduced in the *Juridical Yearbook*, 1965, p. 63.

to take measures to prevent and put an end to all discrimination against migrant workers and to ensure the implementation of such measures; called upon all States to give consideration to ratifying the Migrant Workers (Supplementary Provisions) Convention, 1975; and requested the Secretary-General to explore with Member States and in co-operation with the United Nations agencies, particularly the International Labour Organisation, the possibility of the drawing up of an international convention on the rights of migrant workers.

Also in connexion with the rights of migrant workers, the General Assembly endorsed the Charter of Rights for Migrant Workers in Southern Africa adopted on 7 April 1978 by the Conference on Migratory Labour in Southern Africa;[127] the text of the Charter is annexed to resolution 33/162, adopted on the recommendation of the Third Committee.[128]

(3) *Status of persons refusing service in military or police forces used to enforce* apartheid

By its resolution 33/165, adopted on the recommendation of the Third Committee,[129] the General Assembly *inter alia* recognized the right of all persons to refuse service in military or police forces which are used to enforce *apartheid;* called upon Member States to grant asylum or safe transit to another State in the spirit of the Declaration on Territorial Asylum[130] to persons compelled to leave their country of nationality solely because of a conscientious objection to assisting in the enforcement of *apartheid* through service in military or police forces; and urged Member States to consider favourably the granting to such persons of all the rights and benefits accorded to refugees under existing legal instruments.

(4) *Protection of the human rights of arrested or detained trade union activists*

By its resolution 33/169, adopted on the recommendation of the Third Committee,[131] the General Assembly, having regard in particular to article 20 of the Universal Declaration of Human Rights,[132] article 8 of the International Covenant on Economic, Social and Cultural Rights[133] and article 22 of the International Covenant on Civil and Political Rights[133] as well as to International Labour Convention No. 87 of 9 July 1948 concerning the freedom of association and protection of the right to organize,[134] reaffirmed the importance of protecting the right to freedom of association as an essential prerequisite for the conduct of any trade union activities; recommended that special attention should be paid to the violations of the right to freedom of association; and requested Member States to release any persons who, within their jurisdiction and contrary to the provisions of the above-mentioned international instruments, might be under arrest or detention on account of trade union activities and to ensure that the fundamental rights of such persons were fully protected.

(5) *Human rights of persons subjected to any form of detention or imprisonment*

By its resolution 32/62, the General Assembly requested the Commission on Human Rights to draw up a convention on torture and other cruel, inhuman or degrading treatment or punishment in the light of the principles embodied in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[135]

At its thirty-fourth session, held at Geneva from 6 February to 10 March 1978, the Commission on Human Rights had before it, among other documents, a "Draft International Convention against

[127] The Conference, held at Lusaka from 4 to 8 April 1978, was organized by the Economic Commission for Africa and the International Labour Organisation in co-operation with the Government of Zambia and the liberation movements of southern Africa that are recognized by the Organization of African Unity.

[128] See foot-note 123 above.

[129] See the report of the Third Committee to the thirty-third session of the General Assembly on agenda item 12 (A/33/509).

[130] Resolution 2312 (XXII), annex. Also reproduced in the *Juridical Yearbook,* 1967, p. 349.

[131] See foot-note 129 above.

[132] Resolution 217 A (III).

[133] Resolution 2250 A (XXI), annex. Also reproduced in the *Juridical Yearbook,* 1966, p. 170.

[134] See International Labour Organisation, *Conventions and Recommendations adopted by the International Labour Conference,* 1919-1966 (Geneva, International Labour Office, 1966).

[135] General Assembly resolution 3452 (XXX). Also reproduced in the *Juridical Yearbook,* 1975, p. 48.

Torture and other Cruel, Inhuman or Degrading Treatment or Punishment'' proposed by the delegation of Sweden (E/CN.4/1285). It established an open-ended working group to draw up the first draft of a convention on the question. The working group did not complete the task and the Commission recommended to the Economic and Social Council that a working group be convened immediately before the Commission's subsequent session to prepare concrete drafting proposals, a recommendation which was endorsed by the Council.

The Commission also had before it, in connexion with this question, a draft body of principles for the protection of all persons under any form of detention or imprisonment, prepared by the Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. Erik Nettel (E/CN.4/Sub.2/395).[136]

(6) *Elimination of all forms of intolerance and of discrimination based on religion or belief*

This question has been under consideration in the United Nations since 1962. A preliminary draft of a United Nations Declaration on the Elimination of All Forms of Religious Intolerance had been prepared in 1964 by the Sub-Commission on Prevention of Discrimination and Protection of Minorities.[137] This draft was referred by the Commission on Human Rights to a working group, which was asked to prepare a draft declaration on the basis in particular of the Sub-Commission's preliminary draft. The working group prepared a provisional text for the first six articles.[138]

In 1973, by its resolution 3069 (XXVIII), the General Assembly invited the Economic and Social Council to request the Commission on Human Rights to consider with priority the elaboration of the envisaged draft declaration. Further to this resolution, the Commission on Human Rights, at its thirtieth session in 1974, established an informal working group which was entrusted with the task of preparing the draft declaration on the basis of the above mentioned drafts. The working group was kept in existence at the thirty-first, thirty-second, thirty-third and thirty-fourth sessions. At the conclusion of the thirty-fourth session of the Commission, the working group had completed its consideration of the preamble and had started its consideration of article 1.

By its resolution 33/106, adopted on the recommendation of the Third Committee,[139] the General Assembly noted with regret that the draft declaration had not yet been completed and requested the Commission on Human Rights to give high priority to the drafting of a single Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.[140]

(7) *Question of a convention on the rights of the child*

At its 1978 spring session, the Economic and Social Council adopted, on the recommendation of the Commission on Human Rights,[141] resolution 78/18 in which it referred to the Declaration of the Rights of the Child adopted by the General Assembly in 1959;[142] took note of the initiative taken by the Commission with a view to the conclusion of a convention on the rights of the child, and recommended to the General Assembly that it consider including in the agenda for its thirty-fourth session, as a priority matter, the question of the adoption of a convention on the rights of the child.

At its thirty-third session, the General Assembly, by its resolution 33/166 adopted on the recommendation of the Third Committee,[143] requested the Commission on Human Rights to organize

[136] For further details see the report of the Commission on Human Rights on its thirty-fourth session (*Official Records of the Economic and Social Council, 1978, Supplement No. 4* (E/1978/34), chap. VIII.

[137] E/CN.4/873, para. 142.

[138] *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 8* (E/3873), para. 296.

[139] See the report of the Third Committee to the thirty-third session of the General Assembly on agenda item 89 (A/33/474).

[140] For further details, see the report of the Commission on Human Rights on its thirty-fourth session (*Official Records of the Economic and Social Council, 1978, Supplement No. 4* (E/1978/34), chap. XIV.

[141] Resolution 19 (XXXIV) of the Commission on Human Rights, to which was annexed the text of a draft Convention submitted by Poland (see foot-note 144 below).

[142] General Assembly resolution 1386 (XIV).

[143] See the report of the Third Committee to the thirty-third session of the General Assembly on agenda item 12 (A/33/509).

its work so that the draft of the Convention might be ready for adoption if possible during the International Year of the Child (1979).[144]

(f) Status of women

Twenty-seventh session of the Commission on the Status of Women

The Commission on the Status of Women held its twenty-seventh session at United Nations Headquarters from 20 March to 5 April 1978.[145] In connexion with its agenda item entitled "International instruments and standards relating to the status of women: implementation of the Declaration on the Elimination of Discrimination against Women", it had before it a report of the Secretary-General on the promotion of full equality of women and men in all spheres of life in accordance with international standards and the Declaration on the Elimination of Discrimination against Women.[146] In its resolution I (XXVII), it referred to the Convention for the Suppression of the Traffic on Persons and of the Exploitation of the Prostitution of Others;[147] condemned this shameful exploitation, which where it exists, continues to detract from the dignity of women; and requested the Secretary-General to prepare a report on the implementation of the above-mentioned Convention.

Draft Convention on the Elimination of Discrimination against Women

At its thirty-third session, the General Assembly adopted on the recommendation of the Third Committee[148] resolution 33/177 entitled "Draft Convention on the Elimination of Discrimination against Women" in which it took note with appreciation of the report of the Working Group which had been established at the beginning of the session to deal with the issue[149] and recommended that a working group be established at the beginning of the thirty-fourth session to complete the task with a view to the adoption of the draft convention at the thirty-fourth session.

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4. THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

The seventh session of the Third United Nations Conference on the Law of the Sea was held from 27 March to 19 May 1978 at the Office of the United Nations at Geneva. This session was resumed from 21 August to 15 September 1978 at United Nations Headquarters in New York.[150]

A total of 142 States participated in the first part of the seventh session. In addition, two territories, 14 specialized agencies or United Nations bodies, 11 intergovernmental organizations, 33 non-governmental organizations having consultative status with the Economic and Social Council and four national liberation movements recognized by the Organization of African Unity or the League of Arab States participated as observers. A total of 134 States participated in the second part of the seventh session. In addition, two territories, 12 specialized agencies or United Nations bodies, 9 intergovernmental organizations, 13 non-governmental organizations having consultative status with the Economic and Social Council and two national liberation movements recognized by the Organization of African Unity participated as observers.

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[144] For further details see the report of the Commission on Human Rights on its thirty-fourth session (*Official Records of the Economic and Social Council, 1978, Supplement No. 4* (E/1978/34) chap. XIX).

[145] For the report of the Commission, see *Official Records of the Economic and Social Council, 1978, Supplement No. 2* (E/1978/32/Rev.1).

[146] General Assembly resolution 317 (IV).

[147] United Nations *Treaty Series*, vol. 96, p. 271.

[148] See the report of the Third Committee to the thirty-third session of the General Assembly on agenda item 75 (A/33/468).

[149] A/C.3/33/L.47 and Corr.1 and 2, Add.1 and Corr.1 and Add.2 and Corr.1 (subsequently issued as A/34/60).

[150] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IX (United Nations publication, Sales No. E.79.V.3).

Question of the presidency of the Conference

The Conference adopted, by a roll-call vote of 75 to 18, with 13 abstentions,[151] the following proposal tabled by Nepal on behalf of the Asian Group:

"1. The Conference *resolves* that Ambassador Hamilton Shirley Amerasinghe is and continues to be the President of the Conference unless a decision to the contrary is taken by consensus.

"2. The Conference further *resolves* that there is overwhelming support in the Conference for the continuation of Ambassador Amerasinghe as its President.

"3. Those delegations which have reservations or objections may place such reservations or objections on record."

In the course of the session, various representatives indicated that they had taken a position of principle on the matter of the presidency, holding that only an accredited representative of a government could chair a plenipotentiary conference particularly one of such importance. They generally indicated their desire to proceed with the work of the Conference and to cooperate with the President to that end.

Organization of the work of the Conference at its seventh session

The Conference decided that it should give priority to the identification and resolution of the outstanding core issues.

It set up negotiating groups to deal with:

(1) The system of exploration and exploitation, and resource policy (Negotiating Group I);

(2) Financial arrangements (Negotiating Group II);

(3) Organs of the Authority (Negotiating Group III);

(4) Access to living resources of the exclusive economic zone (Negotiating Group IV);

(5) Settlement of disputes in the exclusive economic zone (Negotiating Group V);

(6) Definition of the outer limits of the continental shelf and sharing of revenues (Negotiating Group VI);

(7) Delimitation of maritime boundaries between adjacent and opposite States and settlement of disputes thereon (Negotiating Group VII);

The Conference left the door open for consideration of other issues in negotiating groups. It agreed that the Third Committee could deal with matters which in its view called for further negotiation. Any modifications or revisions to be made in the Informal Composite Negotiating Text (ICNT),[152] the Conference decided, should emerge from the negotiations themselves and should not be introduced on the initiative of any single person, whether the President or the Chairman of a committee, unless presented to the plenary and found "from the widespread and substantial support prevailing in Plenary, to offer a substantially improved prospect of a consensus." The revision of the ICNT should be the collective responsibility of the President and the Chairmen of the main committees, acting together as a team headed by the President. The Chairman of the Drafting Committee and the Rapporteur General would be associated with the team.

At both parts of the session the Third Committee continued its work on preservation of the marine environment, scientific research and the transfer of technology. The Chairman of the Committee reported consensus on changes in provisions on international rules and national legislation to prevent, reduce and control vessel source pollution, and on measures to protect and preserve rare or fragile ecosystems as well as the habitat of depleted or endangered species. The Committee likewise reported agreement to delete a provision stating that the Convention did not cover the disposal of wastes from sea-bed mining.

Finally, the Conference held four public plenary meetings during the first part of the session to discuss the Preamble and Final Clauses of a Convention. The Conference had before it at this point

[151] Twenty-one delegations stated that they were not participating in the vote.

[152] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

the Informal Composite Negotiating Text provisions, as well as a study prepared by the Secretariat in 1976 (A/CONF.62/L.13) and various proposals submitted by Member States.

Decision of the General Assembly

On 10 November 1978, the General Assembly adopted resolution 33/17 in which it endorsed the recommendation of the Conference for the convening of an eighth session in 1979 and empowered the Conference, if the progress of its work warranted, to hold further meetings in 1979. The General Assembly further decided by a vote of 86 to 9, with 18 abstentions, that in order to enable the President of the Conference to discharge his functions properly he should be deemed to have the status of an official of the United Nations for the purpose of the Convention on the Privileges and Immunities of the United Nations.[153]

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5. INTERNATIONAL COURT OF JUSTICE[154] [155]

(*a*) Cases submitted to the Court[156]

(1) *Aegean Sea Continental Shelf*

At public sittings held from 9 to 17 October 1978 the Court heard argument on the question of its jurisdiction presented on behalf of Greece. Turkey was not represented at the hearings.

On 19 December 1978 the Court, at a public sitting, delivered the judgment[157] which is analysed below:[158]

Procedure, and Summary of Negotiations (paras. 1-31)

In its Judgment the Court, after recapitulating the different stages in the proceedings, noted that the attitude of Turkey had been defined in communications of 25 August 1976 and 24 April and 10 October 1978. (Paras. 1-14.)

While regretting that Turkey had not appeared in order to put forward its arguments, the Court pointed out that it nevertheless had to examine *proprio motu* the question of its own jurisdiction, a duty reinforced by the terms of Article 53 of its Statute, according to which the Court, whenever a party does not appear, must, before finding upon the merits, satisfy itself that it has jurisdiction. (Para. 15.)

After giving a brief account of the negotiations which had taken place between Greece and Turkey since 1973 on the question of delimiting the continental shelf, the Court found, contrary to suggestions by Turkey, that the active pursuit of negotiations concurrently with the proceedings was not, legally, any obstacle to its exercise of its judicial function, and that a legal dispute existed between Greece and Turkey in respect of the continental shelf in the Aegean Sea. (Paras. 16-31.)

First Basis of Jurisdiction Relied Upon: Article 17 of the General Act of 1928 (paras. 32-93)

In its Application Greece had specified two bases on which it claimed to found the jurisdiction of the Court in the dispute. The first was Article 17 of the General Act of 1928 for the Pacific Settlement of International Disputes, read with Article 36, paragraph 1, and Article 37 of the Statute of the Court.

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[153] United Nations, *Treaty Series*, vol. 1, p. 153.

[154] For the composition of the Court, see *Official Records of the General Assembly Thirty-third Session, Supplement No. 45*, sect. X, p. 229.

[155] As of 31 December 1978, the number of States recognizing the jurisdiction of the Court as compulsory in accordance with declarations filed under article 36, paragraph 2, of the Statute stood at 45.

[156] For detailed information, see *I.C.J. Reports 1978; I.C.J. Yearbook 1977-1978*, No. 32; and *I.C.J. Yearbook 1978-1979*, No. 33.

[157] *I.C.J. Reports 1978*, p. 3.

[158] The above analysis is taken from the *I.C.J. Yearbook 1978-1979*, p. 120 *et seq.*

Article 17 of the General Act read as follows:

"All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 39, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal. It is understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute of the Permanent Court of International Justice."

This Article thus provided for the reference of disputes to the Permanent Court of International Justice. That body was the predecessor of the present Court, which, by the effect of Article 37 of its own Statute, was substituted for it in any treaty or convention in force providing for reference of a matter to the Permanent Court. Hence, if the General Act was to be considered a convention in force between Greece and Turkey, it could, when read with Article 37 and Article 36, paragraph 1, of the present Court's Statute, suffice to establish the latter's jurisdiction. (Paras. 32-34.)

The question of the status of the General Act of 1928 as a convention in force for the purposes of Article 37 of the Statute had been raised, though not decided, in previous cases before the Court. In the present case Greece had contended that the Act must be presumed to be still in force as between Greece and Turkey; the latter, on the contrary, took the position that the Act was no longer in force. (Paras. 35-38.)

The Court noted that Greece had drawn attention to the fact that both the Greek and the Turkish instruments of accession to the Act were accompanied by reservations. Greece had affirmed that those were irrelevant to the case. Turkey, on the other hand, took the position that, whether or not the General Act was assumed to be in force, Greece's instrument of accession, dated 14 September 1931, was subject to a clause, reservation (*b*), which would exclude the Court's competence with respect to the dispute. (Para. 39.)

The text of this reservation (*b*) was as follows:

"The following disputes are excluded from the procedures described in the General Act . . .

"(*b*) disputes concerning questions which by international law are solely within the domestic jurisdiction of States, and in particular disputes relating to the territorial status of Greece, including disputes relating to its rights of sovereignty over its ports and lines of communication."

The Court considered that, if Turkey's view of the effect of reservation (*b*) on the applicability of the Act as between Greece and Turkey with respect to the subject-matter of the dispute was justified, a finding on the question whether the Act was or was not in force would cease to be essential for the decision regarding the Court's jurisdiction. (Para. 40.)

According to Greece, the Court should leave reservation (*b*) out of account because the question of its effect on the applicability of the General Act had not been raised regularly by Turkey in accordance with the Rules of Court, so that Turkey could not be regarded as having "enforced" the reservation as required by Article 39, paragraph 3, of the General Act, whereby: "If one of the parties to a dispute has made a reservation, the other parties may enforce the same reservation in regard to that party." In the Court's view, Turkey's invocation of reservation (*b*) in a formal statement made in response to a communication from the Court must be considered as constituting an "enforcement" of the reservation within the meaning of Article 39, paragraph 3, of the Act. The Court had therefore been unable to leave out of its consideration a reservation the invocation of which had been properly brought to its notice earlier in the proceedings. (Paras. 41-47.)

Greece had maintained that reservation (*b*) could not be considered as covering the dispute regarding the continental shelf of the Aegean Sea and therefore did not exclude the normal operation of Article 17 of the Act. It had contended in particular that the reservation did not cover all disputes relating to the territorial status of Greece but only such as *both* related to its territorial status *and at the same time* concerned "questions which by international law are solely within the domestic jurisdiction of States". (Paras. 48 and 49.)

That contention depended on an essentially grammatical interpretation which hinged on the meaning to be ascribed to the expression "and in particular" ("*et, notamment,*" in the original French of the reservation). After considering this argument, the Court found that the question whether that expression had the meaning attributed to it by Greece depended on the context in which it had been used in the instrument of accession and was not a matter simply of the preponderant linguistic usage. The Court stated that it could not base itself on a purely grammatical interpretation of the text and observed that a number of substantive considerations pointed decisively to the conclusion that reservation (*b*) contained two separate and autonomous reservations. (Paras. 50-56.)

One such consideration was that in framing its declaration accepting the compulsory jurisdiction of the Permanent Court under the optional clause of the latter's Statute—a declaration made on 12 September 1929, only two years before the Greek accession to the General Act—Greece had included a provision which, indisputably, had been an autonomous reservation of "disputes relating to the territorial status of Greece". It could hardly be supposed that Greece, in its instrument of accession to the General Act, had intended to give to its reservation of "disputes relating to the territorial status of Greece" a scope which differed fundamentally from that given to it in that declaration. That Greece had had such an intention had not been borne out by the contemporary evidence placed before the Court relating to the making of the declaration and the deposit of the instrument of accession.

That being so, the Court found that reservation (*b*) comprised two distinct and autonomous reservations, one affecting disputes concerning questions of domestic jurisdiction and the other reserving "disputes relating to the territorial status of Greece". (Paras. 57-68.)

The Court next considered what "disputes relating to the territorial status of Greece" must be taken to mean.

Greece had maintained that a restrictive view of the meaning must be taken, by reason of the historical context, and that those words related to territorial questions bound up with the territorial settlements established by the peace treaties after the First World War. In the Court's opinion, the historical evidence relied on by Greece had seemed rather to confirm that in reservation (*b*) the expression "territorial status" had been used in its ordinary, generic sense of any matters properly to be considered as belonging to the concept of territorial status in public international law. The expression therefore included not only the particular legal régime but the territorial integrity and the boundaries of a State. (Paras. 69-76.)

Greece had argued that the very idea of the continental shelf had been wholly unknown in 1928 when the General Act had been concluded, and in 1931 when Greece acceded to the Act. But, in the Court's view, since the expression "territorial status" was used in the Greek reservation as a generic term, the presumption necessarily arose that its meaning, as also that of the word "rights" in Article 17 of the General Act, was to follow the evolution of the law and to correspond with the meaning attached to it by the law in force at any given time. The Court therefore found that the expression "disputes relating to the territorial status of Greece" must be interpreted in accordance with the rules of international law as they now existed today and not as they had existed in 1931. (Paras. 77-80.)

The Court then proceeded to examine whether, taking into account the developments in international law regarding the continental shelf, the expression "disputes relating to the territorial status of Greece" should or should not be understood as comprising disputes relating to the geographical extent of Greece's rights over the continental shelf in the Aegean Sea. Greece had contended that the dispute concerned the delimitation of the continental shelf, said to be entirely extraneous to the notion of territorial status, and that the continental shelf, not being part of the territory, could not be considered as connected with territorial status. The Court observed that it would be difficult to accept the proposition that delimitation was entirely extraneous to the notion of territorial status, and pointed out that a dispute regarding delimitation of a continental shelf tended by its very nature to be one relating to territorial status, inasmuch as a coastal State's rights over the continental shelf derived from its sovereignty over the adjoining land. It followed that the territorial status of the coastal State comprised, *ipso jure*, the rights of exploration and exploitation over the continental shelf to which it was entitled under international law. (Paras. 80-89.)

Having regard to those considerations, the Court was of the opinion that the dispute was one which related to the territorial status of Greece within the meaning of reservation (*b*) and that Turkey's invocation of the reservation had had the effect of excluding the dispute from the application of Article 17 of the General Act. That Act was therefore not a valid basis for the Court's jurisdiction. (Para. 90.)

The Court also took into consideration a suggestion that the General Act had never been applicable as between Turkey and Greece, by reason of the existence of the Greco-Turkish Treaty of Friendship, Neutrality, Conciliation and Arbitration signed on 30 October 1930. It found that it was dispensed from any need to enter into the question of the effect of the 1930 treaty on the applicability of the General Act, because it had established that, by the effect of reservation (*b*), the Act was not applicable to the dispute, and because the 1930 treaty had not been invoked as a basis for its jurisdiction. (Paras. 91-93.)

Second Basis of Jurisdiction Relied Upon: the Brussels Joint Communiqué of 31 May 1975 (paras. 94-108)

The second basis of jurisdiction relied upon by Greece had been the Brussels Joint Communiqué of 31 May 1975. This was a communiqué issued directly to the press by the Prime Ministers of Greece and Turkey following a meeting between them on that date. It had contained the following passage:

> "They [the two Prime Ministers] decided that those problems [between the two countries] should be resolved peacefully by means of negotiations and as regards the continental shelf of the Aegean Sea by the International Court at The Hague."

Greece had maintained that this passage directly conferred jurisdiction on the Court, committed the parties to concluding any implementing agreement needed and, in the event of refusal by one of them to conclude such an agreement, permitted the other to refer the dispute unilaterally to the Court. Turkey, for its part, maintained that the communiqué did not "amount to an agreement under international law", and that in any event it did not comprise any undertaking to resort to the Court without a special agreement (*compromis*) or amount to an agreement by one State to submit to the jurisdiction of the Court upon the unilateral application of the other. (Paras. 94-99.)

In view of those divergent interpretations, the Court considered what light was thrown on the meaning of the communiqué by the context in which the meeting of 31 May 1975 had taken place and the document been drawn up. It found nothing to justify the conclusion that Turkey had been prepared to envisage any other reference to the Court than a joint submission of the dispute. In the information before it on what had followed the Brussels communiqué the Court found confirmation that the two Prime Ministers had not undertaken any unconditional commitment to refer their continental shelf dispute to the Court. (Paras. 100-106.)

Hence the Brussels communiqué did not constitute an immediate and unqualified commitment on the part of the Prime Ministers of Greece and Turkey to accept the submission of the dispute to the Court unilaterally by Application. It followed that it did not furnish a valid basis for establishing the Court's jurisdiction. The Court added that nothing it had said might be understood as precluding the dispute from being brought before the Court if and when the conditions for establishing its jurisdiction were satisfied. (Paras. 107 and 108.)

For those reasons, the Court found, by 12 votes to two, that it was without jurisdiction to entertain the Application filed by the Government of Greece on 10 August 1976. (Para. 109.)

For the purposes of the case, the Court was composed as follows: President Jiménez de Aréchaga; Vice-President Nagendra Singh; Judges Forster, Gros, Lachs, Dillard, de Castro, Morozov, Sir Humphrey Waldock, Ruda, Mosler, Elias, and Tarazi; Judge *ad hoc* Stassinopoulos.

Vice-President Nagendra Singh and Judges Gros, Lachs, Morozov and Tarazi appended separate opinions or declarations.

Dissenting opinions were appended to the Judgment by Judge de Castro and Judge *ad hoc* Stassinopoulos.

(2) *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*

On 1 December 1978 the Government of Tunisia notified to the Registrar of the Court a Special Agreement, drawn up in Arabic between Tunisia and the Libyan Arab Jamahiriya on 10 June 1977, which had come into force on the date of exchange of instruments of ratification, namely 27 February 1978. A certified French translation of the Agreement was attached.

The Special Agreement provides for the reference to the Court of a dispute between Tunisia and the Libyan Arab Jamahiriya concerning the delimitation of the continental shelf between them. *Inter alia,* it provides for Memorials to be filed by both parties within 18 months.

(*b*) Other activities

The Rules of Court adopted on 14 April 1978, which entered into force on 1 July 1978, are applicable in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case. The Rules of 1972, however, continued to apply in the *Aegean Sea Continental Shelf* case.

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6. INTERNATIONAL LAW COMMISSION[159]

THIRTIETH SESSION OF THE COMMISSION[160]

The International Law Commission held its thirtieth session at Geneva from 8 May to 28 July 1978. It continued to make substantial progress in its work for the development of international law and its codification by adopting in particular the final set of the draft articles on most-favoured-nations clauses, which it forwarded to the Assembly with the recommendation that the Assembly should recommend the draft articles to Member States with a view to the conclusion of a convention on the subject.

With respect to State responsibility, the Commission provisionally codified five additional draft articles, one (article 23) dealing with the breach of an international obligation to prevent a given event, the next three (articles 24-26) relating to the moment and duration of the breach of an international obligation, and the last (article 27)—the first of chapter IV entitled "Implication of a State in the internationally wrongful act of another State"—concerning aid or assistance by a State to another State for the commission of an internationally wrongful act.

Regarding succession of States in respect of matters other than treaties, the Commission provisionally approved three additional articles (articles 23-25), thus completing part II (Succession to State debts) of the draft.

On the question of treaties of international organizations, the Commission provisionally approved four additional articles (articles 35-38), thus completing section 4 (Treaties and third States or third international organizations) of part III (Observance, application and interpretation of treaties) of the draft.

The Commission also undertook certain preliminary work on other topics such as the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier,[161] the second part of the topic "Relations between States and international organizations",[162] international liability for injurious consequences arising out of acts not prohibited by international law, jurisdictional immunities of States and their property, and the review of the multilateral treaty-making process.[163]

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[159] For the membership of the Commission, see *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 10* (A/34/10), chap. I.

[160] For detailed information, see *Yearbook of the International Law Commission,* 1978, vol. I and vol. II (Parts One and Two) (United Nations publication, Sales No. E.79.V.5 (Part I) and E.79.V.6 (Part II)).

[161] In this connexion see section 8 below.

[162] See p. 65 of the *Juridical Yearbook,* 1977, foot-note 145.

[163] See p. 70 of the *Juridical Yearbook,* 1977, section (*g*).

Consideration by the General Assembly

At its thirty-third session, the General Assembly had before it the report of the International Law Commission on the work of its thirtieth session.[164] By its resolution 33/139, adopted on the recommendation of the Sixth Committee,[165] the Assembly *inter alia* recommended that the Commission continue its work on State responsibility, on succession of States in respect of matters other than treaties, on the question of treaties of international organizations and on the law of the non-navigational uses of watercourses. The Assembly further recommended that the Commission continue its work on the remaining topics in its current programme.

With regard to the Commission's work on the most-favoured nation clauses, the Assembly, in the second part of the same resolution, invited all States, United Nations organs having competence in the subject matter and interested intergovernmental organizations to submit their comments on the draft articles and on the Commission's recommendation that those draft articles should be recommended to Member States with a view to the conclusion of a convention on the subject. This question is to be taken up again by the General Assembly at its thirty-fifth (1980) session.

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7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[166]

Eleventh session of the Commission[167]

The United Nations Commission on International Trade Law (UNCITRAL) held its eleventh session at United Nations Headquarters from 30 May to 16 June 1978.

At its 1977 session, the Commission had considered and approved a draft Convention on the International Sale of Goods which had been prepared by its Working Group on the International Sale of Goods. At its 1978 session, it considered and approved the text of certain draft articles on the formation of contracts on the basis of a draft prepared by its Working Group on the International Sale of Goods. The Commission decided that the draft articles on the formation of contracts and the draft Convention should be integrated into a single text entitled "Draft Convention on Contracts for the International Sale of Goods"[168] and recommended that the General Assembly convene an international conference of plenipotentiaries, as early as practicable,[169] to conclude, on the basis of the draft Convention, a convention on contracts for the international sale of goods. The Commission also recommended that the General Assembly should authorize the Conference to consider the desirability of preparing a Protocol to the 1974 Convention on the Limitation Period in the International Sale of Goods[170] harmonizing its sphere of application with that of the Convention on Contracts for the International Sale of Goods as it may be adopted by the Conference.

In the course of its eleventh session, the Commission also considered two reports of its Working Group on International Negotiable Instruments concerning the progress made on the preparation of a draft convention on international bills of exchange and international promissory notes. The Commission asked the Working Group to continue its work and further requested the Secretary-General to continue to work in consultation with the Commission's Study Group on International Payments.

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[164] *Official Records of the General Assembly, Thirty-third Session, Supplement No. 10* (A/34/10).

[165] See the report of the Sixth Committee to the thirty-third session of the General Assembly on agenda item 114(A/33/419).

[166] For the membership of the Commission, see *Official Records of the General Assembly, Thirty-first Session, Supplement No. 39* (A/31/39), decision 31/310.

[167] For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. IX, 1978 (United Nations publication, Sales No. E.80.V.VIII).

[168] Reproduced in the report of the Commission on its eleventh session (*Official Records of the General Assembly, Thirty-third Session, Supplement No. 17* (A/33/17)).

[169] The Conference was convened at Vienna on 10 March 1980.

[170] Reproduced in the *Juridical Yearbook*, 1974, p. 92.

The Commission decided that priority in its work programme should be accorded to the following topics: topics relating to international trade contracts (international barter or exchange, international contract practices and the 1955 Hague Convention on the Law Applicable to International Sales); topics on international payments (stand-by letters of credit and, with a lower priority, electronic funds transfer); determination of a universal unit of account for international transactions; international commercial arbitration (including conciliation of international trade disputes); products liability; the legal implications of the new international economic order; and transportation.

Consideration by the General Assembly

At its thirty-third session, the General Assembly had before it the report of UNCITRAL on the work of its eleventh session.[171] With respect to the draft Convention on Contracts for the International Sale of Goods, the Assembly adopted, on the recommendation of the Sixth Committee,[172] resolution 33/93 in which it *inter alia* endorsed the recommendations of the Commission referred to above. On the report of the Commission the Assembly adopted also on the recommendation of the Sixth Committee[173] resolution 33/92 in which it *inter alia* recommended that the Commission continue its work on the topics included in its programme of work and continue to maintain liaison with the Commission on Transnational Corporations and close collaboration with UNCTAD, and to give special consideration to the interests of developing countries bearing in mind the special problems of land-locked countries.

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8. LEGAL QUESTIONS DEALT WITH BY THE SIXTH COMMITTEE AND BY *AD HOC* LEGAL BODIES

(*a*) Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961[174]

By its resolution 33/140 adopted on the recommendation of the Sixth Committee,[175] the General Assembly *inter alia* took note of the report of the Secretary-General[176] on the implementation by States of the provisions of the above-mentioned Convention, as well as of the study by the International Law Commission[177] of the proposals on the elaboration of a protocol concerning the status of the diplomatic courier, and the diplomatic bag not accompanied by diplomatic courier;[178] expressed concern at continuing instances of violations of the generally recognized rules of diplomatic law and at instances of violations of security of diplomatic sessions and safety of their personnel; requested those States which had not yet become parties to the Convention to give urgent consideration to acceding to that Convention; and decided that the General Assembly would give further consideration to this question.

(*b*) Questions concerning the Charter of the United Nations and the strengthening of the role of the Organization

Pursuant to General Assembly resolution 32/45, the Special Committee on the Charter of the United Nations and on the Strengthening of the role of the Organization met at Headquarters from 27

[171] *Official Records of the General Assembly, Thirty-third Session, Supplement No 17* (A/33/17).

[172] See the report of the Sixth Committee to the thirty-third session of the General Assembly on agenda item 115 (A/33/349).

[173] *Ibid.*

[174] United Nations, *Treaty Series*, vol. 500, p. 95.

[175] See the report of the Sixth Committee to the thirty-third session of the General Assembly on agenda item 116 (A/33/465).

[176] A/33/224.

[177] *Ibid.*, p. 31.

[178] By its resolution 33/139, the General Assembly recommended that the International Law Commission should continue the study concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier with a view to the possible elaboration of an appropriate legal instrument (see section 6 above).

February to 24 March 1978. It established an open-ended Working Group which had before it working papers on the peaceful settlement of disputes, the rationalization of existing procedures and the maintenance of international peace and security. It examined those working papers which related to the first two above-mentioned topics and further prepared a compilation of 51 proposals relating to the peaceful settlement of disputes.[179]

At the thirty-third session of the General Assembly, different views were expressed within the Sixth Committee on the results achieved by the Special Committee and on the appropriateness of the extension of its mandate. The Assembly however decided by consensus, on the recommendation of the Sixth Committee,[180] to renew the mandate of the Committee by its resolution 33/94.

(*c*) Proposal for an international convention against the taking of hostages

In accordance with General Assembly resolution 32/148 of 16 December 1977, the *Ad Hoc* Committee on the Drafting of an International Convention against the Taking of Hostages met at the United Nations Office at Geneva from 6 to 24 February 1978.[181] It established two open-ended working groups: Working Group I was requested to examine the thornier questions connected with the drafting of the proposed convention, which it identified as relating *inter alia* to the scope of the convention and the question of national liberation movements and to the question of the right of asylum. Working Group II examined most of the articles of the draft submitted by the Federal Republic of Germany[182] as well as a number of other written and oral proposals. The *Ad Hoc* Committee recommended by consensus that the General Assembly invite it to continue its work in 1979.

At the thirty-third session of the General Assembly, many delegations in the Sixth Committee[183] took note with satisfaction of the progress made by the *Ad Hoc* Committee in the carrying out of its task. The Assembly, by its resolution 33/19 which it adopted by consensus, renewed the mandate of the *Ad Hoc* Committee.

(*d*) Enhancing the effectiveness of the principle of non-use of force in international relations

In accordance with General Assembly resolution 32/150, the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations met at United Nations Headquarters from 21 August to 15 September 1978.[184] It held a general debate on the questions within its mandate. Some delegations also commented on specific provisions of the draft treaty on the non-use of force in international relations submitted by the Soviet Union.[185]

At its thirty-third session the General Assembly, by its resolution 33/96 which it adopted on the recommendation of the Sixth Committee[186] noted that the Special Committee had commenced work to accomplish the tasks assigned to it but had not completed its mandate. It *inter alia* reaffirmed the need for universal and effective application of the principle of the non-use of force in international relations and decided that the Special Committee would continue its work in 1979.

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[179] For the report of the Special Committee, see *Official Records of the General Assembly, Thirty-third Session, Supplement No. 33* (A/33/33).

[180] See the report of the Sixth Committee to the thirty-third session of the General Assembly on agenda item 117 (A/33/413).

[181] For the report of the *Ad Hoc* Committee, see *Official Records of the General Assembly, Thirty-third Session, Supplement No. 39* (A/33/39 and Corr.1).

[182] *Ibid., Thirty-second Session, Supplement No. 39.*

[183] See the report of the Sixth Committee to the thirty-third session of the General Assembly on agenda item 120 (A/33/385).

[184] For the report of the Special Committee, see *Official Records of the General Assembly, Thirty-third Session, Supplement No. 41* (A/33/41 and Corr.1).

[185] *Ibid.*, annex.

[186] See the report of the Sixth Committee to the thirty-third session of the General Assembly on agenda item 121 (A/33/418).

(e) Draft Code of Offences against the Peace and Security of Mankind

At the thirty-second session of the General Assembly, a group of Member States including Barbados, Fiji, Mexico, Nigeria, Panama, the Philippines and the Syrian Arab Republic, noting that in 1957 the General Assembly, by its resolution 1186 (XII), had decided to defer temporarily consideration of the draft Code of Offences against the Peace and Security of Mankind until such time as the General Assembly agreed on a definition of aggression and further noting that a Definition of Aggression had been adopted in 1974 by the General Assembly[187] requested the inclusion in the agenda of the thirty-second session of the Assembly of an additional item entitled "Code of Offences against the Peace and Security of Mankind".[188]

The item could not be considered at the thirty-second session for lack of time. At the thirty-third session, however, the General Assembly, in its resolution 33/97 adopted on the recommendation of the Sixth Committee[189] requested the Secretary-General to invite Member States and relevant international intergovernmental organizations to submit their comments on the draft code prepared in 1954 by the International Law Commission on this topic.[190] The question will be considered again by the Assembly at its thirty-fifth (1980) session.

(f) United Nations Conference on Succession of States in Respect of Treaties

In accordance with General Assembly resolution 32/47, the Conference, which had been unable to complete its task during the session it held in 1977, held a resumed session in Vienna from 31 July to 23 August 1978. The delegations of 94 States participated in the resumed session; in addition, two Governments were represented by observers.

The basic proposal before the Conference was the draft articles on succession of States in respect of treaties adopted by the International Law Commission at its twenty-sixth session.[191]

The Vienna Convention on Succession of States in Respect of Treaties[192] was adopted by the Conference on 22 August 1978 and opened for signature on 23 August 1978. The Conference also adopted a number of resolutions.[193] [194]

(g) United Nations Conference on the Carriage of Goods by Sea

In accordance with General Assembly resolution 31/100, the United Nations Conference on the Carriage of Goods by Sea met at Hamburg, Federal Republic of Germany, from 6 to 31 March 1978, to consider the question of carriage of goods by sea and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. Seventy-eight States participated in the Conference; in addition one State sent an observer to the Conference.

In accordance with General Assembly resolution 33/100 the Conference took as the basis of its work the draft Convention on the Carriage of Goods by Sea contained in chapter IV of the report of the United Nations Commission on International Trade Law on its ninth session[195] and various other documents referred to in the Final Act of the Conference.[196]

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[187] General Assembly resolution 3314 (XXIX), annex.

[188] See *Official Records of the General Assembly, Thirty-second Session, Annex*, agenda item 131, document A/32/247.

[189] See the report of the Sixth Committee to the thirty-third session of the General Assembly on agenda item 124 (A/33/437).

[190] *Official Records of the General Assembly, Ninth Session, Supplement No. 9* (A/2693), para. 54.

[191] *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10* (A/9610/Rev.1), chap. II, sect. D.

[192] Reproduced on p. 106 of this *Yearbook*.

[193] See p. 121 of this *Yearbook*.

[194] For the proceedings of the Conference, see *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vols. I, II and III (United Nations publications, Sales Nos. E.78.V.8, E.79.V.9 and E.79.V.10).

[195] *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17), chap. IV, sect. C.

[196] Document A/CONF.89/13.

On 30 March 1978, the Conference adopted the United Nations Convention on the Carriage of Goods by Sea, 1978,[197] which was opened for signature at the concluding meeting of the Conference on 31 March 1978. The Conference also adopted a "common understanding" and a resolution.[198] [199] [200]

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9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH[201]

UNITAR continued to administer the International Law Fellowships Programme, as a major part of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, established under General Assembly resolution 2099 (XX) of 20 December 1965. A number of fellowships were awarded to legal advisers of Governments and teachers of international law, mostly from developing countries. The programmes included participation in the courses of international law and The Hague Academy of International Law and in the special courses and seminars organized by UNITAR during this period. Apart from the six-week programme at The Hague, the fellows had the choice of attending the international law seminar organized at Geneva in connexion with the annual session of the International Law Commission at Geneva, or of spending three months of practical training at one of the legal offices of the United Nations or the specialized agencies.

B. General review of the activities of intergovernmental organizations related to the United Nations

1. INTERNATIONAL LABOUR ORGANISATION[202]

1. The International Labour Conference (ILC), which held its 64th Session in Geneva in June 1978, adopted the following instruments: a Convention and a Recommendation concerning Labour Administration: Role, Functions and Organization;[203] and a Convention concerning Protection of the

[197] Reproduced on p. 122 of this *Yearbook*.

[198] Reproduced on p. 134 of this *Yearbook*.

[199] The official records of the Conference will be published under the symbol A/CONF.89/14.

[200] Consideration of two other questions of legal interest which were on the provisional agenda of the thirty-third session of the General Assembly was postponed to the thirty-fourth session. The first of those questions concerned the two resolutions (see *Juridical Yearbook*, 1975, p. 114), adopted by the United Nations Conference on the Representation of States in their Relations with International Organizations (Vienna, 4 February-14 March 1975) on the observer status of national liberation movements and on the application of the Vienna Convention on the Representation of States in their Relations with International Organizations in future activities of the United Nations; the second question related to the consolidation and progressive evolution of the norms and principles of international economic law. Consideration of these two questions was postponed to the thirty-fourth session by General Assembly decisions 33/423 and 33/424.

In the course of its thirty-third session, the General Assembly also considered the report of the Committee on Relations with the Host Country (*Official Records of the General Assembly, Thirty-third Session, Supplement No. 26* (A/33/26 and Corr.1), in connexion with which it adopted resolution 33/95, and the question of the registration and publication of treaties and international agreements pursuant to Article 102 of the Charter of the United Nations (for the report of the Secretary-General on this question, see document A/33/258) in connexion with which it adopted resolution 33/141 which *inter alia* amended the procedure for publication of treaties in the United Nations Treaty Series provided for in article 12 of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations.

[201] For detailed information see *Official Records of the General Assembly, Thirty-third Session, Supplement No. 14* (A/33/14) and *ibid., Thirty-fourth Session, Supplement No. 14* (A/34/14).

[202] With regard to the adoption of instruments, information on the preparatory work which, by virtue of the double-discussion procedure, normally covers a period of two years, is given, in order to facilitate reference work, in the year during which the instrument was adopted.

[203] *Official Bulletin*, Vol. LXI, 1978, Series A, No. 2, pp. 99-103; pp. 108-113; English, French, Spanish. Regarding preparatory work, see: *First Discussion*—Labour Administration: Role, Functions and Organisation,

Right to Organise and Procedures for Determining Conditions of Employment in the Public Service,[204] and a Recommendation concerning Procedures for Determining Conditions of Employment in the Public Service.[205]

2. The Committee of Experts on the Application of Conventions and Recommendations met in Geneva from 9-22 March, 1978, and presented its report.

3. The Governing Body Committee on Freedom of Association met in Geneva and adopted Reports Nos. 177,[206] 178,[206] 179,[206] and 180[206] (205th Session of the Governing Body, February-March 1978); Reports Nos. 181,[206] 182,[206] 183,[206] 184,[206] 185[206] and 186[206] (206th Session of the Governing Body, May-June 1978); and Reports Nos. 187,[207] 188[207] and 189[207] (208th Session of the Governing Body, November 1978).

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2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

I. OFFICE OF THE LEGAL COUNSEL[208]

A. *Constitutional Matters*

In addition to current legal advice and services provided to the Director-General and various departments within the Organization, the Office of the Legal Counsel provided legal services to the Committee on Constitutional and Legal Matters (CCLM), the Council and other statutory bodies of the Organization.

(a) *Treaties concluded within the Organization*

—Amendments to the Agreement for the Establishment of a Regional Anin al Production and Health Commission for Asia, the Far East and the South-West Pacific

At its seventy-fourth session (27 November-7 December 1978), the Council adopted a resolution amending Articles III and IX of the Agreement to allow for membership and the granting of observer status to States situated in the region which are not members of FAO but are members of

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ILC, 61st Session (1976), Report V(1) (this report was prepared for the 61st Session, 1976, but the item was later moved to the agenda of the 63rd Session due to the convening of the ILO World Employment Conference in June 1976; it contains, *inter alia*, details of the action which led to the placing of the question on the agenda of the Conference) and ILC, 63rd Session (1977), Report V(2), 170 and 126 pages respectively; English, French, Spanish, German, Russian. See also ILC, 63rd Session (1977), *Record of Proceedings*, pp. 513-529; 701-704; English, French, Spanish. *Second Discussion*—Labour Administration: Role, Functions and Organisation, ILC, 64th Session (1978), Report IV(1) and Report IV(2), 46 and 55 pages respectively; English, French, Spanish, German, Russian. See also ILC, 64th Session (1978), *Provisional Record of Proceedings* Nos. 22; 22A; 22B; 27, pp. 17–20; 34, p. 8; English, French, Spanish.

[204] *Official Bulletin*, Vol. LXI, 1978, Series B, No. 2.

[205] *Ibid.*, Vol. LXI, 1978, Series B, No. 3.

[206] *Official Bulletin*, Vol. LXI, 1978, Series A, No. 2, pp. 104-108; 113-114; English, French, Spanish. Regarding preparatory work, see: *First Discussion*—Freedom of Association and Procedures for Determining Conditions of Employment in the Public Service, ILC, 63rd Session (1977), Report VII(1) (this report contains, *inter alia*, details of the action which led to the placing of the question on the agenda of the Conference), and Report VII(2), 111 and 84 pages respectively; English, French, Spanish, German, Russian. See also ILC, 63rd Session (1977), *Record of Proceedings*, pp. 629-645; 773-777; English, French, Spanish. *Second Discussion*—Freedom of Association and Procedures for Determining Conditions of Employment in the Public Service, ILC, 64th Session (1978), Report V(1) and Report V(2), 45 and 41 pages respectively; English, French, Spanish, German, Russian. See also ILC, 64th Session (1978), *Provisional Record of Proceedings* Nos. 25; 25A; 25B; 28, pp. 10-15; 35, pp. 1-3; English, French, Spanish.

[207] This report has been published as Report III (Part 4) to the 64th Session of the Conference and comprises two volumes: Vol. A: "General Report and Observations concerning Particular Countries" (Report III (Part 4A)), 259 pages; English, French, Spanish. Vol. B: "General Survey of the Reports relating to the Employment (Women with Family Responsibilities) Recommendation, 1965 (No. 123)" (Report III (Part 4B)), 68 pages; English, French, Spanish.

[208] For general information on the organization and functions of the Office of the Legal Counsel, see *Juridical Yearbook*, 1972, p. 60.

any one of the United Nations specialized agencies or the International Atomic Energy Agency, and Article XIV to enable the Commission to adopt and amend its Financial Regulations subject to the approval of the Director-General and confirmation by the FAO Council.[209]

(b) *Amendments to the Statutes of FAO Bodies**

—Membership of the Advisory Committee on Forestry Education

At its seventy-fourth session (27 November-7 December 1978), the Council adopted a resolution increasing the membership of the Committee and authorizing the Director-General to amend the Committee's statutes accordingly.[210]

(c) *Inter-agency agreements and arrangements*

—Supplementary Arrangement between the United Nations and the Food and Agriculture Organization of the United Nations Regarding Co-operation between the World Food Council and the Food and Agriculture Organization of the United Nations

The Supplementary Arrangement concluded under Article XIX of the Agreement between the United Nations and the Food and Agriculture Organization of the United Nations of 14 December 1946[211] entered into force on 28 August 1978 following signature by the Secretary-General of the United Nations and the Director-General of the Food and Agriculture Organization of the United Nations.[212]

(d) *Treaties concluded outside the Organization*

—Agreement for the Establishment of a Centre on Integrated Rural Development for Asia and the Pacific (CIRDAP)[213]

A Conference of Plenipotentiaries, which met in Kuala Lumpur, Malaysia, on 29 July 1978, adopted and opened for signature the aforementioned Agreement setting up a Centre outside the framework of FAO. In accordance with Article XVI of the Agreement, the Director-General of FAO is the Depositary. Pursuant to paragraph 2 of Article XII, the Agreement was open for signature in Kuala Lumpur, from 1 to 4 August 1978, and is thereafter open for signature at FAO Headquarters in Rome.

In accordance with Article XII, paragraph 1, of the Agreement, States listed in Annex I may become parties to the Agreement by signature followed by the deposit of an instrument of ratification, or by the deposit of an instrument of accession with the Depositary. Other States may be admitted by the Governing Council in accordance with Article XII, paragraph 5.

In conformity with its Article XII, paragraph 4, the Agreement shall enter into force with respect to all States that have ratified or acceded to it, on the date when instruments of ratification or accession have been deposited by the Government of the People's Republic of Bangladesh and by the Governments of at least five other eligible States.

On 1 August 1978, the Agreement was signed, subject to ratification, by representatives of the following States: Bangladesh, India, Indonesia, Lao People's Democratic Republic, Malaysia, Nepal, Pakistan, Philippines and Viet Nam. As of 31 December 1978 one instrument of ratification had been received, namely from Bangladesh on 11 October 1978.

B. *Law of the Sea and International Fisheries*

At its second session in May 1978, the Western Central Atlantic Fishery Commission pointed out that the geographic conditions prevailing in the Western Central Atlantic made it necessary for

* See also *infra*, Section B (Law of the Sea and International Fisheries) for amendments to the Statutes of the Western Atlantic Fishery Commission.

[209] CL 74/REP, paras. 201-203, Appendix I; CL 74/9; CL 74/PV/13; CL 74/PV/15.

[210] CL 74/REP, paras. 209-212; CL 74/20.

[211] United Nations, *Treaty Series*, vol. 1, p. 912.

[212] C77/REP, paras. 240-243, 314-317; WFC/1978/1.

[213] The English language version is the only authentic one.

governments to cooperate in the rational utilization of living resources that are of interest to two or more countries. As the Commission could not, under FAO Council Resolution 4/61 by which it had been established, concern itself with management and regulation of fisheries, it decided to invite the Council to amend its Statutes so that it could, at the request of interested countries, promote the development, conservation, rational management and best utilization of fishery resources. The Commission also pointed out that the southern boundary of its area of competence, set at 5°00' North latitude, cut across the distribution of some important fishery resources. It therefore recommended that the boundary should be extended southwards to 10°00' South latitude. The Statutes of the Commission were amended accordingly by Resolution 3/74 of the Council in December 1978.[214]

The eighteenth session of the Indo-Pacific Fishery Commission examined the implications of the new régime of the sea for the management of fishery resources, with particular reference to its own role in this regard. This concerned especially stocks which migrate between two or more areas under national jurisdiction and those which move beyond exclusive economic zones into the high seas. There was general agreement that management plans should be worked out by the countries directly concerned, and that the Commission could provide a convenient forum.

At its twelfth session in June 1978, the FAO Committee on Fisheries reviewed the progress made by the Secretariat in the formulation of a comprehensive programme to assist with the development of fisheries in the exclusive economic zones of developing countries. It made a number of recommendations regarding the further elaboration of that programme.

The Eleventh FAO Regional Conference for Europe, which met in October 1978, considered the new régime of the oceans and its implications for fish supply and resource management in Europe. It emphasized that the next years will be crucial for the fisheries sector, since they will constitute a period of transition and adaptation to the new régime. Many delegations observed that FAO might usefully strengthen its action aimed at encouraging and assisting the negotiation of bilateral fishing agreements as well as of arrangements for the establishment of joint ventures with developing coastal States.

C. *Environmental Law*

In 1978, the FAO Legal Office provided the legal input to the joint FAO/UNEP project, "Preparatory Work for the Protection of the Marine Environment in the Gulf of Guinea and Adjacent Coastal Areas", by undertaking surveys of national legislation, of applicable international agreements and of the scientific basis for legal controls of marine pollution in the area concerned.

Technical assistance was provided in December to the Government of Tunisia in the preparation of a National Rangelands Management Act.

II. Legislation Branch[215]

(a) *Legislative assistance and expert advice in the field*

During the course of 1978 legislative assistance was given as follows:

—fisheries legislation (Bangladesh, Egypt, Liberia, Oman, Philippines, Seychelles, Sierra Leone, Sri Lanka, United Republic of Tanzania, Thailand, Venezuela and Yemen Arab Republic);

—wildlife legislation (Belize, Central African Empire);

—national water resources legislation (Egypt, Mauritius, Sierra Leone);

—seed legislation (Afghanistan);

—plant protection legislation (Cape Verde);

—forestry legislation (Sudan);

—agricultural insurance legislation and preparation of range land legislation (Tunisia).

[214] CL 74/REP, paras. 207-208.

[215] For general information on the organization and functions of the Legislation Branch, see *Juridical Yearbook*, 1972, p. 62, note 59.

Legislative assistance was also given to the following organizations, associations or groups of nations:

—Kagera River Basin Organization (international water resources law and other related matters; Burundi, Rwanda and United Republic of Tanzania; 18-30 September 1978).

—Regional sub-grouping of Senegal, Gambia, Mauritania, Cape Verde and Guinea-Bissau (international co-operation in fisheries).

—West Africa Rice Development Association (WARDA) (constitutional and legal matters).

(b) *Legal assistance and advice not involving field missions*

The principal activities, performed at the request of the Governments, agency, project or FAO technical departments concerned, were the following:

Advice was provided on various subjects, such as: national water resources legislation in Pakistan, Mauritius, Ethiopia, Indonesia, Niger, Nigeria, the Yemen Arab Republic, and the United Arab Emirates; irrigation and drainage legislation in Argentina; international water resources law for the International Law Commission of the United Nations; fisheries legislation for the Arab Conference of Ministers of Agriculture; seed production and control in Iran; draft seed law in Syria; animal feedstuffs legislation in Tunisia; food control law in Qatar; consumer protection legislation in Guyana; and plant quarantine model law.

(c) *Legislative research and publications*

Research was conducted, *inter alia,* on water legislation in selected African countries; legal and institutional aspects of international rivers in Africa; need for and content of water law and legal aspects of international ground water resources; national ground-water legislation; national and international law on water pollution; coastal state requirements for foreign fishing; fisheries joint ventures; the role of parastatal bodies in fisheries development; regulations under which a specific treatment of plants is required as a condition of entry into a country; meat and poultry regulations in European countries;. consumer protection and fertilizers legislation. Studies and other research documents were published on ground-water law, international water resources treaties, bilateral fishery agreements, fisheries management and development, forestry legislation, wildlife protection and national parks legislation, and agrarian reform.[216]

(d) *Collection, translation and dissemination of legislative information*

FAO publishes, semi-annually, the *Food and Agricultural Legislation.* Annotated lists of relevant laws and regulations appear regularly in *Land Reform,* a semi-annual FAO publication. Similar lists are also published in the quarterly *Food and Nutrition Review* and in *Unasylva* [An international journal of forestry and forest industries].

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

1. CONSTITUTIONAL AND PROCEDURAL QUESTIONS

(a) *Membership of the Organization*

Indicated below is information on the signature and acceptance of the Constitution of UNESCO by States which became members of the Organization within the period covered by this review:

State	*Date of Signature*	*Date of deposit of instrument of acceptance*
Cape Verde	15 February 1978	14 November 1977
Namibia	2 November 1978	2 November 1978
Swaziland	25 January 1978	25 January 1978

[216] See *infra* the Bibliography, p. 257.

Under the terms of the relevant provisions of the Constitution[217] each of the above-mentioned States became a member of the Organization on the respective date its acceptance took effect.

In the case of Namibia, as it was then not a Member State of the United Nations, Article II (2) of the UNESCO Constitution was applicable. Thus, before Namibia deposited its instrument of acceptance, the General Conference had, following an application received from the President of the United Nations Council for Namibia and upon recommendation of the Executive Board, adopted by the required two-thirds majority a resolution by which it decided

> ". . . to admit Namibia as a member of UNESCO, it being agreed that the United Nations Council for Namibia, established by the United Nations as the legal administering authority for Namibia, rights and obligations flowing from Namibia's membership of the Organization are concerned, be regarded as the Government of Namibia until the present illegal occupation of that country is terminated."[218]

(b) *Harmonization of the medium-term planning cycles and the budget cycles of the organizations of the United Nations system*

At its twentieth session, the General Conference, after examining the question of the harmonization of the medium-term planning cycles and the budget cycles of the organizations of the United Nations system[219] and the report of the Legal Committee thereon,[220] adopted a resolution to harmonize UNESCO's medium-term planning cycles and biennial budget cycles with those of the other United Nations organizations as of 1984.[221] By this resolution the General Conference decided to hold its twenty-second ordinary session in the third year following its twenty-first ordinary session (i.e., in 1983), and adopted amendments adding transitional provisions thereto to Section I of its Rules of Procedures and to Article IV of the UNESCO Constitution. A transitional provision establishing the term of the Director-General appointed by the General Conference in 1980 at seven years was added to Article VI of the Constitution. The General Conference further decided to convene an extraordinary session in 1982 for the purpose of approving the medium-term plan for 1984–1989 and, if necessary, of considering the financial problems connected with the triennial Programme and Budget for 1981–1983. The General Conference also decided, in accordance with article 13.4 of UNESCO's Financial Regulations, to suspend for the three-year period starting on 1 January 1981 those provisions of Articles 2.1, 5.3, 5.4, and 5.5 of the Financial Regulations which are incompatible with the special provisions laid down in its resolution, as well as those of any other financial and budgetary regulations which may be incompatible with the said special provisions.

(c) *Amendments to Section XVI of the Rules of Procedure of the General Conference ("New Members")*

At its twentieth session, the General Conference, after taking cognizance of the report of its Legal Committee,[222] adopted amendments to Section XVI (Rules 91–94) of its Rules of Procedure. The amendments changed the wording of Section XVI (which concerns new members of the Organization) in order to clarify the procedures through which States Members of the United Nations and States not members of the United Nations become members of UNESCO and by which territories or groups of territories become associate members of UNESCO. The amendments also clarified the point as to when the membership of each of the aforementioned entities became effective under the relevant procedures.

2. INTERNATIONAL REGULATIONS

(a) *Entry into force of instruments previously adopted*

In accordance with the terms of its article 18, the International Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in the Arab and European States bordering

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[217] See Articles II and XV of the Constitution.
[218] See Resolution 20 C/0.71, 30 October 1978.
[219] Document 20 C/37.
[220] Document 20 C/129.
[221] See Resolution 20 C/31.1.
[222] Document 20 C/128.

on the Mediterranean, adopted on 17 December 1976 at Nice, France, by an International Conference of States convened by UNESCO, entered into force on 6 March 1978, that is, one month after the deposit with the Director-General of the second instrument of ratification.

(b) *Instruments adopted by the General Conference at its twentieth session*[223]

—Recommendation concerning the international standardization of statistics on science and technology;[224]

—Revised recommendation concerning the international standardization of educational statistics;[225]

—Revised recommendation concerning international competitions in architecture and town planning;[226]

—Recommendation for the protection of movable cultural property;[227]

—Declaration on fundamental principles concerning the contribution of the mass media to strengthening peace and international understanding, to the promotion of human rights and to countering racialism, *apartheid* and incitement to war;[228]

—Declaration on race and racial prejudice;[229]

—International Charter of Physical Education and Sport.[230]

(c) *Instrument adopted by an International Conference of States convened by UNESCO and held from 18 to 22 December 1978*[231] *at UNESCO headquarters*

—Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in the Arab States (adopted on 22 December 1978).

3. Initial special reports by Member States

(a) *Reports submitted to the twentieth session of the General Conference*

At its twentieth session, the General Conference, after considering the initial special reports[232] submitted by Member States on the action taken by them on the Recommendation on the development of adult education, the Recommendation concerning the international exchange of cultural property, the Recommendation concerning the safeguarding and contemporary role of historic areas, the Recommendation on participation by the people at large in cultural life and their contribution to it, the Recommendation on the legal protection of translators and translations and the practical means to improve the status of translators, and the Recommendation concerning the international standardization of statistics on radio and television, adopted by the General Conference at its nineteenth session, adopted a General Report[233] embodying its comments on the aforesaid action taken by Member States and decided that the General Report would be transmitted to Member States, to the United Nations, and to National Commissions, in accordance with article 19 of the Rules of Procedure concerning recommendations to member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution.

[223] For the text of these instruments, see *Records of the General Conference*, Vol. 1 (Resolutions), Annex I.
[224] See document 20 C/32.
[225] See document 20 C/33.
[226] See document 20 C/29.
[227] See document 20 C/30.
[228] See Resolution 20 C/4/9.3/2.
[229] See Resolution 20 C/3/1.1/2.
[230] See Resolution 20 C/1/5.4/2.
[231] For the Final Report of the Conference see document ED-78/COREDIAB-2/4.
[232] See documents 20 C/23 and Add., 20 C/24 and Add., 20 C/25 and Add., 20 C/26 and Add., 20 C/27 and Add., and 20 C/28 and Add.
[233] See Resolution 20 C/30.11.

(b) *Reports to be submitted to the twenty-first session of the General Conference*

The General Conference, at its twentieth session, reminded Member States of their obligation to transmit to it, at least two months before the opening of its twenty-first session, initial special reports on the action taken by them upon the four Recommendations[234] adopted at its said twentieth session, and to include in these reports the information on the matters specified in paragraph 4 of resolution 50 adopted at its tenth session.[235]

4. COPYRIGHT AND NEIGHBOURING RIGHTS

(a) *Working Group on the Implementation of the Satellite Convention (3-7 April 1978)*

In pursuance of the decisions of their respective governing bodies, UNESCO and WIPO jointly convened a Working Group on the Implementation of the Satellite Convention, which met in Geneva from 3 to 7 April 1978. The object of the Working Group was to examine draft model provisions for the implementation of the Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite.

Despite the view expressed by some experts to link the Satellite Convention to the Rome Convention, the Working Group considered that its task was to examine the Satellite Convention as an independent instrument and decided that the model provisions should be restricted to the implementation of the Satellite Convention and, consequently, concern only transmission by means of point-to-point satellites.

Having discussed and debated the relevant preliminary questions, the Working Group considered that a contracting State desiring "to take adequate measures to prevent prohibited distributions" could choose from two legal systems. The first was to grant to the broadcasting organizations the right to authorize or prohibit their signals, infringement of which would not only be prohibited but would also give rise to claims for damages. The other legal system consisted in prohibiting, subject to sanctions, a distributor from distributing programme-carrying signals which the originating organization had not intended for him.

The Working Group accordingly adopted two alternative draft texts entitled: I. Model Provisions Granting Specific Protection to Broadcasting Organizations with a view to the Implementation of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite; and II. Model Provisions Prohibiting Operations Governed by the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite.[236]

(b) *Sub-Committee of the Intergovernmental Copyright Committee on the Problems Raised by the Transmission of Television Programmes by Cable*

Pursuant to the decisions taken by the Intergovernmental Copyright Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union at their sessions in November/December 1977, the Sub-Committee of the Intergovernmental Copyright Committee of the UCC and the Sub-Committee of the Executive Committee of the Berne Union on the Copyright Problems Raised by the Transmission of Television Programmes by Cable met in Geneva from 3 to 7 July 1978 to look for solutions on the basis of the report of the 1977 Working Group.

The Sub-Committee confirmed the final conclusions of the June 1977 Working Group on the issue, namely, that (i) the solution of the problems did not warrant the revision of either of the two international copyright conventions (UCC and Berne Convention); (ii) in view of different legal concepts in different countries it did not seem practicable to work out a uniform solution to the problems and propose it to the different national legislators as a model; and (iii) it was necessary to identify the problems which should be taken into consideration for settlement by legal provisions or juridical decisions at national level. A Working Group within the Sub-Committee was set up for the drawing up of the said list of problems.

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[234] For the titles of these Recommendations, see *supra* the section entitled "International Regulations".
[235] See Resolution 20 C/30.21.
[236] Document SAT/WG/I/4.

The list drawn up makes a distinction between two areas to be considered: the legal analysis of the situations where authors' rights are involved and the administration of those rights. The legal analysis presented two cases for distinction: that of original transmissions and that of retransmissions of captured transmissions. On the subject of original transmissions a secondary distinction was made between those made by a cable system and those made by the broadcaster himself via cable. As regards retransmissions of captured transmissions it was again distinguished whether or not the retransmissions were simultaneous with the original broadcast. On the subject of administration of rights a preliminary distinction was made between a collective administration system and non-voluntary licensing. As regards the latter, a further distinction was made between statutory licences and compulsory licences.

The systems cited above were discussed by the Working Group with reference to relevant provisions in the Universal Copyright Convention and the Berne Convention. The conclusions reached by the Working Group were adopted by the Sub-Committees.[237]

(c) *Sub-Committee of the Intergovernmental Committee of the Rome Convention on the Problems Raised by the Transmission of Television Programmes by Cable*

In accordance with the decisions taken by the Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention) at its December 1977 session in Geneva, the Sub-Committee of the above Committee on the problems raised by the transmission of television programmes by cable in regard to protection of the interests of the beneficiaries of the Rome Convention met at Geneva on 6 July 1978, to look into solutions which might be offered to national legislators.

The Sub-Committee concluded that it did not seem appropriate at this stage either to adopt an additional protocol to the Rome Convention or to start preparing for revision of the same. It also expressed the opinion that conclusion of any special agreements among the contracting States of the Convention was fraught with the danger of disturbing the established balance between the interests of the beneficiaries whose activities were intermingled. The idea of a model bilateral agreement was also not considered necessary. The Sub-Committee considered it advisable to draw up guidelines to be recommended to States for the settlement of the problems arising from the distribution of television programmes by cable and took over the list of the possible situations as drawn up by the Sub-Committees of the Intergovernmental Committee of the UCC and the Executive Committee of the Berne Union (as mentioned under (b) above).

Then the Sub-Committee made a distinction between original transmission on the one hand and retransmissions of captured transmissions on the other. A secondary distinction was made between original transmission made by a cable system and those made by the broadcaster himself via cable. It expressed the view that as far as transmissions of television programmes by cable were concerned, domestic laws should treat original transmissions as broadcasts, and that the three categories of beneficiaries covered by the Rome Convention should be given, as a minimum, the same protection for those transmissions as for broadcasts. As regards administration of rights, the Sub-Committee was of the opinion that, in the case of simultaneous retransmissions of entire programmes, only collective administration was compatible with the obligations to be met by cable distributors, who had to obtain the authorization of all the contributors to the programme.[238]

(d) *Sub-Committee of the Intergovernmental Copyright Committee on Legal Problems Arising from the Use of Video-cassettes and Audio-visual Discs*

In accordance with the decisions taken by the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee of the Universal Copyright Convention at their November/December 1977 sessions in Paris, the Sub-Committees of the above-mentioned two Committees on the Legal Problems Arising from the Use of Video-cassettes and Audio-visual Discs met in Paris on 13, 14 and 19 September 1978, to look for solutions which might be offered to

[237] Document IGC/SC.I/CTV/7.

[238] Document ICR/SC.1/CTV/6.

national legislators on the basis of the recommendations by the Working Group on the subject which had itself met in Geneva in February 1977 to study the above problems.

While confirming the said Working Group's conclusions that this new dissemination technique (i) "did not call for a revision of the Berne Convention or the Universal Copyright Convention . . .", (ii) "did not necessitate the preparation of a new international instrument . . .", (iii) "required however, the establishment of a topology of specific situations, with their legal implications, and a list of considerations which could serve as a basis for solutions that would make it possible to alleviate the consequences of the development of new techniques in the audio-visual field", the Sub-Committee emphasized the urgency of identifying practical measures for the relief of copyright holders who sustain loss because of the use of their works or performances in cassettes or audio-visual discs, and also suggested that an information campaign should be launched, by UNESCO and WIPO in particular, to alert governments and public opinion to the consequences of such acts.

At the conclusion of their deliberations the Sub-Committees desired: (i) that an inventory of the situation considered by them vis-à-vis the copyright problems raised by the utilisation of videograms should be prepared by the Secretariats; (ii) that the report of their findings should be submitted to the 1979 sessions of the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee and (iii) that after consideration of the afore-mentioned Committee, a full set of documents comprising all the preparatory studies and the report of the 1977 Working Group should be constituted and published.

The inventory on the situations as referred to in the preceding paragraph which includes "terminology", "determination of legal status", "public use", "private use", "use for teaching purposes" and "field of application", has been prepared and as its Annex I, it forms an integral part of the report.[239]

(e) *Sub-Committee of the Intergovernmental Committee of the Rome Convention on Legal Problems Arising from the Use of Video-Cassettes and Audio-Visual Discs (in the case of neighbouring rights—Rome Convention)*

Pursuant to the decisions taken by the Intergovernmental Committee of the Rome Convention at its sixth ordinary session in December 1977, the Sub-Committee of the said Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention) on Legal Problems Arising from the Use of Video-Cassettes and Audio-Visual Discs in connection with the protection of the interests of the categories protected by this Convention, met in Paris on 18 and 20 September 1978 in order to look into solutions which might be offered to national legislators.

Considering the prejudice caused to the beneficiaries of the Rome Convention by the increased use of videograms, the Sub-Committee discussed different possible solutions and concluded that the most practical one would be to provide it through national legislation. It also agreed that it was not necessary to revise the Rome Convention now, though protection provided for in it was inadequate, particularly for the performers.

Accordingly, the Sub-Committee decided to provide national legislators with Guidelines on how the use of videograms should be regulated in view of the limitations of the Rome Convention and the interests of the beneficiaries. The Sub-Committee endorsed the findings of the Copyright Sub-Committee (UCC and Berne—see above), which also recognized and discussed these problems in detail, regarding "terminology", "private use", "use for teaching purposes", and "charging levy on both the equipment used in making the reproduction and on the material support for distribution among beneficiaries" and adopted the same inventory of problems.

The Sub-Committee also expressed the wish that its report should be submitted to the 1979 session of the Intergovernmental Committee of the Rome Convention and be given wide circulation. Further, it expressed the wish that a complete set of documents, including all the preparatory studies and the 1977 Working Group Report on the issue, should be published.[240]

[239] Document IGC/SC.1/VAD/5.
[240] Document ICR/SC.1/VAD/5.

(f) *Third Committee of Governmental Experts on the Double Taxation of Copyright Royalties Remitted from One Country to Another*

In pursuance of resolution 6.123 adopted by the General Conference of UNESCO at its nineteenth session and the decision by the Executive Board of UNESCO at its 102nd session, as also of the decisions approved by the administrative organ of WIPO at its September 1977 sessions respectively, UNESCO and WIPO jointly convened a meeting of the Third Committee of Governmental Experts on the Double Taxation of Copyright Royalties remitted from one country to another which met at UNESCO Headquarters, Paris, from 19 to 30 June 1978.

On the basis of the deliberations of the previous committees and the compromise reached by the Committee that met in 1976, the object of the Third Committee was to establish a multilateral convention on the general principles and a model bilateral agreement designed to govern the relationship between the contracting States vis-à-vis the implementation of the convention.

Accordingly, the Committee discussed and debated various aspects of the preliminary draft multilateral agreement for the avoidance of double taxation on copyright royalties remitted from one country to another, a preliminary draft protocol annexed to the agreement, a preliminary draft model bilateral convention on this subject and commentaries on these drafts, prepared by the secretariat of the Committee.

In the course of discussions there was divergence of opinion on a number of points and voting had to be resorted to on: (i) whether the proposed instrument should take the form of a multilateral convention; (ii) whether the multilateral convention should include a provision whereby the contracting States would undertake to grant a preferential treatment in respect of copyright royalties; and (iii) appeal against chairman's ruling, during consideration of the draft resolution, disallowing the amendments as to the nature of the instrument envisaged. Results of the votes were: (i) in the affirmative; (ii) in the negative, and (iii) prevalence of the ruling by Chairman.

On termination of its discussions, the Committee adopted the texts of the draft "Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties" and the draft protocol attached to it. In the resolution adopted by the Committee, the Secretariats of UNESCO and the International Bureau of WIPO were invited, *inter alia,* to prepare (i) a draft commentary explaining the draft multilateral convention; and (ii) a draft model bilateral agreement along with a draft commentary explaining it. It also recommended that an international conference of States be convened in 1979 by the Directors-General of UNESCO and of WIPO for the adoption of a multilateral convention on this subject accompanied by a model bilateral agreement.[241]

5. Human rights

(a) *Implementation of the Convention and Recommendation against Discrimination in Education*

The third report[242] of the Committee on Conventions and Recommendations, which has responsibility for examining periodic reports by Member States on the implementation of the Convention and Recommendation against Discrimination in Education, together with the comments of the Executive Board on that report[243] was submitted to the twentieth session of the General Conference.

The General Conference adopted the report of the Committee and the recommendations set out therein, in particular as regards the preparation of a new questionnaire and the timetable proposed for the fourth consultation of Member States, the results of which will be submitted to the General Conference at its twenty-third session.[244]

(b) *Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education*

[241] Document UNESCO/WIPO/DT/III/DR.11.
[242] See document 20 C/40 and Add.
[243] See decision 104 EX/5.2.1.
[244] See Resolution 20 C/1/1.1/2.

In accordance with article 3(2) of the Protocol instituting a Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education, and on the report of the Nominations Committee, the General Conference, at its twentieth session, on 20 November 1978, elected for a six-year term the following persons as members of the above-mentioned Commission: Dr. Narciso B. Albarracin (Philippines), Mr. Bandiare Ali (Niger), Professor Dr. Vilhelm Friedrich de Gaay Fortman (Netherlands), and Mr. Preben Kirkegaard (Denmark).[245]

(c) *Examination of cases and questions concerning the exercise of human rights in UNESCO's spheres of competence*

In accordance with a decision[246] taken by the Executive Board at its 103 d session under item 5.5.2 of its agenda, the 13 member Working Party, created pursuant to another decision[247] of the Executive Board taken at its 102nd session under agenda item 5.6.2, met from 9 to 17 January 1978 in order to prepare its final report.

This final report[248] was submitted to the Executive Board at its 104th session. The Board adopted on 26 April 1978 a new procedure as proposed by the Working Party.[249]

This new procedure replaces the former procedure which was applied to the examination of communications addressed to UNESCO in connection with specific cases involving human rights in education, science and culture in accordance with decision 77 EX/8.3 adopted by the Executive Board at its seventy-seventh session in 1967.[250]

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4. INTERNATIONAL CIVIL AVIATION ORGANIZATION

1. LEASE, CHARTER AND INTERCHANGE OF AIRCRAFT IN INTERNATIONAL OPERATIONS

Pursuant to Assembly Resolution A22-28 adopted by the 22nd Session of the Assembly (Montreal, 13 September–4 October 1977), the Council of ICAO convened in Montreal in September 1978 the 23rd Session of the Legal Committee. As a result of its deliberations, the Committee approved a draft article 83 *bis* to be inserted in the Chicago Convention; this new article, which will be submitted for approval to the next ICAO Assembly, would provide for the transfer of certain functions and duties under Articles 12, 30, 31 and 32 a) of the Chicago Convention, when an aircraft registered in a Contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar agreement by an operator who has his principal place of business or, if he has no such place of business, his permanent residence in another Contracting State.

Furthermore, the 23rd Session of the Legal Committee approved draft articles for the amendment of the Rome Convention of 1952; these draft articles referred to the situation when an aircraft is leased, chartered or interchanged in international operations. These draft articles, in substance, were adopted by the International Conference on Air Law held at Montreal in September 1978.

Finally, the Legal Committee considered the question whether the Tokyo Convention of 1963 should apply when the offences are committed on board an aircraft not registered in a Contracting State but leased without crew to a lessee who has his principal place of business or his permanent residence in another Contracting State. The ICAO Council has sent a questionnaire to States relating to the possible amendment of the Tokyo Convention of 1963, and the Council will consider any future action with respect to this subject during the year 1979.

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[245] See document 20 C/NOM/9 and Add.
[246] See decision 103 EX/5.5.2.
[247] See decision 102 EX/5.6.2.
[248] See document 104 EX/3.
[249] See decision 104 EX/3.3.
[250] Reproduced in the *Juridical Yearbook*, 1967, p. 264.

2. Problem of liability for damage caused by noise and sonic boom

A Subcommittee of the Legal Committee met in Montreal from 18 April to 1 May 1978, and its task was to prepare a text or alternative texts of an instrument for the unification of private law liability for damage caused by noise and sonic boom in international civil air navigation. The Subcommittee prepared the text of five draft articles; each proposed system of liability attracted support from less than one third of the States represented at the Subcommittee and the measure of substantial agreement capable of being reached between States was not considered to extend beyond damage caused by noise or sonic boom in a single occurrence (that is damage caused by noise or sonic boom produced by one aircraft during a particular flight); the majority of the Subcommittee took the view that the new instrument should not cover cumulative damage, that is damage caused by the compounded effect of numerous flights, in particular in the vicinity of airports. The Subcommittee prepared a detailed questionnaire but considered the subject was not ripe for study by the Legal Committee. By the end of the year 1978, replies to the questionnaire have been received from only a small group of States and on 6 December 1978, the Council decided that the States should be again requested to send replies to the Council and the Council will consider any future action with respect to this subject during its 97th Session in June 1979.

3. International Conference on Air Law

The tenth International Conference on Air Law was convened by the 92nd Session of the Council and met at Montreal from 6 to 23 September 1978 for the purpose of examining the draft articles for the amendment of the Rome Convention of 1952; these draft articles had been prepared by the 22nd (1976) and 23rd (1978) Sessions of the Legal Committee. The Conference was attended by the delegations of 58 States and by 4 observer delegations. As a result of its deliberations, the Conference adopted the Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface signed at Rome on 7 October 1952; the Protocol was open for signature on 23 September 1978 and on that date was signed by the delegations of 9 States. The basic features of the Protocol are the following: substantial increase of the limits of liability stipulated in Article 11 of the Rome Convention of 1952; the limits of liability are expressed in the terms of Special Drawing Rights but the reference to the "monetary unit" is preserved for those States which are not Members of the International Monetary Fund; the provisions of Chapter III relating to the security for the operator's liability have been substantially simplified; the scope of applicability of the Convention as amended was redefined so as to encompass also the case of aircraft leased, chartered or interchanged whose operator has his principal place of business or his permanent residence in a Contracting State; a new article was inserted stipulating that the Convention shall not apply to nuclear damage.

4. Unlawful interference with international civil aviation and its facilities

The Committee on Unlawful Interference with International Civil Aviation and its Facilities held 19 meetings during the year. The Committee examined proposals from States for amendments to Annex 17—Security and the problems concerning the authority and responsibility of the pilot-in-command during acts of unlawful interference. On the basis of the Report presented by the Committee and the views expressed by the Air Navigation Commission, the Council, at its 94th Session on 29 June 1978, decided to refer this question to the Legal Committee and requested the latter to study this item within the framework of Item 6, Part A, of its Work Programme (Legal Status of the Aircraft Commander) and to decide on the priority of this item.

As a result of the recommendations made by the Committee with regard to Annex 17, and taking into account the comments of Contracting States and interested international organizations who had been consulted on these matters, the Council adopted Amendment 3 to Annex 17 on 13 December 1978. The Council prescribed 13 April 1979 as the date on which the said Amendment shall become effective. The date of applicability, to the extent that this Amendment or parts thereof would have become effective, was set at 29 November 1979.

5. WORLD BANK

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Signatures and Ratifications of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States[251]

As of March 1, 1979, eighty States had signed the Convention,[252] Comoros, Papua New Guinea, Philippines and Rwanda being the most recent signatories. Seventy-five States had taken the final step toward becoming Contracting States by depositing instruments of ratification.[253]

The Additional Facility

On September 27, 1978, the Administrative Council of the Centre authorized the Secretariat to administer at the request of the parties concerned certain proceedings between States and nationals of other States which fall outside the scope of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. They are (i) conciliation or arbitration proceedings for the settlement of investment disputes arising between parties one of which is not a Contracting State or a national of a Contracting State; (ii) conciliation or arbitration proceedings between parties at least one of which is a Contracting State or a national of a Contracting State for the settlement of disputes that do not directly arise out of an investment; and (iii) fact-finding proceedings. The scope within which, and the terms on which, the Secretariat may administer these proceedings, which would of course not be governed by the provisions of the Convention, are set out in the Additional Facility Rules (Document ICSID/11). They provide, among other things that the Additional Facility will not be available for the settlement of ordinary commercial disputes. In that connection the Council recorded its view that economic transactions which may or may not depending on their terms, be regarded by the parties as investments for purposes of the Convention; involve long-term relationships or the commitment of substantial resources on the part of either party; and are of special importance to the economy of the State party, can be clearly distinguished from ordinary commercial contracts. Examples of such transactions may be found in various forms of industrial cooperation agreements and major civil works contracts. The Additional Facility Rules also contain provisions designed to ensure that parties do not seek recourse to the Additional Facility in cases coming within the competence of the Centre pursuant to the provisions of the Convention. There are also four schedules: the Administrative and Financial Rules (Additional Facility), the Conciliation (Additional Facility) Rules, the Arbitration (Additional Facility) Rules, and the Fact-Finding (Additional Facility) Rules.

Disputes Submitted to the Centre

On March 20, 1978, the Centre registered a request for arbitration between *Guadalupe Gas Products Corp.*, a U.S. company, and the *Federal Military Government of Nigeria*. The parties are in the process of appointing the members of the tribunal.

In the cases of *Holiday Inns/Occidental Petroleum* vs. *Government of Morocco* and *Government of Gabon* vs. *Société SERETE S.A.*, the proceedings were discontinued at the request of the parties.

The cases of *Société Ltd. Benvenuti et Bonfant SRL* vs. *Government of the People's Republic of Congo* and *AGIP SpA* vs. *Government of the People's Republic of Congo* are still pending before the Centre.

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[251] Reproduced in the *Juridical Yearbook*, 1966, p. 196.

[252] The Convention on the Settlement of Investment Disputes between States and Nationals of Other States is reproduced in the *Juridical Yearbook* 1966, p. 196.

[253] The list of Contracting States and Other Signatories of the Convention is reproduced in Document ICSID/3.

6. INTERNATIONAL MONETARY FUND

Extensive changes of the Articles of Agreement of the International Monetary Fund took place in 1978 with the entry into force of the Second Amendment to these Articles on April 1, 1978. The Amendment entered into force for all members of the Fund when it had been accepted by three-fifths of the members having four-fifths of the total voting power. Important changes have been made in the provisions of the Articles relating to: the exchange arrangements that members may maintain; the role of gold and the SDR in the international monetary system; the financial operations and transactions of the Fund; and the establishment of a Council.

During the two years required for the acceptance of the proposed Second Amendment, the Legal Department of the Fund worked on extensive revisions of the By-Laws, Rules and Regulations of the Fund and general decisions that were necessitated by the modifications of the Articles of Agreement. The amendments of the By-Laws took effect on June 13, 1978, after adoption by the Board of Governors and revised Rules and Regulations were adopted by the Executive Board and became effective on the same date as the Second Amendment.

Changes in the Fund's General Arrangements to Borrow were also made to conform that legal instrument to the provisions of the Second Amendment.

The major legal activities and decisions of the International Monetary Fund are summarized below:

SECOND AMENDMENT OF THE ARTICLES OF AGREEMENT

The main themes of the modifications of the Articles made by the Second Amendment can be summarized under the following headings:

(*a*) Exchange arrangements of each member's choice; the possible adoption of particular general arrangements; and the possible adoption of a system of par values that members will have an option to participate in; subject at all times to general obligations and firm surveillance by the Fund.

The provisions on exchange arrangements recognize that the essential purpose of the international monetary system is to provide a framework that both facilitates the exchange of goods, services, and capital among countries and sustains sound economic growth, and that a principal objective is the continuing development of the orderly underlying conditions that are necessary for financial and economic stability. Members undertake a general obligation to collaborate with the Fund and with other members in order to assure orderly exchange arrangements and to promote a stable system of exchange rates. Members must perform this obligation by observing certain specified undertakings with respect to domestic and external economic and financial policies.

The general obligation and specified undertakings apply to all members at all times. Members are free, however, to apply the exchange arrangements of their choice. The Fund will be able, by decisions taken with an eighty-five per cent majority of the total voting power, to recommend exchange arrangements that accord with the development of the international monetary system, but members will continue to have the right to choose their own arrangements.

The Fund is required to oversee the international monetary system in order to ensure its effective operation and to oversee the observance by each member of its obligations.

The Fund may determine, by the majority already referred to, that international economic conditions permit the introduction of a system based on stable but adjustable par values, whereupon provisions governing such a system will apply. Each member will then establish a par value unless it intends to apply other arrangements.

(*b*) A reduction in the role of gold, including the disposition of the Fund's own holdings of gold.

The most important changes under this heading are as follows:

(i) the elimination of the function of gold as the common denominator of the par value system and as the unit of value of the special drawing right;

(ii) the abolition of the official price of gold;

(iii) the abrogation of obligatory payments in gold by members to the Fund and by the Fund to members, and elimination of authority for the Fund to accept gold except under decisions taken with a high majority of the total voting power;

(iv) the requirement that the Fund complete the disposition of fifty million ounces of gold;

(v) the authorization of the Fund to dispose of the remainder of its gold holdings in various ways by sale on the basis of prices in the market or at the official price in effect before the second amendment;

(vi) profits on the sale of gold on the basis of prices in the market would be placed in a special account for use in the ordinary operations and transactions of the Fund or for other uses, including those for the special benefit of members with low per capita income;

(vii) the requirement that the Fund, in its dealings in gold, avoid the management of the price, or the establishment of a fixed price, in the gold market; and

(viii) the undertaking of members to collaborate with the Fund and with other members in order to ensure that their policies with respect to reserve assets will be consistent with the objectives of promoting better international surveillance of international liquidity and making the special drawing right the principal reserve asset in the international monetary system.

Many of the powers that the Fund may exercise under this heading (*b*) are subject to a majority of eighty-five per cent of the total voting power.

(*c*) Changes in the characteristics and expansion of the possible uses of the special drawing right so as to assist it to become the principal reserve asset of the international monetary system.

Numerous changes have been made in the provisions dealing with the special drawing right in order to modify its characteristics and extend its usability. Some of the most important modifications are listed below:

(i) participants will be able to enter into transactions by agreement without the necessity for decisions by the Fund, and a participant transferring special drawing rights in such a transaction need not observe the requirement of need that is included in the Articles;

(ii) the Fund may authorize operations between participants that are not otherwise provided for by the Articles, subject to appropriate safeguards;

(iii) the Fund may review the rules for reconstitution of participants' holdings of special drawing rights at any time and may adopt, modify, or abrogate the rules by a lower majority of the total voting power than is necessary at present (seventy instead of eighty-five per cent);

(iv) the possible uses of special drawing rights in operations and transactions conducted through the General Department of the Fund have been expanded;

(v) the Fund may broaden the categories of other holders of special drawing rights, although not beyond official entities, and the operations and transactions in which they may engage.

(*d*) Simplification and expansion of the types of the Fund's financial operations and transactions, particularly those conducted through the General Department

The opportunity has been taken to incorporate in the Articles certain policies and practices that experience has proved to be useful. A leading example is the Fund's policy on repurchase, which is designed to ensure that the use of the general resources will not extend beyond three to five years, unless a longer period is permitted under a special policy on use. The detailed formulae of the present Articles on repurchase and on the calculation of monetary reserves that governed the accrual of repurchase obligations and distribution among reserves have been deleted.

Provisions have been adopted to ensure that the Fund's holdings of the currencies of all members will be usable by the Fund in its operations and transactions in accordance with its policies.

Similarly, members will be able to obtain the currencies of other members when they have been specified by the Fund for repurchase. Appropriate safeguards are adopted for members.

Among other changes in relation to the use of the general resources of the Fund is the more extensive authority it will have to permit members to engage in transactions under special policies without at the same time foregoing their reserve tranche positions (formerly gold tranche positions).

(*e*) The possible establishment of the Council as a new organ of the Fund.

The Board of Governors may decide, by an eighty-five per cent majority of the total voting power, to call a new organ of the Fund, the Council, into being if this action is deemed appropriate. This organ would resemble the present Interim Committee of the Board of Governors in composition and terms of reference. It would differ from the Committee in that it would have powers of decision and not solely advisory authority. If the Board of Governors were to decide that the Council should be established, detailed provisions governing the Council would begin to apply.

(*f*) Certain improvements in organizational aspects of the Fund.

The provisions governing the election of Executive Directors have been brought up to date by the incorporation of the present number of elective Executive Directors in the Articles, together with authority to modify the number by a high majority of the total voting power. In addition, a member entitled to appoint an additional Executive Director in certain circumstances may decide to participate in the election of Executive Directors instead of making an appointment. It is also provided that if the member does make an appointment, it may arrange with individual members in its former "constituency" to have the Executive Director it appoints cast the number of votes alloted to them.

Other major improvements under this heading are the clarification and simplification of the distribution and delegability of powers among the organs of the Fund and the reduction of the categories of special majorities to seventy per cent and eighty-five per cent (and in one instance an absolute majority). Special majorities would apply to a wide range of decisions beyond those that have been noted already under (*b*) above.

Quotas

Adoption by the Board of Governors of a Resolution on increases in members' quotas in December 1978, completed the Seventh General Review of Quotas in the Fund, which began in 1976. The increases will become effective for members that have notified the Fund of their consents and have paid their increased subscriptions, provided that consents have been received from members having 75 per cent of total present quotas. Members will have until November 1980 to consent to increases in their quotas.

Allocation of Special Drawing Rights

Following consultations required under the Articles of Agreement to establish that there is broad support for the proposal among members, the Managing Director made a proposal for allocation of special drawing rights for the third basic period, in which he concluded that there was a long-term global need to supplement existing reserve assets. The Executive Board concurred in the proposal and the Board of Governors was requested to vote on a proposed Resolution. The Board of Governors of the Fund adopted, effective December 11, 1978, Resolution No. 34-3 providing for allocations of SDR 4 billion to be made in each of the three years 1979 to 1981.

Borrowing

Since 1973, the Fund has supplemented its own resources by substantial borrowing from some of its members and Switzerland, and institutions in their territories. In November 1978, the Fund borrowed from two participants in the General Arrangements to Borrow to finance a reserve tranche purchase by the United States. The General Arrangements to Borrow was used on prior occasions to help finance exchange transactions with France, Italy, and the United Kingdom.

A Supplementary Financing Facility was established by a decision of the Executive Board of August 29, 1977 to enable the Fund to provide supplementary financing in conjunction with the use

of the Fund's ordinary resources to members facing serious payments imbalances that are large in relation to their quotas and needing longer periods for adjustment and repurchase than under the credit tranche policy. The Facility became effective on February 23, 1979 with the completion of agreements with 13 lenders under which the Fund could borrow a total amount equivalent to SDR 7.754 billion to finance purchases under the Facility.

Trust Fund

The Trust Fund completed its first two-year period on June 30, 1978. The Trust Fund provides additional balance of payments assistance on concessionary terms to eligible developing members. The resources available to the Trust Fund are the profits realized from the sales of 12.5 million ounces of the Fund's gold that was agreed would be sold for the benefit of developing members, and the income from the investments of these proceeds.

Training and technical assistance

The Fund continued to provide training and technical assistance to member countries in various stages of development. The Legal Department has collaborated with the Central Banking Service of the Fund in the central banking and related fields in the preparation and modification of central banking and general banking legislation. The Legal Department has also provided technical assistance to member countries in the field of taxation.

The IMF Institute provides training to officials of member governments in financial analysis and policy, public finance, balance of payments methodology and government finance statistics. Members of the staff of the Legal Department have assisted in the principal course, financial analysis and policy, in presenting an exposition of the Fund's policies and procedures.

Relations with other international organizations

Members of the staff of the Legal Department continued to cooperate with the United Nations Commission on International Trade Law Study Group on International Payments. Members also attended international conferences at which subjects of interest to the Fund were discussed, such as the United Nations Conference on the Carriage of Goods by Sea, International Law Association meeting, and a seminar organized by the Center for Latin American Monetary Studies (CEMLA).

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7. WORLD HEALTH ORGANIZATION

Constitutional and legal developments

On 10 March 1978, Djibouti, already a member of the United Nations, became a Member of the World Health Organization by depositing a formal instrument of acceptance of the Constitution of the World Health Organization with the Secretary-General of the United Nations.

The Thirty-first World Health Assembly adopted on 18 May 1978 an amendment of Article 74 of the Constitution of the World Health Organization (resolution WHA31.18). The amendment provides for an Arabic authentic text in addition to the Chinese, English, French, Russian and Spanish texts. A first instrument of acceptance of this amendment was deposited by Saudi Arabia on 30 October 1978.

During 1978, 18 instruments of acceptance of the amendment to Articles 24 and 25 of the Constitution of 17 May 1976 (increasing the membership of the Executive Board from 30 to 31) have been deposited with the Secretary-General of the United Nations. The total number of such instruments was thirty-six at the end of 1978.

HEALTH LEGISLATION

WHO publishes a quarterly journal, the *International Digest of Health Legislation,* in separate English and French editions. This periodical is concerned mainly with national legislation (and, increasingly, international instruments) on all aspects of health that are the concern of the Organization, including environmental health, population policies, and drug dependence. Texts of legislation from as wide a range of countries as possible are published in full or in summary form in the *Digest,* as well as information on international and regional conventions and agreements in the health field, surveys of legislation on selected health topics, and reviews of new books on health legislation subjects. A number of additional reviews are being commissioned for future publication, notably problems of drug regulation in developing countries, measures to promote the health of adolescents, problems in the harmonization of health legislation at the regional level, legal obstacles to family planning in developing countries, and regulation of drug abuse in developing countries.

As a result of resolution WHA30.44 adopted by the World Health Assembly in May 1977, calling for the strengthening of WHO's health legislation programme, the future role of the *Digest* and other health legislation activities is now under study. Questionnaires on this topic were sent through WHO's regional offices to all Member States, and three consultants were appointed to gather information in the regional offices and in selected countries. Their reports and recommendations are under consideration prior to the Director-General submitting his report to the governing bodies of WHO in 1980 in accordance with resolution WHA30.44.

An information service on health legislation is provided for Member Governments and other organizations within and outside the United Nations system.

In November-December 1978 the Council for International Organizations of Medical Sciences (a nongovernmental organization closely associated with WHO), held a Round Table Conference in Lisbon on "Medical Experimentation and the Protection of Human Rights", which gave considerable attention to legislative and regulatory problems.

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8. WORLD METEOROLOGICAL ORGANIZATION

MEMBERSHIP OF THE ORGANIZATION

The following countries deposited their instruments of accession to the Convention of the World Meteorological Organization during 1978. The date of deposit and the effective date of membership are indicated in each case, in chronological order:

State	*Date of deposit of the instrument of accession*	*Date of membership*
Guinea-Bissau	15 December 1977 (under Article 3(*b*) of the Convention)	14 January 1978
Maldives	1 June 1978 (under Article 3(*b*) of the Convention)	1 July 1978
Djibouti	30 June 1978 (under Article 3(*b*) of the Convention)	30 July 1978
Gambia	2 October 1978 (under Article 3(*b*) of the Convention)	1 November 1978

AGREEMENTS AND WORKING ARRANGEMENTS

Working Arrangements with the Arab Centre for the Studies of Arid Zones and Dry Lands (ACSAD), Damascus

The twenty-ninth session (1977) of the Executive Committee considered a request for the establishment of a formal working arrangement with WMO which had been received from the Arab Centre for the Studies of Arid Zones and Dry Lands (ACSAD), Damascus. The Committee ap-

proved the substance of the text of a letter to be sent to ACSAD as the basis for the formal working arrangement with WMO. The working arrangement was completed and it came into force on 20 February 1978. The relevant texts are included in the WMO publication (WMO-No. 60), entitled "Agreements and Working Arrangements with other international organizations".

Agreement for Joint Financing of North Atlantic Ocean Stations

Cuba became a Contracting Party to the Agreement as at 1 July 1978 thereby increasing the number of Contracting Parties to Agreement to 15.

9. INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

1. International conferences convened by IMCO in 978

(a) *International Conference on Tanker Safety and Pollution Prevention, 1978*

The Conference was held in London from 6 to 17 February 1978 and adopted the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974 and the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973.[254]

(b) *International Conference on Training and Certification of Seafarers, 1978*

The Conference was held in London from 14 June to 7 July 1978 and adopted the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978. In addition, it adopted also a number of recommendations and resolutions.

2. Third Consultative Meeting of the Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter

The Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter adopted at their Third Consultative Meeting on 12 October 1978 resolution LDC Res. 5 (III) concerning the prevention and control of pollution by incineration of wastes and other matter at sea and resolution LDC Res. 6 (III) concerning procedures for the settlement of disputes. By resolution LDC Res. 5 (III) the Contracting Parties adopted a number of amendments to the Annex to the Convention and by resolution LDC Res. 6 (III) a number of amendments to the Convention itself.[255]

3. Decisions and other legal activities

During 1978, the Legal Committee considered *inter alia:*

(1) Questions relating to a draft convention on liability and compensation in connexion with the carriage of noxious and hazardous substances by sea;

(2) Questions relating to the legal status of novel type of craft, such as air-cushion vehicles, operating in the marine environment;

(3) Legal questions arising from the "Amoco Cadiz" disaster.

[254] The Convention is reproduced in the *Juridical Yearbook*, 1973, p. 81.

[255] The amendment annexed to resolution LDC Res. 5 (III) entered into force, in accordance with the terms of the resolution and article XV, 2 of the Convention, on 11 March 1979.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

Treaties concerning international law concluded under the auspices of the United Nations

1. UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES (VIENNA, 4 APRIL–6 MAY 1977 AND 31 JULY–23 AUGUST 1978)

(*a*) VIENNA CONVENTION ON SUCCESSION OF STATES IN RESPECT OF TREATIES. DONE AT VIENNA ON 23 AUGUST 1978

The States Parties to the present Convention,

Considering the profound transformation of the international community brought about by the decolonization process,

Considering also that other factors may lead to cases of succession of States in the future,

Convinced, in these circumstances, of the need for the codification and progressive development of the rules relating to succession of States in respect of treaties as a means for ensuring greater juridical security in international relations,

Noting that the principles of free consent, good faith and *pacta sunt servanda* are universally recognized,

Emphasizing that the consistent observance of general multilateral treaties which deal with the codification and progressive development of international law and those the object and purpose of which are of interest to the international community as a whole is of special importance for the strengthening of peace and international co-operation,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force, and of universal respect for, and observance of, human rights and fundamental freedoms for all,

Recalling that respect for the territorial integrity and political independence of a State is required by the Charter of the United Nations,

Bearing in mind the provisions of the Vienna Convention on the Law of Treaties of 1969,

Bearing also in mind article 73 of that Convention,

Affirming that questions of the law of treaties other than those that may arise from a succession of States are governed by the relevant rules of international law, including those rules of customary international law which are embodied in the Vienna Convention on the Law of Treaties of 1969,

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

Have agreed as follows:

PART I. GENERAL PROVISIONS

Article 1. Scope of the present Convention

The present Convention applies to the effects of a succession of States in respect of treaties between States.

Article 2. Use of terms

1. For the purposes of the present Convention:

(*a*) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(*b*) "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(*c*) "predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(*d*) "successor State" means the State which has replaced another State on the occurrence of a succession of States;

(*e*) "date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;

(*f*) "newly independent State" means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible;

(*g*) "notification of succession" means in relation to a multilateral treaty any notification, however phrased or named, made by a successor State expressing its consent to be considered as bound by the treaty;

(*h*) "full powers" means in relation to a notification of succession or any other notification under the present Convention a document emanating from the competent authority of a State designating a person or persons to represent the State for communicating the notification of succession or, as the case may be, the notification;

(*i*) "ratification", "acceptance" and "approval" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(*j*) "reservation" means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty or when making a notification of succession to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(*k*) "contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(*l*) "party" means a State which has consented to be bound by the treaty and for which the treaty is in force;

(*m*) "other State party" means in relation to a successor State any party, other than the predecessor State, to a treaty in force at the date of a succession of States in respect of the territory to which that succession of States relates;

(*n*) "international organization" means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

Article 3. Cases not within the scope of the present Convention

The fact that the present Convention does not apply to the effects of a succession of States in respect of international agreements concluded between States and other subjects of international law or in respect of international agreements not in written form shall not affect:

(*a*) the application to such cases of any of the rules set forth in the present Convention to which they are subject under international law independently of the Convention;

(*b*) the application as between States of the present Convention to the effects of a succession of States in respect of international agreements to which other subjects of international law are also parties.

Article 4. Treaties constituting international organizations and treaties adopted within an international organization

The present Convention applies to the effects of a succession of States in respect of:

(*a*) any treaty which is the constituent instrument of an international organization without prejudice to the rules concerning acquisition of membership and without prejudice to any other relevant rules of the organization;

(*b*) any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

Article 5. Obligations imposed by international law independently of a treaty

The fact that a treaty is not considered to be in force in respect of a State by virtue of the application of the present Convention shall not in any way impair the duty of that State to fulfil any obligation embodied in the treaty to which it is subject under international law independently of the treaty.

Article 6. Cases of succession of States covered by the present Convention

The present Convention applies only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

Article 7. Temporal application of the present Convention

1. Without prejudice to the application of any of the rules set forth in the present Convention to which the effects of a succession of States would be subject under international law independently of the Convention, the Convention applies only in respect of a succession of States which has occurred after the entry into force of the Convention except as may be otherwise agreed.

2. A successor State may, at the time of expressing its consent to be bound by the present convention or at any time thereafter, make a declaration that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State or State Party to the Convention which makes a declaration accepting the declaration of the successor State. Upon the entry into force of the Convention as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the Convention shall apply to the effects of the succession of States as from the date of that succession of States.

3. A successor State may at the time of signing or of expressing its consent to be bound by the present Convention make a declaration that it will apply the provisions of the Convention provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provisions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.

4. Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the Parties and the States entitled to become Parties to the present Convention of the communication to him of that notification and of its terms.

Article 8. Agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State

1. The obligations or rights of a predecessor State under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State towards other States parties to those treaties by reason only of the fact that the predecessor State and the successor State have concluded an agreement providing that such obligations or rights shall devolve upon the successor State.

2. Notwithstanding the conclusion of such an agreement, the effects of a succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention.

Article 9. Unilateral declaration by a successor State regarding treaties of the predecessor State

1. Obligations or rights under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State or of other States parties to those treaties by reason only of the fact that the successor State has made a unilateral declaration providing for the continuance in force of the treaties in respect of its territory

2. In such a case, the effects of the succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention.

Article 10. Treaties providing for the participation of a successor State

1. When a treaty provides that, on the occurrence of a succession of States, a successor State shall have the option to consider itself a party to the treaty, it may notify its succession in respect of the treaty in conformity with the provisions of the treaty or, failing any such provisions, in conformity with the provisions of the present Convention.

2. If a treaty provides that, on the occurrence of a succession of States, a successor State shall be considered as a party to the treaty, that provision takes effect as such only if the successor State expressly accepts in writing to be so considered.

3. In cases falling under paragraph 1 or 2, a successor State which establishes its consent to be a party to the treaty is considered as a party from the date of the succession of States unless the treaty otherwise provides or it is otherwise agreed.

Article 11. Boundary régimes

A succession of States does not as such affect:

(*a*) a boundary established by a treaty; or

(*b*) obligations and rights established by a treaty and relating to the régime of a boundary.

Article 12. Other territorial régimes

1. A succession of States does not as such affect:

(*a*) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question;

(*b*) rights established by a treaty for the benefit of any territory and relating to the use, or to restrictions upon the use, of any territory of a foreign State and considered as attaching to the territories in question.

2. A succession of States does not as such affect:

(*a*) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of a group of States or of all States and considered as attaching to that territory;

(*b*) rights established by a treaty for the benefit of a group of States or of all States and relating to the use of any territory, or to restrictions upon its use, and considered as attaching to that territory.

3. The provisions of the present article do not apply to treaty obligations of the predecessor State providing for the establishment of foreign military bases on the territory to which the succession of States relates.

Article 13. The present Convention and permanent sovereignty over natural wealth and resources

Nothing in the present Convention shall affect the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources.

Article 14. Questions relating to the validity of a treaty

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the validity of a treaty.

PART II. SUCCESSION IN RESPECT OF PART OF TERRITORY

Article 15. Succession in respect of part of territory

When part of the territory of a State, or when any territory for the international relations of which a State is responsible, not being part of the territory of that State, becomes part of the territory of another State:

(*a*) treaties of the predecessor State cease to be in force in respect of the territory to which the succession of States relates from the date of the succession of States; and

(*b*) treaties of the successor State are in force in respect of the territory to which the succession of States relates from the date of the succession of States, unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

PART III. NEWLY INDEPENDENT STATES

SECTION 1. GENERAL RULE

Article 16. Position in respect of the treaties of the predecessor State

A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates.

SECTION 2. MULTILATERAL TREATIES

Article 17. Participation in treaties in force at the date of the succession of States

1. Subject to paragraphs 2 and 3, a newly independent State may, by a notification of succession, establish its status as a party to any multilateral treaty which at the date of the succession of States was in force in respect of the territory to which the succession of States relates.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties, the newly independent State may establish its status as a party to the treaty only with such consent.

Article 18. Participation in treaties not in force at the date of the succession of States

1. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a contracting State to a multilateral treaty which is not in force if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

2. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may establish its status as a party or as a contracting State to the treaty only with such consent.

5. When a treaty provides that a specified number of contracting States shall be necessary for its entry into force, a newly independent State which establishes its status as a contracting State to the treaty under paragraph 1 shall be counted as a contracting State for the purpose of that provision unless a different intention appears from the treaty or is otherwise established

Article 19. Participation in treaties signed by the predecessor State subject to ratification, acceptance or approval

1. Subject to paragraphs 3 and 4, if before the date of the succession of States the predecessor State signed a multilateral treaty subject to ratification, acceptance or approval and by the signature intended that the treaty should extend to the territory to which the succession of States relates, the newly independent State may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. For the purpose of paragraph 1, unless a different intention appears from the treaty or is otherwise established, the signature by the predecessor State of a treaty is considered to express the intention that the treaty should extend to the entire territory for the international relations of which the predecessor State was responsible.

3. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may become a party or a contracting State to the treaty only with such consent.

Article 20. Reservations

1. When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession under article 17 or 18, it shall be considered as

maintaining any reservation to that treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates unless, when making the notification of succession, it expresses a contrary intention or formulates a reservation which relates to the same subject-matter as that reservation.

2. When making a notification of succession establishing its status as a party or as a contracting State to a multilateral treaty under article 17 or 18, a newly independent State may formulate a reservation unless the reservation is one the formulation of which would be excluded by the provisions of sub-paragraph (*a*), (*b*) or (*c*) of article 19 of the Vienna Convention on the Law of Treaties.

3. When a newly independent State formulates a reservation in conformity with paragraph 2, the rules set out in articles 20 to 23 of the Vienna Convention on the Law of Treaties apply in respect of that reservation.

Article 21. Consent to be bound by part of a treaty and choice between differing provisions

1. When making a notification of succession under article 17 or 18 establishing its status as a party or contracting State to a multilateral treaty, a newly independent State may, if the treaty so permits, express its consent to be bound by part of the treaty or make a choice between differing provisions under the conditions laid down in the treaty for expressing such consent or making such choice.

2. A newly independent State may also exercise, under the same conditions as the other parties or contracting States, any right provided for in the treaty to withdraw or modify any consent expressed or choice made by itself or by the predecessor State in respect of the territory to which the succession of States relates.

3. If the newly independent State does not in conformity with paragraph 1 express its consent or make a choice, or in conformity with paragraph 2 withdraw or modify the consent or choice of the predecessor State, it shall be considered as maintaining:

(*a*) the consent of the predecessor State, in conformity with the treaty, to be bound in respect of the territory to which the succession of States relates, by part of that treaty; or

(*b*) the choice of the predecessor State, in conformity with the treaty, between differing provisions in the application of the treaty in respect of the territory to which the succession of States relates.

Article 22. Notification of succession

1. A notification of succession in respect of a multilateral treaty under article 17 or 18 shall be made in writing.

2. If the notification of succession is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3. Unless the treaty otherwise provides, the notification of succession shall:

(*a*) be transmitted by the newly independent State to the depositary, or, if there is no depositary, to the parties or the contracting States;

(*b*) be considered to be made by the newly independent State on the date on which it is received by the depositary or, if there is no depositary, on the date on which it is received by all the parties or, as the case may be, by all the contracting States.

4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification of succession or any communication made in connection therewith by the newly independent State.

5. Subject to the provisions of the treaty, the notification of succession or the communication made in connection therewith shall be considered as received by the State for which it is intended only when the latter State has been informed by the depositary.

Article 23. Effects of a notification of succession

1. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 17 or article 18, paragraph 2 shall be considered a party to the treaty from the date of the succession of States or from the date of entry into force of the treaty, whichever is the later date.

2. Nevertheless, the operation of the treaty shall be considered as suspended as between the newly independent State and the other parties to the treaty until the date of making of the notification of succession except in so far as that treaty may be applied provisionally in accordance with article 27 or as may be otherwise agreed.

3. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 18, paragraph 1, shall be considered a contracting State to the treaty from the date on which the notification of succession is made.

SECTION 3. BILATERAL TREATIES

Article 24. Conditions under which a treaty is considered as being in force in the case of a succession of States

1. A bilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party when:

(*a*) they expressly so agree; or

(*b*) by reason of their conduct they are to be considered as having so agreed.

2. A treaty considered as being in force under paragraph 1 applies in the relations between the newly independent State and the other State party from the date of the succession of States, unless a different intention appears from their agreement or is otherwise established.

Article 25. The position as between the predecessor State and the newly independent State

A treaty which under article 24 is considered as being in force between a newly independent State and the other State party is not by reason only of that fact to be considered as being in force also in the relations between the predecessor State and the newly independent State.

Article 26. Termination, suspension of operation or amendment of the treaty as between the predecessor State and the other State party

1. When under article 24 a treaty is considered as being in force between a newly independent State and the other State party, the treaty:

(*a*) does not cease to be in force between them by reason only of the fact that it has subsequently been terminated as between the predecessor State and the other State party;

(*b*) is not suspended in operation as between them by reason only of the fact that it has subsequently been suspended in operation as between the predecessor State and the other State party;

(*c*) is not amended as between them by reason only of the fact that it has subsequently been amended as between the predecessor State and the other State party.

2. The fact that a treaty has been terminated or, as the case may be, suspended in operation as between the predecessor State and the other State party after the date of the succession of States does not prevent the treaty from being considered to be in force or, as the case may be, in operation as between the newly independent State and the other State party if it is established in accordance with article 24 that they so agreed.

3. The fact that a treaty has been amended as between the predecessor State and the other State party after the date of the succession of States does not prevent the unamended treaty from being considered to be in force under article 24 as between the newly independent State and the

other State party, unless it is established that they intended the treaty as amended to apply between them.

SECTION 4. PROVISIONAL APPLICATION

Article 27. Multilateral treaties

1. If, at the date of the succession of States, a multilateral treaty was in force in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any party which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

2. Nevertheless, in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, the consent of all the parties to such provisional application is required.

3. If, at the date of the succession of States, a multilateral treaty not yet in force was being applied provisionally in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should continue to be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any contracting State which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

4. Nevertheless, in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, the consent of all the contracting States to such continued provisional application is required.

5. Paragraphs 1 to 4 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 28. Bilateral treaties

A bilateral treaty which at the date of a succession of States was in force or was being provisionally applied in respect of the territory to which the succession of States relates is considered as applying provisionally between the newly independent State and the other State concerned when:

(*a*) they expressly so agree; or

(*b*) by reason of their conduct they are to be considered as having so agreed.

Article 29. Termination of provisional application

1. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 27 may be terminated:

(*a*) by reasonable notice of termination given by the newly independent State or the party or contracting State provisionally applying the treaty and the expiration of the notice; or

(*b*) in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, by reasonable notice of termination given by the newly independent State or all of the parties or, as the case may be, all of the contracting States and the expiration of the notice.

2. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a bilateral treaty under article 28 may be terminated by reasonable notice of termination given by the newly independent State or the other State concerned and the expiration of the notice.

3. Unless the treaty provides for a shorter period for its termination or it is otherwise agreed, reasonable notice of termination shall be twelve months' notice from the date on which it is received by the other State or States provisionally applying the treaty.

4. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 27 shall be terminated if the newly independent State gives notice of its intention not to become a party to the treaty.

SECTION 5. NEWLY INDEPENDENT STATES FORMED FROM TWO OR MORE TERRITORIES

Article 30. Newly independent States formed from two or more territories

1. Articles 16 to 29 apply in the case of a newly independent State formed from two or more territories.

2. When a newly independent State formed from two or more territories is considered as or becomes a party to a treaty by virtue of article 17, 18 or 24 and at the date of the succession of States the treaty was in force, or consent to be bound had been given, in respect of one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of that State unless:

(*a*) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation;

(*b*) in the case of a multilateral treaty not falling under article 17, paragraph 3, or under article 18, paragraph 4, the notification of succession is restricted to the territory in respect of which the treaty was in force at the date of the succession of States, or in respect of which consent to be bound by the treaty had been given prior to that date;

(*c*) in the case of a multilateral treaty falling under article 17, paragraph 3, or under article 18, paragraph 4, the newly independent State and the other States parties or, as the case may be, the other contracting States otherwise agree; or

(*d*) in the case of a bilateral treaty, the newly independent State and the other State concerned otherwise agree.

3. When a newly independent State formed from two or more territories becomes a party to a multilateral treaty under article 19 and by the signature or signatures of the predecessor State or States it had been intended that the treaty should extend to one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of the newly independent State unless:

(*a*) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation;

(*b*) in the case of a multilateral treaty not falling under article 19, paragraph 4, the ratification, acceptance or approval of the treaty is restricted to the territory or territories to which it was intended that the treaty should extend; or

(*c*) in the case of a multilateral treaty falling under article 19, paragraph 4, the newly independent State and the other States parties or, as the case may be, the other contracting States otherwise agree.

PART IV. UNITING AND SEPARATION OF STATES

Article 31. Effects of a uniting of States in respect of treaties in force at the date of the succession of States

1. When two or more States unite and so form one successor State, any treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the successor State unless:

(*a*) the successor State and the other State party or States parties otherwise agree; or

(*b*) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

2. Any treaty continuing in force in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was in force at the date of the succession of States unless:

(*a*) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State makes a notification that the treaty shall apply in respect of its entire territory;

(*b*) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and the other States parties otherwise agree; or

(*c*) in the case of a bilateral treaty, the successor State and the other State party otherwise agree.

3. Paragraph 2(*a*) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 32. Effects of a uniting of States in respect of treaties not in force at the date of the succession of States

1. Subject to paragraphs 3 and 4, a successor State falling under article 31 may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, any of the predecessor States was a contracting State to the treaty.

2. Subject to paragraphs 3 and 4, a successor State falling under article 31 may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if, at that date, any of the predecessor States was a contracting State to the treaty.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

5. Any treaty to which the successor State becomes a contracting State or a party in conformity with paragraph 1 or 2 shall apply only in respect of the part of the territory of the successor State in respect of which consent to be bound by the treaty had been given prior to the date of the succession of States unless:

(*a*) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State indicates in its notification made under paragraph 1 or 2 that the treaty shall apply in respect of its entire territory; or

(*b*) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

6. Paragraph 5(*a*) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 33. Effects of a uniting of States in respect of treaties signed by a predecessor State subject to ratification, acceptance or approval

1. Subject to paragraphs 2 and 3, if before the date of the succession of States one of the predecessor States had signed a multilateral treaty subject to ratification, acceptance or approval, a successor State falling under article 31 may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

4. Any treaty to which the successor State becomes a party or a contracting State in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was signed by one of the predecessor States unless

(*a*) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State when ratifying, accepting or approving the treaty gives notice that the treaty shall apply in respect of its entire territory; or

(*b*) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

5. Paragraph 4(*a*) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 34. Succession of States in cases of separation of parts of a State

1. When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:

(*a*) any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;

(*b*) any treaty in force at the date of the succession of States in respect only of that part of the territory of the predecessor State which has become a successor State continues in force in respect of that successor State alone.

2. Paragraph 1 does not apply if:

(*a*) the States concerned otherwise agree; or

(*b*) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 35. Position if a State continues after separation of part of its territory

When, after separation of any part of the territory of a State, the predecessor State continues to exist, any treaty which at the date of the succession of States was in force in respect of the predecessor State continues in force in respect of its remaining territory unless:

(*a*) the States concerned otherwise agree;

(*b*) it is established that the treaty related only to the territory which has separated from the predecessor State; or

(*c*) it appears from the treaty or is otherwise established that the application of the treaty in respect of the predecessor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 36. Participation in treaties not in force at the date of the succession of States in cases of separation of parts of a State

1. Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.

2. Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at that date the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

Article 37. Participation in cases of separation of parts of a State in treaties signed by the predecessor State subject to ratification, acceptance or approval

1. Subject to paragraphs 2 and 3, if before the date of the succession of States the predecessor State had signed a multilateral treaty subject to ratification, acceptance or approval and the treaty, if it had been in force at that date, would have applied in respect of the territory to which the succession of States relates, a successor State falling under article 34, paragraph 1, may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

Article 38. Notifications

1. Any notification under articles 31, 32 or 36 shall be made in writing.

2. If the notification is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3. Unless the treaty otherwise provides, the notification shall:

(*a*) be transmitted by the successor State to the depositary, or, if there is no depositary, to the parties or the contracting States;

(*b*) be considered to be made by the successor State on the date on which it is received by the depositary or, if there is no depositary, on the date on which it is received by all the parties or, as the case may be, by all the contracting States.

4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification or any communication made in connection therewith by the successor State.

5. Subject to the provisions of the treaty, such notification or communication shall be considered as received by the State for which it is intended only when the latter State has been informed by the depositary.

PART V. MISCELLANEOUS PROVISIONS

Article 39. Cases of State responsibility and outbreak of hostilities

The provisions of the present Convention shall not prejudge any question that may arise in regard to the effects of a succession of States in respect of a treaty from the international responsibility of a State or from the outbreak of hostilities between States.

Article 40. Cases of military occupation

The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from the military occupation of a territory.

PART VI. SETTLEMENT OF DISPUTES

Article 41. Consultation and negotiation

If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

Article 42. Conciliation

If the dispute is not resolved within six months of the date on which the request referred to in article 41 has been made, any party to the dispute may submit it to the conciliation procedure specified in the Annex to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations and informing the other party or parties to the dispute of the request.

Article 43. Judicial settlement and arbitration

Any State at the time of signature or ratification of the present Convention or accession thereto or at any time thereafter, may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures referred to in articles 41 and 42, that dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other party to the dispute has made a like declaration.

Article 44. Settlement by common consent

Notwithstanding articles 41, 42 and 43, if a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention they may by common consent agree to submit it to the International Court of Justice, or to arbitration, or to any other appropriate procedure for the settlement of disputes.

Article 45. Other provisions in force for the settlement of disputes

Nothing in articles 41 to 44 shall affect the rights or obligations of the Parties to the present Convention under any provisions in force binding them with regard to the settlement of disputes.

PART VII. FINAL PROVISIONS

Article 46. Signature

The present Convention shall be open for signature by all States until 28 February 1979 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 31 August 1979, at United Nations Headquarters in New York.

Article 47. Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48. Accession

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 50. Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this twenty-third day of August, one thousand nine hundred and seventy-eight.

ANNEX

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 42, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(*a*) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(*b*) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the appointment of the last of them, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any Party to the present Convention to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

(*b*) Resolutions adopted by the Conference

Resolution concerning Namibia

The United Nations Conference on Succession of States in Respect of Treaties,

Taking note of the statement made by the Chairman of the delegation of the United Nations Council for Namibia during the resumed session of the Conference,[1]

Taking into account United Nations General Assembly resolution 2145 (XXI) of 27 October 1966, by which the General Assembly decided to terminate the Mandate of South Africa over Namibia and by which the United Nations assumed direct responsibility for the Territory until independence, and General Assembly resolution 2248 (S-V) of 19 May 1967, by which the United Nations Council for Namibia was established and entrusted with the responsibility of administering the Territory until independence,

Recalling the advisory opinion of the International Court of Justice of 21 June 1971 which declared that the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from the Territory and thus put an end to its illegal occupation of the Territory,

Further recalling the relevant resolutions of the United Nations, in particular Security Council resolutions 385 (1976) which reaffirmed the territorial integrity and unity of Namibia and 432 (1978) which took note of paragraph 7 of General Assembly resolution 32/9 D (1977) declaring that Walvis Bay is an integral part of Namibia,

Resolves that the relevant articles of the Vienna Convention on Succession of States in Respect of Treaties shall be interpreted, in the case of Namibia, in conformity with United Nations resolutions on the question of Namibia;

Further resolves that South Africa is not the predecessor State of the future independent State of Namibia.

Resolution relating to incompatible treaty obligations and rights arising from a uniting of States

The United Nations Conference on Succession of States in Respect of Treaties,

Considering that a uniting of States may give rise to incompatible obligations and rights as a result of the differing treaty régimes applicable to the two or more States which unite,

Recognizing the desirability of resolving such questions through a process of consultation and negotiation,

Recommends that if a uniting of States gives rise to incompatible obligations or rights under treaties, the successor State and the other States parties to the treaties in question make every effort to resolve the matter by mutual agreement.[2]

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[1] See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. II (A/CONF.80/16/Add.1, Sales No. E.79.V.9), 38th meeting of the Committee of the Whole, paras. 62–70.

[2] The Conference adopted three other resolutions which are not reproduced here: see the Final Act of the Conference (A/CONF.80/32 in *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, Documents of the Conference (A/CONF.80/16/Add.2, United Nations publication Sales No. E.79.V.10), p. 179.

2. UNITED NATIONS CONFERENCE ON THE CARRIAGE OF GOODS BY SEA (HAMBURG, 6–31 MARCH 1978)

(*a*) UNITED NATIONS CONVENTION ON THE CARRIAGE OF GOODS BY SEA, 1978

Preamble

The States Parties to this Convention,

Having recognized the desirability of determining by agreement certain rules relating to the carriage of goods by sea,

Have decided to conclude a Convention for this purpose and have thereto agreed as follows:

PART I. GENERAL PROVISIONS

Article 1. Definitions

In this Convention:

1. "Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.

2. "Actual carrier" means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.

3. "Shipper" means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.

4. "Consignee" means the person entitled to take delivery of the goods.

5. "Goods" includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, "goods" includes such article of transport or packaging if supplied by the shipper.

6. "Contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea.

7. "Bill of lading" means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.

8. "Writing" includes, *inter alia,* telegram and telex.

Article 2. Scope of application

1. The provisions of this Convention are applicable to all contracts of carriage by sea between two different States, if:

(*a*) the port of loading as provided for in the contract of carriage by sea is located in a Contracting State, or

(*b*) the port of discharge as provided for in the contract of carriage by sea is located in a Contracting State, or

(*c*) one of the optional ports of discharge provided for in the contract of carriage by sea is the actual port of discharge and such port is located in a Contracting State, or

(*d*) the bill of lading or other document evidencing the contract of carriage by sea is issued in a Contracting State, or

(*e*) the bill of lading or other document evidencing the contract of carriage by sea provides that the provisions of this Convention or the legislation of any State giving effect to them are to govern the contract.

2. The provisions of this Convention are applicable without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee or any other interested person.

3. The provisions of this Convention are not applicable to charter-parties However, where a bill of lading is issued pursuant to a charter-party, the provisions of the Convention apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading, not being the charterer.

4. If a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention apply to each shipment. However, where a shipment is made under a charter-party, the provisions of paragraph 3 of this article apply

Article 3. Interpretation of the Convention

In the interpretation and application of the provisions of this Convention regard shall be had to its international character and to the need to promote uniformity.

PART II. LIABILITY OF THE CARRIER

Article 4. Period of responsibility

1. The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.

2. For the purpose of paragraph 1 of this article, the carrier is deemed to be in charge of the goods

(*a*) from the time he has taken over the goods from:

(i) the shipper, or a person acting on his behalf; or

(ii) an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;

(*b*) until the time he has delivered the goods:

(i) by handing over the goods to the consignee; or

(ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge, or

(iii) by handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over.

3. In paragraphs 1 and 2 of this article, reference to the carrier or to the consignee means, in addition to the carrier or the consignee, the servants or agents, respectively of the carrier or the consignee.

Article 5. Basis of liability

1. The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in article 4, unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences.

2. Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

3. The person entitled to make a claim for the loss of goods may treat the goods as lost if they have not been delivered as required by article 4 within 60 consecutive days following the expiry of the time for delivery according to paragraph 2 of this article.

4. (*a*) The carrier is liable

(i) for loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents;

(ii) for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents, in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.

(*b*) In case of fire on board the ship affecting the goods, if the claimant or the carrier so desires, a survey in accordance with shipping practices must be held into the cause and circumstances of the fire, and a copy of the surveyor's report shall be made available on demand to the carrier and the claimant.

5. With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of carriage. If the carrier proves that he has complied with any special instructions given to him by the shipper respecting the animals and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributed to such risks, it is presumed that the loss, damage or delay in delivery was so caused, unless there is proof that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.

6. The carrier is not liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea.

7. Where fault or neglect on the part of the carrier, his servants or agents combines with another cause to produce loss, damage or delay in delivery the carrier is liable only to the extent that the loss, damage or delay in delivery is attributable to such fault or neglect, provided that the carrier proves the amount of the loss, damage or delay in delivery not attributable thereto.

Article 6. Limits of liability

1. (*a*) The liability of the carrier for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.

(*b*) The liability of the carrier for delay in delivery according to the provisions of article 5 is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.

(*c*) In no case shall the aggregate liability of the carrier, under both subparagraphs (*a*) and (*b*) of this paragraph, exceed the limitation which would be established under subparagraph (*a*) of this paragraph for total loss of the goods with respect to which such liability was incurred.

2. For the purpose of calculating which amount is the higher in accordance with paragraph 1 (*a*) of this article, the following rules apply:

(*a*) Where a container, pallet or similar article of transport is used to consolidate goods, the package or other shipping units enumerated in the bill of lading, if issued, or otherwise in any other document evidencing the contract of carriage by sea, as packed in such article of transport are deemed packages or shipping units. Except as aforesaid the goods in such article of transport are deemed one shipping unit.

(*b*) In cases where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the carrier, is considered one separate shipping unit.

3. Unit of account means the unit of account mentioned in article 26.

4. By agreement between the carrier and the shipper, limits of liability exceeding those provided for in paragraph 1 may be fixed.

Article 7. Application to non-contractual claims

1. The defences and limits of liability provided for in this Convention apply in any action against the carrier in respect of loss or damage to the goods covered by the contract of carriage by sea, as well as of delay in delivery whether the action is founded in contract, in tort or otherwise.

2. If such an action is brought against a servant or agent of the carrier, such servant or agent, if he proves that he acted within the scope of his employment, is entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.

3. Except as provided in article 8, the aggregate of the amounts recoverable from the carrier and from any persons referred to in paragraph 2 of this article shall not exceed the limits of liability provided for in this Convention.

Article 8. Loss of right to limit responsibility

1. The carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

2. Notwithstanding the provisions of paragraph 2 of article 7, a servant or agent of the carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

Article 9. Deck cargo

1. The carrier is entitled to carry the goods on deck only if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations.

2. If the carrier and the shipper have agreed that the goods shall or may be carried on deck, the carrier must insert in the bill of lading or other document evidencing the contract of carriage by sea a statement to that effect. In the absence of such a statement the carrier has the burden of proving that an agreement for carriage on deck has been entered into; however, the carrier is not entitled to invoke such an agreement against a third party, including a consignee, who has acquired the bill of lading in good faith.

3. Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this article or where the carrier may not under paragraph 2 of this article invoke an agreement for carriage on deck, the carrier, notwithstanding the provisions of paragraph 1 of article 5, is liable for loss of or damage to the goods, as well as for delay in delivery, resulting solely from the carriage on deck, and the extent of his liability is to be determined in accordance with the provisions of article 6 or article 8 of this Convention, as the case may be.

4. Carriage of goods on deck contrary to express agreement for carriage under deck is deemed to be an act or omission of the carrier within the meaning of article 8

Article 10. Liability of the carrier and actual carrier

1. Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage by sea to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.

2. All the provisions of this Convention governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by him. The provisions of paragraphs 2 and 3 of article 7 and of paragraph 2 of article 8 apply if an action is brought against a servant or agent of the actual carrier.

3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or waives rights conferred by this Convention affects the actual carrier only if agreed to by him expressly and in writing. Whether or not the actual carrier has so agreed, the carrier nevertheless remains bound by the obligations or waivers resulting from such special agreement.

4. Where and to the extent that both the carrier and the actual carrier are liable, their liability is joint and several.

5. The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the limits of liability provided for in this Convention.

6. Nothing in this article shall prejudice any right of recourse as between the carrier and the actual carrier.

Article 11. Through carriage

1. Notwithstanding the provisions of paragraph 1 of article 10, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said contract is to be performed by a named person other than the carrier, the contract may also provide that the carrier is not liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage. Nevertheless, any stipulation limiting or excluding such liability is without effect if no judicial proceedings can be instituted against the actual carrier in a court competent under paragraph 1 or 2 of article 21. The burden of proving that any loss, damage or delay in delivery has been caused by such an occurrence rests upon the carrier.

2. The actual carrier is responsible in accordance with the provisions of paragraph 2 of article 10 for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in his charge.

PART III. LIABILITY OF THE SHIPPER

Article 12. General rule

The shipper is not liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such loss or damage was caused by the fault or neglect of the shipper, his servants or agents. Nor is any servant or agent of the shipper liable for such loss or damage unless the loss or damage was caused by fault or neglect on his part.

Article 13. Special rules on dangerous goods

1. The shipper must mark or label in a suitable manner dangerous goods as dangerous.

2. Where the shipper hands over dangerous goods to the carrier or an actual carrier, as the case may be, the shipper must inform him of the dangerous character of the goods and, if necessary, of the precautions to be taken. If the shipper fails to do so and such carrier or actual carrier does not otherwise have knowledge of their dangerous character:

(*a*) the shipper is liable to the carrier and any actual carrier for the loss resulting from the shipment of such goods, and

(*b*) the goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.

3. The provisions of paragraph 2 of this article may not be invoked by any person if during the carriage he has taken the goods in his charge with knowledge of their dangerous character.

4. If, in cases where the provisions of paragraph 2, subparagraph (*b*), of this article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average or where the carrier is liable in accordance with the provisions of article 5.

PART IV. TRANSPORT DOCUMENTS

Article 14. Issue of bill of lading

1. When the carrier or the actual carrier takes the goods in his charge, he carrier must, on demand of the shipper, issue to the shipper a bill of lading.

2. The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.

3. The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued.

Article 15. Contents of bill of lading

1. The bill of lading must include, *inter alia*, the following particulars:

(*a*) the general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the shipper;

(*b*) the apparent condition of the goods;

(*c*) the name and principal place of business of the carrier;

(*d*) the name of the shipper;

(*e*) the consignee if named by the shipper;

(*f*) the port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading;

(*g*) the port of discharge under the contract of carriage by sea;

(*h*) the number of originals of the bill of lading, if more than one;

(*i*) the place of issuance of the bill of lading;

(*j*) the signature of the carrier or a person acting on his behalf;

(*k*) the freight to the extent payable by the consignee or other indication that freight is payable by him;

(*l*) the statement referred to in paragraph 3 of article 23;

(*m*) the statement, if applicable, that the goods shall or may be carried on deck;

(*n*) the date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties; and

(*o*) any increased limit or limits of liability where agreed in accordance with paragraph 4 of article 6.

2. After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper a "shipped" bill of lading which, in addition to the particulars required under paragraph 1 of this article, must state that the goods are on board a named ship or ships, and the date or dates of loading. If the carrier has previously issued to the shipper a bill of lading or other document of title with respect to any of such goods, on request of the carrier, the shipper must surrender such document in exchange for a "shipped" bill of lading. The carrier may amend any previously issued document in order to meet the shipper's demand for a "shipped" bill of lading if, as amended, such document includes all the information required to be contained in a "shipped" bill of lading.

3. The absence in the bill of lading of one or more particulars referred to in this article does not affect the legal character of the document as a bill of lading provided that it nevertheless meets the requirements set out in paragraph 7 of article 1.

Article 16. Bills of lading: reservations and evidentiary effect

1. If the bill of lading contains particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods which the carrier or other person issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately represent the goods actually taken over or, where a "shipped" bill of lading is issued, loaded, or if he had no reasonable means of checking such particulars, the carrier or such other person must insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.

2. If the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition.

3. Except for particulars in respect of which and to the extent to which a reservation permitted under paragraph 1 of this article has been entered:

(*a*) the bill of lading is *prima facie* evidence of the taking over or, where a "shipped" bill of lading is issued, loading, by the carrier of the goods as described in the bill of lading; and

(*b*) proof to the contrary by the carrier is not admissible if the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.

4. A bill of lading which does not, as provided in paragraph 1, subparagraph (*k*), of article 15, set forth the freight or otherwise indicate that freight is payable by the consignee or does not set forth demurrage incurred at the port of loading payable by the consignee, is *prima facie* evidence that no freight or such demurrage is payable by him. However, proof to the contrary by the carrier is not admissible when the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the absence in the bill of lading of any such indication.

Article 17. Guarantees by the shipper

1. The shipper is deemed to have guaranteed to the carrier the accuracy of particulars relating to the general nature of the goods, their marks, number, weight and quantity as furnished by him for insertion in the bill of lading. The shipper must indemnify the carrier against the loss resulting from inaccuracies in such particulars. The shipper remains liable even if the bill of lading has been transferred by him. The right of the carrier to such indemnity in no way limits his liability under the contract of carriage by sea to any person other than the shipper.

2. Any letter of guarantee or agreement by which the shipper undertakes to indemnify the carrier against loss resulting from the issuance of the bill of lading by the carrier, or by a person acting on his behalf, without entering a reservation relating to particulars furnished by the shipper for insertion in the bill of lading, or to the apparent condition of the goods, is void and of no effect as against any third party, including a consignee, to whom the bill of lading has been transferred.

3. Such letter of guarantee or agreement is valid as against the shipper unless the carrier or the person acting on his behalf, by omitting the reservation referred to in paragraph 2 of this article, intends to defraud a third party, including a consignee, who acts in reliance on the description of the goods in the bill of lading. In the latter case, if the reservation omitted relates to particulars furnished by the shipper for insertion in the bill of lading, the carrier has no right of indemnity from the shipper pursuant to paragraph 1 of this article.

4. In the case of intended fraud referred to in paragraph 3 of this article the carrier is liable, without the benefit of the limitation of liability provided for in this Convention, for the loss incurred by a third party, including a consignee, because he has acted in reliance on the description of the goods in the bill of lading.

Article 18. Documents other than bills of lading

Where a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried, such a document is *prima facie* evidence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described.

PART V. CLAIMS AND ACTIONS

Article 19. Notice of loss, damage or delay

1. Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing by the consignee to the carrier not later than the working day after the day when the goods were handed over to the consignee, such handing over is *prima facie* evidence of the delivery by the carrier of the goods as described in the document of transport or, if no such document has been issued, in good condition.

2. Where the loss or damage is not apparent, the provisions of paragraph 1 of this article apply correspondingly if notice in writing is not given within 15 consecutive days after the day when the goods were handed over to the consignee.

3. If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties, notice in writing need not be given of loss or damage ascertained during such survey or inspection.

4. In the case of any actual or apprehended loss or damage the carrier and the consignee must give all reasonable facilities to each other for inspecting and tallying the goods.

5. No compensation shall be payable for loss resulting from delay in delivery unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were handed over to the consignee.

6. If the goods have been delivered by an actual carrier, any notice given under this article to him shall have the same effect as if it had been given to the carrier, and any notice given to the carrier shall have effect as if given to such actual carrier.

7. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given in writing by the carrier or actual carrier to the shipper not later than 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods in accordance with paragraph 2 of article 4, whichever is later, the failure to give such notice is *prima facie* evidence that the carrier or the actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, his servants or agents.

8. For the purpose of this article, notice given to a person acting on the carrier's or the actual carrier's behalf, including the master or the officer in charge of the ship, or to a person acting on the shipper's behalf is deemed to have been given to the carrier, to the actual carrier or to the shipper, respectively.

Article 20. Limitation of actions

1. Any action relating to carriage of goods under this Convention is time-barred if judicial or arbitral proceedings have not been instituted.

2. The limitation period commences on the day on which the carrier has delivered the goods or part thereof or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.

3. The day on which the limitation period commences is not included in the period.

4. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations.

5. An action for indemnity by a person held liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted within the time allowed by the law of the State where proceedings are instituted. However, the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been served with process in the action against himself

Article 21. Jurisdiction

1. In judicial proceedings relating to carriage of goods under this Convention the plaintiff, at his option, may institute an action in a court which, according to the law of the State where the court

is situated, is competent and within the jurisdiction of which is situated one of the following places:

(*a*) the principal place of business or, in the absence thereof, the habitual residence of the defendant; or

(*b*) the place where the contract was made provided that the defendant has there a place of business, branch or agency through which the contract was made; or

(*c*) the port of loading or the port of discharge; or

(*d*) any additional place designated for that purpose in the contract of carriage by sea.

2. (*a*) Notwithstanding the preceding provisions of this article, an action may be instituted in the courts of any port or place in a Contracting State at which the carrying vessel or any other vessel of the same ownership may have been arrested in accordance with applicable rules of the law of that State and of international law. However, in such a case, at the petition of the defendant, the claimant must remove the action, at his choice, to one of the jurisdictions referred to in paragraph 1 of this article for the determination of the claim, but before such removal the defendant must furnish security sufficient to ensure payment of any judgement that may subsequently be awarded to the claimant in the action.

(*b*) All questions relating to the sufficiency or otherwise of the security shall be determined by the court of the port or place of the arrest.

3. No judicial proceedings relating to carriage of goods under this Convention may be instituted in a place not specified in paragraph 1 or 2 of this article. The provisions of this paragraph do not constitute an obstacle to the jurisdiction of the Contracting States for provisional or protective measures.

4. (*a*) Where an action has been instituted in a court competent under paragraph 1 or 2 of this article or where judgement has been delivered by such a court, no new action may be started between the same parties on the same grounds unless the judgement of the court before which the first action was instituted is not enforceable in the country in which the new proceedings are instituted;

(*b*) for the purpose of this article the institution of measures with a view to obtaining enforcement of a judgement is not to be considered as the starting of a new action;

(*c*) for the purpose of this article, the removal of an action to a different court within the same country, or to a court in another country, in accordance with paragraph 2 (*a*) of this article, is not to be considered as the starting of a new action.

5. Notwithstanding the provisions of the preceding paragraphs, an agreement made by the parties, after a claim under the contract of carriage by sea has arisen, which designates the place where the claimant may institute an action, is effective.

Article 22. Arbitration

1. Subject to the provisions of this article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to carriage of goods under this Convention shall be referred to arbitration.

2. Where a charter-party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charter-party does not contain a special annotation providing that such provision shall be binding upon the holder of the bill of lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.

3. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:

(*a*) a place in a State within whose territory is situated:

(i) the principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or

(ii) the place where the contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or

(iii) the port of loading or the port of discharge; or

(*b*) any place designated for that purpose in the arbitration clause or ag eement.

4. The arbitrator or arbitration tribunal shall apply the rules of this Con vention.

5. The provisions of paragraphs 3 and 4 of this article are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is in consistent therewith is null and void.

6. Nothing in this article affects the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage by sea has arisen.

PART VI. SUPPLEMENTARY PROVISIONS

Article 23. Contractual stipulations

1. Any stipulation in a contract of carriage by sea, in a bill of lading, o in any other document evidencing the contract of carriage by sea is null and void to the exte nt that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of su h a stipulation does not affect the validity of the other provisions of the contract or document of whi h it forms a part. A clause assigning benefit of insurance of the goods in favour of the carrier, or a ny similar clause, is null and void.

2. Notwithstanding the provisions of paragraph 1 of this article, a carri er may increase his responsibilities and obligations under this Convention.

3. Where a bill of lading or any other document evidencing the contract of carriage by sea is issued, it must contain a statement that the carriage is subject to the provisions of this Convention which nullify any stipulation derogating therefrom to the detriment of the shippe or the consignee.

4. Where the claimant in respect of the goods has incurred loss as a re sult of a stipulation which is null and void by virtue of the present article, or as a result of the omiss ion of the statement referred to in paragraph 3 of this article, the carrier must pay compensation to th e extent required in order to give the claimant compensation in accordance with the provisions of this Convention for any loss of or damage to the goods as well as for delay in delivery. The carrier m ust, in addition, pay compensation for costs incurred by the claimant for the purpose of exercising his right, provided that costs incurred in the action where the foregoing provision is invoked are to be d etermined in accordance with the law of the State where proceedings are instituted.

Article 24. General average

1. Nothing in this Convention shall prevent the application of provisio ns in the contract of carriage by sea or national law regarding the adjustment of general average.

2. With the exception of article 20, the provisions of this Convention rel ating to the liability of the carrier for loss of or damage to the goods also determine whether the co nsignee may refuse contribution in general average and the liability of the carrier to indemnify the c onsignee in respect of any such contribution made or any salvage paid.

Article 25. Other conventions

1. This Convention does not modify the rights or duties of the carrier, th e actual carrier and their servants and agents, provided for in international conventions or nationa law relating to the limitation of liability of owners of seagoing ships.

2. The provisions of articles 21 and 22 of this Convention do not preve nt the application of the mandatory provisions of any other multilateral convention already in forc e at the date of this Convention relating to matters dealt with in the said articles, provided that the d ispute arises exclusively between parties having their principal place of business in States member s of such other convention. However, this paragraph does not affect the application of paragraph 4 of article 22 of this Convention.

3. No liability shall arise under the provisions of this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

(*a*) under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964 or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or

(*b*) by virtue of national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or Vienna Conventions.

4. No liability shall arise under the provisions of this Convention for any loss of or damage to or delay in delivery of luggage for which the carrier is responsible under any international convention or national law relating to the carriage of passengers and their luggage by sea.

5. Nothing contained in this Convention prevents a Contracting State from applying any other international convention which is already in force at the date of this Convention and which applies mandatorily to contracts of carriage of goods primarily by a mode of transport other than transport by sea. This provision also applies to any subsequent revision or amendment of such international convention.

Article 26. Unit of account

1. The unit of account referred to in article 6 of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article 6 are to be converted into the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency in terms of the Special Drawing Right of a Contracting State which is not a member of the International Monetary Fund is to be calculated in a manner determined by that State.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of signature, or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as:

12,500 monetary units per package or other shipping unit or 37.5 monetary units per kilogramme of gross weight of the goods.

3. The monetary unit referred to in paragraph 2 of this article corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency is to be made according to the law of the State concerned.

4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 of this article is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in article 6 as is expressed there in units of account. Contracting States must communicate to the depositary the manner of calculation pursuant to paragraph 1 of this article, or the result of the conversion mentioned in paragraph 3 of this article, as the case may be, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, or when availing themselves of the option provided for in paragraph 2 of this article and whenever there is a change in the manner of such calculation or in the result of such conversion.

PART VII. FINAL CLAUSES

Article 27. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 28. Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States until 30 April 1979 at the Headquarters of the United Nations, New York.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After 30 April 1979, this Convention will be open for accession by all States which are not signatory States.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 29. Reservations

No reservations may be made to this Convention.

Article 30. Entry into force

1. This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the 20th instrument of ratification, acceptance, approval or accession.

2. For each State which becomes a Contracting State to this Convention after the date of the deposit of the 20th instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

3. Each Contracting State shall apply the provisions of this Convention to contracts of carriage by sea concluded on or after the date of the entry into force of this Convention in respect of that State.

Article 31. Denunciation of other conventions

1. Upon becoming a Contracting State to this Convention, any State party to the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 (1924 Convention) must notify the Government of Belgium as the depositary of the 1924 Convention of its denunciation of the said Convention with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

2. Upon the entry into force of this Convention under paragraph 1 of article 30, the depositary of this Convention must notify the Government of Belgium as the depositary of the 1924 Convention of the date of such entry into force, and of the names of the Contracting States in respect of which the Convention has entered into force.

3. The provisions of paragraphs 1 and 2 of this article apply correspondingly in respect of States parties to the Protocol signed on 23 February 1968 to amend the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924.

4. Notwithstanding article 2 of this Convention, for the purposes of paragraph 1 of this article, a Contracting State may, if it deems it desirable, defer the denunciation of the 1924 Convention and of the 1924 Convention as modified by the 1968 Protocol for a maximum period of five years from the entry into force of this Convention. It will then notify the Government of Belgium of its intention. During this transitory period, it must apply to the Contracting States this Convention to the exclusion of any other one.

Article 32. Revision and amendment

1. At the request of not less than one-third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention, is deemed to apply to the Convention as amended.

Article 33. Revision of the limitation amounts and unit of account or monetary unit

1. Notwithstanding the provisions of article 32, a conference only for the purpose of altering the amount specified in article 6 and paragraph 2 of article 26, or of substituting either or both of the units defined in paragraphs 1 and 3 of article 26 by other units is to be convened by the depositary in accordance with paragraph 2 of this article. An alteration of the amounts shall be made only because of a significant change in their real value.

2. A revision conference is to be convened by the depositary when not less than one-fourth of the Contracting States so request.

3. Any decision by the conference must be taken by a two-thirds majority of the participating States. The amendment is communicated by the depositary to all the Contracting States for acceptance and to all the States signatories of the Convention for information.

4. Any amendment adopted enters into force on the first day of the month following one year after its acceptance by two-thirds of the Contracting States. Acceptance is to be effected by the deposit of a formal instrument to that effect, with the depositary.

5. After entry into force of an amendment a Contracting State which has accepted the amendment is entitled to apply the Convention as amended in its relations with Contracting States which have not within six months after the adoption of the amendment notified the depositary that they are not bound by the amendment.

6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 34. Denunciation

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Hamburg, this thirty-first day of March one thousand nine hundred and seventy-eight, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

(*b*) COMMON UNDERSTANDING ADOPTED BY THE CONFERENCE

It is the common understanding that the liability of the carrier under this Convention is based on the principle of presumed fault or neglect. This means that, as a rule, the burden of proof rests on the carrier but, with respect to certain cases, the provisions of the Convention modify this rule.[3]

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[3] The Conference also adopted a resolution in which it *inter alia* decided to designate the Convention as the "United Nations Convention on the Carriage of Goods by Sea, 1978" and recommended that the rules embodied therein be known as the "Hamburg Rules" (see the Final Act of the Conference (A/CONF.89/13), Annex III).

Chapter V

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Decisions of the Administrative Tribunal of the United Nations[1] [2]

1. JUDGEMENT NO. 231 (9 OCTOBER 1978):[3] GAUDOIN *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Request for rescission of a decision denying application of a retroactive salary scale issued after the effective date of applicant's resignation—Question of the receivability of the application

The applicant, a former UNICEF staff member, had been denied the benefit of a revised local salary scale which had been issued after the effective date of his resignation (1 November 1973) but applied retroactively to 1 July 1973. Though the administrative decision embodying the denial had been rendered on 20 September 1974, the applicant had delayed filing his claim with the Joint Appeals Board until 30 January 1977.

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[1] Under article 2 of its Statute, the Administrative Tribunal of the United Nations is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. Article 14 of the Statute states that the competence of the Tribunal may be extended to any specialized agency upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. By the end of 1978, two agreements of general scope, dealing with the non-observance of contracts of employment and of terms of appointment, had been concluded, pursuant to the above provision, with two specialized agencies: the International Civil Aviation Organization and the Inter-Governmental Maritime Consultative Organization. In addition, agreements limited to applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund had been concluded with the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the International Telecommunication Union, the International Civil Aviation Organization, the World Meteorological Organization and the International Atomic Energy Agency.

The Tribunal is open not only to any staff member, even after his employment has ceased, but also to any person who succeeded to the staff member's rights on his death or who can show that he is entitled to rights under any contract or terms of appointment.

[2] At a special plenary meeting held on 29 September 1978, the United Nations Administrative Tribunal, further to a request for an advisory opinion from the Secretary-General of the United Nations, reached the following unanimous decision:

"Considering that the Statute of the United Nations Administrative Tribunal has made no express provision for receiving requests for an advisory opinion from any party nor laid down procedures for dealing with such requests and

"Considering that the history of the adoption of the Statute of the United Nations Administrative Tribunal shows that the General Assembly expressly negatived a proposal for investing the Administrative Tribunal with competence to render advisory opinions at the request of the Secretary-General or at the request of the Staff Committee with the consent of the Secretary-General;

"The Tribunal decides that it has no competence to entertain the request for an advisory opinion as stated in your letter dated 17 July 1978."

In this connexion it should be recalled that the initial draft Statute of the United Nations Administrative Tribunal, prepared in 1946 by the Advisory Committee appointed by the Secretary-General under the terms of General Assembly resolution 13 (I), contained no provisions authorizing the Tribunal to give advisory opinions (see *Official Records of the General Assembly, Fourth Session, Fifth Committee,* annex 10 the summary records of meetings, vol. I, document A/986, annex III). The revised draft Statute (first revision) submitted to the General Assembly by the Secretary-General on 21 September 1949 likewise contained no such provisions (*ibid.*, annex I). In its comments on the revised draft Statute, however, the Staff Committee proposed that the following article be inserted after article 2:

"The Tribunal shall be competent to give advisory opinions at the request of the Secretary-General or the Staff Committee." (*Ibid.*, annex IV, paras. 17-19.)

The respondent contended that, due to the long delay between the notification of the administrative decision and the submission of the applicant's claim, the requirements of staff rule 111.3(*a*)[4] were not complied with, and that, the Joint Appeals Board having determined that the appeal was not receivable on this ground, the Tribunal should reject the application as unreceivable under article 7 of its Statute.[5]

The Tribunal noted that, though warned throughout by the Secretary of the Joint Appeals Board that his appeal might not be receivable unless he was able to invoke exceptional circumstances justifying the long delay,[6] the applicant had failed to produce any satisfactory evidence to account for the delay of more than twenty-seven months before formulating his appeal.

Accordingly, the Tribunal concluded that the Joint Appeals Board's decision that the appeal was not receivable was well founded, and that, in the absence of a recommendation on merits from the Board, the application was not receivable under article 7 of the Tribunal's Statute.

2. JUDGEMENT NO. 232 (12 OCTOBER 1978):[7] DIAS *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Request for rescission of a decision denying validation of non-contributory services performed prior to eligibility for participation in the Pension Fund—Question of the receivability of the application

The applicant, a former technical assistance expert of the United Nations, had become eligible to participate in the United Nations Joint Staff Pension Fund on 1 January 1969. He had sought the advice of the Resident Representative of the United Nations Development Programme (UNDP) in Somalia, as to whether he could pay in instalments the sum that was payable to the Pension Fund for the purpose of validating his five years of service prior to January 1969. The Resident Representa-

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In the course of the discussion of the item in the Fifth Committee, the delegation of New Zealand similarly proposed to add after article 2 a new article reading:

"The Tribunal and the Appeals Board shall be competent to give advisory opinions at the request of the Secretary-General or at the request of the Staff Committee with the consent of the Secretary-General." (*Ibid.*, document A/C.5/L.4/Rev.1 and Corr.1.)

In a revised draft Statute (second revision) submitted to the Fifth Committee on 31 October 1949, the Secretary-General accordingly proposed the addition to article 2 of a paragraph 5 reading:

"The Tribunal shall be competent to give advisory opinions at the request of the Secretary-General or at the request of the Staff Committee with the consent of the Secretary-General." (*Ibid.*, document A/C.5/L.4/Rev.2.)

On 2 November 1949, at its 214th meeting, the Fifth Committee, on the proposal of the delegation of the Netherlands, decided to delete paragraph 5 of article 2 by a vote of 30 to 3, with 7 abstentions.

The subject-matter of the above-mentioned request for an advisory opinion was subsequently dealt with by the Tribunal in its judgements Nos. 337, 338 and 339. A summary of those judgements will appear in the *Juridical Yearbook*, 1979.

[3] Mme. Paul Bastid, Vice-President, presiding; Mr. T. Mutuale, Member; Sir Roger Stevens, Member; Mr. F. A. Forteza, Alternate Member.

[4] Reading as follows:

"(*a*) A staff member who, under the terms of regulation 11.1, wishes to appeal an administrative decision, shall, as a first step, address a letter to the Secretary-General, requesting that the administrative decision be reviewed. Such a letter must be sent within one month from the time the staff member received notification of the decision in writing."

[5] Reading as follows:

"An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the staff regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal."

[6] Under staff rule 111.3 (*d*) "An appeal shall not be receivable by the Joint Appeals Board unless the above time limits have been met, provided that the Board may waive the time limits in exceptional circumstances."

[7] Mr. R. Venkataraman, President; Sir Roger Stevens, Member; Mr. E. Ustor, Member.

tive had advised him that, since he had only a three month fixed-term contract with the prospect of an extension very much in doubt, he could only make payment in a lump sum. On the basis of this advice, the applicant had decided not to validate his prior years of service. However, contrary to the Resident Representative's expectations, the applicant received an extension of his contract, and thereafter continued in the employ of the United Nations until 1977. He however made no further attempt to pursue the possibility of validation and the issue remained dormant until 1976, when the applicant sought the guidance of his superior in making a tentative assessment of his retirement entitlements.

On 28 July 1977, the applicant asked that the Secretary of the United Nations Joint Staff Pension Board be informed that the Resident Representative had committed an administrative error in advising him that he could not pay by instalments, and that the United Nations should bear the financial consequences of this error and pay the actuarial cost of validation. His request having been denied by a decision of 12 December 1977 and the respondent having agreed by a decision of 14 February 1978 to direct submission of an application to the Tribunal, the applicant filed an application on 11 April 1978, contending that the alleged administrative error of the Resident Representative was imputable to the United Nations, which therefore had to bear the responsibility and the financial consequences of the material loss he suffered.

In answer to the respondent's claim that the subject-matter of the application was time-barred, the Tribunal observed that the application attacked an administrative decision dated 12 December 1977 and thus was lodged in due time. The Tribunal held that the time limits for appeals set by Staff Rules 111.3(*a*) and (*b*) were irrelevant in the present case and that the respondent's objection based on those limits was therefore invalid.

The Tribunal noted that the principal question in connexion with the applicant's claim was whether the omission of the applicant to validate his previous service was caused by following the allegedly misleading advice. From the evidence, it appeared that the applicant had been told not, as he contended, that he could only make payment in a lump sum but rather that since his contract was about to expire and stood little chance of being renewed, the question of validating past services by monthly payments was not highly relevant. This advice under the then prevailing circumstances was reasonable; when these circumstances changed with the renewal of the applicant's contract, it was for him to take this change into consideration, to look after his own interests and to take the necessary steps toward validation for which he had ample time. Hence, the Tribunal concluded, it was not negligence on the part of the Resident Representative but a lack of due diligence on behalf of the applicant that had cost him the loss of an opportunity. No administrative error having been committed by the Resident Representative, the question of the liability of the United Nations for the alleged error did not arise.

3. Judgement No. 233 (13 October 1978):[8] Teixeira *v.* Secretary-General of the United Nations

Legal status of an individual having worked during 10 years for the Organization under successive special service agreements—Allegations of misuse of procedure and violation of general principles of international law—Entitlement to a termination indemnity

The applicant had previously filed with the Tribunal an application on which the Tribunal, by its judgement No. 230[9], had declared itself competent to pass judgement, adding that, unless the parties settled the matter, the applicant could file with the Tribunal pleas on the merits of the case.

For nearly ten years, the applicant worked for the Economic Commission for Latin America (ECLA) under a number of special service agreements. He contended that the link established between him and ECLA gave him in fact the status of a regular employee as opposed to that of an independent or occasional worker, that the Administration had committed a misuse of procedure by continuing, for improper purposes, to use the special service agreement procedure rather than using the normal recruitment procedure, and that the special service agreements should be declared null

[8] Mme. Paul Bastid, Vice-President, presiding; Mr. F. A. Forteza, Member; Mr. T. Mutuale, Member; Mr. Francis T. P. Plimpton, Vice-President, Alternate Member.

[9] See *Juridical Yearbook*, 1977, p. 155.

and void because their essential clauses conflicted with certain general principles of law and basic rights recognized by international law and national labour laws, because of their leonine character and because of the misuse of power.

The Tribunal noted that the applicant had never contested the exact terms of the special service agreements defining the reciprocal legal relations between himself and the Administration. It also noted that the applicant himself had contributed to the creation and renewal of the factual situation, which he claimed was in contradiction with his contractual status, by agreeing to conclude special service agreements under which he accepted the legal status of an independent contractor and expressly waived being considered "in any respect as being a staff member of the United Nations". The Tribunal further observed that the personal situation which had allegedly obliged the applicant to enter into successive special service agreements could only be taken into account if it was established that the Administration had taken advantage of that situation, which was not the case in this instance. The Tribunal therefore held that the applicant could not use his factual situation as an argument to claim a legal status different from his contractual status.

On the issue of procedural irregularity, the Tribunal observed that the special service agreement procedure, although improper by the Administration's own admission, had been favourable to the applicant since it had enabled him to continue rendering services and receiving remuneration. The Tribunal also found that the applicant had been warned that he could not count on a contract as a staff member. For these reasons the Tribunal held that the applicant was not entitled to request a ruling that the special service agreements were leonine and null.

The Tribunal rejected the applicant's contention that generally recognized principles of international law had been violated because of "serious inequality of treatment among staff members", observing that this claim was based on the argument, already dismissed, that the applicant had been in fact a staff member.

Considering however the length of the period during which the applicant had worked for ECLA and the Administration's ratings of the quality of his work, the Tribunal found that, although his agreements contained no provisions to that effect, the applicant could count on receiving a termination indemnity from the respondent. The Tribunal fixed the amount of the indemnity at 3,000 dollars.

4. Judgement No. 234 (18 October 1978):[10] Johnson *v.* Secretary-General of the United Nations

Request that the Tribunal specify the date to be taken for calculation of the amount in Swiss francs of compensation awarded as reparation under an earlier judgement—An interpretation favourable to the Applicant of the staff rule relating to the education grant cannot be contested after compensation has been awarded as reparation.

By its Judgement No. 213,[11] the Tribunal had reversed the decision terminating the Applicant's appointment and, on the grounds that she could have expected to remain in service until superannuation, awarded her a termination indemnity of one week's salary for each month of uncompleted service, or two years' net base salary, less the amount of the *ex gratia* payment already received following the recommendations of the Joint Appeals Board. The Applicant asked that the compensation be paid in Swiss francs at the exchange rate prevailing on the date of her termination contending that, in determing the exchange rate to be applied, the criterion should be the date on which the injury occurred. The Respondent maintained that the exchange rate applied in calculating the compensation was the exchange rate prevailing on the date of payment.

The Tribunal noted that the annual amount in dollars of the Applicant's net base salary was not the matter at issue, and that the dispute arose from the changes in the exchange rate of the dollar in Geneva. It also noted that, in an express provision brought to the attention of the Applicant at the time of her appointment, the Respondent had made an exchange operation necessary for each pay-

[10] Mr. R. Venkataraman, President; Mme P. Bastid, Vice-President; Mr. Endre Ustor, Member.
[11] See *Juridical Yearbook*, 1976, p. 135.

ment, with the result that the Applicant's salary, established in dollars, was actually paid to her in Swiss francs. The same procedure had been followed in making the *ex gratia* payment recommended by the Joint Appeals Board.

The Tribunal observed that, although the injury had occurred on the date of termination, the sum due to the Applicant had been determined by the judgement. It was thus on the date of the judgement that the debt owing to the Applicant had been determined with binding force and her rights in Swiss francs must therefore be established on the date of the judgement and according to the exchange rate prevailing on that date.

The Tribunal also noted that, in calculating the compensation due in application of Judgement No. 213, the Respondent had seen fit to deduct, in addition to the amount of the *ex gratia* payment, an amount of 950 dollars which, according to him, represented reimbursement by the Applicant of part of the education grant for which she was said to be liable in accordance with staff rule 103.20 (*g*).[12]

The Tribunal noted that the principle of proportionality set forth in that staff rule left the Respondent a large measure of discretion. It also observed that, in the course of the financial settlements which had followed the termination of the Applicant and at the time of the payment of the *ex gratia* indemnity, the Respondent, by not claiming the reimbursement of 950 dollars, had interpreted staff rule 103.20 (*g*) in a manner favourable to the Applicant and had considered that reimbursement would not be "normal". According to the Tribunal that interpretation could not be modified following Judgement No. 213, and the Respondent must therefore refund the sum in question to the Applicant.

5. JUDGEMENT NO. 235 (20 OCTOBER 1978):[13] MATHUR *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting a reprimand delivered under staff rule 110.3—Non-observance of the prescribed time-limit for lodging an internal appeal—Confirmation of the decision of the Joint Appeals Board that the appeal was not receivable, since there had been no exceptional circumstances beyond the Applicant's control

On 11 December 1974, the Applicant had received a reprimand under staff rule 110.3 (*c*), following an administrative investigation concerning certain aspects of his conduct. On 26 February 1976, he had lodged an appeal with the Joint Appeals Board. The Board found that the appeal was not receivable since the Applicant had not requested a review of the contested decision until more than nine months had elapsed from the time he had received notification of it, that is, long after the expiry of the prescribed time-limit of one month. Having examined the documents in the case, the Board had concluded that the Applicant could not invoke exceptional circumstances as grounds for waiving the statutory time-limit.

In the light of the facts, the Tribunal concluded that the failure of the Applicant to comply with the time-limits was due not so much to oversight or indolence as to genuine doubts about the applicability of the prescribed procedure to the subject-matter of his complaint. Other considerations, in particular the fact that his contractual status had been uncertain for some months, taken by themselves, could have constituted a basis for "exceptional circumstances" in which the Board might have authorized a waiver of the prescribed time-limits. In the Tribunal's view, however, those considerations could not be taken by themselves. It considered that the Applicant had been perfectly aware of the implications and the limitations of a formal appeal against an administrative decision, that for reasons of his own and with his eyes open he had been reluctant to initiate such an appeal, that his reluctance had persisted even after his contractual status was no longer in doubt and that the delay in submitting the appeal had been the result of the exercise of a choice on

[12] This provision reads as follows:

"Where the period of service of the staff member does not cover the full scholastic year, the amount of the grant for that year shall normally be that proportion of the grant otherwise payable which the period of service bears to the full scholastic years."

[13] Mr. R. Venkataraman, President; Mr. F. A. Forteza, Member; Sir Roger Stevens, Member.

his part and could not be attributed to exceptional circumstances beyond his control. The non-compliance with the prescribed time-limits was the responsibility of the Applicant and the decision of the Joint Appeals Board that the appeal was not receivable must therefore be upheld.

6. JUDGEMENT NO. 236 (20 OCTOBER 1978):[14] BELCHAMBER *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting the introduction of a new salary scale for General Service staff in Geneva to replace a scale established following negotiations between the administrations concerned and the representatives of the staff—Did the Secretary-General have a statutory or contractual, express or implied, obligation to negotiate with the staff representatives before introducing the new scale?—Effect of the establishment of the International Civil Service Commission on earlier practice in that field—Obligation of the Secretary-General to hold consultations with the staff representatives concerning the ICSC recommendations—Refusal of the staff representatives to co-operate either at the stage of the drafting of the ICSC recommendations or of the discussion of those recommendations.

At the beginning of 1975, at a plenary meeting of representatives of the Executive Heads and of the staff of the seven Geneva-based organizations, it was decided to conduct a survey of emoluments of General Service staff. This survey, the results of which all parties undertook in advance to accept as binding, was carried out at the end of 1975 by an independent institution, the Battelle Institute. At the beginning of 1976, the representatives of the Executive Heads expressed very serious misgivings about the validity of the conclusions reached by that Institute. The staff regarded this as a breach of the Executive Heads' commitment and a strike ensued at the United Nations Office at Geneva. In March 1976, the Executive Heads and the staff representatives agreed that the Institute's findings should be checked jointly with a view to the construction of the new salary scale and that the new scale would be implemented with effect from 1 August 1975. The Controller of the United Nations, who was designated as sole negotiator, then held a series of meetings with the representatives of the staff, which culminated on 23 April 1976 in an agreement.

On 22 December 1976, in resolution 31/193 B, the General Assembly requested the International Civil Service Commission to have a survey made of local employment conditions at Geneva, to make recommendations as to the salary scales deemed appropriate and to inform the General Assembly of the actions taken in that regard. The ICSC accordingly carried out a survey in Geneva, as a result of which it recommended reductions from the existing scale and communicated its findings and recommendations to the General Assembly in September 1977. During September and October 1977, the Secretary-General and his representatives engaged in consultations with the staff representatives. On 22 November 1977, the Secretary-General announced to the Fifth Committee his intention to implement the ICSC recommendations and on 21 December 1977, in its resolution 32/200, the General Assembly noted with appreciation the ICSC report and the intention expressed by the Secretary-General. The new salary scale was introduced effective 1 January 1978.

The Applicant, a General Service staff member of the United Nations Office at Geneva, filed an application with the Tribunal requesting that it direct the Secretary-General to rescind the salary scale of the General Service category at Geneva which he had, according to her, introduced unilaterally and without prior negotiations with the Staff Council.

The Tribunal noted that, according to the Applicant, the requirement that the Secretary-General negotiate with the Staff Council before fixing the salary scale of the staff in the General Service category formed part of the conditions of service of such staff. It added that the case involved consideration of the scope and effects of Staff Regulations 8.1 and 8.2 and Staff Rule 108.2 concerning staff relations. It therefore ruled that it was competent to hear and pass judgement on the application.

The Tribunal first considered whether there was a statutory or contractual, express or implied, obligation on the part of the Secretary-General to negotiate with the Staff Council prior to the introduction of the revised salary scale. It pointed out that the legal "right" and "duty" to engage in

[14] Mr. R. Venkataraman, President; Mme P. Bastid, Vice-President; Mr. F. T. P. Plimpton, Vice-President; Mr. E. Ustor, Alternate Member.

collective bargaining, if any, arises out of a statute or contract and that, apart from statutory or contractual obligations, it was not aware of an enforceable right to collective bargaining based on general principles of labour law. The question was therefore to determine whether such an obligation existed in the case under consideration. In that connexion, the Tribunal noted that there were no provisions in the Staff Regulations and Rules for "collective bargaining" or "negotiation in good faith"; nor were the latter provided for *in express terms* in the agreement of 23 April 1976 or in the earlier agreements of 1968–1969. It added that the agreement of 23 April 1976 had not prescribed any time-limit for its duration and, since it did not limit the powers of the Secretary-General to revise the salary scale of the staff in the General Service category from time to time, it could not have created any contractual obligation as to "collective bargaining" or "negotiation in good faith" with the staff representatives prior to the revision of the scale.

The Tribunal then considered whether such an obligation was implicit in the agreements of 1968-1969 and 1976. It found that, since 1957, there had invariably been discussions between representatives of the Executive Heads and of the staff of the various Geneva organizations in inter-agency committees, joint advisory committees, joint working parties, etc., prior to the fixing of the salary scale of General Service staff by the Secretary-General. It was not the Applicant's case that the Secretary-General could not make a salary revision without the consent of the representatives of the staff, nor was any derogation from his authority involved. In fact, in agreeing in advance to abide by the results of the survey carried out in 1975, the Secretary-General had exercised the wide discretion he had in the matter.

The Tribunal also noted that the holding of consulations between the representatives of the Executive Heads and of the staff of the Geneva-based organizations on the revision of salary scales was a long-established practice based, according to the Respondent, on Staff Regulations 8.1 and 8.2. It observed that no joint group had been constituted for the purpose of consultation before the introduction of the salary scale effective from 1 January 1978. Noting that the Respondent maintained that the constitution of such groups had become irrelevant after the establishment of the ICSC, the Tribunal considered whether the establishment of the ICSC had altered the situation. It concluded that the earlier practice of constituting joint committees to decide on the metholodogy of the survey or on the choice of an agency for conducting it had become inapplicable after the establishment of the ICSC, which had been charged with the same responsibilities under article 12 of its Statute. It also noted that the Statute and rules of procedure of the ICSC afforded fair and reasonable opportunity for the staff to make representations to the Commission and to discuss issues with it both before and after the formulation of its recommendations.

The Tribunal then considered whether, after the receipt of the recommendation of the ICSC and before the promulgation of the revised salary scale, there had been an obligation on the part of the Respondent to engage in consultations with the staff representatives through joint administrative machinery in application of Staff Regulations 8.1 and 8.2. From the positions adopted in that connexion by the ICSC and the Under-Secretary-General for Administration and Management and from the established practice described above, it concluded that there was an implied obligation on the part of the Respondent to hold consultations with the staff representatives prior to the revision of the salary scale.

The Tribunal thus had to determine whether there had been a breach of that obligation by the Respondent. It noted that the staff representatives had not availed themselves of the opportunity offered to them of co-operating with the ICSC and that, by their refusal to co-operate, they had rendered article 12, paragraph 3, and article 28 of the Statute of the ICSC infructuous. It also observed that the staff representatives had been afforded ample opportunity to discuss the ICSC recommendations with senior officials in New York but had refused to accept the report of the ICSC as a basis for discussion. The staff representatives appeared to have relied on the contention that the agreement of 23 April 1976 could not be altered except by another agreement. As stated earlier, however, that agreement did not involve any derogation from the authority of the Secretary-General in the matter and it must moreover be read consistent with and subject to the statutory changes introduced by the establishment of the ICSC.

The Tribunal concluded that, in view of the negative attitude adopted by the staff representatives, the Respondent could not reasonably have been expected to follow the procedures

utilized in the past. The Tribunal had therefore decided that there had been no breach of an obligation on the part of the Respondent and that the salary scale promulgated effective 1 January 1978 was not vitiated.

B. Decisions of the Administrative Tribunal of the International Labour Organisation[15] [16]

1. JUDGEMENT NO. 331 (8 MAY 1978): LEDRUT *v.* INTERNATIONAL PATENT INSTITUTE
The tribunal recorded the withdrawal of the complainant's suit.

2. JUDGEMENT NO. 332 (8 MAY 1978): SIKKA *v.* WORLD HEALTH ORGANIZATION
The Tribunal recorded the withdrawal of the complainant's suit.

3. JUDGEMENT NO. 333 (8 MAY 1978): CUVILLIER *v.* INTERNATIONAL LABOUR ORGANISATION

Complaint impugning a decision taken on the recommendation of an Appeals Committee which had not considered the full dossier of the case—Quashing of the impugned decision

The complainant, who occupied a P-4 post, had been told that, under the grading survey of P-1 to D-1 posts undertaken within the Organisation, her post would continue to be graded P-4. An appeals procedure having been established, the complainant appealed against the decision in question. The Appeals Committee made its recommendation to the Director-General in the autumn of 1975. Upon the resignation of the members of the Committee, the Director-General decided to hold over his decision on all the cases on which he had not received the Appeals Committee's reports until after its members had resigned. Once a new Appeals Committee had been formed, the Director-General referred to it the cases on which no final decision had been taken. The Committee recommended confirming the grade of the complainant's post at P-4 and she was notified of the Director-General's decision to that effect. She asked to see the text of the Committee's final recommendation, but her request was refused.

The Tribunal noted that, according to the Organisation, the Appeals Committee had not carried out a second full review of the complainant's case but had merely "resumed consideration of the grading". It stressed that once the Director-General decided not to act on the recommendations already made, and to set up a new Committee with a somewhat different membership, he was bound to start the proceedings all over again before that Committee, to put to it the entire cases of the staff members concerned, and to ask for its recommendations on the entirety of those cases. It added that

[15] The Administrative Tribunal of the International Labour Organisation is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment, and of such provisions of the Staff Regulations as are applicable to the case of officials of the International Labour Office and of officials of the international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1978, the World Health Organization (including the Pan American Health Organization (PAHO)), the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the Interim Commission for the International Trade Organization/General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organization for the Safety of Air Navigation, the Universal Postal Union, the International Patent Institute, the European Southern Observatory, the Intergovernmental Council of Copper Exporting Countries, the European Free Trade Association, the Inter-Parliamentary Union, the European Molecular Biology Laboratory and the World Tourism Organization. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organisation and disputes relating to the application of the Regulations of the former Staff Pension Fund of the International Labour Organisation.

The Tribunal is open to any official of the International Labour Office and of the above-mentioned organizations, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely.

[16] Mr. M. Letourmeur, President; Mr. A. Grisel, Vice-President; Lord Devlin, Judge.

the new Committee could not legally make such recommendations without giving the staff members a hearing in accordance with the general principles of law, something which, in the event, it had not done.

The Tribunal consequently quashed the impugned decision and referred the complainant's case back to the Director-General of ILO for a new decision to be taken after due consultation of the Appeals Committee.

4. JUDGEMENT NO. 334 (8 MAY 1978): CAGLAR *v.* INTERNATIONAL TELECOMMUNICATION UNION

Complaint impugning a decision to terminate an appointment when a post was abolished—Limits of the Tribunal's power of review with regard to such a decision

The complainant impugned a decision by which his appointment was to be terminated as a result of his post being abolished pursuant to a decision of the Administrative Council of ITU.

The Tribunal noted that the application of regulation 9.1 (*b*) of the organization's Staff Regulations and Staff Rules, on which the impugned decision was based, was contingent on the existence of a suitable post in which the staff member's services could be effectively utilized. Applying it required knowledge of the duties of vacant posts and of staff members' qualifications and raised matters of discretion. Hence the Tribunal could not quash decisions taken under that provision unless they were taken without authority, or violated a rule of form or procedure, or were based on a mistake of fact or of law, or if essential facts had been overlooked, or if the decision was tainted with abuse of authority or clearly mistaken conclusions were drawn from the facts.

The Tribunal concluded, after examining all the documents in the dossier, that the impugned decision was not tainted with any of those flaws. It noted in particular that under regulation 9.1 (*b*) of the Staff Regulations and Rules the priority granted to a staff member whose post was abolished was not absolute but subject to two conditions, namely the existence of a suitable vacant post and the staff member's capacity to give useful service, and that it might be necessary to test the ability of the staff member whose post had been abolished to occupy another post. Hence the Secretary-General had made no mistake of law in making the complainant serve a trial period before appointing him to a new post.

The Tribunal also considered that, contrary to the complainant's contention, the Secretary-General had a duty to take account not just of the reports for the trial period but of earlier ones as well: since the priority granted under regulation 9.1 (*b*) was not absolute, the question to be decided was whether priority was deserved, in other words, whether the complainant was qualified for the post offered to him and could give useful service in that post. Accordingly the Secretary-General had to take account of all the information he had on the complainant. Throughout most of the time he was employed by ITU, the complainant's performance had been criticized with varying degrees of severity. The Secretary-General had therefore not drawn clearly mistaken conclusions from the dossier in deciding that the complainant was not fit for the vacant post.

5. JUDGEMENT NO. 335 (8 MAY 1978): DAUKSCH *v.* INTERNATIONAL PATENT INSTITUTE

Request for the substitution of a new "place of origin" for that determined at the time of recruitment—Concept of "place of origin"—Discretionary power conferred on the Director-General by the relevant provision of the Staff Regulations

The complainant had requested that his "place of origin", which had been determined as the place of his recruitment, be changed, *inter alia*, because of a shift in the "centre of his interests" as a consequence of his marriage.

The Tribunal recalled the terms of article 18 of appendix III to the Staff Regulations, which reads:

> "A staff member's place of origin is determined when he takes up his appointment, with due regard to the place of recruitment or the centre of his interests.
>
> "The Director-General may, by a special decision, later alter that determination, while the staff member is serving under appointment and when he leaves.
>
> "While the staff member is still serving, however, such a decision may be made only in exceptional circumstances and after he has produced evidence in support of his request."

The Tribunal noted that the second and third paragraphs of that article left the matter to the discretion of the competent authority and that decisions taken by virtue of those provisions could not be quashed unless tainted with certain well-defined flaws.

In the opinion of the Tribunal, it was impossible, without straining the term beyond normal usage, to take the "place of origin" of a married man to be the place where his wife had relatives or property. Moreover, the exceptional circumstances required by the third paragraph did not exist because it often happened that a man formed connexions with the place where his wife's family lived and where she had property.

The complainant alleged in addition that other staff members had had their place of origin changed. The Tribunal established, however, upon examination of the dossier, that the circumstances were not the same, and it consequently dismissed the complaint.

6. JUDGEMENT NO. 336 (8 MAY 1978): HAYWARD *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Irreceivability of a complaint not referring to a final administrative decision—Article VII of the Statute of the Tribunal

The Tribunal, having established that the complainant had submitted a claim to the Administration and then, having obtained an interview to discuss his problems, had decided not to pursue the matter but to refer it to the Tribunal, emphasized that the Administration's failure to act was not, in the circumstances of the case, equivalent to an adverse decision. The complainant was free to resume correspondence and, in that case, could not consider that his claim had been rejected when 60 days' silence had elapsed. The Tribunal, considering that the complainant had not obtained a final decision within the meaning of article VII of its Statute, declared the complaint irreceivable.

7. JUDGEMENT NO. 337 (8 MAY 1978): FRASER *v.* INTERNATIONAL LABOUR ORGANISATION

Complaint impugning a decision not to extend a fixed-term appointment—Limits of the Tribunal's power of review with regard to such a decision

The complainant held a fixed-term appointment which had been extended to 30 August 1977. He impugned a decision to terminate his appointment at that date.

The Tribunal emphasized that the extension of fixed-term appointments was a matter which fell within the Director-General's discretionary powers and that it could not interfere with decisions in that respect unless they were tainted with certain well-defined flaws, none of which was present in the case. In particular, the core of the complainant's argument was to contest the judgements of fact made by the Director-General, in which the Tribunal could not interfere.

8. JUDGEMENT NO. 338 (8 MAY 1978): STANKOV *v.* WORLD HEALTH ORGANIZATION

Dismissal of a complaint impugning a decision declaring an internal appeal irreceivable on the ground that it was time-barred

The complainant appealed to the Regional Board of Appeal on 6 January 1976 against a decision of 13 August 1975 refusing to convert his home leave into sick leave. The Regional Board of Appeal declared the appeal irreceivable on the ground, *inter alia*, that it was time-barred. The headquarters Board of Inquiry and Appeal, to which the matter was referred, had recommended that the appeal should be deemed receivable, but that recommendation had been dismissed by the Director-General.

The Tribunal dismissed the complaint on the ground that the impugned decision should have been appealed to the Regional Board of Appeal not later than 30 days after 13 August 1975. The appeal, not having been lodged until 6 January 1976, was time-barred and the Director-General had therefore been right to dismiss the appeal.

9. JUDGEMENT NO. 339 (8 MAY 1978): KENNEDY *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Cancellation, after acceptance by the complainant, of a document defining the terms of his appointment—Question of the Tribunal's jurisdiction—Comparison between the resolution con-

cerning the defendant organization's acceptance of the Tribunal's jurisdiction and article II, paragraph 5, of the Tribunal's Statute—Question of the receivability of the complaint in view of the rule concerning exhaustion of internal means of redress—Conclusion of the Tribunal that the document in question constituted a binding contract for a conditional appointment

After offering the complainant a six-month consultancy, the organization sent him two copies of a document entitled "Terms of employment", which stipulated that his appointment would be confirmed after medical clearance, the United States loyalty clearance and other "internal clearances" had been received. As requested, the complainant returned one of the two copies of the document, duly signed, thereby informing the organization that he accepted the proposed terms. However, he was subsequently informed that the document in question had been cancelled, because the requisite "internal clearances" were lacking.

In considering the case, the Tribunal first had to settle the question of its jurisdiction: it pointed out that, under the terms of article II, paragraph 5, of its Statute, it heard "complaints alleging non-observance, in substance or in form, of the terms of appointment of officials". It noted that the appointment was effected after the "terms of appointment" had been framed, by mutual agreement, by the Organization and the person to be appointed. One of the "terms of appointment" was that the person in question would be appointed as an official in due course. If the organization did not observe that term, the non-observance fell within paragraph 5 of article II. Of course, in order for jurisdiction to be conferred on the Tribunal, the complainant must establish that he had agreed to the terms of employment; but if, as in the case under consideration, there was a dispute about that point, it was a dispute which, under article II, paragraph 5, the Tribunal was competent to determine.

The Tribunal did note that the resolution in which the FAO Conference had accepted the jurisdiction of the Tribunal referred to "complaints of alleged non-observance of the terms and conditions of appointment of FAO staff members". However, it deemed it unnecessary to discuss whether there was any substantial difference between that wording and the wording of article II, paragraph 5, of its Statute, or whether an organization which was acceding to the Tribunal could, by appropriate words, exclude a part of the jurisdiction conferred upon the Tribunal by its Statute. Accordingly, it deemed that the Statute was the document which was known to define the jurisdiction of the Tribunal, and the resolution was merely an instruction to the Director-General to arrange for the organization to accept that jurisdiction. Moreover, it would be unrealistic to think that, when the Conference had passed the resolution in question, it had wished to exclude from the Tribunal's jurisdiction the highly unusual category of disputes about whether or not a contract had been made.

The Tribunal then considered the question of the receivability of the complaint in the light of the Organization's contention that the complainant had not, as required by article VII of the Statute, exhausted such means of resisting the decision impugned as were open to him under the Staff Regulations. The Tribunal observed that it was open to the Organization, if it wished, to dispense with the requirement in article VII. It noted that, when the complainant had notified the Director-General of his intention to file an appeal, he had been informed by the Director of Personnel that the Organization would consider any such appeal as irreceivable but that the Tribunal would determine for itself the receivability of any claim addressed to it. The complainant had then declared his intention to file a complaint with the Tribunal. Since the organization had not replied, the complainant had rightly concluded that it would be pointless for him to file an appeal under the Staff Regulations.

On the merits, the Tribunal noted that, while the language of the document entitled "Terms of employment", which the complainant had signed, could be interpreted to mean that the organization was not bound to confirm the appointment, it did not provide any basis at all for the argument that, if the appointment was confirmed, the complainant was not bound to accept it. Accordingly, the organization had no ground for contending that no contract had been made.

The Tribunal considered that the language of the document and the circumstances of the case supported the view that the Organization had intended to make a commitment, albeit one that was subject to certain conditions. Accordingly, the said document constituted a binding contract for a conditional appointment. Only the "other internal clearances" had been lacking in order for the contract to be completed. It had been for the organization to define the meaning of those words; it had also been its duty to initiate the requisite procedures and, if necessary, to explain why they had

failed. Since the organization had remained silent on both those points, the Tribunal could not assume that that condition had not been fulfilled.

The Tribunal therefore quashed the impugned decision and granted the complainant an indemnity equal to the salary he would have received for a six-month consultancy.

10. JUDGEMENT NO. 340 (8 MAY 1978): BIGGIO, VAN MOER, RAMBOER, HOORNAERT, BOGAERT, DESCAMPS AND DEKEIREL *v.* INTERNATIONAL PATENT INSTITUTE

Complaint impugning a decision establishing a promotion list—Limits of the Tribunal's power of review with regard to such a decision

The complainants impugned a decision of the Director-General endorsing a promotion list in which their names had not been included. The Tribunal stressed that such a decision fell within the scope of discretionary authority and, thus, that it could interfere with it only if it was tainted by very specific flaws.

It noted that the Careers Committee, which on 27 January 1976 had drawn up a promotion list for 1975, had subsequently been asked to draw up a second list of staff members eligible for promotion by order of merit, it being understood that only those staff members included in the first list should be taken into consideration. The Tribunal pointed out that, in its Judgement No. 300,[17] it had decided that the Director-General had not abused his discretionary authority by promoting only those staff members included in the said list; the Tribunal thus concluded that, since the complainants were not included in that list, they could not properly contend that the decision to refuse them promotion had been tainted with any flaw which entitled the Tribunal to interfere.

11. JUDGEMENT NO. 341 (8 MAY 1978): LEE *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Request for the reimbursement of travel expenses on the ground that the Organization had neglected its obligation to inform staff members of a change in the provisions governing home leave

In its Judgement No. 271,[18] the Tribunal had ordered "that the claims of the interveners be remitted to the Director-General for him to determine what sums, if any, are in the light of this judgement due . . . in respect of home leave entitlement, and with liberty to the interveners, if they do not accept such determination, to apply to the Tribunal . . .".

The complainant, an intervener in the case settled by Judgement No. 271, contended that, over and above the expenses she had incurred in taking leave in 1972, she should be repaid the leave expenses she had incurred in June 1970.

The Tribunal noted that the benefit of home leave travel paid for by the organization had not been extended to the category of officers to which the complainant belonged until 1 June 1969 and that copies of the amendment to the Regulations concerning that benefit had been circulated to the staff in the usual way, namely one copy per desk.

Under the new system, the complainant could have claimed the benefit of paid home leave travel as of December 1970. She said that, had she known, she would have postponed the leave she had taken in June 1970. On the ground that the Personnel Department had failed to inform her of her rights, she asked that she should be reimbursed for the travel expenses incurred in 1970. Having studied the dossier, however, the Tribunal stated that it could not find that there had been any fault by the Organization constituting a breach of the regulations or of the complainant's contract of employment.

12. JUDGEMENT NO. 342 (8 MAY 1978): PRICE *v.* PAN-AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

Complaint concerning reclassification of a post—Limits of the Tribunal's power of review with regard to such a decision—Quashing of the decision because it lacked a proper basis of fact was

[17] See *Juridical Yearbook*, 1977, p. 165.
[18] See *Juridical Yearbook*, 1976, p. 146.

based on irrelevant matters or was tainted by irregularity—Decision of the Tribunal ordering the reclassification in question

The complainant impugned a decision by which the Administration had refused to reclassify his post at the P-4 level.

The Tribunal observed that that decision was one taken within the discretionary authority of the administration, over which the Tribunal had only a limited power of review.

The Tribunal noted, however, that in the case in point there was complete disagreement between the Board of Inquiry and Appeal and the Chief of Personnel, and that in the circumstances the fact that the Director of PAHO had allowed the Chief of Personnel to become involved in the decision taken as a result of the recommendation of the Board of Inquiry and Appeal was *prima facie* an irregularity.

The Tribunal further stressed that the Director of PAHO had referred the question to the WHO Chief of Personnel for "an evaluation" or "an advisory opinion", thus addressing himself to a member of an outside organization who was nevertheless considered an independent expert on the matter.

The Tribunal considered that although the Director could legitimately ask the WHO Chief of Personnel for help in making up his own mind, he had no right to delegate his responsibility. Indeed, the WHO Chief of Personnel appeared to have treated the application made to him simply as a reference of the matter to him for decision.

The WHO Chief of Personnel had, moreover, been contacted not by the Director but by the PAHO Chief of Personnel. Since his evaluation was to be extremely influential in what was in effect a new process of appeal, the fact that only one of the parties had access to him was gravely irregular.

Lastly, the Tribunal reached the conclusion, after reviewing the facts, that the evaluation made by the WHO Chief of Personnel was irrelevant since it had been made on the wrong basis. However, the decision impugned seemed to be based on that evaluation. The Tribunal therefore concluded that that decision was defective in that it lacked a proper basis of fact, was based on irrelevant matters or was tainted by irregularity, and that it should therefore be quashed.

The Tribunal added that, on the basis of the dossier, the complainant's post should have been classified as P-4 if the PAHO/WHO Classification Plan was applied. PAHO had in fact adopted the WHO Classification Plan and the Director had no power to depart from it by a discretionary decision in a particular case. Observing that, if the matter were remitted to the Director for a new decision he could only act in accordance with the law and within the limits of his authority by following the recommendation by the Board of Inquiry and Appeal for reclassification to the P-4 level, the Tribunal ordered such reclassification.

13. JUDGEMENT NO. 343 (8 MAY 1978): OSUNA SANZ *v.* INTERNATIONAL LABOUR ORGANISATION

Complaint impugning a decision not to renew a fixed-term contract—Limits of the Tribunal's power of review with regard to such a decision

The complainant impugned a decision by which the International Labour Organisation had refused to renew his fixed-term contract.

The Tribunal recalled that such a decision, taken at the termination of the contract, could be quashed only if it was tainted with various specific flaws. It held that none of the complainant's grounds were valid and therefore dismissed the complaint.

14. JUDGEMENT NO. 344 (8 MAY 1978): CALLEWAERT *v.* INTERNATIONAL PATENT INSTITUTE

Complaint concerning the conditions of membership in the sickness insurance scheme provided for in the Staff Regulations for spouses of staff members—Existence of difference of treatment on grounds of sex—Refusal by the Tribunal to allow application of provisions establishing discrimina-

tion which offended against the general principles of the law and particularly of the international civil service

The complainant had requested that her husband be admitted to membership of the sickness insurance scheme provided for in the Staff Regulations and had undertaken to pay the full cost of his membership. Subsequently, however, she had asked for reimbursement of the amounts which had been deducted as a result from her salary, contending in particular that the provisions in accordance with which the Institute had made those deductions introduced discrimination among staff members on grounds of sex.

The Tribunal observed that according to article 28 of appendix IV to the Staff Regulations, adopted by the Administrative Council in its capacity as an executive body, membership of the Institute sickness insurance scheme was open to "the staff member, his wife and dependent children under the age of 21 who are not engaged in any gainful activity, are not married and are actually maintained by the staff member".

It noted that the Director-General considered that the text explicitly applied only to wives of male staff members and not to husbands of female staff members, thus interpreting it so as to discriminate among Institute staff members. The Tribunal considered that it could not allow application of a text establishing discrimination which offended against the general principles of law and particularly of the international civil service. It therefore decided that the complainant was entitled to repayment of the amounts which had been improperly deducted from her salary for her husband's membership in the sickness insurance scheme.

15. JUDGEMENT NO. 345 (8 MAY 1978): DIABASANA *v.* WORLD HEALTH ORGANIZATION

Complaint impugning a decision of dismissal for disciplinary reasons—Refusal of the Tribunal to assess the appropriateness of such a measure except in cases of disproportion between the misconduct and the sanction imposed

The complainant impugned a decision by which his fixed-term contract had been terminated because he had been guilty of misconduct by becoming improperly involved, by virtue of his status as a WHO staff member, in a private transaction. The Tribunal recognized after reviewing the dossier that the complainant was guilty of misconduct legally warranting a disciplinary sanction. The Tribunal considered that it was not for it to consider the gravity of the sanction imposed on the complainant unless it appeared from the dossier that the sanction was disproportionate to the misconduct, which was not the case.

The Tribunal therefore dismissed the complaint.

16. JUDGEMENT NO. 346 (8 MAY 1978): SAVIOLI *v.* WORLD METEOROLOGICAL ORGANIZATION

Complaint impugning a decision terminating a permanent appointment on the ground of abolition of post—Limits of the Tribunal's power of review with regard to such a decision—Abolition of a post is in order only when it is based on objective reasons relating to the functioning of the Organization—Scope of obligations incumbent on the Administration towards staff with permanent appointments whose posts are abolished.

The complainant impugned a decision by which the Organization had terminated her permanent appointment on the ground that her post had been abolished.

The Tribunal noted that, according to staff regulation 9.2, the Secretary-General could terminate the appointment of a staff member if the necessities of the service required reduction of the staff. It recalled that, as a measure of administrative organization, the decision to abolish a post and dismiss the incumbent fell within the scope of discretionary authority and could not, therefore, be rescinded unless it was tainted with specific flaws.

The Tribunal emphasized that, to be in keeping with staff regulation 9.2, the abolition of a post should be required by the necessities of the service, i.e. it should be based on objective reasons relating to the functioning of the Organization, for example, for purposes of savings or rationalization, but not on the wish to get rid of an undesirable staff member, it nevertheless being understood

that when the abolition of a post was required by the interests of the Organization, it was not tainted because it led to the dismissal of an unqualified staff member.

On examining the dossier, the Tribunal considered that the abolition of the complainant's post had been based on an objective reason, namely the financial situation of UNDI , and therefore appeared to be in keeping with staff regulation 9.2.

The Tribunal then recalled the wording of the first sentence of staff rule 192. l (*b*), which reads:

> "If the necessities of the service require that the appointment of staff members be terminated as a result of abolition of posts or reduction of staff, staff members vith permanent appointments shall as a general rule be retained in preference to those hol ing other appointments, subject to the availability of suitable posts in which their services can be effectively utilized."

In the opinion of the Tribunal, that provision imposed on the Secretary-Ge ieral the obligation to ask all department directors about any posts which were vacant or would l ecome so within a certain period, and to conduct consultations for several months before dismiss ng a staff member who had given the Organization long and satisfactory service. That provisic n also obliged the Secretary-General to inquire into all posts corresponding to the qualifications of the holder of the abolished post and held by staff members belonging either to his grade or, subje ct to the agreement of the person concerned, to a lower grade.

On examining the dossier, the Tribunal considered that the Organization iad not pursued its inquiry for as long as it should have done given the circumstances. It noted that the Secretary-General had based his decision on the list of posts which were vacant when the post was abolished and had failed to take account of the fact that temporary situations could have changed sooner or later, for such unforeseen reasons as resignation, illness or death. According to the Tribunal, the organization should have pursued its inquiries at least until the date of expiry o the complainant's period of notice.

Secondly, the attention of the department directors should have been dra wn not only to the complainant's last two posts but also to the possibility of appointing her to posts more or less different from those she had recently held, even if they were normally held by staff me mbers belonging to a lower grade.

Consequently, the Tribunal quashed the impugned decision and awarded th complainant compensation equal to three years' salary.

17. JUDGEMENT NO. 347 (8 MAY 1978): TYBERGHIEN *v.* INTERNATIONAL P/ TENT INSTITUTE

Complaint impugning a decision concerning the date from which a promoti on should take retroactive effect—Limits of the Tribunal's power of review with regard to such a decision—Principle of equality of treatment of staff members

The complainant impugned a decision by which the Director-General had refused to make a promotion which took effect on 1 October 1975 take effect retroactively from 1 January 1975. He maintained that the decision was unfavourable to him in relation to other colle igues who, having either less seniority or lower performance marks than he, had been promoted on the same date.

The Tribunal emphasized that the impugned decision was a discretionary one and therefore could be quashed by the Tribunal only if it was tainted with specific flaws.

It recalled that the principle of equality could be infringed in two ways: eit ier by treating differently cases which were plainly alike; or by treating in the same way cases vhich were plainly unlike. It considered that the complainant was mistakenly alleging the latter ki id of breach of the principle of equality, since he was not of plainly greater merit than those staff r embers he considered to have been treated unduly favourably. Consequently, the Tribunal dismis sed the complaint.

18. JUDGEMENT NO. 348 (8 MAY 1978): DAUKSCH *v.* INTERNATIONAL PATE NT INSTITUTE

Complaint impugning a decision refusing a promotion—Limits of the Trib unal's power of review with regard to such a decision—Principle of equality of treatment of staf members

The complainant impugned a decision by which the Director-General had refused him a promotion despite the fact that he had the same seniority as, and better performance marks than, his colleagues who had been promoted.

The Tribunal emphasized that the impugned decision was a discretionary one and therefore could be quashed by the Tribunal only if it was tainted with specific flaws. In particular, it noted that the complainant's situation and that of the staff members with whom he was comparing himself were different in terms of the number of years actually spent at the Institute, which made a difference in treatment justifiable. Consequently, it dismissed the complaint.

19. JUDGEMENT NO. 349 (8 MAY 1978): DIAZ ACEVEDO *v.* EUROPEAN SOUTHERN OBSERVATORY (ESO)

Complaint impugning a decision to dismiss the person concerned on the ground of his attitude, which the organization deemed unacceptable—Alleged failure to comply with the rule of the exhaustion of internal means of redress—Difference between standards of behaviour required of staff according to whether they are collaborating on a hierarchical basis or negotiating conditions of employment—The Administration's discretionary power with regard to the choice of disciplinary penalties to be imposed in the case of a breach of discipline is subordinate to the principle of proportionality between the offence and the penalty

The complainant had been the subject of a decision to dismiss him on the ground of the attitude he had adopted towards his superiors and which the organization deemed unacceptable. He asked the Tribunal to order his reinstatement and the payment of an indemnity for night work and to award compensation for overtime.

The Tribunal first pronounced upon the receivability of the complaint, in the light of the organization's argument that the complainant had not exhausted the internal means of redress. It considered, on examining the dossier, that this argument was not relevant.

With regard to the merits of the case, the Tribunal emphasized that, in accordance with the provisions of the Staff Regulations and Rules, local staff who, like the complainant, regularly performed night work should sign a special contract, stating the conditions and special indemnities paid for that kind of work. It considered that the organization had not complied with that provision, probably not paying an indemnity and certainly by not specifying what it was in the contracts of the staff concerned.

It noted that the rather strained relations which existed between the complainant and his superior officer were linked to the existence of those anomalies and fell within the framework of efforts towards normalization in which the complainant's superior had taken part not on a hierarchical basis but as a negotiator. In that respect, the Tribunal emphasized that

> "Things can be said in free negotiations about conditions or work in a manner which cannot be used in answer to an order which has to be obeyed. A negotiator does not need to be armed with disciplinary sanctions; he is as free as any other individual to break off discussions with anyone whose manners he finds intolerable. It is because a superior officer cannot break off relations with his subordinates that sanctions against disrespect have to be provided."

The Tribunal also emphasized that at no stage had the superior officer warned the complainant about his disrespect even though, if he considered that his subordinate had gone too far, it was for him to make it quite clear that he would not longer tolerate such behaviour. It finally stressed that, at the meeting following which the dismissal was ordered, nothing had been said or done by the complainant that, taking into account the nature of the meeting and the fact that his previous attitude had never given rise to any rebuke, might properly be interpreted as showing a degree of disrespect sufficient to constitute an offence against the Regulations or a breach of contract. In any case, the Tribunal added, any offence given did not deserve more than a reprimand and, while it was true that the selection of the appropriate penalty fell within the discretion of the Director-General, that discretion should be exercised subject to the principle of proportionality; accordingly, in the case in hand, the summary dismissal constituted a penalty which was out of proportion to any offence committed.

The Tribunal consequently quashed the decision to dismiss the complainant and awarded him, by way of compensation, the amount of $US 12,000. In addition, it recognized that the complainant

was entitled to payment of an indemnity for night work and, in that respect, awarded him an amount equal to 10 per cent of the basic salary for a period of six months, in accordance with the provision of the Local Staff Regulations which prescribes that claims relating to the payment of indemnities may not be raised later than six months from the date on which the local staff member became entitled to raise such a claim.

20. JUDGEMENT NO. 350 (13 NOVEMBER 1978): VERDRAGER *v.* WORLD HEALTH ORGANIZATION

Application for review of a judgement of the Tribunal—Irreceivability of such an application other than in exceptional circumstances, such as the emergence of new facts of decisive importance

The complainant was applying for the review of Judgement No. 325.[19]

The Tribunal emphasized that an application for review of a judgement of the Tribunal was not provided for in either the Statute or the Rules of Court and therefore could be declared receivable only in quite exceptional circumstances, such as when new facts of decisive importance had come to light since the date of the judgement. The complainant did not adduce any new fact of that nature. Moreover, even supposing that the Tribunal had committed a material error, as contended by the complainant, which was not the case, that error would have had no effect on the judgement, so that the application, even if regarded as an application for correction of a material error, was still irreceivable.

21. JUDGEMENT NO. 351 (13 NOVEMBER 1978): PIBOULEAU *v.* WORLD HEALTH ORGANIZATION

Complaint impugning a decision not to renew a contract taken, according to the organization, for reasons of economy—Rejection of the allegation that the impugned decision was taken in breach of the Staff Rules and of the Conventions and Recommendations of the International Labour Organisation

The complainant impugned a decision not to renew her contract which had been taken, she claimed, in breach of the WHO Staff Rules and of the Conventions and Recommendations of the International Labour Organisation on maternity protection.

The Tribunal noted that the Organization had extended the complainant's contract by the period necessary to ensure that she benefited from the pre-natal and post-natal maternity leave prescribed in the Staff Rules. It concluded that the complainant had suffered no prejudice by reason of the behaviour of the Organization, which, far from committing any offence, had correctly implemented the Staff Rules.

The Conventions and Recommendations of the ILO invoked by the complainant had not been made applicable to WHO and, in any case, had not been infringed.

The organization stated that the impugned decision was attributable solely to the desire to make savings. It was not for the Tribunal to pass judgement on a policy which fell within the exclusive competence of the executive organs of WHO, or to review measures taken in pursuance of that policy.

22. JUDGEMENT NO. 352 (13 NOVEMBER 1978): PEETERS *v.* INTERNATIONAL PATENT INSTITUTE

Complaint impugning a decision relating to the content of a periodic report—Limits of the Tribunal's power of review with regard to such a decision—The advisory bodies called upon to give their opinion on the matter to the Director-General enjoy the same freedom of assessment as the Director-General

The complainant impugned a decision by which the Director-General had refused to amend a comment contained in the former's report. The Tribunal emphasized that such a decision was of a discretionary nature and could not be quashed by the Tribunal unless it had been tainted with specific flaws.

The Tribunal noted that the complainant had alleged procedural flaws, maintaining in particular that the internal bodies which had examined the matter had gone beyond the scope of the task entrusted to them and had infringed the rule of *non ultra petita*.

[19] See *Juridical Yearbook*, 1977, p. 184.

However, the Tribunal emphasized that the bodies in question were advisory in nature. Given that, in the exercise of his authority, the Director-General was quite free to determine the assessment he deemed appropriate, the advisory bodies called upon to give him their opinion enjoyed as much freedom as he in the assessment of the official's performance.

The Tribunal, considering the allegation of procedural flaws to be irrelevant and, in addition, noting that the Director-General had not drawn plainly inaccurate conclusions from the dossier, dismissed the complaint.

23. JUDGEMENT NO. 353 (13 NOVEMBER 1978): BASTANI *v.* INTERNATIONAL CENTRE FOR ADVANCED TECHNICAL AND VOCATIONAL TRAINING (INTERNATIONAL LABOUR ORGANISATION)

Request for reinstatement submitted by a staff member who resigned after having been suspended—Power of any supervisor to suspend a staff member from duty forthwith and without formality in view of the temporary nature of such a measure, in the interests of the Organization

The complainant had resigned after being suspended from duty because of the way he had behaved in an official meeting and his resignation had been accepted. Before the Tribunal he impugned the decision to suspend him and asked to be reinstated.

The Tribunal noted that the complainant had resigned of his own free [illegible] had not been coerced. Even supposing that, as he claimed, he had resigned because he had been suspended, the fact remained that according to the general principles of the international civil service, a supervisor may suspend from duty, forthwith and without formality, a staff member who is guilty of misconduct serious enough to make it clear that it is incompatible with the organization's interests to keep him on the staff. Moreover, the suspension was a provisional measure and reserved the staff member's rights and would have been followed by an inquiry affording him full safeguards.

In this case, in view of the serious incidents created by the complainant, it was incumbent on the Chief of Personnel to suspend him forthwith, as the case was to be referred later to the Director of the Centre for disciplinary proceedings.

The Tribunal therefore dismissed the complaint.

24. JUDGEMENT NO. 354 (13 NOVEMBER 1978): SHALEV *v.* UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Complaint impugning a decision not to renew a fixed-term contract—Limits of the Tribunal's power of review with regard to such a decision—Prior demotion on disciplinary grounds is one of the elements which can legitimately be taken into consideration in determining whether or not it is in the interest of the Organization to extend a staff member's appointment

The complainant impugned the decision not to renew his fixed-term contract.

The Tribunal observed that according to Staff Rule 104.6 (*b*) it was within the Director-General's discretionary authority to make such a decision and that therefore the complainant had no right to extension of his appointment, and where it was not extended the Tribunal's power of review was limited.

The nub of the complainant's case was that the impugned decision was the consequence of an earlier disciplinary decision taken by the Director-General to demote him from D-1 to P-5. Although that decision had become final the Tribunal might nevertheless consider whether the decision not to extend his appointment was not really a further disciplinary sanction based on the same facts, in which case it would be a mistake of law.

The Tribunal noted that in determining whether or not to extend a staff member's appointment the Director-General had to consider whether the extension was in the organization's interests in the broad sense, for example by taking account of all the facts in the dossier. If a staff member had suffered a disciplinary sanction the Director-General was bound to keep a balance between that adverse fact and other facts in the staff member's favour and should take such facts into account in reaching his decision, in the organization's interest alone. A clear distinction had to be drawn between imposing a covert disciplinary sanction on a staff member—which was unlawful—and taking into account, in reaching a decision of different purport, the fact that in his career the staff member

had suffered a disciplinary sanction—which, save in exceptional circumstances, was perfectly lawful.

In the present case the Director-General stated that he had made a full review of the complainant's dossier and that, inasmuch as it had been based on appreciations of fact, his decision was not subject to review by the Tribunal. Moreover, that decision did not seem to be tainted by any of the flaws which entitled the Tribunal to interfere. The Tribunal therefore dismissed the complaint.

25. JUDGEMENT NO. 355 (13 NOVEMBER 1978): LEVEUGLE AND BERNEY *v.* INTERNATIONAL LABOUR ORGANISATION

Request for a reclassification of posts in view of the duties relating thereto—Referral of the decisions in question to the Director-General

The complainants impugned a decision confirming the grading of their posts at the P-3 level. Both had been recruited at the P-3 level as translators and were paid a special allowance for their interpretation work. As a result of a reorganization of the Office they had been transferred to a new unit and placed under the authority of the chief interpreter and they therefore claimed that they should be regraded P-4 on the grounds that since their transfer they had been mainly taken up with interpretation and that the grading of their posts no longer corresponded to their actual duties and should be reviewed.

The Tribunal considered that that contention could not be submitted directly to it and referred the complainants back to the Director-General for possible review of the grading of their posts.

26. JUDGEMENT NO. 356 (13 NOVEMBER 1978): CHEN *v.* WORLD HEALTH ORGANIZATION

Complaint impugning a decision not to renew a contract—Failure to observe the rule relating to the exhaustion of internal remedies—Irreceivability of the complaint

The complainant impugned the decision not to renew his contract. After appealing to the Regional Director, who rejected the appeal, he brought the matter before the Tribunal.

Under the Staff Regulations the complainant had the right to appeal against the Regional Director's decision to a Board of Inquiry and Appeal but had not exercised that right. Under article VII of the Tribunal's Statute "a complaint shall not be receivable unless . . . the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations". The Tribunal therefore declared the complaint irreceivable.

27. JUDGEMENT NO. 357 (13 NOVEMBER 1978): ASP *v.* INTERNATIONAL LABOUR ORGANISATION

Complaint concerning the calculation of compensation owed for accumulated leave in the light of the coming into effect, six months prior to the cessation of service of the person concerned, of a new régime pertaining to this—Notion of acquired rights—Principle of non-retroactivity whereby facts and events which were completed at the time of the entry into force of a new statutory régime shall be governed by the rules pertaining to the previous régime

The complainant, who had ceased being a staff member on 31 August 1977, claimed that the compensation to which he was entitled for accumulated leave should have been calculated on the basis of the relevant provision of the Staff Regulations as at 31 December 1976, not the Staff Regulations as amended effective 1 January 1977. He claimed to have an acquired right to application of the earlier version of the provision in question.

The Tribunal recalled that a staff member could derive an acquired right either from a clause of his contract of appointment or from a provision of the Staff Regulations or the Staff Rules which was important enough to affect the mind of the ordinary applicant when he was considering joining the staff of the organization. In the present case the claimant could not claim an acquired right on either of those grounds.

The Tribunal, however, wondered whether application of the former text of the relevant provision was warranted by the rule precluding retroactivity, which removed from the ambit of new law facts and events which had been completed by the time that law came into force. The Tribunal did not deem it necessary to settle that point. It noted, on the one hand, that the organization had cor-

rectly applied the former version of the relevant provision in the complainant's case and that the latter therefore was mistaken in claiming that the provision had been violated and that, on the other hand, there was no question that, based on the new version of the article in question, the person concerned had received everything which was due to him.

The Tribunal therefore dismissed the complaint.

28. JUDGEMENT NO. 358 (13 NOVEMBER 1978): LANDI *v.* INTERNATIONAL CENTRE FOR ADVANCED TECHNICAL AND VOCATIONAL TRAINING (INTERNATIONAL LABOUR ORGANISATION)

Complaint regarding a refusal to extend an appointment beyond the age limit set by the Staff Regulations—Limits of the Tribunal's power of review with regard to such a decision

The complainant impugned a decision whereby the Director of the Centre had refused to extend his appointment beyond the age limit set in the Staff Regulations.

The Tribunal observed that such a decision was discretionary and could be interfered with only if it was tainted with very specific flaws. It concluded that all the grievances invoked by the claimant were groundless and therefore dismissed the complaint.

29. JUDGEMENT NO. 359 (13 NOVEMBER 1978): DJOEHANA *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS)

Complaint impugning a decision not to renew a contract—Limits of the Tribunal's power of review with regard to such a decision—Deficiency of the dossier concerning the professional behaviour of the staff member during his last two years of service and the nature of the duties performed by him during that period—Quashing of the impugned decision on the ground of abuse of authority

The complainant impugned a decision whereby the organization had refused to extend his appointment. The Tribunal observed that such a decision was discretionary and that it could interfere only if the decision was tainted with very specific flaws.

The Tribunal noted that, at the end of 1974, the organization had postponed its final decision concerning the complainant to October 1976 and that regarding the decisive matter of determining whether, during that period, the complainant had proved unable to perform the services expected of him, the dossier was incomplete. It also said nothing about the nature of the tasks entrusted to the complainant during this period and it was therefore difficult to determine whether the organization had made vigorous enough efforts to find him a post in which his often acknowledged talents could have been put to good use.

In the view of the Tribunal, if the organization intended not to renew the complainant's appointment it needed to rely on decisive facts. Such facts did not appear in the evidence produced by the parties. Thus the circumstances in which the decision not to renew the contract had been taken pointed to an abuse of authority. In particular, since there was no description of the posts the complainant had held in 1975 and 1976 and no detailed comment on his performance during that period, there was reason to believe that the Director-General had either failed to take account of essential facts or had drawn clearly mistaken conclusions from the facts. In either event the impugned decision had to be quashed. The Tribunal ordered that the complainant be paid compensation amounting to the remuneration which he would have received during one year.

30. JUDGEMENT NO. 360 (13 NOVEMBER 1978): BREUCKMANN *v.* EUROPEAN ORGANIZATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL AGENCY)

Complaint seeking the application, by analogy, of the régime in effect within the European Communities regarding pension rights to the case of the person concerned—Scope of the principle whereby the claims submitted to the Tribunal and the claims in the internal appeal must be the same—Application by analogy, within an organization, of the régime applicable in another organization is justified only if the applicable text contains a gap due to an oversight

The complainant left the Commission of the European Communities to join the Eurocontrol Agency and did not avail himself of the right, provided for in article 12 of annex IV to the Staff Regulations of the Agency, to transfer the actuarial value of his pension rights from one organization

to another. When he later asked to do so his request was denied and he therefore filed a complaint with the Tribunal requesting it to "find against the opposing party in the sense that such party should be obliged to recognize the actuarial value of the pension rights being introduced into the Eurocontrol scheme as an analogous decision to Regulations No. 174.65/EEC and 14 65 EURATOM".

The Tribunal noted the Agency's contention that the claims submitted in the complaint were irreceivable because they did not correspond to the claims submitted in the internal appeal. It dismissed this argument, observing that, although the claim referred to article 1[illegible] of annex IV to the Staff Regulations and proposed applying by analogy the "actuarial" solution adopted by the Commission of the European Communities, whereas the purpose of the complaint was merely to have the complainant's rights determined by analogy in accordance with the rules of the Communities, the purpose was the same, namely, to secure recognition of the complainant's right to benefit under the Eurocontrol pension scheme. The Tribunal stated that the principle whereby the claims submitted to it and the claims in the internal appeal must be the same applied only to the substance, and had been respected in the present case.

As to the merits, the Tribunal felt that there were no grounds for applying to the particular case of the complainant, even by analogy, the rules in force for staff of the European Communities. Such application would be warranted only if the Eurocontrol rules failed to provide for that matter due to an oversight. That was not the case, since the Committee of Management of the Agency before which the case had been brought had expressly refused to meet the complainant's claims by amending the rules.

The Tribunal therefore dismissed the complaint.

31. JUDGEMENT NO. 361 (13 NOVEMBER 1978): SCHOFIELD *v.* WORLD HEALTH ORGANIZATION

Complaint impugning decisions considered prejudicial by the complainant—obligation of the Organization to respect the dignity and reputation of staff members and not cause them unnecessary personal distress—This obligation may be breached even if there has been no irregular decision—The Tribunal orders compensation for moral prejudice only in exceptional circumstances when the injury is of a kind likely to impair a staff member's career

The complainant alleged that a series of decisions concerning him constituted punitive measures taken against him without justification. In particular, he had been summarily relieved of his functions as acting director of a division and displaced from his post as chief of a programme for which he had been responsible for several years.

The Tribunal recognized that, if one tested the substance of the claim by asking oneself to what extent the complainant had suffered materially by the action taken, as distinct from the way in which it had been taken, the answer had to be that he had not suffered much.

Nevertheless, the complaint was about the way in which the complainant had been treated and its aim was to secure some kind of rehabilitation. In the opinion of the Tribunal that claim, if it could be made out on the facts, was good in law irrespective of whether or not the decisions complained of were valid. On that point, the Tribunal stated the following:

> "Just as it is implicit in every contract of service that the staff member shall be loyal, shall treat his superiors with due respect and shall guard the reputation of the Organization, so it is implicit that the Administration in its treatment of staff members shall have a care for their dignity and reputation and shall not cause them unnecessarily personal distress. Often distress and disappointment cannot be avoided but, where it can be, it should be. As in all organizations, the staff member must take the rough with the smooth and there are bound in management to be pieces of clumsiness or tactlessness which can be sufficiently smoothed over by apology or explanation. The Tribunal is not likely to concern itself with cases other than those of grave injury which has been left unredressed. But where such injury has occurred it is not the decision to take the action that is relevant—in substance it may be correct or incorrect—but the decision as to the form in which it should be taken and as to how it shall be executed."

While rejecting the argument that the decisions in question had been motivated by personal prejudice or had been otherwise illegal, the Tribunal considered that they had been taken in such a way that the interests, the feelings and the reputations of those who had been affected by them had

been treated as of no account. The question which remained to be determined was whether the ruthlessness with which the decisions had been applied had been so excessive and unnecessary as to amount to a breach of the obligation referred to in the passage of the judgement quoted above.

Having been called upon for the first time to consider a claim for compensation for moral prejudice arising from decisions which it had not deemed irregular, the Tribunal noted that to find moral prejudice in such a case and to award compensation for it was to take a very exceptional course and one which could be taken only in circumstances in which grave injury of a kind likely to impair a staff member's career had been left unredressed. In that respect, the Tribunal reached the conclusion that, in the light of the facts, the injury done to the complainant's feelings and reputation was so grave as to amount to a breach of obligation which called for compensation. The Tribunal fixed the amount of compensation at 30,000 Swiss francs.

32. JUDGEMENT NO. 362 (13 NOVEMBER 1978): ALONSO *v.* PAN AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

Complaint seeking payment by the Organization of fees of legal counsel retained on behalf of two staff members and at their request by a staff member holding the post of chairperson of a subcommittee of the Staff Association—Complaint is outside the Tribunal's jurisdiction—Article II of the Statute

The complainant, a staff member of the Organization, was the "chairperson" of the Legal Subcommittee of the PAHO/WHO Staff Association in which the duly elected representatives of the staff are recognized as "representing the views of that portion of the staff from which elected".

Two staff members in dispute with the Organization had authorized the complainant to represent them in negotiations with the Organization and to obtain legal counsel on their behalf. The complainant had retained counsel and made herself personally liable for his fees. The two disputes had later been settled on terms which made no provision for the settlement of costs. Legal counsel had submitted his bill to the Organization, which had refused to pay it.

The Tribunal noted that, under article II of its Statute, the Tribunal was open to any official who alleged non-observance of his terms of appointment or of the Staff Regulations or who was in dispute with the Organization concerning the compensation provided for in cases of invalidity, injury or disease incurred by him in the course of his employment. It observed that the complainant alleged that she was entitled to be compensated by the Organization for the injury sustained in that she had been left to pay counsel's fees herself. In the opinion of the Tribunal, the word "injury" in the English text of article II of the Statute had to be given the restricted meaning of physical injury, particularly in view of the use of the word "*accident*" in the French text. Moreover, even if there had been a physical injury, it would not have been incurred by the complainant in the course of her employment because there was nothing to suggest that an elected representative of the staff was employed as such by the Organization: any such interpretation would be incompatible with the nature and purposes of the Staff Association.

The Tribunal therefore dismissed the complaint as outside its jurisdiction.

33. JUDGEMENT NO. 363 (13 NOVEMBER 1978): GHAFFAR *v.* WORLD HEALTH ORGANIZATION

Complaint concerning the payment of an installation allowance—Provision, following a recommendation of the internal board of appeal, of an additional sum considered by the Organization to end the dispute—Obligation of the Director-General to conform to the Staff Rules in calculating the allowances due to staff members—A provision that the Organization may authorize an allowance if certain conditions are fulfilled gives the Administration the power to determine whether or not the conditions are fulfilled but not to withhold the payment when the conditions are fulfilled

The complainant was transferred to Abu Dhabi on 3 August 1975 and remained there until 15 May 1976. For the first period of 30 days, in accordance with the relevant provision of the WHO Manual, he received an installation allowance amounting to $US 4,770. After requesting that an installation allowance be paid to him for the entire duration of his stay at Abu Dhabi, he had received an additional amount of $2,000, following a recommendation from the Board of Inquiry and Appeal.

The complainant impugned the decision by which the Director-General had implemented the recommendation of the Board of Inquiry and Appeal on the ground that the relevant Staff Rules had not been correctly applied. The Organization contended that the complainant, having elected to take the payment of $2,000, was estopped from contending that he was entitled to anything more.

The Tribunal maintained that it was true that a debtor was entitled to offer a creditor less than the amount of the claim and that if the offer was made on condition that it was to be accepted in full and final settlement, the creditor could not accept the payment and reject the condition.

Nevertheless, in the case in question, the two parties had not been in a debtor and creditor situation and had not been free to negotiate a settlement: the Director-General had had to decide upon what was just and, unless he erred in the exercise of his discretion, his decision settled the matter. When, therefore, the Director-General had awarded to the complainant the sum of $2,000, he had done so because he considered that the sum was due, and the payment could not be subject to any condition that was not warranted by the Regulations.

Since the complainant had apparently requested payment for the entire duration of his stay at Abu Dhabi of the installation allowance provided for in the WHO Manual for the second period of 60 days following the first 30-day period, the Tribunal considered the question of how to interpret the provision of the Manual envisaging the possibility of the Organization extending payment of the allowance beyond the 60 days.

The Tribunal did not accept the view of the Organization that the use of the word "may" in the provision in question imported a large measure of discretion in allowing or disallowing requests for an extended allowance. It noted that when a regulation or rule made the payment of a sum subject to conditions and the question of whether or not a condition was fulfilled was a matter to be determined by the competent authority, the word "may" was a more appropriate word to use than the imperative in that it gave the competent authority the responsibility to apply its own judgement to the question. If in good faith and on reasonable grounds the authority withheld approval, that concluded the matter. But the use of the word "may" was quite inadequate to confer upon the authority an unbounded discretion so that, even where the conditions were manifestly fulfilled, it could for any reason or for no given reason withhold the allowance.

In the light of these facts, the Tribunal considered that the complainant was entitled to payment of the allowance for the second period of 60 days.

As to the third period, the Tribunal recognized that the relevant provision allowed the Organization wide discretion of interpretation but also noted that there was nothing in the dossier to show that the Organization had ever exercised any discretion. Nevertheless the Director-General must have been satisfied that the necessary conditions were fulfilled when he accepted the recommendation of the Board of Inquiry and Appeal concerning the payment of an additional amount of $2,000, since otherwise there would have been no basis for the award of that sum.

In the opinion of the Tribunal, the complainant had found himself in exceptional circumstances because of the uncertainty in which the Organization had left him as to his contractual status and because of real financial hardship. The Tribunal concluded that the installation allowance was payable in respect of the third period.

Consequently, the Tribunal decided that the complainant was entitled to the installation allowance for the period from 2 September 1975 until 16 May 1976.

34. JUDGEMENT NO. 364 (13 NOVEMBER 1978): FOURNIER D'ALBE v. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Complaint regarding the validation of a period of service for pension purposes—Question of the receivability of the complaint ratione materiae*—Consideration of the conclusion of the internal appeals body concerning the irreceivability of the complaint because of the failure to submit it in time*

The complainant asked the Tribunal to take the necessary action to ensure that the period of service he had performed before 31 December 1957 was taken into account for the purpose of calculating his pension or, failing that, to award him an allowance by way of compensation.

The Tribunal noted that at the time of his first appointment in 1951, the complainant had signed as "accepted" a notice of personnel action containing the note "not applicable" opposite the heading "Provident Fund Pension Scheme". It also noted that in January 1953, the Regulations of the Fund had been amended (article II thenceforth provided for the admission to the Fund of members of affiliated organizations under contract for a year or more and article III provided that under certain conditions previous service might be taken into account) and that the complainant had not been informed of that development. The Tribunal also observed that in 1958, the complainant had been informed of his admission to the Fund and advised that he could not avail himself of the provisions of article III because his previous service as an expert of the technical assistance programme was specifically excluded from participation in the Fund. Lastly, the Tribunal noted that on 27 October 1976 the complainant, referring to the unfavourable position taken by the Director-General at the General Conference in 1976 regarding the validation of previous service performed by experts which was not covered by article III, had written to the defendant organization contending, *inter alia*, that the Administration was at fault in not allowing him to avail himself of the provisions of article III.

The Appeals Board, to which the matter had been referred, had decided that it was competent to adjudicate upon the complaint, but that the complaint was irreceivable. By a decision of 26 July 1977, the Director-General had accepted the opinion of irreceivability while reserving his position on competence.

The Tribunal first took a decision on its jurisdiction. It noted that the Organization maintained that, since the complainant alleged a failure to observe the Statutes of the Fund, the matter was within the jurisdiction of the United Nations Administrative Tribunal. Nevertheless, it observed that it was the object of the complaint to obtain compensation from the Organization for its alleged breach of duties and that it therefore fell within the jurisdiction of the Administrative Tribunal of the International Labour Organisation.

The Tribunal then considered whether the Appeals Board had been right in considering the complaint as irreceivable on the ground that it was time-barred. It took the view that the answer to that question would be in the affirmative if the statement "not applicable" and the 1958 decision referred to above were considered to be administrative decisions. The question was therefore whether those statements were decisions. In the opinion of the Tribunal, that could not have been the case unless the Organization had the power to give a decision binding on the complainant as to whether or not the provisions of article III were available to him, and it did not have that power. The statements in question consequently had to be construed as no more than advice about the way in which the matter would be decided upon by the competent body. The complainant was therefore justified in contending that such advice was erroneous and misleading and that by giving such advice, the Organization had failed to observe some regulation or to fulfil a duty arising out of the contract of service. While the question as to whether or not the advice in question had indeed been erroneous and misleading was open to discussion, there was no doubt that the matter had not been settled and that, therefore, it called for a decision.

The Tribunal thus decided that the complaint was receivable in so far as it was based on the allegation that the Organization had failed to fulfil its obligation to give staff members correct information concerning their participation in the Fund, and it quashed the decision of 26 July 1977.

35. JUDGEMENT NO. 365 (13 NOVEMBER 1978): LAMADIE AND KRAANEN *v.* INTERNATIONAL PATENT INSTITUTE

Complaints concerning the applicability to the staff members concerned of the new conditions of employment resulting from the conclusion of an inter-State agreement—Competence of the Tribunal to consider the complaints—Concept of acquired rights in respect of remuneration, promotion and retirement

The complainants alleged that, as a result of the integration of the International Patent Institute into the European Patent Office (EPO) on the basis of an agreement between the States concerned, they had been forced to accept conditions of employment very different from those which had led them to join the Institute, and they consequently demanded the quashing of the EPO decision subjecting them to new conditions of employment.

The Tribunal first noted that, according to EPO, the Tribunal was not competent to consider applications for the quashing of legislative acts or *a fortiori* decisions to approve international agreements, since that would impair the authority of the States parties. Nevertheless, the Tribunal observed that the complainants were not contesting the validity of the integration agreement but were contending only that the provisions of that instrument should not apply to them and were not asking the Tribunal to disregard State sovereignty. It added:

> "It is immaterial that the provisions which they say should not apply are embodied in an international agreement and not in the Staff Regulations of an organization which still exists. Whatever the nature of the text which contains the provisions, they have the same purport, namely the legal position of the staff of an organization. Where a provision of the Staff Regulations is amended the Tribunal may order the defendant organization to apply the old text and not the new. So, too, when provisions of Staff Regulations are amended so as to comply with clauses in an international agreement the Tribunal may order the application of the former rather than the latter. In the present case, therefore, the plea that the Tribunal is not competent fails."

With regard to the argument that the Institute had radically altered the terms of appointment of its officials without their real co-operation, the Tribunal noted that representatives of the Institute staff had taken part in the discussions which had preceded the conclusion of the integration agreement.

As to the merits of the case, the Tribunal noted that the complainants contended that the integration agreement infringed their acquired rights. It observed that a right was acquired when he who had it might require that it be respected notwithstanding any amendment to the rules, and that an acquired right should be understood to be either a right which arose under an official's contract of appointment and which both parties intended should be inviolate, or a right laid down in a provision of the Staff Regulations or Staff Rules which was of decisive importance to a candidate for appointment.

It noted that although under the provisions of the Institute's Staff Regulations staff members had as a rule been paid salaries identical to those of European Communities, staff stationed in the Netherlands at the time when the Regulations had come into force, no provision of the Staff Regulations guaranteed that that parity would continue. Moreover, the integration agreement had not brought about any cut in the salary which the complainants received from the Institute and, although it was true that former Institute officials would have fared less well than European Communities staff if the salaries of the latter had risen faster than the salaries of EPO staff, the officials transferred from the Institute to EPO had no acquired right to be paid the same salary from 1 January 1972 as European Communities staff and could not allege unfair discrimination.

The complainants also maintained that their acquired rights had been breached by the change in the rules on promotion. On that point, the Tribunal stated the following:

> "It is true that when he takes up employment with an organization an official may reasonably hope some day to advance in grade and that the rules on promotion create an acquired right in so far as they offer the prospect of advancement. But the substance of the acquired right to promotion is merely the possibility of advancement because it is only on the strength of such a possibility that a staff member may have accepted appointment. The provisions which lay down the conditions governing promotion do not confer any acquired rights on a staff member because, when he takes up his appointment, he cannot foresee how he will fare in his career. On the contrary, those provisions are subject to amendment and the staff member must expect such amendment."

On the question of the pension scheme, the Tribunal recognized that an official who offered his services to an organization might be expected to give decisive importance to the provisions on his pension rights and that any curtailment of those rights should therefore be regarded as affecting an acquired right. Nevertheless, it reached the conclusion that the complainants' acquired rights would have been infringed only if the Administrative Council had guaranteed the application of the pension scheme of the European Communities to former Institute officials, and it had not.

With regard to expatriation, education and leave expense allowances, the Tribunal recognized that it could legitimately be asked whether their outright abolition would not violate an acquired right. Nevertheless, it considered that the amount and conditions of payment of such allowances did not constitute acquired rights and, indeed, that the staff member should expect them to vary.

As to the question of the internal appeals system available to the staff, the Tribunal concluded that even according to the integration agreement, the complainants would continue to enjoy such protection as precluded any curtailment of their acquired rights.

The Tribunal therefore dismissed the complaint.

36. JUDGEMENT NO. 366 (13 NOVEMBER 1978): BIGGIO, VANMOER AND FOURNIER *v.* INTERNATIONAL PATENT INSTITUTE

This case is similar to the case which is the subject of Judgement No. 365.

37. JUDGEMENT NO. 367 (13 NOVEMBER 1978): SITA RAM *v.* WORLD HEALTH ORGANIZATION

Complaint impugning a transfer decision—Quashing of the decision on the grounds of prejudice and incomplete consideration of the facts—Compensation for the moral prejudice suffered by the complainant

The complainant requested the quashing of a transfer decision concerning him which, according to him, had been taken in violation of the established rules and procedures. He also asked to be reinstated in the post he had occupied before the appointment of his replacement and to be given retroactively the grade given to the latter.

The Tribunal first considered the receivability of the complaint. It noted that the appointment of a third person to the post previously occupied by the complainant and the transfer of the complainant to another post were discretionary decisions to be taken by the Administration in the interests of the Organization. The complainant, however, contended that discretion had been abused and also alleged irregularities, including breaches of Staff Rules, affecting each of the decisions separately.

The Organization did not dispute the receivability of the complaint in general terms; in particular it did not dispute the complainant's right to challenge his assignment. Nevertheless, it contended that to the extent that the complaint was directed against the appointment of the complainant's successor, it was time-barred. The Tribunal noted that the complainant was not asking that the decision in question be quashed, but was asking for remedies that would appear to be consequential on the quashing. It was not within the competence of the Tribunal to grant relief in those forms, and it was therefore unnecessary to consider to what extent the claims were time-barred. Nevertheless, the Tribunal stressed that the two decisions were inseparably linked and that the complainant must contest the validity of the decision to appoint a successor if he wanted to be able to allege abuse of power in relation to the transfer decision.

The complainant alleged that there had been both personal prejudice against him and an incomplete consideration of the facts. On the question of the facts, the Tribunal reached the following conclusion:

> "When outstanding considerations are overlooked, it suggests that the matter is not being examined objectively; and this in turn suggests in the case of competent examiners that it is prejudice rather than lack of perception that is at work. [In the case in question], it was not on the evidence a prejudice *against* the complainant but a prejudice *for* [his successor]. The Board of Inquiry and Appeal appreciated 'the desire of a newly appointed high official to choose a collaborator with whom he is well acquainted and in whose ability and co-operation he can place his complete confidence'. But a selection process, as the Board in effect goes on to say, cannot be fair if the head of the department is openly pressing his own candidate, putting him at an advantage by clothing him temporarily with the office, and failing to see that there are other candidates. The Board noted that the complainant was not considered for the vacancy, 'presumably because the Administration was eager to recruit [his successor]'. The complainant fell a victim to [his superior's] prejudice for another."

The Tribunal therefore concluded that the transfer decision had been affected by prejudice and incomplete consideration of the facts and should be quashed. It added that it was the moral prejudice

which the claimant had suffered which must be compensated. In that respect, it reaffirmed the position it had taken in Judgement No. 365.[20]

Since the Administration in its treatment of the complainant and irrespective of whether its decision to assign had been right or wrong had failed to observe the general obligation of showing concern for the dignity and reputation of staff members, the Tribunal fixed at $ 2,000 the sum to be awarded to the complainant as compensation.

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[20] See page 158 of this *Yearbook*.

Chapter VI

SELECTED LEGAL OPINIONS OF THE SECRETARIATS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Legal opinions of the Secretariat of the United Nations

(Issued or prepared by the Office of Legal Affairs)

1. QUESTION OF THE FINANCING OF UNIFIL DURING THE PERIOD BETWEEN ITS ESTABLISHMENT BY SECURITY COUNCIL RESOLUTION 425 (1978) OF 19 MARCH 1978 AND THE CONVENING OF THE THIRTY-THIRD REGULAR SESSION OF THE GENERAL ASSEMBLY—REQUIREMENT UNDER GENERAL ASSEMBLY RESOLUTIONS RELATING TO UNFORESEEN AND EXTRAORDINARY EXPENSES THAT, IN CASE COMMITMENTS SHOULD ARISE IN AN ESTIMATED TOTAL EXCEEDING $10 MILLION DURING THE INTERVENING PERIOD, A SPECIAL SESSION OF THE ASSEMBLY BE CONVENED TO CONSIDER THE MATTER—QUESTION WHETHER THE MATTER OF THE FINANCING OF UNIFIL COULD BE DEALT WITH THROUGH INCLUSION OF A SUPPLEMENTARY ITEM, AT THE SUGGESTION OF THE SECRETARY-GENERAL UNDER RULE 18 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY, IN THE AGENDA OF AN ALREADY PLANNED SPECIAL SESSION TO DEAL WITH A DIFFERENT QUESTION

Note prepared at the request of the Under-Secretary-General for Political and General Assembly Affairs

Introduction

1. The Security Council, by paragraph 3 of its resolution 425 (1978) of 19 March 1978, decided to establish immediately under its authority a United Nations interim force for southern Lebanon (UNIFIL) and, by paragraph 4 of the same resolution, requested the Secretary-General to report to the Security Council within 24 hours on the implementation of the resolution.

2. In paragraph 10 of his report to the Security Council (S/12611), the Secretary-General estimated that the cost of establishing a force of 4,000 all ranks for a period of six months would be $68 million. This figure is made up of initial setting-up costs (excluding the cost of initial airlift) of $29 million and ongoing costs for the six-month period of $39 million. Paragraph 11 of the Secretary-General's report states that "the costs of the Force shall be considered as expenses of the Organization to be borne by the Members in accordance with Article 17, paragraph 2, of the Charter". The Security Council approved the Secretary-General's report by its resolution 426 (1978) of 19 March 1978.

3. Consequently, paragraph 3 of General Assembly resolution 32/214 of 21 December 1977, relating to unforeseen and extraordinary expenses for the biennium 1978–1979, comes into operation. This paragraph provides

> "that if as a result of a decision of the Security Council commitments relating to the maintenance of peace and security should arise in an estimated total exceeding $10 million before either the thirty-third or the thirty-fourth session of the General Assembly, a special session of the Assembly shall be convened by the Secretary-General to consider the matter".

4. The question that arises is whether under the terms of the above-mentioned Assembly resolution the Secretary-General is required to convene a special session of the General Assembly solely for the purpose of considering the financial implications of the Security Council's decisions and to provide the necessary budgetary authorization for their implementation, or whether the matter could be referred to a conveniently timed special session already convened to deal with another matter.

5. On the basis of a review of the legislative history of the provisions of paragraph 3 of General Assembly resolution 32/214, and the purposes for which it was intended, it can be concluded

that the Secretary-General is not legally precluded from proposing, in accordance with the provisions of rule 18 of the rules of procedure of the General Assembly,[1] the inclusion of the question of the financing of UNIFIL as a supplementary item in the agenda of the special session to be convened in April to consider the situation in Namibia if (*a*) the expenditures to be incurred in connexion with establishment of the Force do not exceed $10 million before the General Assembly could consider the matter and (*b*) if this procedure by way of inclusion of a supplementary item is generally acceptable to Member States.

Legislative history and background

6. Wording similar to that used in paragraph 3 of General Assembly resolution 32/214, relating to unforeseen and extraordinary expenses, appeared for the first time in a resolution adopted by the Assembly at its resumed fifteenth session entitled "Review of the resolution relating to unforeseen and extraordinary expenses" (General Assembly resolution 1615 (XV) of 21 April 1961) after the Advisory Committee on Administrative and Budgetary Questions (ACABQ) had studied the question and reported thereon to the Assembly pursuant to General Assembly resolution 1585 (XV) of 20 December 1960. Since the sixteenth session of the General Assembly, the provision appears virtually unchanged in every resolution adopted by the Assembly relating to unforeseen and extraordinary expenses.

7. The language of the resolution as it had been adopted annually up to the first part of the fifteenth session appeared to vest in the Advisory Committee, on behalf of the General Assembly, the authority to concur in proposals from the Secretary-General for the incurring of practically unlimited unforeseen and extraordinary expenses provided that such expenses related to authorized activities. Indeed, it was the invoking of this resolution, in the absence of any other duly constituted procedure, to meet the substantial expenses of the United Nations operation in the Congo, pending action by the General Assembly at its fifteenth regular session, that prompted the request for a review of the terms of the customary annual resolution.

8. The purpose for which the provision in its present form was introduced is clear. The Charter vests in the General Assembly the authority to approve the budget of the United Nations. The nature of the Organization's responsibilities and activities is such that expenditures of an unforeseen and emergency nature for which provision has not been included in the approved budget arise between regular sessions of the General Assembly. Emergency expenses relating to the maintenance of peace and security arising as a result of Security Council decisions are an excellent example of such situations.

9. The course outlined by ACABQ[2] and approved by the General Assembly at its resumed fifteenth session, on the recommendation of the Fifth Committee, constitutes a controlled delegation of authority consistent with the financial prerogatives of the General Assembly and designed to provide prompt and effective financial support for the decisions of the Security Council pending appropriate financial action by the General Assembly at its next regular session in case of expenditures up to $10 million and at a special session convened for that purpose for estimated expenditures in excess of that amount.

10. It should be noted that at the time the provision was first adopted the calling of a special session was a rare and exceptional occurrence and it can be assumed that at that time it was never envisaged that special sessions would be convened between regular sessions as often as they have been in recent years. This assumption has been automatically carried over as the provision is each time repeated in successive resolutions on unforeseen and extraordinary expenses.

[1] Rule 18 reads as follows:

"Any Member or principal organ of the United Nations or the Secretary-General may, at least four days before the date fixed for the opening of a special session, request the inclusion of supplementary items in the agenda. Such items shall be placed on a supplementary list, which shall be communicated to Members as soon as possible."

[2] *Official Records of the General Assembly, Fifteenth Session, Annexes*, agenda item 50, document A/4715.

Concluding observations

11. The foregoing analysis establishes that the purpose of provisions of the nature of paragraph 3 of General Assembly resolution 32/214 is to ensure a flexible system permitting an immediate response to emergency situations, while preserving the financial prerogatives of the General Assembly. It can also be safely assumed that in adopting that paragraph the Assembly has not had in contemplation a situation where a special session of the General Assembly might already be planned, at an appropriate time, where the matter of unforeseen and extraordinary expenses could be taken up. It appears that being able to deal with this matter as part of a session already planned, rather than at a separate session, would result in very considerable savings to the United Nations in matters such as travel. In such circumstances, it is not unreasonable to conclude that the underlying purposes of paragraph 3 of General Assembly resolution 32/214 would be met by a suggestion from the Secretary-General that the question of the financing of the United Nations Interim Force in Lebanon might be dealt with as a supplementary item in accordance with rule 18 of the General Assembly's rules of procedure in the agenda of the forthcoming special session on Namibia, provided that (*a*) expenses incurred up to the time that the Assembly considers the matter do not exceed $10 million and (*b*) such inclusion is generally acceptable to Member States. In this latter connexion, it should be noted that under rule 19 of the General Assembly's rules of procedure, a decision to add supplementary items to the agenda during a special session requires a two-thirds majority of the members present and voting. With reference to the suggestion made in this paragraph, the Secretary-General could propose that the next special session, although bearing only a single number, could be divided into two parts, which could either immediately succeed each other, or even be conducted concurrently, one part dealing with the financing of UNIFIL, the other with Namibia.

12. If the two conditions stated in the previous paragraph cannot be met, the Secretary-General would have to proceed under the provisions of paragraph 3 of resolution 32/214 to convene a separate special session on the financing of UNIFIL.[3]

22 March 1978

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2. Question of the participation in plenary meetings of the special session of the General Assembly devoted to disarmament of non-member States and specialized agencies

Memorandum to the Assistant Secretary-General, Centre for Disarmament, Department of Political and Security Council Affairs

1. You have requested our advice in connexion with requests received from two non-member States and UNESCO to participate in plenary meetings at the forthcoming special session of the General Assembly.

2. In this connexion, we are transmitting for your information the annexed extract from the "Guidelines on the procedure to be followed in matters relating to the General Assembly" dated 23 August 1977. These guidelines were prepared by the Secretariat. The extract contains references to precedents relating to the participation in plenary meetings of the General Assembly by non-member States, specialized agencies and the International Atomic Energy Agency, other organizations and liberation movements. There are clear precedents existing for participation in plenary by non-Member States.

3. The Director of the International Atomic Energy Agency has made statements in plenary at the outset of the consideration of the Agency's annual report to the General Assembly. In this connexion it should be borne in mind that unlike the specialized agencies, the International Atomic

[3] There was no general agreement to the inclusion of the question of the financing of UNIFIL in the agenda of the special session on the question of Namibia. As a result two separate special sessions were convened: the eighth special session, which took place on 20 and 21 April 1978, dealt with the financing of UNIFIL, and the ninth special session, held from 24 April to 3 May 1978, was devoted to the question of Namibia.

Energy Agency under its relationship agreement with the United Nations[4] subn its its reports to the General Assembly.

4. There is only one case where a representative of a specialized agen y has intervened in plenary—the occasion was of a ceremonial nature. At the twenty-fourth sessi n, the General Assembly placed in its agenda a special item entitled "Fiftieth anniversary of the International Labour Organisation" to mark the fiftieth anniversary of the founding of ILO. The Dire tor General of ILO made a statement at the 1793rd plenary meeting in connexion with this item.[5]

5. There is no legal basis at present for participation in plenary meetings l y representatives of UNESCO. The relationship agreement between UNESCO and the United Natio ns[6] approved by the General Assembly on 14 December 1946 makes no provision for such particip ation except for the purposes of consultation on educational, scientific and cultural matters at the ir vitation of the General Assembly. (See Article III, paragraph 3 of the relationship agreement.[7])

20 April 1978

ANNEX

Extract from the "Guidelines on the procedure to be followed in matters relating to the General Assembly"

I. Participation of non-member States

(a) *Main Committees*

31. When representatives of non-member States are invited to participate in discu ssions on items before Main Committees, they are permitted to take part in the debate without the right to vote On a number of such occasions representatives of non-member States have made more than one statement; t is has included statements in reply to speeches made by representatives of Member States. The question v hether they would be entitled to make procedural motions, such as the ones listed in rule 119, or motions relati g to the actual voting, has not been raised but would, in the Legal Counsel's opinion, have to be answered in the negative.

32. Non-member States have not submitted proposals, or co-sponsored draft resol itions, on the items in the discussion of which they have participated. The only exception to this occurred wh n Switzerland was invited to participate, without the right to vote, in the Sixth Committee discussions at the tw enty-third and twenty-fourth sessions of the General Assembly on the draft convention on special missions. Sw itzerland submitted an amendment to the draft convention which was voted upon. In this particular case, the Sixth Committee was preparing a Convention and thus was acting essentially as a codification conference. If uch a conference had instead been convened, certain non-member States, including Switzerland, would, accord ng to the normal practice, have been invited to participate. At the twenty-eighth session, however, during the discussion of the draft convention on the prevention and punishment of crimes against diplomatic agents and oth er internationally protected persons, the Sixth Committee decided to invite Switzerland to take part, witho t the right to vote, in the work of the Committee on the item, on the understanding that it could not subm t formal proposals or amendments.

(b) *Plenary meetings*

33. In accordance with General Assembly resolution 264 (III) of 8 October 1948, S tates which are parties to the Statute of the International Court of Justice but not Members of the United Nati ons participate, in the General Assembly, in electing members of the Court in the same manner as the Members of the United Nations. Likewise, in accordance with General Assembly resolution 2520 (XXIV) of 4 Decembe 1969, the same non-member States participate in the General Assembly in regard to amendments to the Stat ute of the Court in the same manner as the Members of the United Nations. These two instances where non-mem bers have full rights of

[4] United Nations, *Treaty Series*, vol. 281, p. 369 (article III).

[5] *Official Records of the General Assembly, Twenty-fourth Session, Plenary Mee tings*, vol. II, 1793rd meeting, para. 8.

[6] United Nations, *Treaty Series*, vol. 1, p. 238.

[7] Reading as follows: "Representatives of the United Nations Educational, Scientif c and Cultural Organization shall be invited to attend meetings of the General Assembly of the United Nati ons for the purpose of consultation on educational, scientific and cultural matters."

participation, including the right to vote, in the plenary and, if necessary, in the Main Committees d.rive from Articles 4 and 69 of the Statute of the Court.

34. Until the thirtieth session, the only instance where a representative of a non-member State had appeared before the plenary occurred when His Holiness Pope Paul VI addressed the 1347th meeting of the General Assembly on 4 October 1965. This was a meeting of a purely ceremonial nature and not one involving participation of a representative of a non-member State in the proceedings on a particular item.

35. At its thirtieth session, however, the General Assembly, on the recommendation of the General Committee,[8] decided (see A/PV.2353) to invite the Permanent Observers of the Democratic Republic of Viet-Nam and the Republic of South Viet-Nam to participate in the debate on the special report of the Security Council relating to the consideration of their countries' application for membership in the United Nations. The representatives of the two non-member States made statements at the 2354th plenary meeting of the General Assembly on 19 September 1975.

36. At its thirty-first session, the General Assembly decided (A/31/PV.79, para. 6) to invite the Permanent Observer of the Socialist Republic of Viet-Nam to participate in the debate on the special report of the Security Council on the consideration of his country's application for membership in the United Nations. The representative of that non-member State made a statement at the 79th plenary meeting on 26 November 1976.

2. Participation of specialized agencies and of the International Atomic Energy Agency

(a) *Main Committees*

37. Representatives of specialized agencies and of the International Atomic Energy Agency have on numerous occasions participated in the deliberations of Main Committees.

(b) *Plenary meetings*

38. Except for the presentation of the annual report of the International Atomic Energy Agency by the Director-General of that organization at the outset of the consideration of the item in plenary meetings, the specialized agencies and the International Atomic Energy Agency have not participated in the deliberations of the General Assembly in plenary meetings.

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3. Modalities of holding a joint meeting of two Main Committees of the General Assembly

Memorandum to the Under-Secretary-General, Political and General Assembly Affairs

1. We have been asked about the modalities of holding a joint meeting of the Second and Third Committees for the purpose of having the President of the Economic and Social Council introduce the report of the Council to both Committees.

2. Joint meetings of these two Committees, and also of other Main Committees, were indeed held during early sessions of the General Assembly (first through sixth). However, these joint meetings were not held pursuant to any particular rule of procedure, but, in each case we were able to find, on the basis of an explicit decision of the General Assembly, in general recommended to it by the General Committee. As a matter of fact, in most of these instances, certain agenda items were referred to the "Joint Second and Third Committee", i.e., to a special organ that in fact constituted an amalgamation of two main Committees; however, in at least one instance, this Joint Committee was instructed by the Assembly to conduct a joint meeting with the Fifth Committee (see A/C.2&3/L.5, A/C.5/L.24, reproduced in *Official Records of the General Assembly, Fourth Session, Joint Second and Third Committee,* Annex to the Summary records of meetings, p. 1).

3. In spite of the fact that all of the precedents we were able to discover were ones in which joint organs or meetings were specifically mandated by the General Assembly, it would appear that the mere conducting of a joint meeting, for the restricted purpose of hearing an address of interest to

[8] *Official Records of the General Assembly, Thirtieth Session, Annexes,* agenda item 8, document A/10250, para. 23 (*a*) (i).

two or more committees and not for the purpose of jointly acting on an agenda item, could be decided on by the two bodies concerned without reference to the Assembly or its General Committee. It is, therefore, suggested that the joint meeting be announced in an Assembly document reproducing the text of a letter that the Chairmen of the Second and Third Committees would address to the President. This procedure would still enable the President to refer the matter to the Assembly or to the General Committee if he considers that necessary or appropriate.

4. As to the chairmanship of the Joint Committee, of the early sessions this was arranged either by consultation or by rotation, whether the meeting was a joint one or that of a special joint organ. This would still seem to be the best method to use, and specifically it is suggested that the two Chairmen consult and agree that they will alternately preside over joint meetings, and either draw lots for the first to preside or decide that it be the Chairman of the Second Committee (merely by numerical priority).

5. With respect to the records, those of a joint organ were indicated as such, i.e. A/C.2&3/. . .). Since this will not be a joint organ, it is suggested that each summary record merely be issued with two separate symbols, i.e. A/C.2/33/SR. . . and A/C.3/33/SR . . .

30 October 1978

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4. QUESTION WHETHER THE FOURTH COMMITTEE IS COMPETENT TO GRANT A HEARING TO A REPRESENTATIVE OF THE PUERTO RICAN SOCIALIST PARTY NOTWITHSTANDING THE FACT THAT PUERTO RICO IS NOT INCLUDED IN THE LIST OF TERRITORIES APPROVED BY THE GENERAL ASSEMBLY TO WHICH THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES CURRENTLY APPLIES

Statement made by the Legal Counsel at the 24th meeting of the Fourth Committee on 24 November 1978[9]

1. The advice of the Office of Legal Affairs has been requested on the question of whether the Fourth Committee is competent to grant a hearing to a representative of the Puerto Rican Socialist Party. A letter containing a request to that effect was circulated as a document of the Fourth Committee at the request of the representative of Cuba (A/C.4/33/14).

2. Puerto Rico is not included in the list of Territories approved by the General Assembly to which the Declaration on the Granting of Independence to Colonial Countries and Peoples currently applies.

3. At its 1978 session, the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples considered an item entitled "Special Committee decision of 2 September 1977 concerning Puerto Rico" and adopted a resolution on the subject[10] which does not contain any recommendation to the effect that the General Assembly is to include Puerto Rico in the list of Territories to which the Declaration is applicable.

4. In the report of the Special Committee covering its work during 1978 submitted to the General Assembly at its thirty-third session,[11] Puerto Rico is not listed in the section of the report dealing with Territories considered by the Special Committee during the period covered by the report. The question of Puerto Rico is covered under a separate subheading of chapter I entitled "F. Question of the list of Territories to which the Declaration is applicable".

5. The Secretary-General's memorandum entitled "Organization of the thirty-third regular session of the General Assembly, adoption of the agenda and allocation of items" (A/BUR/33/1) contains the following paragraph relating to item 24 of the draft agenda (Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples):

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[9] The above statement was distributed in accordance with a decision taken by the Fourth Committee at its 25th meeting on 24 November 1978 as document A/C.4/33/15.

[10] A/33/23 (Part I), chap. 1, sect. F.

[11] A/33/23 and Add.1-9.

"22. With regard to item 24 of the draft agenda (Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples), the General Committee may wish to consider referring to the Fourth Committee, as was done at previous sessions, all the chapters of the report of the Special Committee (A/33/23 and Add.1-9) relating to specific Territories. This would again enable the General Assembly to deal in plenary meetings with the question of the implementation of the Declaration as a whole."

6. In paragraph 29 of his memorandum, the Secretary-General stated the following:

"Subject to changes made by the General Committee in the light of the comments contained in paragraphs 19 to 28 above, the allocation of the items of the draft agenda, as based on previous practice, would be the following:

"Plenary meetings

". . .

"24. Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples . . . :

"(*a*) Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples;

"(*b*) Report of the Secretary-General.

"Fourth Committee

". . .

"9. Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples [chapters relating to specific Territories] . . ."

7. At its 4th and 5th plenary meetings, on 22 September 1978, the General Assembly adopted the agenda (A/33/251/Rev. 1) and the allocation of agenda items (A/33/252) for its thirty-third regular session. In so far as item 24 is concerned, the Assembly decided that this item was to be considered in plenary meetings and to allocate to the Fourth Committee all chapters of the report of the Special Committee relating to specific Territories so that it might deal in plenary meetings with the question of the implementation of the Declaration as a whole. (See letter dated 22 September 1978 from the President of the General Assembly to the Chairman of the Fourth Committee informing him of the items allocated to that Committee (A/C.4/33/1).)

8. In these circumstances, it is the view of the Office of Legal Affairs that the question of Puerto Rico is not a question before the Fourth Committee since it is not on the list of Territories to which the Declaration applies and consequently not in any of the chapters of the report of the Special Committee dealing with specific Territories allocated to the Committee by the General Assembly. Since the General Assembly has reserved to itself the consideration of the question of the implementation of the Declaration as a whole, which in the view of the Office of Legal Affairs, is the context in which the question of Puerto Rico has hitherto been considered, it would not be within the competence of the Fourth Committee to consider or grant the request contained in document A/C.4/33/14 without express authorization from the General Assembly.[12]

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[12] At its 26th meeting on 27 November 1978, the Fourth Committee agreed that its Chairman be authorized to bring to the attention of the President of the General Assembly document A/C.4/33/14 for such treatment as he might deem appropriate (Report of the Fourth Committee to the General Assembly at its thirty-third session on agenda item 24 (A/33/460), para. 16.)

5. CONTRIBUTION OF NON-MEMBER STATES, UNDER REGULATION 5.9 OF THE FINANCIAL RULES AND REGULATIONS OF THE UNITED NATIONS, TO THE EXPENSES OF "TREATY BODIES" OF WHICH THEY ARE MEMBERS AND OF ORGANS OF CONFERENCES IN WHICH THEY PARTICIPATE—MEANING OF THE TERM "PARTICIPATE" IN THE CONTEXT OF REGULATION 5.9—QUESTION WHETHER THE EXPENSES REFERRED TO IN THAT REGULATION ARE LIMITED TO THOSE INCURRED IN THE HOLDING OF THE MEETINGS OF THE ORGANS OR CONFERENCES CONCERNED

Memorandum to the Officer-in-Charge, Budget Division, Office of Financial Services

1. I refer to your memorandum of 16 January 1978 concerning contributions from non-member States under regulation 5.9 of the Financial Rules and Regulations of the United Nations[13] in which you sought our views on two specific matters: (*a*) the precise meaning of the term "treaty bodies" and a definitive list of such bodies currently involved; (*b*) the meaning of the term "participate" in the context of the second sentence of regulation 5.9.

2. For the purpose of regulation 5.9, "treaty bodies" are bodies established in accordance with the provisions of the treaties concerned and which are financed from United Nations appropriations. Although the Charter of the United Nations is also a treaty, the principal and subsidiary organs of the United Nations established in accordance with the provisions of the Charter are not "treaty bodies" envisaged in regulation 5.9. The treaty bodies currently involved are the following:

(a) *International Narcotics Control Board*

The Board was established in accordance with the provisions of the 1961 Single Convention on Narcotic Drugs (which entered into force on 13 December 1964).[14] Paragraph 1 of article 9 of the Convention, as amended by article 2 of the 1972 Protocol,[15] provides that the Board shall consist of thirteen members to be elected by the Economic and Social Council of the United Nations as follows:

"(*a*) Three members with medical, pharmacological or pharmaceutical experience from a list of at least five persons nominated by the World Health Organization; and

"(*b*) Ten members from a list of persons nominated by the Members of the United Nations *and by Parties which are not Members of the United Nations.*" (Italics added.)

Paragraph 6 of the same article states that "The members of the Board shall receive an adequate remuneration as determined by the General Assembly".

The general provision on expenses is contained in article 6 which reads:

"The expenses of the Commission and the Board will be borne by the United Nations in such manner as shall be decided by the General Assembly. The Parties which are not members of the United Nations shall contribute to these expenses such amounts as the General Assembly shall find equitable and assess from time to time after consultation with the Governments of these Parties."

The Commission referred to in article 6 is the Commission on Narcotic Drugs which is a subsidiary organ of the Economic and Social Council and not a treaty body although the Convention entrusts the Commission with specific functions.

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[13] Reading as follows:

"States which are not Members of the United Nations but which become parties to the Statute of the International Court of Justice or treaty bodies financed from United Nations appropriations shall contribute to the expenses of such bodies at rates to be determined by the General Assembly. States which are not Members of the United Nations but which participate in organs or conferences financed from United Nations appropriations shall contribute to the expenses of such organs or conferences at rates to be determined by the General Assembly, unless the Assembly decides with respect to any such State to exempt it from the requirement of so contributing. Such contributions shall be taken into account as miscellaneous income."

[14] United Nations, *Treaty Series*, vol. 520, p. 151.

[15] E/CONF.63/9.

Both the Commission on Narcotic Drugs and the International Narcotics Control Board are entrusted with further functions under the 1971 Convention on Psychotropic Substances (which entered into force on 16 August 1976).[16] Article 24 of this Convention, entitled "Expenses of international organs incurred in administering the provisions of the Convention", reads as follows:

> "The expenses of the Commission and the Board in carrying out their respective functions under this Convention shall be borne by the United Nations in such manner as shall be decided by the General Assembly. The Parties which are not Members of the United Nations shall contribute to these expenses such amounts as the General Assembly finds equitable and assesses from time to time after consultation with the Governments of these Parties."

Each of the two above-mentioned Conventions thus contains provisions concerning contributions by States Parties which are not Members of the United Nations to the expenses borne by the United Nations.[17]

(b) *Human Rights Committee*

This Committee was established by the International Covenant on Civil and Political Rights (which entered into force on 23 March 1976).[18] It consists of eighteen members nominated and elected by the States Parties to the Covenant. Article 28 of the Covenant specified that the members of the Committee shall serve in their personal capacity. Articles 35 and 36 of the Covenant which involve financing from United Nations appropriations for the Committee read as follows:

"Article 35

> "The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

"Article 36

> "The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant."

In addition the Covenant provides for the possibility of the appointment of *ad hoc* conciliation commissions and stipulates that the States Parties concerned shall share equally all the expenses of the members of the commissions in accordance with estimates to be provided by the Secretary-General of the United Nations; the Secretary-General is empowered to pay the expenses of the members of the commissions, if necessary, before reimbursement by the States Parties concerned (see article 42).

(c) *Committee on the Elimination of Racial Discrimination*

This Committee was established by the International Convention on the Elimination of All Forms of Racial Discrimination (which entered into force on 4 January 1969).[19] It consists of eighteen experts serving in their personal capacity. Like the Human Rights Committee, the members of this Committee are nominated and elected by the States Parties to the Convention. Article 8 (6) of the Convention provides that "States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties". The Convention further contains provisions similar to those of the International Covenant on Civil and Political Rights with respect to the possibility of the appointment of *ad hoc* conciliation commissions whose expenses are shared by States Parties (see article 12).

(d) *Group to Consider Periodic Reports on* Apartheid

According to paragraph 1 of article IX of the International Convention on the Suppression and Punishment of the Crime of *Apartheid* (which entered into force on 18 July 1976),[20] the Chairman

[16] E/CONF.58/6.
[17] See para. 8 below.
[18] United Nations, *Treaty Series*, vol. 999. Also reproduced in the *Juridical Yearbook*, 1966, p. 178.
[19] *Ibid.*, vol. 660, p. 195. Also reproduced in the *Juridical Yearbook*, 1965, p. 63.
[20] General Assembly resolution 3068 (XXVIII). Also reproduced in the *Juridical Yearbook*, 1973, p. 70.

of the Commission on Human Rights shall appoint a group consisting of three members of the Commission who are also representatives of States Parties to the Convention, to consider periodic reports submitted by States Parties on measures they have adopted to give effect to the provisions of the Convention. Paragraphs 2 and 3 of the same article read as follows:

> "If, among the members of the Commission on Human Rights, there are no representatives of States Parties to the present Convention or if there are fewer than three such representatives, the Secretary-General of the United Nations shall, after consulting all States Parties to the Convention, designate a representative of the State Party or representatives of the States Parties which are not members of the Commission on Human Rights to take part in the work of the group established in accordance with paragraph 1 of this article until such time as representatives of the States Parties to the Convention are elected to the Commission on Human Rights.
>
> "The group may meet for a period of not more than five days, either before the opening or after the closing of the session of the Commission on Human Rights, to consider the reports submitted in accordance with article VII."

Although the group is appointed by the Chairman of a functional commission of the Economic and Social Council, it should be considered a treaty body within the meaning of regulation 5.9 since its appointment is pursuant to the provisions of the Convention. There is no provision in the Convention relating to expenses.

3. The above list does not include (i) bodies envisaged in the treaties but whose establishment depends on special circumstances (e.g. the *ad hoc* conciliation commissions referred to in paragraph 2 (*b*) above) and (ii) bodies which may be convened to implement the provisions of treaties and which may require servicing of their meetings by the United Nations (e.g., cases similar to the Preparatory Committee for the Review Conference on the Non-proliferation Treaty and the Review Conference itself held in 1974 and 1975).

4. An Appeals Committee consisting of three members and two alternates was appointed pursuant to article 12 (3) (*b*) (ii) of the 1953 Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium (which entered into force on 8 March 1963).[21] The members of the Appeals Committee shall, in accordance with arrangements made by the Secretary-General, receive remuneration only for the duration of the sittings of the Committee. Since there have been no sittings of the Committee no expenses have been incurred.

5. We are unaware of any bodies established by the commodities agreements that would involve expenses of the United Nations.

6. We note that where the General Assembly itself (instead of a conference) undertakes to examine and draft a treaty, the Secretary-General submits to the Assembly, before the adoption of the treaty, a Note on administrative and financial implications of those provisions of the treaty involving United Nations expenses. This is true in the cases referred to in paragraphs 2 (*b*),[22] (*c*)[23] and (*d*)[24] above.

7. As to your second question, your assumption concerning the meaning of the term "participate" in the context of regulation 5.9 is correct, i.e., it implies full membership with the right to vote.

8. I understand that you wish to have our views on a further question, namely whether the expenses to which non-member States are required to contribute under regulation 5.9 are limited to those incurred in the holding of the meetings of the bodies concerned or cover "all" expenses involved in the functioning of such bodies. From the legal point of view, we believe that in general the latter interpretation should prevail. Thus, in the Commentary on the Convention on Psychotropic Substances[25] (referred to as the Vienna Convention below), it is stated that the obligation imposed

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[21] United Nations, *Treaty Series*, vol. 456, p. 3.

[22] See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 62, document A/C.5/1102.

[23] *Ibid., Twentieth Session, Annexes*, agenda item 58, document A/C.5/1051.

[24] Document A/C.3/L.2023.

[25] United Nations publication, Sales No. E.76.XI.5 (E/CN.7/589).

upon Parties by article 24 (see paragraph 2 (*a*), third subparagraph above) is more limited than that for which article 6 of the Single Convention on Narcotic Drugs (see paragraph 2 (2), second subparagraph above) provides. It goes on to say:

> "The latter provision requires that Parties which are not Members of the United Nations bear an equitable share of all expenses of the Commission and the Board, and this comprises the expenses incurred in carrying out their functions not only under the Single Convention, but also under other treaties (including of course the Vienna Convention) and, in the case of the Commission, under the Charter. Parties to the Vienna Convention which are neither Members of the United Nations nor parties to the Single Convention would however under article 24 of the Vienna Convention be obligated to pay only their equitable share of those expenses of the Commission and the Board which are due to the work of those organs under the Vienna Convention. But the far greater part of the work of the two organs under the Single Convention or under the Charter would also be work under the terms of the Vienna Convention, since the aims of the Conventions, although not fully identical, are in any event largely overlapping, and are also a part of the task of the United Nations to promote solutions of social, health and related problems pursuant to Article 55 of the Charter. Moreover, the Commission is under both Conventions explicitly authorized to consider all matters pertaining to their aims. The portion of the expenses of the Commission and the Board which is exclusively due to their work under the Single Convention or under the Charter and not also to their functions under the Vienna Convention will therefore be only a minor part of their total costs."[26]

9. Another example is the case of UNCTAD. Paragraph 29 of General Assembly resolution 1995 (XIX) establishing UNCTAD provides:

> "The expenses of the Conference, its subsidiary bodies and secretariat shall be borne by the regular budget of the United Nations, which shall include a separate budgetary provision for such expenses. In accordance with the practice followed by the United Nations in similar cases, arrangements shall be made for assessments on States not members of the United Nations which participate in the Conference."

It is clear that the expenses involved are all expenses of UNCTAD including those of the Secretariat.

10. We would, however, accept a restrictive interpretation in certain cases where the organ or the conference concerned is serviced entirely by existing substantive staff and not by a unit created specially for that purpose. Thus, while the expenses involved, for example, in the Third United Nations Conference on the Law of the Sea include those of the Secretariat of that Conference, the expenses of such conferences as the Conference on the Law of Treaties which are serviced by existing Office of Legal Affairs staff are limited to those incurred in the holding of the Conference. It should be noted that non-members are assessed only for the duration in which they participate in the organ or conference concerned and in accordance with the scale of assessment. Consequently, it is not likely that their financial obligation would be excessive.

1 February 1978

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6. Eventuality of proposals involving expenditures being voted on at the tenth special session of the General Assembly—Question whether, should that eventuality materialize, the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee should be convened in the light of rule 153 of the rules of procedure of the General Assembly

Memorandum to the Secretary of the Fifth Committee

1. In your memorandum of 6 April 1978, you requested the advice of the Office of Legal Affairs with regard to the question of convening ACABQ and the Fifth Committee, in the event that

[26] *Ibid.*, p. 372.

the tenth special session is to adopt decisions having financial implications, in the light of rule 153 of the General Assembly's rules of procedure.

2. The relevant provision in connexion with the question under review is contained in the second sentence of rule 153 of the General Assembly's rules of procedure. It reads as follows:

> ". . . No resolution in respect of which expenditures are anticipated by the Secretary-General shall be voted by the General Assembly until the Administrative and Budgetary Committee (Fifth Committee) has had an opportunity of stating the effect of the proposal upon the budget estimates of the United Nations."

3. Clearly, this provision makes it mandatory for the Fifth Committee to consider any proposal involving expenditures before such proposal is voted on by the Assembly. The rule as it is now formulated allows for no exceptions. Nevertheless, as you correctly indicated, the General Assembly is master of its own procedure, to the extent that such procedure is not based on provisions contained in the United Nations Charter (such as for example, rules 82, 83 and 85). Consequently, the Assembly could, preferably on the basis of consensus, decide to suspend the application of this rule if there are valid and practical reasons for avoiding the convening of the Fifth Committee during the tenth special session. In this connexion, your attention is drawn to what we believe is the most pertinent precedent for not convening the Fifth Committee during a special session. At the 2349th plenary meeting of the General Assembly (held during the seventh special session), the Assembly adopted a draft resolution on development and international economic co-operation after hearing the following statement by the Under-Secretary-General for Political and General Assembly Affairs:

> "The draft resolution recommended by the *Ad Hoc* Committee incorporates a number of proposals regarding development and international economic co-operation
>
> "23. Should the draft resolution be adopted, financial implications will arise in respect of some of the provisions requiring action by the Secretary-General or units of the Secretariat. In accordance with past practice at previous special sessions and in view of the convening later today of the thirtieth regular session of the General Assembly, the Secretary-General intends to deal with the financial implications which may arise from any resolution adopted at the seventh special session as may be required either in the context of the final performance report of the 1974-1975 biennium or in revised estimates for the 1976-1977 biennium. '[27]

Several decisions giving rise to expenditures were adopted by the seventh special session[28] but the convening of the Fifth Committee was avoided for practical considerations, in particular, the convening of the thirtieth regular session immediately after the special session.

4. In conclusion, it is our view that if resolutions involving expenditures are to be voted on by the General Assembly during the special session devoted to disarmament, the requirements of rule 153 should, if possible, be satisfied. If this procedure presents difficulties, consultations regarding the procedure to be followed should be held in advance of the session among representatives of the various regional groups and, if there is general agreement, the General Assembly could decide to follow the precedent established at the seventh special session, i.e., to act on the substance of proposals and to refer their administrative and financial aspects to the following regular session. The financial implications of any resolutions adopted by the tenth special session could then be included in the Secretary-General's revised estimates for the 1978-1979 biennium and submitted to the General Assembly for its consideration and approval during the course of the thirty-third regular session.

11 April 1978

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7. COMMITTEE ESTABLISHED UNDER GENERAL ASSEMBLY RESOLUTION 32/174—QUESTION WHETHER THE COMMITTEE ON CONFERENCES HAS THE COMPETENCE, UNDER ITS TERMS OF

[27] *Official Records of the General Assembly, Tenth Special Session, Plenary Meetings,* 2349th meeting, paras. 22 and 23.

[28] *Ibid.,* paras. 28 and 29.

REFERENCE AND IN THE LIGHT OF THE CRITERIA ADOPTED BY THE GENERAL ASSEMBLY IN RESOLUTION 3415 (XXX), TO AUTHORIZE THE PROVISION OF MEETING RECORDS FOR THE SAID COMMITTEE

Memorandum to the Chief, Planning and Meeting Services Section, Department of Conference Services

1. It is to be noted that General Assembly resolution 32/174 of 19 December 1977 establishing a committee of the whole to oversee and monitor the progress in the establishment of the new international economic order, requests the Secretary-General, in paragraph 9, "to ensure that the Committee receives the necessary documentation to enable it to accomplish its tasks . . . and authorizes the Committee to request the Secretary-General to provide specific reports in this regard in co-operation with the appropriate organs, organizations, other bodies and conferences of the United Nations system", but does not expressly authorize the Secretary-General to provide summary records for its meetings. By its resolution 3415 (XXX) of 8 December 1975, the General Assembly endorsed, on an experimental basis, certain criteria for the provision of meeting records, one of which being that newly established bodies are only furnished with meeting records "by an express decision" of the General Assembly (see A/C.5/1670, para. 14 (2)). The Committee on Conferences, in its report to the thirty-second session of the General Assembly, recommended to the Assembly that the criteria which were adopted on an experimental basis for the 1976-1977 biennium should be continued and used more widely.[29] The General Assembly endorsed this recommendation (see paragraph 4 of section II of resolution 32/71 of 9 December 1977).

2. The practice of the General Assembly shows clearly that a request to the Secretary-General "to ensure that the Committee receives the necessary documentation to enable it to accomplish its tasks" or to provide "all the necessary facilities" or "all possible assistance" does not extend to provision of summary records, unless this is expressly spelt out. Several examples of such express provision for meeting records appear in recent Assembly resolutions (see for instance resolution 32/167 of 19 December 1977 convening the United Nations Conference on the Establishment of the United Nations Industrial Development Organization as a Specialized Agency, paragraph 4 of which requests the Secretary-General "to make the necessary arrangements for holding the Conference . . ., to submit to the Conference all relevant documentation and to arrange for the necessary staff, facilities and services that it will require, including the provision of summary records").

3. It remains to be determined whether the General Assembly has in any way delegated to the Committee on Conferences the authority to make the "express decision" that a newly established subsidiary organ shall have meeting records. In this context it is necessary to examine the terms of reference of the Committee on Conferences as well as General Assembly resolution 3415 (XXX) referred to above, by which the Committee on Conferences was entrusted with certain tasks relating to the application of the criteria for the provision of meeting records.

I. *Terms of reference of the Committee on Conferences*

4. The terms of reference of the Committee on Conferences, as laid down in paragraph 3 of General Assembly resolution 32/72 of 9 December 1977, are as follows:

(*a*) To advise the General Assembly on the calendar of conferences;

(*b*) To act on behalf of the General Assembly in dealing with departures from the approved calendar of conferences that have administrative and financial implications;

(*c*) To recommend to the General Assembly means to provide the optimum apportionment of conference resources, facilities and services, including documentation, in order to ensure their most efficient and effective use;

(*d*) To advise the General Assembly on the current and future requirements of the Organization for conference services, facilities and documentation;

[29] *Official Records of the General Assembly, Thirty-second Session, Supplement No. 32* (A/32/32), para. 145 (4).

(*e*) To advise the General Assembly on means to ensure improved co-ordination of conferences within the United Nations system, including conference services and facilities, and to conduct the appropriate consultation in that regard.

5. It is clear from the above text that the Committee on Conferences does not have any explicit authority to decide whether a subsidiary body not specifically authorized to have meeting records by the General Assembly may, nevertheless, have such records. Paragraphs (*a*), (*c*), (*d*) and (*e*) deal exclusively with advisory and consultative functions which the Committee is to exercise in relation to the General Assembly itself and not to subsidiary organs. Paragraph (*b*) authorizes the Committee "to act on behalf of the General Assembly in dealing with departures from the approved calendar of conferences that have administrative and financial implications". The "departures" in question involve matters such as proposed changes in date or venue of a session of a particular body, and authority to permit the provision of meeting records cannot be inferred from such wording. It must be concluded, therefore, that the terms of reference of the Committee on Conferences, taken by themselves, neither expressly or impliedly allow the Committee to authorize the provision of meeting records to any newly established subsidiary organ in respect of which the Assembly has not made an "express decision" calling for the provision of meeting records. The Assembly has reserved for itself the authority to settle such questions.

II. *General Assembly resolution 3415 (XXX)*

6. As noted above, the General Assembly, by its resolution 3415 (XXX), endorsed certain criteria for meeting records of United Nations bodies and, in paragraph 5 thereof, requested:

> "the Committee on Conferences to monitor the application of the criteria, to review, on the basis of appropriate consultations, the optimum requirements for records of bodies and organs of the United Nations, to report on progress made in applying the criteria and to make recommendations as required for consideration by the General Assembly"

7. The above text does not expressly authorize the Committee on Conferences to provide meeting records to a committee not otherwise entitled to such records, and a review of the debates leading to the adoption of the resolution confirms that such authority cannot be inferred from the text. In fact, those records lend support to the contrary view.

8. Paragraph 5 of the original version (A/C.5/L.1249) of the draft resolution which, in a revised form (A/C.5/L.1249/Rev.2 as orally amended) became resolution 3415 (XXX), provided that the Committee on Conferences was to be entrusted "with the task of carrying out proposals for reducing meeting records" (without, however, "impairing the effectiveness of the bodies concerned"). Referring to a revised version of the original draft in which paragraph 5 had been rendered identical with paragraph 5 of the resolution as subsequently adopted, the representative of Sri Lanka, speaking at the Fifth Committee's 1742nd meeting on 18 November 1975, stated the following:

> "The original draft resolution (A/C.5/L.1249) had suggested that the Committee on Conferences should be entrusted with the task of carrying out proposals for reducing meeting records without impairing the effectiveness of the bodies concerned. Although Sri Lanka held the Committee on Conferences in high regard, it felt that it was not the appropriate Committee to evaluate the comparative usefulness of United Nations bodies. That was the task of the General Assembly. His delegation therefore welcomed the amendments to paragraph 5 in the revised draft (A/C.5/L.1249/Rev.1). Nevertheless, it would welcome an assurance that the conclusions of the Committee on Conferences would be merely recommendations to the General Assembly, which would make the final decision."[30]

9. It is, therefore, to be concluded that the General Assembly, in its resolution 3415 (XXX), has not delegated to the Committee on Conferences the power to decide that subsidiary organs of the Assembly shall have summary records. At the very most, that resolution authorizes the Committee to recommend to the Assembly whether or not a subsidiary organ should have records, the power of decision being reserved to the Assembly itself.

[30] *Ibid., Thirtieth Session, Fifth Committee*, 1742nd meeting, para. 27.

III. *Conclusion*

10. There is no existing delegation of authority which would permit the Committee on Conferences to authorize meeting records for a subsidiary organ of the General Assembly, in respect of which the Assembly has made no express decision to this effect. The Committee, however, could recommend to the Assembly which subsidiary organs should, or should not, be provided with meeting records. The financial implications of such recommendations would require appropriate action by organs such as the ACABQ and the Fifth Committee of the Assembly.[31]

16 March 1978

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8. MEETINGS OF THE BUREAUX OF THE COMMISSION ON HUMAN SETTLEMENTS AND OF THE GOVERNING COUNCIL OF THE UNITED NATIONS ENVIRONMENT PROGRAMME—QUESTION WHETHER THE TRAVEL EXPENSES OF THE MEMBERS OF THE BUREAUX SHOULD BE MET BY THE GOVERNMENTS CONCERNED OR BY THE UNITED NATIONS—CRITERIA SET FORTH IN GENERAL ASSEMBLY RESOLUTION 1798 (XVII)

Memorandum to the Acting Executive Officer, Department of Administration and Management

1. You have raised with us the question of the payment of travel expenses for the members of the bureaux of the Commission on Human Settlements and of the Governing Council of the United Nations Environment Programme, when attending the bi-annual meetings called for by the General Assembly in section VI, paragraph 1, of its resolution 32/162 of 19 December 1977. That paragraph reads as follows:

> "1. *Urges* in particular, that the Executive Director of the Centre and the bureau of the Commission on Human Settlements should meet biannually with the Executive Director of the United Nations Environment Programme and the bureau of its Governing Council to review together their respective priorities and programmes for improving human settlements and to strengthen and extend co-operation between the two organizations;"

2. Unfortunately, the statement of financial implications (A/C.2/32/L.89) submitted in connexion with the consideration of the relevant draft resolution at the thirty-second session of the General Assembly provides no guidance on the question here concerned. It is entirely silent on the matter whether the travel expenses involved should be met by Governments or by the United Nations. In such circumstances it is necessary to have recourse to the basic principles established by the General Assembly for the payment of travel and subsistence allowances to members of organs and subsidiary organs of the United Nations, to ascertain whether they contain clear guidance. These basic principles are to be found in General Assembly resolution 1798 (XVII) of 11 December 1962.

3. Before turning to the provisions of that resolution, it should be pointed out that both the Commission on Human Settlements (established pursuant to General Assembly resolution 32/162 as a Standing Commission of the Economic and Social Council and governed by the rules of procedure of the Council) and the Governing Council of the United Nations Environment Programme (created by the General Assembly in its resolution 2997 (XXVII) of 15 December 1972, and having its own rules of procedure (UNEP/GC/3/Rev.D) come within the definition of "organs and subsidiary organs of the United Nations" to which resolution 1798 (XVII) applies. The Bureau of the Commis-

[31] After an extensive and in-depth discussion, the Committee on Conferences agreed to the following: while noting the importance of the work of the Committee established under General Assembly resolution 32/174 and the context in which the request was made, the Committee, guided by General Assembly resolutions 2538 (XXIV) and 3415 (XXX) on the subject of provision of summary records and noting the explicit exclusion of the provision of summary records in the relevant statement of financial implications, "decided that a decision of that nature would rest with the General Assembly" (*Official Records of the General Assembly, Thirty-third Session, Supplement No. 32* (A/33/32), vol. I, para. 37).

The Committee however commended to the consideration of the Committee established under General Assembly resolution 34/174 the working solution proposed by the Secretariat (i.e., statements of positions could be recorded by the Secretary of the Committee, cleared by the Rapporteur with the delegations concerned and reflected in the Committee's report (*ibid.*, para. 36).

sion consists of a Chairman, three Vice-Chairmen and a Rapporteur, and that of the Governing Council of a President, three Vice-Presidents and a Rapporteur. The number of persons here involved on both bureaux thus amounts to 10, and it is envisaged that they will be required to attend bi-annual meetings. The resolution in question does not lay down the venue of these meetings, this presumably being established by consultation between the Executive Directors of the organs involved.

4. General Assembly resolution 1798 (XVII) provides in its paragraph 2 (*a*) that:

> "Travel and subsistence expenses shall be paid in respect of members of organs and subsidiary organs who serve in an individual personal capacity and not as representatives of Governments."

Members of the bureaux of both the Commission and of the Governing Council are elected from among the representatives of States serving on those bodies, and they cease to serve on those bureaux if they lose their representative capacity. It has, furthermore, not been the practice to consider the entire bureaux of United Nations organs, composed of States, as coming within the terms of paragraph 2 (*a*) of resolution 1798 (XVII). Had this been the case, the United Nations would, for example, have been responsible for the annual travel of the officers of the Economic and Social Council to its sessions in New York or Geneva. Many other examples could be found. To regard the members of the bureaux of the two bodies here concerned as coming within the terms of paragraph 2 (*a*) could thus, by analogy, lead to a very large extension of the liability of the United Nations to meet travel expenses. Such an extension would only appear warranted by decision of a competent deliberative organ.

5. The second basic principle established by resolution 1798 (XVII), in paragraph 2 (*b*), is that ". . . neither travel nor subsistence allowances shall be paid in respect of members of organs or subsidiary organs who serve as representatives of Governments . . .". This principle is subject to certain special exceptions, laid down in paragraph 3. Most of those exceptions would clearly not be applicable to the situation now under consideration. However, paragraph 3 (*b*) (ii) provides that travel and subsistence expenses shall be paid in respect of: "One member of an organ or subsidiary organ serving as its designated representative at meetings of a second organ or subsidiary organ", while similar provisions are extended, in paragraph 3 (*b*) (iii) to: "One representative of a Member State or one alternate participating in a subsidiary organ instituted by the General Assembly or the Security Council and which is required, by decision of the parent organ, to work away from United Nations Headquarters in the performance of a special task . . .". It should be considered whether or not the present case comes at least within the spirit of these two exceptions.

6. Taken together, these exceptions envisage situations where a representative of one organ travels to attend meetings of another organ and where a particular organ as a whole is charged with a special task and is required for that purpose to travel to a designated meeting place. In the present situation part of one organ is instructed to meet with part of another to carry out a new responsibility. It can be cogently argued that by urging the bureaux of the Commission and of the Governing Council to meet for the stated purpose of review of programmes and priorities for strengthening and extending co-operation, the General Assembly has charged representatives of the organs concerned with "the performance of a special task". It could thus be maintained that, on an *ad hoc* basis and having in mind the very particular circumstances created by General Assembly resolution 32/162, the Assembly, by urging the entire bureaux to meet, has created by implication for present purposes only an exception in conformity with the spirit of the exceptions appearing in paragraphs 3 (*b*) (ii) and (iii) of resolution 1798 (XVII). However, as there is nothing in the record to indicate that this was the clear intention of the Assembly—the relevant financial estimates being mute on this point, one way or the other—the Secretary-General, before reaching a conclusion of the nature just set out, might wish to refer the matter to the Advisory Committee on Administrative and Budgetary Questions for its views.[32]

19 June 1978

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[32] At the thirty-third session of the General Assembly, the Secretary-General informed the Fifth Committee that after carefully reviewing operative paragraph 1 (vi) of resolution 32/162, he had come to the conclusion that

9. VISIT OF A WORKING GROUP OF THE COMMISSION ON HUMAN RIGHTS TO THE COUNTRY DESIGNATED IN ITS TERMS OF REFERENCE—QUESTION WHETHER SUCH A VISIT REQUIRES THE PARTICIPATION OF ALL THE MEMBERS OF THE GROUP—APPLICABILITY OF THE RULE ON QUORUM OF THE RULES OF PROCEDURE OF THE FUNCTIONAL COMMISSIONS OF THE ECONOMIC AND SOCIAL COUNCIL

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. By your memorandum of 26 June you inquired as to the legal propriety of an expected decision of a Working Group of the Commission on Human Rights to proceed with a visit to the country designated in its terms of reference, even though its Chairman would not accompany the Group.

. . .

3. In light of the resolutions which established the Working Group, it appears clear that the Commission expects the Working Group, as such, to visit the country concerned, rather than for its members to do so individually. The question therefore arises whether a visit by the Group requires the participation of all its members.

4. There are no specific rules governing "visits", either in the rules of procedure of the functional commissions of the Economic and Social Council (which are those applicable to the Working Group), or in the Model rules of procedure for United Nations bodies dealing with violations of human rights (E/CN.4/1134, annex, which Economic and Social Council resolution 1870 (LVI) brought to the attention of all organs and bodies of the United Nations dealing with questions of human rights and fundamental freedoms, but which were not specifically made applicable to the Working Group), or for that matter in any other rules of procedure. Consequently, the only applicable rules appear to be those governing quorums, in respect of which rule 40 of the rules of procedure of the functional commissions provides that: "A majority of the representatives of members of the commission shall constitute a quorum". This is in substance identical to rule 8 of the above-mentioned Model rules and indeed to the corresponding rules of almost all other United Nations bodies.

5. In other words, it is sufficient for any act of the Working Group if a majority of its members participates therein. Any requirement that all members of an organ participate in a particular meeting or other activity would of course enable any member to exercise a "veto" over such activity, merely by declining to participate. For this reason, no requirement of full participation can be construed, unless it is explicitly provided for.

6. Finally, it should be noted that it does not make any difference that the absent member would be the Chairman-Rapporteur. Rule 17(*l*) of the rules of procedure of the functional commissions provides that: "If the Chairman finds it necessary to be absent during a meeting or any part thereof, he shall designate one of the Vice-Chairmen to take his place". (Rule 12(*d*) of the Model rules is similar.) If the Working Group has no designated Vice-Chairman, then, under rule 23 of the rules of procedure of the functional commissions, it can elect one, who will then perform the functions of the Chairman in his absence.[33]

27 June 1978

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the members of the two bureaux would participate in the biennial meetings as the designated representatives of the organ of which they were a member rather than on behalf of their Governments and that, their case being therefore analogous to those dealt with in paragraph 3 (*b*) of General Assembly resolution 1798 (XVII), they would be entitled to reimbursement of travel and subsistence expenses in accordance with the terms of paragraph 4 of that resolution (see document A/C.5/33/42). At its 44th meeting, the Fifth Committee approved the corresponding additional appropriations requested by the Secretary-General (A/C.5/33/SR.44).

[33] For details on the background to the above opinion and on subsequent relevant developments, see document A/33/331, paras. 23-25.

10. Sessional Working Group of the Economic and Social Council on reports from parties to the International Covenant on Economic, Social and Cultural Rights[34]—Question whether the sessional Working Group should be composed exclusively of members of the Council that are parties to the Covenant

Memorandum to the Director and Secretary of the Economic and Social Council

1. By paragraph 9 (*a*) of its resolution 1988 (LX) of 11 May 1976, the Economic and Social Council decided that

> "A sessional working group of the Economic and Social Council, with appropriate representation of States parties to the Covenant, and with due regard to equitable geographical distribution, shall be established by the Council whenever reports are due for consideration by the Council, for the purpose of assisting it in the consideration of such reports."

2. In paragraph 3 (*d*) of its decision 1978/1 of 13 January 1978, the Council decided

> "To request Mr. Vladimir Nikiphorovich Martynenko, Vice-President of the Council, to undertake consultations on the composition of the sessional working group which will be established under item 4 (Implementation of the International Covenant on Economic, Social and Cultural Rights) of the list of items for the first regular session of 1978; to invite members of the Council to notify the Secretary-General as early as possible of their interest in participating in that working group, without prejudice to the final decision of the Council on the composition thereof to be adopted at the outset of the first regular session of 1978; and to request the Secretariat to make an interim report on the notifications received by 15 March 1978."

Pursuant to this decision, the Secretariat received notifications of interest from fifteen members of the Council (see E/1978/L.19 and Add.1), including five States that are not parties to the Covenant.

3. When the resolution and decision referred to in paragraphs 1 and 2 above were approved by the Council, there was no discussion on record of the purport of the above quoted texts. Consequently, interpretation of paragraph 9 (*a*) of Economic and Social Council resolution 1988 (LX) must be based on its wording in the context of the entire resolution, taking into consideration any relevant provisions of the Covenant.

4. The sessional working group is established by the Council for the purpose of assisting it in the consideration of reports submitted by parties to the Covenant. In establishing the working group, the Council attached two conditions, namely, that it should have "appropriate representation of States parties to the Covenant" and that due regard should be given to "equitable geographic representation". In this context, unless records clearly indicate otherwise, "appropriate" representation cannot be taken to mean "exclusive" representation. Moreover, in paragraph 10 of the same resolution (i.e. resolution 1988 (LX)) the Council appealed to States "to include, if possible, in their delegations to the relevant sessions of the Economic and Social Council, members competent in the subject matters under consideration". This is to ensure that all members of the Council including those that are not parties to the Covenant should have representatives competent to discuss the subject matters of the reports submitted by parties to the Covenant.

5. In its decision 1978/1, the Council invited *members* of the Council to notify the Secretary-General of their interest in participating in the working group (see paragraph 2 above). Although this is done without prejudice to the final decision of the Council on the composition of the working group, the fact remains that the invitation is addressed to all members of the Council including States that are not parties to the Covenant.

6. Article 16 of the Covenant provides that reports from States parties to the Covenant shall be submitted to the Secretary-General who shall transmit copies "to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant". While it is clear that reports are submitted only by Parties to the Covenant, nowhere in the Covenant is it indicated or implied that consideration by the Economic and Social Council should in the first instance be made only by those members of the Council that are Parties to the Covenant.

[34] United Nations, *Treaty Series*, vol. 993. Also reproduced in the *Juridical Yearbook*, 1966, p. 170.

7. From the foregoing analysis, it is our conclusion that the phrase "with appropriate representation of States Parties to the Covenant" means that States parties to the Covenant should be represented by an appropriate number on the sessional working group. It does not require from a legal point of view that the sessional working group should be composed exclusively of those members of the Council that are Parties to the Covenant.[35]

10 April 1978

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11. QUESTION OF THE INCLUSION IN THE AGENDA OF THE ECONOMIC COMMISSION FOR EUROPE OF AN ITEM PROPOSED BY A STATE MEMBER OF THE COMMISSION—DUTY OF THE EXECUTIVE SECRETARY OF THE COMMISSION, UNDER RULE 5 OF THE COMMISSION'S RULES OF PROCEDURE,[36] TO INCLUDE AN ITEM SO PROPOSED IN THE PROVISIONAL AGENDA AFTER CONSULTATION WITH THE CHAIRMAN—MEANING OF THE WORD "CONSULTATION" IN THIS CONTEXT

Telegram to the Legal Liaison Offices, United Nations Office in Geneva

Our opinion is that the Executive Secretary of the Economic Commission for Europe has no alternative but to include in the provisional agenda all items proposed, under the mandatory provisions of rule 6 [of the rules of procedure of the Economic Commission for Europe].[37] Under this rule members have an absolute right to propose items for inclusion in the provisional agenda. The Executive Secretary must include items so proposed after consultation with the Chairman as required by rule 5.[38] In this context "consultation" means informing the Chairman about items to be included under rule 6 and taking into account, to the extent possible, his views concerning the form of presentation, the order of items, the item titles, etc. Under rule 5, the ultimate responsibility for the preparation of the provisional agenda remains with the Executive Secretary. Consultation certainly does not give the Chairman authority to veto the inclusion of items proposed by members under rule 6. Finally we note that the inclusion [of the proposed item] would not present difficulties for the Secretariat under rule 3 which requires communication of the provisional agenda at least 42 days before the commencement of the session.

2 February 1978

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[35] In decision 1978/10 of 3 May 1978, the Economic and Social Council decided, *inter alia* (*a*) to establish, for the purpose of assisting the Council in the consideration of reports submitted by States parties to the International Covenant on Economic, Social and Cultural Rights in accordance with Council resolution 1988 (LX), a sessional working group composed of 15 members of the Council which are also States parties to the Covenant, 3 members from African States, 3 members from Asian States, 3 members from Eastern European States, 3 members from Latin American States and 3 members from Western European and other States; and (*b*) to invite the President of the Council, after due consultations with the regional groups, to appoint the members of the working group in accordance with paragraph (*a*) above. For the composition of the group see document E/1979/52.

[36] Document E/ECE/778/Rev.2.

[37] Rule 6 reads as follows:

"The provisional agenda for any session shall include:

"(*a*) Items arising from previous sessions of the Commission;

"(*b*) Items proposed by the Economic and Social Council;

"(*c*) Items proposed by any member of the Commission;

"(*d*) Items proposed by a specialized agency in accordance with the agreements of relationship concluded between the United Nations and such agencies; and

"(*e*) Any other item which the Chairman or the Executive Secretary sees fit to include."

[38] Rule 5 reads as follows: "The provisional agenda for each session shall be drawn up by the Executive Secretary in consultation with the Chairman".

12. ECONOMIC COMMISSION FOR WESTERN ASIA—QUESTION OF THE POSTPONEMENT OF THE COMMISSION'S FIFTH SESSION SCHEDULED TO BE HELD IN 1978—UNDER ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1768 (LIV), A DECISION OF THE COMMISSION TO POSTPONE THAT SESSION TO 1979 SHOULD BE SUBMITTED TO THE COUNCIL FOR ITS CONCURRENCE—REQUIREMENT, UNDER COUNCIL DECISION 279 (LXIII), THAT PROPOSALS FOR CHANGES IN THE ESTABLISHED PATTERN OF SESSIONS OF SUBSIDIARY BODIES BE SUBMITTED TO THE COUNCIL FOR ITS CONSIDERATION

Memorandum to the Chief, Regional Commissions Section, Department of Economic and Social Affairs

1. I refer to your memorandum of 21 March 1978 in which you requested our views on the question whether ECWA may postpone its fifth session from 1978 to 1979.

2. The terms of reference of ECWA, as set out in Economic and Social Council resolution 1818 (LV) of 9 August 1973, do not contain a provision on the sessions of ECWA. Rule 1 (*a*) of the provisional rules of procedure of ECWA[39] states that the sessions of the Commission shall be held "*normally* annually, beginning on the third Monday of April" (italics added). Thus neither the terms of reference nor the rules of procedure oblige the Commission to meet annually.

3. It should be noted, however, that in its resolution 1768 (LIV) of 18 May 1973, the Economic and Social Council decided that the calendar of conferences should be so arranged that certain subsidiary organs of the Council including the regional economic commissions "meet every year unless any of these organs decide or have decided otherwise with the concurrence of the Council" (para. 16 (*a*) of the resolution). It is clear that while a regional economic commission may decide not to hold annual sessions or to postpone one of its annual sessions to the following year, such a decision should be submitted to the Economic and Social Council for its concurrence.

4. Your attention is further drawn to decision 279 (LXIII) of 4 August 1977 by which the Economic and Social Council decided "to request its subsidiary bodies, before they submit proposals for changes in the established pattern of their sessions to the Council for its consideration, to seek the advice of the Committee on Conferences, through the Bureau of the Council, which shall make recommendations concerning the timing and co-ordination of the proposals." Whether this decision is applicable to the present case of ECWA depends on the timing and duration of the postponed session. If it is intended to let one year lapse and to have the annual sessions begin again with the fifth session in 1979 without additional meetings and services, this would not involve the application of the procedure laid down in Council decision 279 (LXIII). Should it be more than a pure and simple postponement, consideration may have to be given to the said procedure.[40]

22 March 1978

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13. QUESTION OF THE PARTICIPATION OF INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS IN THE ECONOMIC COMMISSION FOR WESTERN ASIA (ECWA)

Memorandum to the Chief, Regional Commissions Section, Department of Economic and Social Affairs

1. I refer to your memoranda of 9 January and 8 February transmitting respectively a letter and a cable from the Executive Secretary of ECWA on the above-mentioned subject.

2. From the outset I would like to draw attention to the fact that the participation of intergovernmental organizations and non-governmental organizations in the Commission rests on different bases. There is also a difference between participation in the Commission and contacts at the Secretariat level. A detailed analysis of these and other relevant aspects is given below.

[39] See *Official Records of the Economic and Social Council, Fifty-seventh Session, Supplement No. 10* (E/5539), annex IV.

[40] On 4 May 1978, the Economic and Social Council noted that the fifth session of the Economic Commission for Western Asia had been postponed until a later date in 1978 (decision 1978/38). The session was held from 2 to 6 October 1978.

A. *Intergovernmental organizations*

3. The legal basis for the participation of intergovernmental organizations in ECWA is laid down in paragraph 7 of the Commission's terms of reference which reads:

> "The Commission . . . may invite representatives of any intergovernmental organizations to participate in a consultative capacity in its consideration of any matter of particular concern to those . . . organizations, following the practice of the Council."[41]

This provision is given expression in rule 66 of the Commission's provisional rules of procedure, which reads as follows:

> "Representatives of intergovernmental organizations accorded permanent observer status by the General Assembly and of other intergovernmental organizations designated on an *ad hoc* or continuing basis by the Council or the Commission may participate, without the right to vote, in the deliberations of the Commission on questions within the scope of the activities of the organizations."[42]

4. It is clear from the provisions quoted above that (1) all intergovernmental organizations accorded permanent observer status by the General Assembly and others designated on an *ad hoc* or continuing basis by the Economic and Social Council may participate in the deliberations of the Commission on questions within the scope of activities of those organizations; (2) the Commission itself may grant observer status to intergovernmental organizations on an *ad hoc* or continuing basis and (3) the right of the Commission to grant observer status to intergovernmental organizations other than those referred to in (1) above is discretionary and not obligatory.

5. In accordance with rule 4 of the Commission's provisional rules of procedure, notification of sessions should be sent only to those intergovernmental organizations accorded permanent observer status by the General Assembly, to other organizations designated on an *ad hoc* or continuing basis by the Economic and Social Council and to the organizations which have been designated by the Commission itself to participate in its deliberations.

6. As to the question whether an organization which is "affiliated to" or "associated with" another intergovernmental organization may be granted observer status separately from the latter, the criterion to be applied is whether the former is an organ created by and subject to the direction of the latter. In other words, a subsidiary body of an intergovernmental organization should not have separate representation from that organization. (For non-governmental organizations, see paragraph 8 below.)

B. *Non-governmental organizations*

7. Paragraph 5 of the terms of reference of ECWA provides:

> "The Commission may make arrangements for consultation with non-governmental organizations which have been granted consultative status by the Council, in accordance with the principles approved by the Council for this purpose and contained in its resolution 1296 (XLIV) of 23 May 1968."

The procedure for implementation of this provision is set out in chapter XIII of the Commission's provisional rules of procedure.

8. These provisions make it clear that consultations by the Commission with non-governmental organizations is limited to those organizations which have been granted consultative status by the Economic and Social Council in accordance with Council resolution 1296 (XLIV).

9. Non-governmental organizations under resolution 1296 (XLIV) are mainly international non-governmental organizations. Paragraph 9 of that resolution provides that national organizations shall normally present their views through international non-governmental organizations to which they belong. The paragraph goes on to say:

> "It would not, save in exceptional cases, be appropriate to admit national organizations which are affiliated to an international non-governmental organization covering the same subjects on an international basis. National organizations, however, may be admitted after consul-

[41] See Economic and Social Council resolution 1818 (LV) of 9 August 1973.
[42] See foot-note 39 above.

tation with the Member State concerned in order to help achieve a balanced and effective representation of non-governmental organizations reflecting major interests of all regions and areas of the world, or where they have special experience upon which the Council may wish to draw."

10. Non-governmental organizations in consultative status with the Economic and Social Council may attend any session of the Commission in accordance with the procedure set forth in Chapter XIII of the Commission's provisional rules of procedure. Since not all such organizations are required to or will actually attend the meetings of the Commission, it would be appropriate for practical purposes, for the Executive Secretary to prepare a list of those non-governmental organizations which the Commission has consulted or wishes to consult. In respect of such non-governmental organizations, no grant of observer status is required.

11. In so far as ECWA is concerned there are two possibilities for co-operation with international and national non-governmental organizations which have not been granted consultative status by the Economic and Social Council. The first is that the Commission may invite a person from a particular non-governmental organization to provide it with information which, in the opinion of the Commission, will be useful to its work. This is different from granting *ad hoc* observer status to the non-governmental organization. The second possibility is that such consultation be made at the Secretariat level (see paragraph 13 below). A combination of both approaches is also possible.

C. *National governmental organizations*

12. Since it is assumed that national governmental organizations are a part of the government, it is for the government concerned to include in its delegation to the Commission a representative of such an organization. If the State concerned is not a member of the Commission it may be invited by the Commission to participate in a consultative capacity in accordance with paragraph 4 of the terms of reference of the Commission.

D. *Contacts and co-ordination at the Secretariat level*

13. It has been indicated above that for those organizations to which the Commission is not in a position to grant either *ad hoc* or continuing observer status, the Secretariat of the Commission may play an important role. ECWA resolutions 9 (II) and 31 (II) should be viewed in this light. Those two resolutions give an overall authorization to the Executive Secretary in the matter of co-ordination and co-operation with regional institutions. In his report to the Commission on the implementation of those resolutions, the Executive Secretary should distinguish between those organizations which have been or may be granted observer status by the Commission and those in relation to which responsibility for consultation and co-ordination lies mainly with the Executive Secretary himself.

14. In the light of the foregoing analysis, the Executive Secretary may propose to the Commission a list of intergovernmental organizations (whether regional or not) to which the Commission is competent to grant observer status on a continuing basis. With respect to non-governmental organizations, there is no need for the Commission to grant observer status.

10 February 1978

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14. Preparatory Committee of the United Nations Conference on Science and Technology for Development—Possible implications with respect to the composition of the Committee's bureau of the decision of the General Assembly to open full membership in the Committee to all States

Memorandum to the Secretary-General of the United Nations Conference on Science and Technology for Development

1. By memorandum of 11 January 1978, you have raised with me the question whether new elections are required for the Preparatory Committee of the United Nations Conference on Science

and Technology for Development, in view of the decision of the General Assembly, in its resolution 32/115 of 15 December 1977, to open full membership in the Committee to all States. We have examined this question very carefully, both in the light of applicable principles and of decisions taken by the Preparatory Committee itself, and have arrived at the conclusions set out below.

2. In its resolution 2028 (LXI) of 4 August 1976, the Economic and Social Council directed the Preparatory Committee "to organize its work in such a way as to ensure the continuity of its preparatory role between its sessions." This principle was confirmed by the General Assembly in its resolution 31/184 of 21 December 1976. With this directive in mind, the Preparatory Committee, at its first session, elected officers to serve for the entire preparatory period for the Conference. While the summary record of the meeting at which this decision was taken does not expressly mention that understanding, it is, however, reflected in the relevant press release of the meeting (TEC/305), repeated in other press releases and it has been confirmed in discussions we have had with representatives present at the meeting.

3. While the General Assembly, by its resolution 32/115, increased the membership of the Preparatory Committee, it did not create a new or different Preparatory Committee, nor did it indicate that any departure should be made from the principle of continuity laid down in resolution 2028 (LXI) of the Economic and Social Council. Consequently, there is no compelling legal reason for requiring new elections for officers of the Committee, although, in view of its enlarged membership, the Committee may wish—as it is entitled to do—to review the composition of its bureau, in order to enlarge it to ensure equitable geographical distribution.

4. As there is no legal reason for requiring new elections, and having in mind the decision of the Committee at its first session to elect officers for the entire preparatory period—a decision which stands until such time as it may be reversed by the Committee—it would not be appropriate for the Secretariat to raise the question of the election of officers, beyond the indication already given in the provisional agenda that the Committee may wish to examine the composition of its bureau, taking into account the enlargement of the Committee.

13 January 1978

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15. Preparatory Committee for the United Nations Conference on Science and Technology for Development—Question whether the Committee on Conferences is competent under its terms of reference to take affirmative action on a request that Arabic be included as a language of the Preparatory Committee at its future sessions—Arrangements approved by the General Assembly in relation to the provision of Arabic interpretation services

Memorandum to the Director, Interpretation and Meetings Division, Department of Conference Services

1. At its second session held recently in Geneva, the Preparatory Committee for the United Nations Conference on Science and Technology for Development requested that Arabic be included as a language of the Preparatory Committee at its future sessions. You have requested legal advice on whether the Committee on Conferences is competent under its terms of reference, contained in paragraph 3 of General Assembly resolution 32/72 of 9 December 1977, to take affirmative action on that request. The opinion which follows is submitted in response to your request.

2. The practice of the General Assembly shows clearly that the Assembly has reserved for itself the power to determine the languages of the documentation of its subsidiary bodies and the language services to be provided for meetings of those bodies. As a matter of general policy, the language services to be made available for meetings are those for which provision has been made in the financial estimates relating to the holding of those meetings and approved by the appropriate

authority. If subsequently there was a request for an additional language, such a request has always been decided on by the General Assembly after appropriate action had been taken by organs such as ACABQ and the Fifth Committee with regard to the corresponding financial implications. Whenever Arabic language services were to be provided for a particular organ or conference this has always been expressly stated in the relevant General Assembly resolution or decision.

3. The terms of reference of the Committee on Conferences contained in operative paragraph 3 of General Assembly resolution 32/72 of 9 December 1977 are as follows:

(*a*) To advise the General Assembly on the calendar of conferences;

(*b*) To act on behalf of the General Assembly in dealing with departures from the approved calendar of conferences that have administrative and financial implications;

(*c*) To recommend to the General Assembly means to provide the optimum apportionment of conference resources, facilities and services, including documentation, in order to ensure their most efficient and effective use;

(*d*) To advise the General Assembly on the current and future requirements of the Organization for conference services, facilities and documentation;

(*e*) To advise the General Assembly on means to ensure improved co-ordination of conferences within the United States system, including conference services and facilities, and to conduct the appropriate consultations in that regard.

4. It is clear from the above text that the Committee on Conferences does not have the explicit authority to decide whether United Nations bodies may have language services additional to those specifically approved by the General Assembly. It must be concluded, therefore, that the terms of reference of the Committee on Conferences, taken by themselves, neither expressly nor impliedly allow the Committee to authorize the Preparatory Committee for the United Nations Conference on Science and Technology for Development to have Arabic language services on a permanent basis.

5. In so far as documentation is concerned, the Preparatory Committee, being a committee of the General Assembly, is already authorized to have its documents published in Arabic pursuant to General Assembly resolution 878 (IX) of 4 December 1954. With regard to Arabic interpretation services, it is to be noted that the General Assembly dealt with the question at its thirty-first and thirty-second sessions. For its consideration of this question the Assembly had before it reports prepared by the Secretary-General (A/C.5/31/60 and Corr. 1 and A/C.5/32/9). In his report to the thirty-first session, the Secretary-General recommended *inter alia* the establishment of priorities in the provision of Arabic interpretation services as follows:

> "The General Assembly would have first call on permanent staff for the provision of Arabic interpretation services. During the rest of the year, priority for available permanent staff would be given, in the first instance, to the UNCTAD Conference, the Trade and Development Board and its main committees, meetings of the *ad hoc* intergovernmental committee or the Integrated Programme for Commodities and preparatory meetings and the negotiating conference on a common fund; second, to special meetings and conferences for which the General Assembly approves Arabic language services; third, to all other United Nations meetings, including other UNCTAD bodies, on an 'as available' basis; and finally, to other organizations of the United Nations system, when and if available, on reimbursable loan."

This arrangement was approved by the General Assembly at its thirty-first session and confirmed at its thirty-second session (see resolution 31/208 of 22 December 1976 and resolution 32/205 of 21 December 1977).

6. In the light of these resolutions, it is clear that until the General Assembly specifically authorizes the Preparatory Committee for the United Nations Conference on Science and Technology for Development to have full Arabic language services at its future sessions Arabic interpretation can only be provided on an "as available" basis. If Arabic interpreters are available, the Secretary-General could himself assign them to meetings of the Preparatory Committee without referring the question to the Committee on Conferences since the decisions of the General Assembly are clear in this regard.

Conclusion

7. (*a*) The Secretary-General may provide Arabic interpretation services for meetings of the Preparatory Committee for the United Nations Conference on Science and Technology for Development only on an "as available" basis.

(*b*) The Committee on Conferences may recommend to the General Assembly that full Arabic language services be provided for future sessions of the Preparatory Committee but it is not competent under its terms of reference to take a final decision on the inclusion of Arabic as a language of the Preparatory Committee at its future sessions.[43]

17 March 1978

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16. IMMUNITY FROM LEGAL PROCESS OF THE UNITED NATIONS JOINT STAFF PENSION FUND, A SUBSIDIARY ORGAN OF THE UNITED NATIONS, UNDER ARTICLE II, SECTION 2 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS—IMMUNITY OF UNITED NATIONS OFFICIALS FROM LEGAL PROCESS IN RESPECT OF ACTS PERFORMED IN THEIR OFFICIAL CAPACITY, UNDER ARTICLE V, SECTION 18 OF THE SAID CONVENTION

Letter to the Permanent Mission of the United States to the United Nations

I wish to refer to the letter dated 20 September 1978, from a Deputy Sheriff of the City of New York, addressed to the Secretary of the United Nations Joint Staff Pension Fund.

The addressee of the letter is requested to appear at the office of the Sheriff of the City of New York in the morning of Thursday, 19 October 1978. The request is made under the threat of arrest for non-compliance, and in this connexion reference is made to the order dated 24 May 1978 (index number 5800/75) by a Judge of the Queens County Court in the matter of *Raymonde Shamsee vs. Muddassir Ali Shamsee*. This order purports to hold the United Nations Joint Staff Pension Fund and its Secretary in contempt of court for failure to comply with the court order of 30 December 1976, which would sequester assets of the United Nations Joint Staff Pension Fund.

In connexion with the above, I wish to advise that both the United Nations Joint Staff Pension Fund and its Secretary enjoy immunity from legal process in accordance with the provisions of the Convention on the Privileges and Immunities of the United Nations,[44] to which the United States is a party.

The Pension Fund is a subsidiary organ of the United Nations established by action of the United Nations General Assembly. As such, it falls under article II, section 2, of the Convention which reads:

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

The person concerned, being the Secretary of the Pension Fund and its Chief Administrative Officer, is an official of the United Nations in the sense of article V, section 17, of the Convention. He therefore possesses the immunity from national jurisdiction granted under article V, section 18 (*a*), of the Convention which reads:

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[43] The Committee on Conferences took note of the part of the legal opinion stating that pursuant to reports of the Secretary-General on the question of Arabic language services (A/C.5/31/60 and Corr.1 and A/C.5/32/9) the Assembly confirmed, in its resolutions 31/208 of 22 December 1976 and 32/205 of 21 December 1977, that the Secretary-General could assign Arabic interpretation services on an as available basis, without referring the question to the Committee on Conferences, since the decisions of the Assembly were clear in this regard. (*Official Records of the General Assembly, Thirty-third Session, Supplement No. 32* (A/33/32, vol. I, para. 35).)

[44] United Nations, *Treaty Series*, vol. 1, p. 15.

"Officials of the United Nations shall:

"(*a*) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity."

In the present case, there can be no doubt that the subject matter involves a claim to assets of the Pension Fund of which the person in question is the Chief Administrative Officer, and that his only connexion with the case is through his official functions as an official of the United Nations.

For the above reasons—with which you are already familiar—I request that the United States Department of State issue a suggestion of immunity from legal process for the United Nations Joint Staff Pension Fund and its Secretary, to the appropriate officials of the Queens County Court and New York City's Sheriff's Office.[45]

3 October 1978

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17. QUESTION OF THE EXEMPTION FROM REAL ESTATE TAX OF A RESIDENTIAL PROPERTY IN THE HOST STATE OCCUPIED BY A MEMBER OF A PERMANENT MISSION TO THE UNITED NATIONS—RELEVANT PROVISIONS OF THE HEADQUARTERS AGREEMENT AND OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS

Letter to a private lawyer

I refer to your request for the views of the Office of Legal Affairs of the United Nations Secretariat on the claim to real estate tax exemption for a residential property situated in Westbury Village, in New York State. You have indicated that the property in question is occupied by a member of a Permanent Mission to the United Nations with the rank of Counsellor, and that title to the property stands in the name of the Mission. I understand that you have been retained by the Mission as their attorney for the purpose of claiming exemption before the municipal tax authorities of the Village of Westbury.

By virtue of article V, section 15, of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed on 26 June 1947,[46] the resident members of permanent missions to the United Nations are:

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[45] The following letter was addressed on 23 March 1979 by the Deputy Legal Adviser, Department of State to the United States Attorney, Eastern District of New York:

"In regard to the referenced case, we understand that there are two matters on which the court has requested the opinion of the Department of State:

"(1) The immunity of the Secretary of the United Nations Joint Staff Pension Fund; and

"(2) The immunity of the United Nations Joint Staff Pension Fund.

"As stated in a certificate by the Chief of Protocol of the United States Department of State, the official referred to in (1) above is entitled to the privileges, exemptions and immunities granted employees of the United Nations Secretariat under the International Organizations Immunities Act, 22 U.S.C., §288-288f-2, and section 18 (2) of the Convention on the Privileges and Immunities of the United Nations. He is, therefore, entitled to immunity from suit and legal process relating to acts performed by him in his official capacity and falling within his official functions. His determination that assets of the Pension Fund could not be sequestered or paid over to Mrs. Shamsee consistent with the regulations of the Fund and his consequent refusal to obey the sequestration order were, in the view of the Department of State, acts performed by the official concerned in his official capacity.

"The immunity of the United Nations Joint Staff Pension Fund is governed by Section 2 of the Convention on the Privileges and Immunities of the United Nations which provides:

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

The affidavit of the Under-Secretary General and Legal Counsel of the United Nations testifies to the legal status of the Fund and its relationship to the United Nations. On the basis of that affidavit, the Department of State is of the view that the Fund is covered by Section 2 of the Convention on Privileges and Immunities of the United Nations.

"I would appreciate it if you would convey these views to the court."

[46] United Nations, *Treaty Series*, vol. 11, p. 11.

"entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it."

The generally accepted rules of international law on the privileges and immunities of diplomatic personnel are contained in the Vienna Convention on Diplomatic Relations of 18 April 1961,[47] to which the United States acceded on 13 November 1972. Article 23, paragraph 1, of the Convention provides:

"The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered."

The exemption naturally is granted to the legal person who otherwise would be liable for the tax, namely the owner, and it therefore would be a requirement for exemption that the property is owned by either the sending State (which includes title standing in the name of the Mission) or by the head of the Mission.

The limitation of the exemption in respect of "payment for specific services rendered", refers to utility charges and similar fees.

To enjoy exemption, the property must also be included among "the premises of the mission". In this connexion it is relevant to note that article 1 of the Vienna Convention contains a set of definitions of the meanings of certain expressions used in the Convention. Paragraph (i) of article 1 defines the "premises of the mission" as follows:

"(i) the 'premises of the mission' are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission."

The travaux préparatoires to the Vienna Convention on Diplomatic Relations indicate that the above definition was introduced at the Conference itself. It was considered at the sixth and seventh meetings of the Committee of the Whole held on 8 and 9 March 1961, and provisionally adopted at the latter of these two meetings.[48] At the twenty-third meeting of the Committee of the Whole during its consideration of draft article 21 (which became article 23 of the Convention), the United States representative stated:

". . . the expression 'premises of the mission' used in article 21 and other articles had not been defined; that was a gap which should be filled. In his delegation's opinion, the expression should comprise the land and all the buildings of the mission, even if scattered."[49]

It does not appear that any further statement was made by United States representatives on this matter during the Conference. At its thirty-eighth meeting, the Committee of the Whole adopted Article 1 (i) in its present formulation by 52 votes to 9 with 11 abstentions.[50] Article 21 was adopted at the twenty-third meeting by 72 votes to none with one abstention.[51]

During the subsequent consideration of the matter by the Conference meeting in plenary, article 1 was adopted unanimously (subject to drafting changes not relevant to paragraph (i)) at the fourth plenary meeting, held on 10 April 1961,[52] and article 21 (now article 23) was adopted unanimously without debate at the sixth plenary meeting on 11 April 1961.[53]

In the opinion of the Office of Legal Affairs the interpretation and application of article 23 of the Vienna Convention to the present case should be based on the legal facts stated in the preceding.

20 April 1978

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[47] *Ibid.*, vol. 500, p. 95.

[48] United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. I: Summary Records, seventh meeting of the Committee of the Whole, para. 39.

[49] *Ibid.*, twenty-third meeting of the Committee of the Whole, para. 49.

[50] *Ibid.*, thirty-eighth meeting of the Committee of the Whole, para. 42.

[51] *Ibid.*, twenty-third meeting of the Committee of the Whole, para. 69.

[52] *Ibid.*, fourth plenary meeting, para. 11.

[53] *Ibid.*, sixth plenary meeting, para. 22.

18. SECTION 13 (*b*) OF THE AGREEMENT CONCERNING THE HEADQUARTERS OF THE UNITED NATIONS OF 26 JUNE 1947—INTERPRETATION OF THE CONCEPT OF PRIOR CONSULTATION IN RELATION TO A REQUEST MADE BY THE HOST STATE FOR THE DEPARTURE FROM ITS TERRITORY OF A PERMANENT REPRESENTATIVE TO THE UNITED NATIONS—DISTINCTION BETWEEN CONSULTATION AND AGREEMENT OR CONCURRENCE

Statement made by the Legal Counsel at the 71st meeting of the Committee on Relations with the Host Country, on 13 February 1978[54]

During the meeting last Thursday, the representative of Senegal asked me to give certain clarifications and I am now ready to reply to what I think was the main question raised here, namely, what is the legal meaning of "prior consultation". The Headquarters Agreement of 1947 provides, in subparagraph (1) of section 13 (*b*), that:

"(1) No proceedings shall be instituted . . . to require any such person to leave the United States except with the prior approval of the Secretary of State of the United States. Such approval shall be given only after consultation with the appropriate Member in the case of a representative of a Member". . . .

Thus the essential question is to determine what the term "prior consultation" means. I shall confine myself to seeking a legal definition of this expression. In this connexion, I first of all consulted the only existing dictionary of the terminology of international law, that published in Paris in 1960.[55] The following definition of the word "consultation" is found there:

"Term which, in diplomatic language, is used to signify the joint consideration of an affair, a situation, an incident, the attitude to be adopted, the measures to be taken, the seeking, on that occasion, of the opinion of another Government."[56]

The same dictionary gives several examples, of which I should like to cite the following in particular:

"At the meeting of the United Nations Trusteeship Council held on 24 January 1950 to deal with the preparation of the Trusteeship Agreement for Italian Somaliland, Mr. Ryckmans (Belgium) said, with reference to the expression 'after consultation with the Advisory Council', appearing in article 6 of that Agreement: ' "after consultation" is certainly more precise than "request the opinion". But neither of these expressions goes as far as "with the agreement of" '.[57]

"The United States representative, Mr. Sayre, said 'The first term [consultation] implies a continuous action, whereas the second [opinion] refers to a specific action. A request for an opinion . . . could prompt a positive or a negative reply, whereas consultation entails collaboration and discussion.' "[58]

Furthermore, when in 1975 the United Nations drew up the Vienna Convention—often cited here—on the Representation of States in their Relations with International Organizations, which has

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[54] The facts behind the above statement are the following:

In December 1977, the host State requested the departure of the Permanent Representative of a Member State on grounds of abuse of the privilege of residence within the meaning of section 13 (*b*) of the Headquarters Agreement of 26 June 1947. The Member State concerned contended that, in taking such action, the host State had exploited the uncertainty surrounding the rules about *persona non grata* declarations in both the Headquarters Agreement and the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, and had breached Section 13 (*b*) of the Headquarters Agreement by not consulting the Government concerned beforehand.

The representative of the host State claimed that the conditions set forth in subparagraph (1) of section 13 (*b*) had been scrupulously observed in this case, stating in particular that his Government had attempted to discuss the situation with the Permanent Mission concerned but that after an initial contact, the Mission had refused to engage in further discussions. For more details on this case see the report of the Committee on Relations with the Host Country to the thirty-third session of the General Assembly (*Official Records of the General Assembly, Thirty-third Session, Supplement No. 26* (A/33/26), paras. 7-46.

[55] Union académique internationale, *Dictionnaire de la terminologie du droit international*, Sirey, Paris, 1960.

[56] *Ibid.*, p. 159.

[57] *Ibid.*

[58] *Ibid.*

not yet entered into force, the delegations had occasion to discuss an article and amendments on respect for the laws and regulations of the host State.

During the discussions, the representative of France proposed to add to the relevant article a paragraph reading as follows:

> "Nothing in this article shall be construed as prohibiting the host State from taking such measures as are necessary for its own protection. In that event the host State shall, without prejudice to articles 81 and 82, consult the sending State in an appropriate manner in order to ensure that such measures do not interfere with the normal functioning of the mission or delegation."[59]

In submitting this text, the representative of France stated the following:

> "All authorities on international law had traditionally conceded to host States the powers which it proposed; in order to allay any apprehension, his oral revision made specific reference to articles 81 and 82. Article 81 made provision for consultation when a dispute had already arisen, but the proposed new sentence envisaged consultation with the sending State at an earlier stage in order to further the aim, common to all delegations, of ensuring the effective functioning of the international organization and of the missions accredited to it."[60]

We have here the element of prior consultation. Moreover, the text of the amendment specifies that the consultation shall be held "in an appropriate manner". This French amendment was finally incorporated in the text of article 77 of the Vienna Convention, paragraph 4 of which reads as follows:

> "Nothing in this article shall be construed as prohibiting the host State from taking such measures as are necessary for its own protection. In that event the host State shall, without prejudice to articles 84 and 85, consult the sending State in an appropriate manner in order to ensure that such measures do not interfere with the normal functioning of the mission, the delegation or the observer delegation."[61]

I think that, although this Convention has not yet entered into force, the article in question, and more specifically this text, reflects existing international law with respect to the matter and that the host State should take appropriate measures of prior consultation before taking any action against an ambassador or a member of a mission.

Thirdly, in the Secretariat we had occasion more than 15 years ago to prepare a study on the subject of the expressions "in consultation with" and "after consultation". I shall read out to you several very brief extracts from this study.[62]

> "In interpreting United Nations texts, therefore, 'consultation' must be distinguished from 'agreement', 'concurrence' or 'consent' unless it is clearly indicated in the text that the purpose of consultation is to obtain agreement. On the other hand, it may be said that while certain differences of emphasis may exist, the expressions 'in consultation with' or 'after consultation with' have a similar connotation as 'taking into account the views of'[63] or 'bearing in mind the recommendations of'[64] in the sense that these latter expressions do not require agreement with the views expressed or the recommendations made."

> "United Nations practice does not indicate any significant difference between the expressions 'in consultation with' and 'after consultation with'. The former expression may refer to a more continuous process leading to the reaching of a decision by the consulting party; the latter may more clearly distinguish between the two stages, that of consultations and that of decision-making."

In conclusion, this study states:

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[59] United Nations Conference on the Representation of States in their Relations with International Organizations, *Official Records*, vol. II, document A/CONF.67/17, para. 776, subparagraph (*d*).

[60] *Ibid.*, vol. I, 40th meeting of the Committee of the Whole, para. 26.

[61] *Ibid.*, vol. II, document A/CONF.67/16.

[62] *Juridical Yearbook*, 1962, provisional edition (mimeographed), Fascicle 2, p. 269.

[63] E.g., General Assembly resolutions 1512 (XV) and 1572 (XV).

[64] E.g., General Assembly resolution 1517 (XV).

"It may therefore be said that either the language or the implementation in practice of such resolutions of the General Assembly as those illustrated above indicates that consultation is a process by which the views of the parties consulted are merely sought or ascertained and that the distinction is carefully made between the use of the expressions 'in consultation with' or 'after consultation with' and such expressions as 'with the concurrence of'."[65]

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19. QUESTION WHETHER UNITED NATIONS OFFICIALS CAN TESTIFY UNDER OATH IN DOMESTIC COURTS CONSISTENTLY WITH THEIR OBLIGATIONS UNDER THE STAFF REGULATIONS—UNITED NATIONS PRACTICE WITH REGARD TO PROVISION TO COURTS OF UNPRIVILEGED INFORMATION IN ITS POSSESSION WHICH MAY BE NEEDED IN JUDICIAL PROCEEDINGS

Letter to the Legal Liaison Officer, United Nations Office in Geneva

I refer to your letter of 7 February asking advice on how to handle a summons addressed to a United Nations official for the purpose of eliciting testimony about salaries, pension, career prospects, etc. of a staff member victim of an automobile accident which is the subject of a suit for damages. You particularly ask whether United Nations officials can take an oath in court consistently with their obligations under the Staff Regulations.

We have a long-standing United Nations policy with respect to requests for staff members to appear as witnesses in court proceedings, in cases in which the United Nations as such has no interest, to testify on matters within their knowledge as United Nations officials or to provide information contained in United Nations files. Our policy is based on the Secretary-General's duty under Section 20 of the Convention on the Privileges and Immunities of the United Nations "to waive the immunity of any officer in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations".

The United Nations authorizes officials to appear and to testify on specific matters within their official knowledge provided (1) that there is no reasonable effective alternative to such testimony for the orderly adjudication or prosecution of the case; and (2) that no significant United Nations interest would be adversely affected by the waiver. The authority to waive the immunity and to authorize the testimony has been delegated to the Legal Counsel.

Occasions for the authorization and waiver are limited to cases in which the subject matter within the official's knowledge may be made public without giving rise to any problem as regards, for example, privileged papers or controversial political issues. Most frequently, where testimony by officials is required for criminal cases where cross examination is anticipated, we have had prior consultation with the attorneys requesting the appearance concerning the area of questioning.

We have on frequent occasions received summonses or subpoenae in connexion with matrimonial and personal injury cases where United Nations salary entitlements and allowances are relevant. Our usual practice is to reply stating that the United Nations is immune but that information may be provided in relation to specific questions on a voluntary basis. Frequently, letters or documentary material is sufficient. In some instances, Personnel officers have appeared in judicial or quasi-judicial proceedings to provide information on United Nations salaries and emoluments. In cases where the staff member is a party to the dispute and the opposing party needs information about his United Nations emoluments, we sometimes provide the information to the staff member and require him to transmit the material required in the court proceedings so as to relieve the United Nations of the need to waive. In other words, our effort is to provide the information other than by court appearance if possible.

When staff members are authorized to appear and to testify on a particular subject matter, they are implicitly authorized to take whatever oath or to make whatever affirmation is necessary for the testimony to be admissible. Given the conditions for the waiver and authorization, the oath to testify

[65] *Ibid.*, p. 279.

truthfully would not, in our view, give rise to a conflict with the staff member's obligations under the Staff Regulations.

17 February 1978

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20. MEMBERSHIP DRIVE CONDUCTED BY A NATIONAL TRADE UNION FOR ENROLLING LOCAL EMPLOYEES OF INTERNATIONAL ORGANIZATIONS—RIGHT TO FREEDOM OF ASSOCIATION OF ALL UNITED NATIONS STAFF MEMBERS—THE EMPLOYMENT RELATIONSHIP BETWEEN THE UNITED NATIONS AND ITS STAFF IS GOVERNED EXCLUSIVELY BY THE APPLICABLE UNITED NATIONS STAFF RÉGIME—EXCLUSIVE STATUS OF STAFF REPRESENTATIVES UNDER CHAPTER 8 OF THE UNITED NATIONS STAFF REGULATIONS

Letter to the Legal Liaison Officer, United Nations Environment Programme

1. You have requested our advice on the question whether units of the United Nations in [name of a Member State] are compelled to deal with a national trade union which claims the right to represent all local employees of international organizations in that State in matters relating to their conditions of employment.

The Facts

2. On 11 September 1978 the trade union in question (hereafter referred to as the "Union") wrote to various United Nations offices in the country concerned announcing a membership drive for local employees of "international establishments and allied institutions".

3. The Union advised that it had been registered by the Registrar of Trade Unions as the "sole union that caters for all employees" engaged in international institutions in the country concerned. However, the Union's membership drive is limited to organizing and enrolling "local employees into the Union membership and to explain to them about union representations and what is expected of them as workers under the Industrial Relations contents".

4. In support of its membership drive the Union notes that it is the policy of the Government to see to it that every worker is represented and protected by trade unions. The Union also refers to a number of local statutes governing labour relations and to Conventions Nos. 84, 87 and 98 of the International Labour Organisation in order to buttress its claim to organize local employees of international institutions in the Member State concerned.

Law applicable to employment relationship with the United Nations

5. It is a well recognized principle of public international law that the employment relationship between the United Nations and its staff is not subject to national law but is governed by the internal rules of the United Nations. This principle derives from Article 101, paragraph 1 of the Charter of the United Nations which provides as follows:

> "The staff shall be appointed by the Secretary-General under regulations established by the General Assembly."

Furthermore, pursuant to Article 100, paragraph 2, "each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff".

6. The inapplicability of national law to the employment relationship between the United Nations and its staff has been recognized not only by international tribunals and doctrinal writings but also by national courts. The relevant authorities are conveniently set out and discussed in an opinion of the Legal Counsel of the Food and Agricultural Organization dated 4 September 1970.[66] However, national law may, on occasion, be relevant since General Service staff and manual workers are appointed "on the basis of the best prevailing conditions of employment in the locality of the United Nations office concerned" (Staff Regulations, annex I, para. 7). But in these cases, national

[66] Reproduced in *Juridical Yearbook*, 1970, p. 189.

laws are relevant only because they may be taken into consideration when estı blishing the conditions of employment of locally recruited staff. National laws themselves are no directly applicable to the relationship between the Secretary-General and United Nations staff.

Right of national trade unions to represent United Nations staff in employmen matters

7. Given the fact that the laws governing the employment relationship ɔetween the United Nations (including UNICEF, UNDP, UNEP and other subsidiary organs of the C rganization) and its staff are the "regulations established by the General Assembly" pursuant to Aı icle 101, paragraph 1 of the Charter, the question arises as to whether these regulations oblige, or even authorize, the United Nations to deal with national trade unions which seek to represent certain sectors of the staff.

8. The Staff Regulations adopted by the General Assembly as implemente d by the Staff Rules promulgated by the Secretary-General provide machinery for the representatio n of United Nations employees. In particular, Staff Regulation 8.1 provides for an elected Staff C(uncil "for the purpose of ensuring continuous contact between the staff and the Secretary-Gener al". The Council is "entitled to make proposals to the Secretary-General for improvements in th e situation of staff members, both as regards their conditions of work and their general condition s of life".

The Council must be "composed in such a way as to afford equitable r epresentation to all levels of the staff". Staff Regulation 8.2 provides for the establishment of joint administrative machinery with staff participation regarding personnel policy and general questi ons of staff welfare. Staff Rules 108.1 and 108.2 implement these Regulations.

9. In addition, by General Assembly resolution 3357 (XXIX) of 18 D ecember 1974, the International Civil Service Commission was established "for the regulation and co-ordination of the conditions of service of the United Nations common system" (article 1 of the S atute of the ICSC). The United Nations Administrative Tribunal has recently pointed out that the Statute of the ICSC and its rules of procedure "afford fair and reasonable opportunity for the s aff to make representations to the Commission and discuss issues with it . . . (Judgement No. 2 ·6 (Belchamber), at para. XVI).[67]

10. It is thus clear that the machinery established by the General Assembly to enable the staff to participate in the determination of conditions of employment through recog nized staff associations and joint administrative machinery does not require the United Nations ad ministration to deal with associations other than those established in accordance with the Staff Regulations and Rules. It follows that national trade unions have no status to represent the staff of the Unit ed Nations in questions relating to the staff's employment relationship with the United Nations. Accordingly, the United Nations administration has no obligation to accord any recognition to nati onal trade unions or to grant such unions facilities on United Nations premises.

11. Consequently, staff members cannot be compelled, by national laws or by union regulation enforced by law, to become members of any trade union.

Freedom of association

12. This is not, however, to say that staff members are prohibited from be coming members of trade unions. Staff members are free to join with other staff members, and eve n with persons not affiliated with the United Nations in any association that is compatible with t heir status as international civil servants, that is which does not entail public espousal of political p ositions or inappropriate activities within or outside the United Nations. Staff members' freedom of association has been considered to encompass the right to organize a union of staff members o her than the recognized staff association;[68] but this freedom of association enjoyed by staff mem bers is separate and distinct from rights accorded to a particular association that staff members may join. While there is no absolute impediment to the administration's voluntarily having contact with representatives of any groups or associations to which staff members belong, the United Nations administration must

[67] For a summary of this judgement see p. 140 of this *Yearbook*.

[68] See the legal opinion reproduced on p. 171 of the *Juridical Yearbook*, 1973.

respect the exclusive status and functions of the representatives recognized pursuant to Chapter 8 of the Staff Regulations and Rules.

Relevance to ILO Conventions

13. In addition to relying upon domestic legislation to grant it authority to represent United Nations staff, the Union also relies on several conventions adopted by the International Labour Organisation.

14. These Conventions are, of course, applicable only to those States who ratify them and not to any intergovernmental organizations that those States might belong to. As was pointed out in a previous opinion from this Office:

> "If States feel obliged to bring the provisions or the principles of such treaties to bear on an international organization, they can do so by means of appropriate resolutions in the organization."[69]

15. However, leaving aside this question of the applicability of ILO Conventions, it is clear that the three Conventions relied upon by the Union do not assist it in its claim. These three Conventions, as well as another more recently adopted, are discussed in turn.

ILO Convention No. 84

16. The Right of Association (Non-Metropolitan Territories) Convention, 1947[70] concerns the right of association and the settlement of labour disputes in non-metropolitan territories of Members of the ILO. It is clear that this Convention is not applicable, even by way of analogy, to the present circumstances.

ILO Convention No. 87

17. The Freedom of Association and Protection of the Right to Organise Convention, 1948[71] concerns the freedom of association of employees and protection of their right to organize. These rights are also specified in the Universal Declaration of Human Rights and are also clearly established pursuant to general principles of international law. The United Nations has fully recognized and implemented these rights.[72] Indeed, staff regulation 8.1 and staff rule 108.1, which make provision for the election of a Staff Council, have been seen by the United Nations Administrative Tribunal as constituting a specific recognition and acceptance of these rights (Judgement No. 15 (Robinson)).[73]

18. Moreover, as pointed out above, individual staff members have the right to organize or to join any associations, including trade unions, but this does not oblige the United Nations to deal with such associations if these are outside the specific machinery established by the General Assembly pursuant to Article 101, paragraph 1 of the Charter.

ILO Convention No. 98

19. The Right to Organise and Collective Bargaining Convention, 1949[74] concerns the application of the principles of the right to organize and to bargain collectively. This Convention recognizes that the right of employees to join unions or associations is not synonymous with the right to insist that employers bargain with those unions. Although the Convention promotes collective agreements between employers' and employees' organizations, article 6 specifically states that the Convention "does not deal with the position of public servants engaged in the administration of the State".

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[69] *Ibid.*, para. 2.
[70] United Nations, *Treaty Series*, vol. 171, p. 330.
[71] *Ibid.*, vol. 68, p. 17.
[72] See para. 2 of the legal opinion referred to in foot-note 68 above.
[73] See *Judgements of the United Nations Administrative Tribunal*, Numbers 1 to 70, 1950-1957, pp. 43-53.
[74] United Nations, *Treaty Series*, vol. 96, p. 258.

ILO Convention No. 151 and ILO Recommendation No. 159

20. The special status of employees in the public service has been recognized by the adoption by the ILO in 1978 of the Labour Relations (Public Service) Convention and of the Labour Relations (Public Service) Recommendation. Although the Union did not refer to these instruments, it may be useful to discuss them since they deal with employment that is analogous to that of the international civil service.

21. The above-mentioned Convention and Recommendation concern the protection of the right to organize of public employees and the establishment of procedures for determining conditions of employment in the public service. The Convention sets out the facilities to be afforded to "recognized public employees' organizations" (article 6) and calls for the promotion and utilization of machinery for the negotiation of terms and conditions of employment or of such other methods as will allow representatives of public employees to participate in the determination of these matters (article 7; see also paragraph 2 of the Recommendation). However, such facilities are already accorded to the recognized staff associations in the United Nations, whereby the representatives of the staff can participate in the determination of terms and conditions of employment.

22. It is thus evident that, insofar as the provisions of the new Convention and Recommendation are applicable by way of analogy to the international civil service, the machinery established under the United Nations Staff Regulations and Rules meets the standards set out in the Conventions.

Conclusion

23. Locally recruited staff in the Member State concerned, like all United Nations staff members, have the right to freedom of association, but their employment relations with the United Nations are governed exclusively by the applicable United Nations staff régime. Consequently, the Secretary-General and the executive heads of subsidiary organs with offices in that Member State are not obliged to deal with the Union and should avoid action inconsistent with the exclusive status of staff representatives under chapter 8 of the United Nations Staff Regulations and Rules.

30 November 1978

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21. INELIGIBILITY OF UNITED NATIONS EMPLOYEES FOR UNEMPLOYMENT INSURANCE COMPENSATION

Internal note

We recently had an enquiry regarding the availability to former United Nations employees of unemployment insurance compensation.

The United Nations is a public international organization not liable for contributions as an employer under the New York State Unemployment Insurance Law;[75] and accordingly United Nations employees are not eligible for unemployment insurance compensation.[76]

11 January 1978

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[75] In a letter to the Secretariat of the United Nations dated 4 October 1946, an official in the New York State Department of Labour wrote:

"You inquire as to whether or not the United Nations is an employer liable for contributions under the New York State Unemployment Insurance Law.

"We have carefully examined the documents submitted . . . and have also secured the advice of the Secretary of State of the United States. It is our determination that the United Nations is not an employer liable for contributions under the New York State Unemployment Insurance Law. Our determination is based upon the fact that the United Nations is entitled to all of the rights and privileges of a sovereign State."

[76] The question of availability of unemployment insurance benefits came up in New York State in 1975 in

22. CONVENTION ON THE AGENCY FOR CULTURAL AND TECHNICAL CO-OPERATION—THE DESIGNATION IN THE CONVENTION OF AN AUTHORITY RESPONSIBLE FOR REGISTRATION WITH THE SECRETARIAT OF THE UNITED NATIONS DOES NOT RELIEVE STATES PARTIES WHICH ARE MEMBERS OF THE UNITED NATIONS OF THE OBLIGATION INCUMBENT ON THEM UNDER ARTICLE 102 OF THE CHARTER—PROBLEM RESULTING FROM THE TAKING INTO ACCOUNT, FOR THE PURPOSE OF THE ENTRY INTO FORCE OF THE CONVENTION, OF SIGNATURES WHICH THE STATES CONCERNED INTENDED TO BE CONSIDERED SUBJECT TO RATIFICATION

Letter to the Minister for Foreign Affairs and Co-operation of a Member State

I have the honour to acknowledge receipt of your letter No. 03160 of 24 April 1978 concerning the registration, under Article 102 of the Charter, of the Convention on the Agency for Cultural and Technical Co-operation, concluded at The Hague on 20 March 1970.

Your communication raises two questions, concerning (1) the registration procedure itself, and (2) the determination of the date of entry into force of the Convention in view of the uncertainties which at present exist with regard to the effect of a number of signatures.

Registration procedure under Article 102 of the Charter

We have taken note of article 11 of the Convention, which provides that "the Government of the host country for the constituent Conference or the Government of the country in which the Agency will have its seat" shall cause the Convention to be registered with the Secretariat.

In this connexion, it should be noted that, in the case of States Members of the United Nations, the obligation to register stems primarily from Article 102 of the Charter and from the General Assembly regulations to give effect to that Article.[77] Where an agreement—such as the Convention on the Agency—specifically designates an authority responsible for registration, it thereby creates an obligation for that authority, which, assuming that it is a Member of the United Nations, is additional to the obligation already incumbent on it under Article 102 of the Charter; such a designation is not, however, considered to relieve other States Parties which are Members of the United Nations of the obligation laid down in Article 102.

It may also be noted that it has become customary, in the case of multilateral international agreements, to allow registration to be effected by the depositary, the latter being obviously in a better position than the other parties, since the depositary keeps custody of the original text and usually of the instruments. This practice, which had been recommended by the Sixth Committee of the General Assembly at the time of the adoption of the regulations to give effect to Article 102 of the Charter, was sanctioned by the 1969 Vienna Convention on the Law of Treaties,[78] which includes registration among the functions of depositaries (see art. 77 (1) (*g*)).[79]

Determination of the date of entry into force of the Convention

You have also requested an opinion from the Office of Legal Affairs on the question of the date of entry into force of the Convention. The Convention provides, *inter alia*, for definitive signature—in other words, signature without reservation as to ratification—and three States (Chad, Senegal and Upper Volta) did sign it without reservation as to ratification. The depositaries took those three signatures into account for the purpose of the definitive entry into force of the Convention, which was accordingly announced as at 31 August 1970; however, it is apparent from the full powers subsequently communicated to the depositaries or from the subsequent deposit of instru-

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the case of an individual who had been employed by the United Nations in New York for a limited period in 1975. Under the relevant legislation, a claimant must have a minimum of 20 weeks of employment as defined by Federal law in order to establish a valid claim for unemployment insurance benefits. A New York State Department of Labour referee confirmed, by a decision of 15 June 1977, that the claimant's period of employment in the United Nations should be discounted in the computation of the 20-week period of employment required.

[77] General Assembly resolutions 97 (I), 364 B (IV), 482 (V) and 33/141 A.

[78] United Nations Conference on the Law of Treaties, *Official Records*, Documents of the Conference (A/CONF.39/11/Add.2—United Nations publication, Sales No. E.70.V.5), p. 287.

[79] As at 23 August 1979, two additional ratifications were required for the entry into force of the Vienna Convention on the Law of Treaties.

ments of ratification that the Governments concerned intended to sign the Convention subject to ratification. That being the case, there arose the question whether the depositaries should, for the sake of good order, notify interested States that an error had been made in declaring the Convention officially in force as from 30 August 1970, and that it had in fact entered into force on 7 June 1971 (the date on which 10 instruments of ratification or definitive signatures had actually been received).

Difficulties of this kind tend to occur when an agreement provides for the unfortunately uncommon procedure of participation by definitive signature, and the Secretary-General, as depositary of nearly 300 multilateral agreements, has himself encountered such difficulties (see, for example, the annual publication *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions* (ST/LEG/SER.D/11), p. 336, foot-notes 2 and 3).

The main fact which emerges from the information you were good enough to provide to us is that the Convention was signed without reservation as to ratification on behalf of Chad, Senegal and the Upper Volta, as provided for in article 5 (1) (*a*). The production of full powers at the time of signature would no doubt have prevented the subsequent confusion about the real intentions of the Governments concerned; however, it should be noted, firstly, that the production of full powers, while always recommended, does not follow from a peremptory norm of general international law (see in this connexion art. 7, para. 1 of the Vienna Convention on the Law of Treaties), and, secondly, that the depositary Government is always entitled to assume that a formal act by the official representative of a State was done advisedly.

It is also clear that the communication by which the depositaries announced the entry into force of the Convention as at 31 August 1970 did not lead to any objection from the Governments of Chad, Senegal and the Upper Volta. That being so, the three Governments concerned may be considered to have accepted the signatures affixed on their behalf as definitively binding them, even if their original intention was to subject the Convention to domestic ratification procedures.

In conclusion, our opinion is that it is not necessary now to correct the notification by which the depositaries announced the entry into force of the Convention as at 31 August 1970. In the absence of any objection to that notification, the Governments of Chad, Senegal and the Upper Volta may be considered to have retroactively confirmed the definitive signatures effected on their behalf.

11 May 1978

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23. REGISTRATION OF TREATIES WITH THE SECRETARIAT IN ACCORDANCE WITH THE GENERAL ASSEMBLY REGULATIONS TO GIVE EFFECT TO ARTICLE 102 OF THE CHARTER[80]—PRACTICE DEVELOPED BY THE SECRETARIAT WITH A VIEW TO REFLECTING IN THE REGISTER ANY SUBSEQUENT ACTION AFFECTING A REGISTERED TREATY EVEN IN THE ABSENCE OF A CERTIFIED STATEMENT UNDER ARTICLE 2 OF THE REGULATIONS

Extract from a letter to the Permanent Representative of a Member State to the United Nations

. . . reference is made to the Agreement between Brazil and Guyana for air services between and beyond their respective territories, signed at Georgetown on 10 May 1974. The said Agreement provides in its article 15 for the termination of the air transport agreement between Brazil and the United Kingdom, signed at Rio de Janeiro on 31 October 1946, in so far as it applies to Brazil and Guyana (Guyana was included in the terms of the Agreement by an exchange of notes dated 27 June 1952 which was registered under No. 152 on 18 February 1953). In the past, the Secretariat's practice, in the absence of any mention of the termination in the accompanying certification, has been to suggest that the registering party register the termination by means of a certified statement under article 2 of the General Assembly regulations to give effect to Article 102 of the Charter.[80]

A number of Governments have, however, not considered it necessary as a matter of law to do so. In suggesting registration in similar instances the Secretariat has been guided by the usefulness of hav-

[80] General Assembly resolutions 97 (I), 364 B (IV), 452 (V) and 33/141 A.

ing all developments affecting a registered treaty or international agreement reflected in the registration records, which is particularly important in light of the computerization of treaty data now in progress at the Secretariat.

After reviewing its procedures, the Secretariat has concluded that this purpose could be achieved by means of a note originating in the Secretariat which would provide, under the number of the Agreement that has been terminated, the relevant information contained in the new Agreement submitted for registration, in the same way as a certified statement. Thus as regards the agreement in question, the text which will be inserted in the register will read as follows:

"No. 152. Air transport agreement between the Government of the United Kingdom and the Government of Brazil. Signed at Rio de Janeiro on 31 October 1946;

"TERMINATION of the exchange of notes of 27 June 1952 amending the above-mentioned Agreement (*Note by the Secretariat*)

"The Government of Brazil registered on 27 February 1976, an agreement between Brazil and Guyana for air services between and beyond their respective territories, signed at Georgetown on 10 May 1974.

"The said Agreement, which came into force on 4 March 1975, provides in its article 15 for the termination of the Agreement of 31 October 1946 in so far as it applies to Brazil and Guyana.

"*27 February 1976.*"

13 February 1978

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24. QUESTION WHETHER UNILATERAL DECLARATIONS DEPOSITED BY MEMBER STATES IN RESPONSE TO GENERAL ASSEMBLY RESOLUTION 32/64 RELATING TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT CONSTITUTE BINDING UNDERTAKINGS IN INTERNATIONAL LAW

Internal memorandum

1. I understand that the Government of Luxembourg has deposited a declaration in response to General Assembly resolution 32/64 [paragraph 1 of which calls upon all Member States to make unilateral declarations against torture and other cruel, inhuman or degrading treatment or punishment along the lines of the text annexed to the resolution, and to deposit such declarations with the Secretary-General].

2. A number of essentially administrative decisions should now be taken in relation to these instruments, depending in large part on what legal status and effect these are considered to have.

3. An examination of resolution 32/64 shows that the declarations called for by the resolution are to be "deposited . . . with the Secretary-General", a formal term used in treaty practice. However, the model declaration annexed to the resolution[81] would merely have Governments declare their "intention" to comply and to implement, rather than indicate that they "will" or "undertake to" comply and implement. On balance, therefore, the resolution suggests that no binding obligation is intended.

4. An examination of the debates leading to the adoption of the resolution shows that the principal sponsor, India, in introducing the draft resolution (A/C.3/32/L.15) stated that:

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[81] The text of the annex reads as follows:

"Model unilateral declaration against torture and other cruel, inhuman or degrading treatment or punishment

"The Government of . . . hereby declares its intention:

"(*a*) To comply with the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX), annex;

"(*b*) To implement, through legislation and other effective measures, the provisions of the said Declaration."

"the fourth preambular paragraph [of the draft resolution] recognized the need for further international action in the form of a legally binding international convention. The unilateral declarations called for in paragraph 1 would be an expression of the good faith of Governments and their moral commitment to the provisions of the Declaration on Torture" (A/C.3/32/SR.37, para. 27).

In other words, the ultimate goal of a binding convention is contrasted with the immediate object of securing moral commitments. However, in explaining their votes, a number of representatives seemed to suggest that they attributed some legal force to the resolution and/or to declarations made pursuant to it: e.g., France (A/C.3/32/SR.42, para. 21), Togo (*id*, para. 23), the German Democratic Republic (*id*, para. 24), Madagascar, Mali, the United Republic of Cameroon, Benin, Venezuela (*id*, para. 27) and the United Kingdom (*id*, para. 32). Naturally these statements may have been *ex abundanti cautela*. Here again, on balance, the *travaux préparatoires* suggest that no binding obligation was intended.

5. If it is agreed that the declarations have no legal force, then it would seem that they should be dealt with by the Division of Human Rights, perhaps through its Liaison Office here. That Division would then receive the declarations, acknowledge them, keep a running list and prepare the annual report required by paragraph 3 of the resolution.

6. However, should it be concluded that the declarations do have legal force, then they should be dealt with by the Office of Legal Affairs. Indeed, if they are to be considered treaty obligations, they should presumably be dealt with by the Treaty Section in the same way as other instruments deposited with the Secretary-General, in particular those that are unilateral in form (e.g. declarations under Article 36 (2) of the Statute of the International Court of Justice).

13 January 1978

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25. CONVENTION PROVIDING A UNIFORM LAW FOR CHEQUES OF 19 MARCH 1931—QUESTION WHETHER A STATE PARTY TO THE CONVENTION MAY, SUBSEQUENT TO THE DEPOSIT OF ITS INSTRUMENT OF ACCESSION, MAKE RESERVATIONS WHICH UNDER THE TERMS OF THE CONVENTION MAY BE MADE ONLY AT THE TIME OF ACCESSION OR RATIFICATION—PROCEDURE WHEREBY THE PROPOSED RESERVATIONS WOULD BE COMMUNICATED TO THE STATES PARTIES AND CONSIDERED TO HAVE TAKEN EFFECT, IN THE ABSENCE OF ANY OBJECTION, UPON THE EXPIRY OF 90 DAYS FROM THE DATE OF COMMUNICATION

Letter to the Permanent Mission of a Member State to the United Nations

1. I have the honour to refer to our recent conversations concerning the Convention providing a Uniform Law for Cheques of 19 March 1931,[82] for which the United Nations performs the Secretariat functions previously entrusted to the Secretary-General of the League of Nations as depositary.

2. You stated that your Government was considering including in its next finance bill, with a view to minimizing tax evasion, provisions curtailing the freedom to endorse cheques which would be consistent with article 7 of annex II of the Convention (reservations permitted to articles 5 and 14 of the Uniform Law). The situation is that your country acceded to the Convention on 27 April 1936 without making the reservation in question, whereas the second paragraph of article I of the Convention provides that such a reservation may be made only at the time of ratification or accession (in contrast with what the third paragraph of article I prescribes in the case of the reservations referred to in articles 9, 22, 27 and 30 of annex II, which may be notified after ratification or accession). Your Government, having considered denouncing the Convention and then reacceding to it with the requisite reservations, wonders whether it would not be possible to employ a simpler procedure, which would involve submitting its proposed reservation for the unanimous approval of the parties—i.e., the States for which the Convention is in force.

[82] League of Nations, *Treaty Series*, vol. CXLIII, p. 355.

3. Although our review of the practice of the Secretary-General has not thus far brought to light any exactly identical case, such a situation is not without precedent. For instance, article 20 of the Customs Convention on the temporary importation of packings of 6 October 1960,[83] which was deposited with the Secretary-General of the Customs Co-operation Council, provides that any Contracting Party may, at the time of signing and ratifying the Convention, declare that it does not consider itself bound by article 2 of the Convention. Switzerland, which had ratified the Convention on 30 April 1963, made a reservation on 21 December 1965, which was submitted by the depositary to the States concerned and, in the absence of any objection, was considered accepted with retroactive effect to 31 July 1963.

4. The procedure described above appears to be fully in accord with the general principle that the parties to an international agreement may, by unanimous decision, amend the provisions of an agreement or take such measures as they deem appropriate with respect to the application or interpretation of that agreement. In fact, this procedure has already been followed with respect to the 1931 Convention itself in connexion with the acceptance for deposit of the instruments of ratification of Germany, Greece, the Netherlands and Portugal, which had been received after 1 September 1933, the date stipulated in article IV (see *Multilateral Treaties in respect of which the Secretary-General performs Depositary Functions* (ST/LEG/SER.D/11), p. 584, foot-note with asterisk).

5. Consequently, it would appear that your Government could address to the Secretary-General, over the signature of the Minister for Foreign Affairs, a letter communicating the proposed reservation together with an indication of the date, if any, on which it is decided that it should take effect. The proposed reservation would be communicated to the States concerned (States parties, Contracting States and signatory States) by the Secretary-General and, in the absence of any objection by States parties within 90 days from the date of that communication (the period traditionally set, according to the practice of the Secretary-General, for the purpose of tacit acceptance and corresponding, in the present case, to the period specified in the third paragraph of article I of the Convention for acceptance of the reservations referred to in articles 9, 22, 27 and 30 of annex II), the reservation would be considered to take effect on the date indicated. It may be deemed advisable, when communicating the reservation, to include a brief statement of the reasons for which it is being made.

14 September 1978

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

1. INTERNATIONAL LABOUR ORGANISATION

MEMORANDUM ON THE MIGRANT WORKERS (SUPPLEMENTARY PROVISIONS) CONVENTION, 1975 (NO. 143)

The following memorandum, dealing with the interpretation of an international labour Convention, was drawn up by the International Labour Office at the request of a Government:

Memorandum on the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), drawn up at the request of the Government of the Federal Republic of Germany, 30 January 1979. Document GB. 210/16/1; 210th session of the Governing Body, May-June 1979.

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[83] United Nations, *Treaty Series*, vol. 473, p. 131.

2. WORLD BANK

MEANING OF ARTICLE 2, SECTIONS 2 (*a*) AND 9 (*a*) AND (*b*) OF THE BANK'S ARTICLES OF AGREEMENT[84] UPON THE ENTRY INTO FORCE OF THE SECOND AMENDMENT TO THE ARTICLES OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND

Opinion of the General Counsel[85]

I

1. Article II, Section 2 (*a*) provides as follows:

"The authorized capital stock of the Bank shall be $10,000,000,000, in terms of United States dollars of the weight and fineness in effect on July 1, 1944. The capital stock shall be divided into 100,000 shares having a par value of $100,000 each, which shall be available for subscription only by members."

The Bank's authorized capital is expressed in terms of "United States dollars of the weight and fineness in effect on July 1, 1944" (hereafter "1944 dollars"), and so is the "par value"[86] of the shares into which the capital is divided. Article II, Sections 3 and 4, govern the terms and conditions under which members are obliged and entitled, respectively, to subscribe to shares of the Bank's capital stock and such subscriptions have at all times been, and still are, expressed in 1944 dollars. Article II, Section 7(*i*) provides that two per cent of "the price of each share" (which is expressed in 1944 dollars) is payable in gold or United States dollars and eighteen per cent in the currency of the subscribing member. Equally, Section 7(*iii*) provides with respect to calls on the eighty per cent portion of subscriptions that payments on such calls "shall be made in amounts equal in value to the member's liability under the call". And the text continues: "This liability shall be a proportionate part of the subscribed capital stock of the Bank as authorized and defined in Section 2 of this Article", i.e. in terms of the 1944 dollar.

2. Thus, under the provisions of the Bank's Articles with respect to capital subscriptions and payment for shares, the 1944 dollar is the measure of value for all currencies, including the current United States dollar. Accordingly, after the devaluation of the United States dollar in 1972, and again in 1973, payments of subscriptions on account of the two per cent portion payable in United States dollars were made in amounts calculated to be the equivalent of the 1944 dollar in which such subscriptions were expressed. The calculation was based on the IMF par value of the United States dollar on the relevant date compared to the 1944 dollar.

3. Article II, Section 9 (*a*) and (*b*), provides as follows:

"(*a*) Whenever (i) the par value of a member's currency is reduced or (ii) the foreign exchange value of a member's currency has, in the opinion of the Bank, depreciated to a significant extent within that member's territories, the member shall pay to the Bank within a reasonable time an additional amount of its own currency sufficient to maintain the value, as of the time of initial subscription, of the amount of the currency of such member which is held by the Bank and derived from currency originally paid into the Bank by the member under Article II, Section 7(*i*), from currency referred to in Article IV, Section 2 (*b*), or from any additional currency furnished under the provisions of the present paragraph, and which has not been repurchased by the member for gold or for the currency of any member which is acceptable to the Bank."

"(*b*) Whenever the par value of a member's currency is increased, the Bank shall return to such member within a reasonable time an amount of that member's currency equal to the increase in the value of the amount of such currency described in (*a*) above."

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[84] This opinion has been submitted to the President and the Executive Director of the World Bank. The Executive Director has not yet acted on the matter.

[85] United Nations, *Treaty Series*, vol. 2, p. 134.

[86] "Par value" is used here in the meaning of face value, as in Article II, Section 4 ("Shares . . . shall be issued at par"), and Article V, Section 12, dealing with notes issued in substitution of the paid-in local currency portion of subscriptions (". . . notes . . . which shall be non-negotiable, non-interest bearing and payable at their par value . . .").

4. The Bank's maintenance of value provisions becomes operative upon certain changes in "par value" and "foreign exchange value within [its] territories", terms derived from and to be understood in the context of the Fund Articles. Article IV, Section 1 of the Fund Articles provides that the "par value" of the currency of each member shall be expressed "in terms of gold as a common denominator" (direct gold link) or "in terms of the United States dollar of the weight and fineness in effect on July 1, 1944" (indirect gold link).[87] Transactions in gold by members must take place within prescribed margins above or below par value (Article IV, Section 2) and members are required to observe prescribed margins around "parity" (the relationship between par values) for exchange transactions within their territories (Article IV, Sections 3 and 4). As distinguished from "par value" which is fixed, directly or indirectly, in terms of gold, and "parity" which is the fixed relationship between the par values of any two or more currencies, the "foreign exchange value" of a currency in terms of any other currency is a *de facto* relationship which may deviate from "parity", and if a significant deviation (depreciation) has occurred in the opinion of the Fund, maintenance of value payments will be called for. The Bank's Article II, Section 9 is to the same effect.[88]

II

5. On April 30, 1976, the Board of Governors of the Fund approved proposed modifications of the Fund Articles (hereafter "Second Amendment") which will become effective when they shall have been accepted by three-fifths of the members, having four-fifths of the total voting power.[89]

6. On the effective date of the Second Amendment, par values will cease to exist and there will no longer be an official price for gold. Fund quotas and the value of the Fund's assets in the accounts of the General Department will be expressed in terms of the SDR (new Articles III, Section 1 and V, Section 10). A par value system may be reintroduced by an 85 per cent majority of total voting power (new Article IV, Section 4), but the common denominator of par values shall not be gold or a currency and no member is required to establish a par value (new Schedule C, paras. 1 and 3).

7. The maintenance of value provisions under the Second Amendment (new Article V, Section 11) no longer mention "gold value", "par value" or "foreign exchange value". The value of currencies is to be maintained in terms of the special drawing right.[90]

8. Under Article XXI, Section 2 of the existing Fund Articles, as amended in 1969 on the occasion of the introduction of the special drawing rights, the unit of value of the special drawing right is equivalent to 0.888671 gram of fine gold, i.e. the gold content of the 1944 dollar. New Fund Article XV, Section 2, provides that the method of valuation of the special drawing right shall be determined by the Fund.

9. The present method of valuation of the SDR is set out in Fund Rule 0-3 as follows:

> "(*a*) For the purpose of determining the exchange rate in terms of special drawing rights for a currency provided in a transaction between participants or involved in a conversion associated with such a transaction one special drawing right shall be deemed to be equal to the sum of:
>
> US dollar 0.40
> Deutsche mark 0.38

[87] The language in the initial Bretton Woods Fund draft was "gold or gold-convertible currency". This was changed to the present text, since in 1944 no (prospective) member, including the United States, converted its currency into gold without restriction.

[88] While the Fund and Bank Articles expressly prescribe only maintenance of value payments by members in case of *de facto* depreciation, both institutions have decided that they are permitted to make such payments to members in case of *de facto* appreciation (Fund, Executive Directors' Decision No. 321-(54/32), as amended; Bank, R59-45 of May 27, 1959, approved June 16, 1959 (SM 59-15) and R73-42 of March 9, 1973, approved March 16, 1973 (M73-13)).

[89] The "Second Amendment" came into force on 1 April 1978 (see *supra*, p. 100 of this *Yearbook*).

[90] The full text is "in terms of the special drawing right in accordance with exchange rates under Article XIX, Section 7 (*a*)". The reference to the latter provision means that computations must be made on the basis of the rates (in terms of the SDR) for each currency determined for the purposes of transactions in special drawing rights (at present according to Rule 0-3).

Pound sterling	0.045
French franc	0.44
Japanese yen	26
Canadian dollar	0.071
Italian lira	47
Netherlands guilder	0.14
Belgian franc	1.6
Swedish krona	0.13
Australian dollar	0.012
Danish krone	0.11
Norwegian krone	0.099
Spanish peseta	1.1
Austrian schilling	0.22
South African rand	0.0082

"(*b*) One special drawing right in terms of the United States dollar shall be equal to the sum of the equivalents in United States dollars of the amounts of the currencies specified in (*a*) above calculated on the basis of exchange rates established in accordance with procedures decided from time to time by the Fund.

"(*c*) One special drawing right in terms of a currency other than the United States dollar shall be determined on the basis of the rate of the special drawing right in terms of the United States dollar as established in accordance with (*b*) above and an exchange rate for that currency determined as follows:

"(i) for the currency of a member having an exchange market in which the Fund finds that a representative rate for spot delivery for the United States dollar can be readily ascertained, that representative rate;

"(ii) for the currency of a member having an exchange market in which the Fund finds that a representative rate for spot delivery for the United States dollar cannot be readily ascertained but in which a representative rate can be readily ascertained for spot delivery for a currency as described in (i), the rate calculated by reference to the representative rate for spot delivery for that currency and the rate ascertained pursuant to (i) above for the United States dollar in terms of that currency;

"(iii) for any other currency, a rate determined by the Fund."

10. Pursuant to paragraph 6 of new Schedule B the method of valuation in effect at the date of the amendment, i.e. the "basket" adopted in June 1974, described in the previous paragraph, will continue in effect until changed in accordance with Article XV, Section 2.[91] Thus, no action by the Fund is required with respect to the valuation of the SDR upon the Second Amendment becoming effective. The then existing "basket" remains in effect.

11. Determination of a new valuation of the SDR requires a 70% majority of the total voting power, except that a change in the principle of valuation or a fundamental change in the application of the principle in effect requires an 85 per cent majority of the total voting power.[92] The Fund Report does not explain, by example or otherwise, what is meant by "change in the principle of valuation" and "fundamental change in the application of the principle". A special majority is not prescribed for deciding whether a proposed change requires the lower or the higher majority, and therefore that decision can be taken by a majority of the votes cast.[93]

[91] See Report by the Executive Directors of the Fund on the Proposed Second Amendment of the Fund Articles (hereafter "Fund Report"), chap. II, Q, para. 1.

[92] If the valuation of the SDR is to be regarded as a matter pertaining to both the (newly named) General Department and Special Drawing Rights Department, the required majorities would have to be obtained both among members (for the former) and "participants" (for the latter). However, since the total voting power of participants cannot be higher than that of members, in practice the majority of total voting power of members is what matters (new Article XXI (*a*) (iii) and Fund Report, Chapter II, Q, para 1).

[93] See Fund Report, chap. II, Q, para. 1.

III

12. As noted in Part I of this Opinion, the gold content of the United States dollar on July 1, 1944 was established by the Articles of Agreement as the unit of value in which the size of the authorized capital stock of the Bank and the share of each member in the capital stock is expressed and, as a consequence, is the common denominator and standard of value for determining in terms of the relevant currency the obligation of each member to make payments on account of the paid-in and callable portions of its subscription, as well as the mutual obligations of each member and the Bank to maintain the value of the 18 per cent portion of that member's subscription paid in its own currency.

13. Section 2 (*a*) of Article II of the Bank's Articles was drafted in the context of the monetary system established at Bretton Woods which gave a central place to gold. Under the Fund's Articles par values for members' currencies are to be expressed in terms of gold or of the 1944 dollar. As noted in Part II of this Opinion, upon the coming into effect of the Second Amendment (i) the function of gold as the common denominator of the par value system will be eliminated, (ii) the official price of gold will be abolished and (iii) currencies of members will no longer have par values and, if at some future time the Fund permits the re-establishment of par values, gold will not be the common denominator. Consequently, there will no longer be any official basis for relating the value of any member's currency to the gold content of the United States dollar in effect on July 1, 1944.

14. Thus, one would be led to conclude that on the effective date of the Second Amendment all direct and indirect references in the Bank's Articles of Agreement to share capital denominated in terms of 1944 dollars will cease to have any operative meaning. But such a conclusion is unacceptable since it would leave the Bank without an effective basis for valuing its capital stock which is crucial for its continued operation.

15. It is my opinion that it is indispensable to give the term "1944 dollar" in Article II, Section 2 (*a*) some meaning which will permit it, upon the effectiveness of the Second Amendment, to be applied for the purposes which it is to serve in the Bank's Articles. It is further my opinion that as a matter of law the proper meaning to be assigned to the term "United States dollar of the weight and fineness in effect on July 1, 1944" is "the unit of value of the special drawing right as determined by the International Monetary Fund".

16. When special drawing rights were first introduced in the Fund Articles in 1969, their unit of value was a quantity of gold equal to the gold content of the 1944 dollar. In 1974 the Fund proceeded to define the special drawing right in terms of a basket of currencies.[94] This basket was composed in such a manner as to produce an initial value for the special drawing right translated into United States dollars equal to the gold value of the 1944 dollar and the gold value of the special drawing right, namely $1.20635. This leads me to the conclusion that the special drawing right as so defined, or as it may be subsequently defined under the Fund Agreement, must be regarded as the equivalent in the reformed monetary system of the 1944 dollar.

17. This conclusion is reinforced by considering the only other practical meaning to be given to the term "United States dollar of the weight and fineness in effect on July 1, 1944", namely that of 1.20635 current United States dollars, the equivalent of the 1944 dollar calculated by reference to the last IMF par value for the United States dollar. The argument in support of such an interpretation would have to be that the Bank's Articles were based on a system of par values, that par values will be abolished by the Second Amendment of the Fund Articles and that the unit of the Bank's capital should therefore be fixed at the last amount which can be derived from the application of the par value system. Such an interpretation would seem to me to be inconsistent with the consensus regarding the reform of the monetary system which is reflected in the Second Amendment, which does away with both gold and any single national currency as a standard of value. To substitute a quantity of current dollars for the 1944 dollar would, on the contrary, substitute for a reference unit of value for all member currencies (namely the 1944 dollar), the currency unit of one member, namely the

[94] "This way of determining gold value for the purpose of applying the provisions of the Articles was adopted by the Fund when members ceased to maintain effective par values for their currencies and there was no longer any member that bought and sold gold freely for the settlement of international transactions" (Fund Report, p. 37).

current United States dollar. This would mean a radical change in the existing mutuality of rights and obligations of members with respect to maintenance of value. Every movement in the rate of exchange between the United States dollar and another member's currency would give rise to an obligation either of the other member to make additional payments to the Bank, or of the Bank to make refunds to the member, but there would be no maintenance of value obligations running from the United States to the Bank or vice versa. For these reasons I consider that such an interpretation could not be justified as a matter of law.

18. Having concluded that references to the 1944 dollar must be taken to mean references to the unit of value of the special drawing right upon the effectiveness of the Second Amendment, the meaning of Article II, Section 9 (*a*) and (*b*) can be determined without difficulty. That provision calls for maintenance of value payments by the member upon a decrease in the par value of its currency or a finding by the Bank that the foreign exchange value of its currency has depreciated to a significant extent within its territories and, as interpreted by the Bank, obliges the Bank to make maintenance of value payments to the member in case of an increase in par value and permits such payments to be made in case of *de facto* appreciation. As has been noted, upon the effectiveness of the Second Amendment there will be no par value and in the absence of par values the expression "foreign exchange value" of which Article II, Section 9 speaks in terms of a departure from par value has lost its original meaning. Under the new Fund maintenance of value provision (new Article V, Section 11) the event that gives rise to an adjustment of currency holdings is a change in the value of a currency in terms of the special drawing rights. It seems clear that Article II, Section 9 of the Bank's Articles must be read as providing for maintenance of value in terms of that same SDR value which has taken the place of "par value". It seems equally clear that Article II, Section 9 should, therefore, be read as making maintenance of value payments mandatory in case of both decreases and increases in SDR value.

Conclusions

19. Upon the coming into effect of the Second Amendment to the Articles of Agreement of the International Monetary Fund:

(*a*) Article II, Section 2 (*a*) of the Bank's Articles of Agreement must be read to mean that the capital stock of the Bank and its shares are defined in terms of the special drawing right of the International Monetary Fund, as determined from time to time by the Fund, on the basis of one such special drawing right for one United States dollar of the weight and fineness in effect on July 1, 1944.

(*b*) The mutual obligations of each member and the Bank to maintain the value of holdings of the member's currency under, and within the limits of, Article II, Section 9 (*a*) and (*b*) of the Bank's Articles of Agreement will be measured by the value of that currency in terms of the special drawing right at any given time.

17 February 1978

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

[No decision or advisory opinion from international tribunals on questions relating to the United Nations and related intergovernmental organizations to be reported for 1978.]

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. Sweden

NOTE DATED 23 JULY 1979 FROM THE PERMANENT MISSION OF SWEDEN TO THE UNITED NATIONS

. . .

The Swedish court of accounts has dealt with a couple of cases regarding taxation of Swedish citizens in the service of the United Nations peace-keeping operations in Cyprus and the Middle East. These cases have been primarily concerned with such questions as tax deduction for costs incurred to the person in question as a consequence of his service and have not dealt with the issue of whether a Swedish citizen in the service of a United Nations peace-keeping operation should be taxed in Sweden. Swedish taxation legislation has been deemed applicable. Below follows a resumé of relevant considerations.

1. Swedish citizens in the service of United Nations peace-keeping operations are employed through an agreement with a representative of the State of Sweden. They are consequently to be taxed in Sweden whether or not they are to be considered as living in the realm in accordance with Swedish legislation (article 53 para. 1 (*a*)) of the municipal taxation law, and article 6 para 1 (*a*)) of the state income tax law).

2. The so-called one-year rule (article 54 (*h*)), meaning that Swedish citizens working abroad in certain cases shall not be considered Swedish tax subjects, does not apply to employees of the State of Sweden.

3. International agreements to which Sweden is a party concerning immunities and privileges of representatives of the United Nations and other organizations do not apply to the above-mentioned category of employees.

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2. United States of America

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

PERLITA DIZA WINTHAL AND NATIVIDAD DIZA *v.* RUBEN MENDEZ, MRS. RUBEN MENDEZ, I.G. PATEL AND MRS. I. G. PATEL: DECISION OF 18 APRIL 1978[1]

Action instituted by household employees of United Nations officials, admitted in the United States under a G-5 visa—Question whether local minimum wage law should be deemed to apply to such non-immigrant aliens—Differentiation made by the United States Congress with respect to employment of non-immigrant aliens between diplomatic or semi-diplomatic and non-diplomatic employers—Question whether all aliens are entitled to enjoy all the advantages of citizenship.

The plaintiffs, both citizens of the Philippines, were household employees of the Mendezes and Patels, respectively. Both had come to the United States under a special temporary visa ("G-5")

[1] In connexion with this case see *Juridical Yearbook*, 1976, p. 230.

which permitted their entry solely for the purpose of such employment. They *inter alia* alleged that the conditions under which they worked violated the New York State Minimum Wage Act and that they had been denied the same rights to sell personal property and to make and enforce contracts as are enjoyed by white United States citizens, in violation of the thirteenth amendment and title 42 of the United States Code, §1981.

The Court granted an application to dismiss the action as to defendants I. G. Patel and Mrs. Patel. It noted that I. G. Patel was Deputy Administrator of the United Nations Development Programme, which rank was equivalent to an Under-Secretary-General of the United Nations, and that he and his wife had been granted on 21 February 1973 diplomatic privileges and immunities by the United States Department of State. The Court accordingly declared service upon them as void pursuant to 22 U.S.C. § 252.

The Court examined the question whether, although they were non-immigrant aliens in the United States on special temporary visas, the plaintiffs came within the protection afforded by New York's Minimum Wage Act. It referred in this connexion to a recent decision of a Maryland state court (*Torres-Monterroso* v. *Blanco*, Cir. Ct. Montgomery County, Md. 27 Sept. 1977) in which the Court had held that "Congress has accorded to foreign diplomatic or semi-diplomatic officials . . . the privilege of bringing into and employing in this country non-immigrant aliens who are attendants, servants and personal employees, free of any minimum wage requirements". The Court further pointed out that once the United States Congress had regulated in a certain area, States were no longer free to legislate as if they were writing on a clean slate. It recalled that while pursuant to 8 U.S.C. § 1101 (*a*) (15) (H) (ii), non-diplomatic employers were allowed to employ non-immigrant aliens in the United States only if unemployed persons capable of performing such service or labour could not be found locally, no such proviso obtained to the employment of non-immigrant aliens by foreign diplomatic or semi-diplomatic officials (See 8 U.S.C. § 1101 (*a*) (15) (G) (v). Since the United States Congress had clearly differentiated the conditions under which diplomatic employers on the one hand, and non-diplomatic employers, on the other hand, were allowed to employ non-immigrant aliens in the United States, New York State could not create its own limitations on the employment by United Nations officials of persons such as the plaintiffs.

With respect to the claim that the conditions under which the plaintiffs had performed their services had deprived them of the same rights enjoyed by white United States citizens, the Court referred to a decision of the United States Supreme Court (*Mathews* v. *Diza*, 426 U.S. 67, 78 (1976)) which rejected the notion "that all aliens are entitled to enjoy all the advantages of citizenship . . ." pointing out that

"Neither the overnight visitor, the unfriendly agent of a hostile foreign power, the resident diplomat nor the illegal entrant can advance even a colorable constitutional claim to a share in the bounty that a conscientious sovereign makes available to its own citizens and *some* of its guests. The decision to share that bounty with our guests may take into account the character of the relationship between the alien and this country: Congress may decide that as the alien's tie grows stronger, so does the strength of his claim to an equal share of that munificence."

The Court noted that the plaintiffs' relationship to the United States was minimal: they had been admitted to that country on special temporary visas that permitted them to remain there throughout the duration of their employment and they were in the United States solely for that employment with no expectation of future residency or citizenship. The Court therefore held that the plaintiffs' rights had not been violated by New York's failure to afford them the protection of its minimum wage laws.[2]

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[2] The dismissal of the plaintiffs' federal claims mandated the dismissal of the claims based on New York's Minimum Wage Act so that even if it had been accepted that the plaintiffs were included within the protection of the New York statute, the claim could not have been raised in this court.

Part Four

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LEGAL BIBLIOGRAPHY OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

MAIN HEADINGS

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C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS
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A. INTERNATIONAL ORGANIZATIONS IN GENERAL
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МЕЖДУНАРОДНЫЕ ОРГАНИЗАЦИИ В ЦЕЛОМ
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B. UNITED NATIONS
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C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS
ORGANISATIONS INTERGOUVERNEMENTALES RELIÉES À L'ORGANISATION DES NATIONS UNIES
МЕЖПРАВИТЕЛЬСТВЕННЫЕ ОРГАНИЗАЦИИ, СВЯЗАННЫЕ С ОРГАНИЗАЦИЕЙ ОБЪЕДИНЕННЫХ НАЦИЙ
ORGANIZACIONES INTERGUBERNAMENTALES RELACIONADAS CON LAS NACIONES UNIDAS

1. *Particular organizations*
Ouvrages concernant certaines organisations
Отдельные организации
Organizaciones particulares

Food and Agriculture Organization of the United Nations
Organisation des Nations Unies pour l'alimentation et l'agriculture
Продовольственная и сельскохозяйственная организация Объединенных Наций
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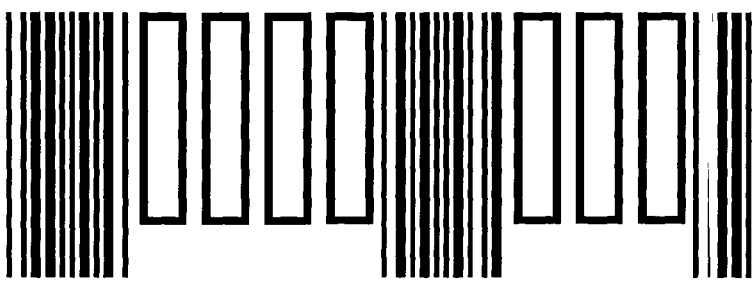

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