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INTERGOVERNMENTAL COMMITTEE OF THE  
WHOLE TO DRAW UP A CONSTITUTION FOR  
UNIDO AS A SPECIALIZED AGENCY

Second Session

Vienna, 22 March - 2 April 1976

IN/SA COLLECTION

WORKING RESUME  
OF THE SECOND SESSION OF THE INTERGOVERNMENTAL COMMITTEE  
OF THE WHOLE TO DRAW UP A CONSTITUTION FOR UNIDO  
AS A SPECIALIZED AGENCY

## CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
Introduction . . . . .		3
<u>Chapter</u>		
I. ATTENDANCE AND ORGANIZATION OF WORK OF THE SECOND SESSION . . . . .	1-25	4
II. PRELIMINARY VIEWS ON THE DRAFT CONSTITUTION (A/10202) . . . . .	26-94	10
III. CONCLUSION OF THE SECOND SESSION . . . . .	95-102	24

### NOTE BY THE RAPPORTEUR

At its eleventh meeting, on 15 January 1976, the Committee decided, in accordance with a suggestion put forward by the Chairman, that the Rapporteur, on his own responsibility, should prepare a working resumé covering the proceedings at each session of the Committee; such a resumé would be without prejudice to the form and contents of the official report to be adopted at the end of the Committee's work. The present document constitutes therefore the provisional working resumé of the second session, as prepared by the Rapporteur. It is subject to amendments and corrections by delegations who feel that their views have not been adequately expressed.

The tabulated syntheses of the views and proposals advanced in the Contact Group during the second session of the Intergovernmental Committee of the Whole to Draw Up a Constitution for UNIDO as a Specialized Agency, referred to in paragraph 99 of the present working resumé, will appear at a later date as an addendum to the present document.

## Introduction

The General Assembly of the United Nations, at its seventh special session, endorsed the Lima Declaration and Plan of Action,<sup>1/</sup> including the recommendation of the Lima Conference to convert the United Nations Industrial Development Organization into a specialized agency<sup>2/</sup> and decided to establish an intergovernmental committee of the whole, including States that had participated in the Lima Conference, to meet at Vienna to draw up a constitution for UNIDO as a specialized agency; the constitution that would be drawn up by the Committee would be submitted to a conference of plenipotentiaries, to be convened by the Secretary-General in the last quarter of 1976.<sup>3/</sup>

On the basis of the General Assembly's decision, the Secretary-General invited all States to participate in the Committee on the Drafting of a Constitution for UNIDO, the first session of which he convened on 7 January 1976.<sup>4/</sup> He also invited specialized agencies, intergovernmental organizations, non-governmental organizations and other entities that had been invited to participate in the Lima Conference to send observers to the Committee.<sup>5/</sup>

The Intergovernmental Committee of the Whole to Draw Up a Constitution for UNIDO as a Specialized Agency held its first session at Vienna, Austria, from 7 to 19 January 1976. The Committee held 14 plenary meetings during the first session.<sup>6/</sup>

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<sup>1/</sup> A/10112, annex, chap. IV.

<sup>2/</sup> General Assembly resolution 3362 (S-VII), section IV, para. 1 (16 September 1975).

<sup>3/</sup> Ibid., para. 9.

<sup>4/</sup> A/10395, para. 2.

<sup>5/</sup> Ibid., para. 3.

<sup>6/</sup> A working resumé of the first session of the Committee was issued as document A/AC.180/L.4.

## I. ATTENDANCE AND ORGANIZATION OF WORK OF THE SECOND SESSION

1. The Intergovernmental Committee of the Whole to Draw Up a Constitution for UNIDO as a Specialized Agency held its second session at Vienna, Austria, from 22 March to 2 April 1976. The Committee held four plenary meetings during the second session.

Attendance

2. Representatives of the following 77 States, States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency took part in the second session of the Committee:

Algeria	Mauritania
Argentina	Mexico
Australia	Morocco
Austria	Nepal
Belgium	Netherlands
Brazil	New Zealand
Bulgaria	Niger
Byelorussian Soviet Socialist Republic	Nigeria
Canada	Norway
Chile	Oman
China	Pakistan
Colombia	Panama
Cuba	Peru
Czechoslovakia	Philippines
Denmark	Poland
Ecuador	Portugal
Egypt	Qatar
Finland	Republic of Korea
France	Romania
German Democratic Republic	Somalia
Germany, Federal Republic of	Spain
Ghana	Sri Lanka
Greece	Sweden
Holy See	Switzerland
Hungary	Thailand
India	Trinidad and Tobago
Indonesia	Tunisia
Iran	Turkey
Iraq	Uganda
Ireland	Ukrainian Soviet Socialist Republic
Israel	Union of Soviet Socialist Republics
Italy	United Kingdom of Great Britain and Northern Ireland
Ivory Coast	United Republic of Cameroon
Jamaica	United States of America
Japan	Upper Volta
Lebanon	Venezuela
Libyan Arab Republic	Yugoslavia
Madagascar	Zaire
Malaysia	

3. The United Nations Secretariat was represented as follows:

Mr. Abd-El Rahman Khane, Representative of the Secretary-General,  
Executive Director of UNIDO

Mr. Erik Suy, Under-Secretary-General, the Legal Counsel

Mr. Helmut Debatin, Assistant Secretary-General, Controller

Mr. Paul Szasz, Senior Legal Officer, General Legal Division

Mr. Almamy Sylla, Executive Secretary of the Committee

Mr. Rolf Kloepzig, Legal Liaison Officer, UNIDO

4. Observers from the following intergovernmental organizations and the following specialized agency also attended:

European Economic Community (EEC)

Industrial Development Centre for Arab States (IDCAS)

Organisation for Economic Co-operation and Development (OECD)

World Intellectual Property Organization (WIPO)

5. Observers from the following international non-governmental organizations also participated:

International Association of Crafts and Small and Medium-Sized Enterprises (UIAPME)

International Council of Societies of Industrial Design (ICSID)

International Institute for Industrial Planning (III)

International Union of Architects (IUA)

Latin American Association of Finance Development Institutions (ALIDE)

Society for Chemical Industry (SCI)

International Savings Banks Institute (ISBI)

Opening of the second session

6. On 22 March 1976, at the 15th plenary meeting of the Committee, the Chairman, Ambassador Amrik S. Mehta, opened the second session of the Committee.

Statement by the Chairman

7. Ambassador Mehta recalled the substantial progress that had been made at the first session of the Committee. He expressed his appreciation of the preparation by the Secretariat of a paper (A/AC.180/CRP.2) containing a comparative study of the provisions of the draft Constitution prepared by the Secretary-General of the United Nations and the corresponding provisions in the working papers of the

Group of 77 and Group B. He expressed the hope that the Committee would also have the benefit, during the current session, of the detailed views of the group of socialist countries on the individual provisions of the draft Constitution. He acknowledged with thanks the paper brought out by the Secretariat containing a comparative analysis of the provisions of the constitutions of several specialized agencies (A/AC.180/CRP.1), in response to his proposal made during the first session of the Committee, and expressed his appreciation for the co-operation and assistance displayed by the Secretariat.

8. He said that the debate during the first session of the Committee and the informal working papers of the Group of 77 and of Group B had revealed many areas of agreement and relatively few areas of disagreement and were favourable presages for the work of the Committee during the current and future sessions. He said he was sure that, given the co-operative spirit and atmosphere of goodwill which had prevailed during the first session of the Committee, it should be able to make rapid progress and complete the task entrusted to it by the General Assembly within the set time-frame.

9. Ambassador Mehta stressed that there was cause for optimism that the Committee should be able to prepare a set of statutes for the new specialized agency that would provide a solid framework for the future activities of that agency and that would also have the widest acceptability.

Statement by the Executive Director

10. Following the opening speech of the second session by the Chairman, the Executive Director of UNIDO, Mr. Abd-El Rahman Khane made a brief statement welcoming the members of the Committee on behalf of the Secretary-General of the United Nations. He drew attention to the historic purpose of the meetings and expressed hope that the second session would be characterized by a similar spirit of constructive co-operation as that which prevailed during the first session.

11. The Executive Director said that there appeared to be an objective recognition by all concerned that the current world situation called for new structures in international relations and that augured well for the work of the Committee. Another promising sign was the exchange of working documents at the first session between the different groups; he said he hoped that the Committee would continue its work in that spirit.

12. On behalf of the Secretary-General and the staff of the UNIDO Secretariat, he wished the Committee success in its undertaking, and said that the work of the Committee would be followed by all with great interest. He assured the Committee of the full support and co-operation of the Secretariat.

#### Organization of work

13. In his opening statement at the 15th plenary meeting, on 22 March 1976, the Chairman recalled the agreement reached during the first session on the broad pattern of work for the current and subsequent sessions of the Committee. Since preliminary consideration of the Preamble and Chapter I of the draft Constitution had already been completed, the Chairman suggested that it would be feasible to set up the Contact Group which, under his Chairmanship, could begin the task of negotiating the texts of the individual draft articles. Once the composition of the Group had been agreed upon, it would be left to the regional groups to nominate their representatives on the Contact Group. Delegations not represented on the Contact Group might attend the meetings as observers.

14. The Chairman continued that, during the present session, concentration would primarily be directed on negotiations in the Contact Group, though plenary meetings would be held from time to time to continue preliminary consideration of the remaining chapters of the draft Constitution. As a broad area of agreement had already been reached among the various groups with regard to Chapter II, the Chairman proposed that it be remitted, together with the Preamble and Chapter I, to the Contact Group for finalization, unless representatives had new observations to make on those chapters.

15. The Chairman said that although it did not seem likely that final agreement would be reached on all the important aspects to be discussed during the current session, the Committee could hopefully proceed with the finalization of those provisions where agreement would be possible without too much difficulty, reserving the more controversial aspects for further negotiations in later sessions. He stressed that the work of the Committee depended upon the spirit of constructive co-operation, goodwill and mutual accommodation on the part of the representatives; he urged the members of the Committee to keep that spirit alive and to contribute the maximum to the success of the deliberations and negotiations during the current session.

16. At the 16th plenary meeting, on 23 March 1976, the Chairman announced that, following informal consultations, agreement had been reached on the composition of a Contact Group. The Group would consist of 36 members: 18 from the Group of 77, 11 from Group B, 6 from Group D, and China. It was understood, said the Chairman, that the composition of the Contact Group was not to be regarded as a precedent for the composition of any other contact groups or bodies to be established in the future.

17. The representative of the Union of Soviet Socialist Republics, supported by the representative of Czechoslovakia, inquired as to the grounds on which one State had been appointed to the Contact Group on an individual basis, in violation of established procedures for the election of the members of the Organization to various bodies and groups. In the opinion of his delegation, the granting of special rights to one State created a serious precedent and was inconsistent with the spirit and letter of equitable distribution.

18. The representative of China stressed the willingness of his delegation to participate in the contribution to the work of the Contact Group. As a member of UNIDO, China was entitled to participate in all the Organization's activities. As China did not belong to any geographical group, it had to participate on an individual basis, as it had, in fact, already done during the sixth special session of the General Assembly and during the seventh special session of the Trade Development Board (UNCTAD). It was the opinion of his delegation that there could be no question of the present situation creating a precedent.

19. The representative of Switzerland, speaking on behalf of Group B, said that the various groups, particularly Group B and the Group of 77, were not represented equitably in the Contact Group, but Group B, in a spirit of co-operation had reluctantly agreed on the composition on the clear understanding that the said composition of the Contact Group would not constitute a precedent for any other body.

20. The representative of Algeria said that, in his opinion, an undesirable precedent was being established by the expression of opinions on the composition of the Contact Group on which, in fact, agreement had already been reached. Contact groups had been used for some ten years within the United Nations system and the election to such unofficial groups had nothing to do with the rules and principles established for representation on official bodies. If any concern was to be voiced about inadequate representation on the Contact Group, it should have come from the Group of 77 which comprised 108 countries, but accounted for only one half of the membership of the Contact Group.



21. The representative of the United Republic of Cameroon said Group A, despite reservations about the composition of the Contact Group, had agreed to go along with that composition in a spirit of co-operation. He pointed out that the five permanent members of the Security Council should be represented in all United Nations fora.

22. The Chairman recalled that all regional groups had agreed to the composition of the Contact Group and urged the Committee to proceed with its work in a spirit of constructive co-operation.

23. The representative of France, supported by the representatives of Madagascar and Canada, requested that the comparative survey of the constitutions of selected agencies within the United Nations system (A/AC.180/CRP.1) be made available in French.

24. The Executive Secretary said that the Secretariat would attempt to issue French and Spanish versions of the document as soon as possible.

25. The representative of the Union of Soviet Socialist Republics, speaking also on behalf of the delegations of Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, the German Democratic Republic, Hungary and Poland, said that, in the opinion of the above delegations, the Contact Group was empowered to discuss only those sections of the draft Constitution that had been submitted to it by the plenary, together with comments made in the plenary. Following discussions in the Contact Group, the relevant sections of the draft Constitution should be transmitted back to the plenary which would take the final decision. In the plenary, consideration should be given to the structure of the Constitution. He pointed out that there was a single concept of the type of organization envisaged, its aims and its tasks; that concept should be discussed before other aspects and the subsequent provisions of the Constitution.

## II. PRELIMINARY VIEWS ON THE DRAFT CONSTITUTION (A/10202)<sup>1/</sup>

### Preamble

26. The representative of Italy said that his delegation - notwithstanding the support it had lent to the draft prepared by Group B - would have experienced no great difficulty in accepting the text of the Preamble in the Group of 77 draft as a basis for discussion had the wording constituted a preamble in the true sense of the word.

27. In reply, the representative of Sri Lanka said that a preamble could not stand in total isolation, but had to relate to the text following thereafter.

### Chapter I

#### (Objectives and functions)

#### Article 2 (Functions)

28. The representative of Nepal said he noted with pleasure that in Article 2(j), in the Group of 77 draft, the need was stressed for special measures designed to assist the least developed, land-locked and island developing countries. He said that in view of the plight of those countries, however, the urgent need for measures to help them overcome their hardships should have been spelt out more forcefully; moreover, the text as drafted, was misleading and should read "the least developed land-locked countries".

### Chapter II

#### (Membership)

29. The representative of Italy said his delegation would have no major difficulty in taking as a basis for discussion the version of Chapter II, as well as that of Chapter I, prepared by the Group of 77, although his delegation had supported the draft text prepared by Group B.

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<sup>1/</sup> In its discussion the Intergovernmental Committee had before it document A/AC.180/CRP.2, a comparative survey of three texts of a draft Constitution for UNIDO; namely, the texts prepared by: the Secretary-General in consultation with the Executive Director of UNIDO (A/10202); a drafting committee of the working group of the Group of 77; and a majority of Group B. In the current chapter these three texts are referred to as the Secretariat draft, Group of 77 draft and Group B draft, respectively.

Article 3 (Members)

30. The representative of the Union of Soviet Socialist Republics<sup>2/</sup> said that the Socialist countries had always favoured the idea that all States - irrespective of their economic and social systems - enjoyed equal rights in the international community and in international organizations; consequently, all States that had agreed to accept the obligations of membership should be permitted to become members of the organization. Membership should not be regulated by special conditions.

31. The representative of the United States of America said he saw some merit in the Secretariat draft of Article 3, which included the valuable notion of associate membership; entities in the category referred to in that Article might well be interested in association with UNIDO, short of assuming the responsibilities of full membership, and they should have an institutional possibility to do so. He pointed out that some small States might find themselves in a position in which they will be unable to accept the burden of full membership, but they would benefit - and UNIDO would benefit from their association - if they had an institutionalized alternative. Such an alternative would not apply to States that were capable of assuming the responsibilities of full membership in the organization.

32. The representative of Madagascar said that provision should be made in Article 3 for granting observer status to States and regional bodies officially recognized by the United Nations.

33. The representative of China, emphasizing that certain United Nations specialized agencies had not yet complied with General Assembly resolution 2758 (XXVI) on the restoration of the lawful rights of the People's Republic of China in the United Nations, said that due account should be taken of that resolution in Article 3.1 of the Constitution. His delegation would be submitting an amendment to that effect at a later stage.

Article 4 (Suspension)

34. The representative of Canada said that his delegation supported the principle of universality in the United Nations system and therefore endorsed Articles 3 and 4 in the Group B draft on questions of membership and of suspension and expulsion. The establishment of criteria that would be open to interpretation by the organization itself was unacceptable to his delegation.

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<sup>2/</sup> Speaking on behalf also of Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Hungary, Poland and the Ukrainian Soviet Socialist Republic.

35. The representative of the United States of America said that it seemed unwise to his delegation to include in the Constitution material such as Article 4 which could only become a cause of future grief; no useful purpose could be served by it. He said that if such a concept were to be widely regarded as useful, his delegation would concur with the inclusion of the formulation contained in Article 4.2 in the Group B draft. The latter formulation could help to avoid the organization finding itself in an anomalous situation in contrast to the United Nations General Assembly; at the same time, it would avoid opening up the Conference to useless and unproductive political controversy. He said that his delegation saw no need, however, for Article 4.3 on expulsion in the Group B draft.

36. The representative of Switzerland said it should be made clear that the word "persistently" referred to delay in payment; the final text of Article 4 should incorporate the wording that appeared in Article 4.1 in the Group B draft, in which reference was made to "arrears". As UNIDO would be a sovereign organization, he said his delegation saw no need to link the suspension of new members of the organization with expulsion from the membership in the United Nations; it was for the Conference to decide whether a member had a right to participate in the organization. In the opinion of his delegation, it was not necessary to include an expulsion clause in the Constitution, as the possibility of suspension should suffice.

#### Article 5 (Withdrawn)

37. The representative of Canada said that provisions pertaining to withdrawal should seek to protect the organization against the disruption of programmes that had already been formally accepted; at the same time no member State should be expected to continue contributing to an organization for an unreasonable length of time once it had given its notification of intent to withdraw. To prevent such a situation arising, the effective date of withdrawal - and thereby the period for which a State was financially liable - might be linked to the budgetary cycle. His delegation would be submitting an amendment to that effect to the Contact Group.

38. Referring to Article 5.2, the representative of the Union of Soviet Socialist Republics<sup>2/</sup> said that, in accordance with the principle of sovereign rights of States, the organization could not oblige a country to carry out its obligations.

### Chapter III

#### (Organs)

##### Article 6

39. The delegation of the United States of America said that the wording in Article 6 reflected widespread agreement as to the principal organs and the anticipation of the need for subsidiary organs. Referring to Article 6.2 in the Group B draft, he said that his delegation saw considerable merit in the proposal for a programme and budget committee of finite membership; it seemed only sensible to reflect the creation of such a committee in the Article under review. The basic function of such a committee would be to make recommendations to the Board for the programme and budget. His delegation considered that precise terms of reference for the committee should also be included in Article 6.

40. The representative of Sri Lanka said that although the creation of a programme and budget committee had been approved at the Second General Conference, his delegation was in agreement with the Group of 77 that no reference to that committee should be included in the Constitution; the question should be decided upon after that instrument entered into force. As to the question whether the committee's composition should be similar to that of the Advisory Committee on Administrative and Budgetary Questions or whether it should be a committee of the whole, he said that his delegation believed that the latter composition would be preferable, on the understanding that the committee be assisted by small advisory groups.

41. The representative of Switzerland said that in Article 6.2 specifications should be given of the subsidiary organs to be established.

42. The representative of Madagascar said that the text of Article 6.2 was sufficiently explicit; in addition, there was no need to specify that due regard should be given to the financial implications of the establishment of subsidiary organs as had been done in Article 6.3 in the Group B draft.

##### Article 7 (The Conference)

43. Referring to Article 7.2, the representative of Sri Lanka said that the General Conference should meet annually, despite the recommendation that conferences within the United Nations system meet biennially; in fact, in a number of cases that recommendation had not been implemented.

44. Also referring to Article 7.2, the representative of Switzerland suggested the addition of a phrase specifying that special sessions could be convened by at least one third of the members of the organization.

45. The representative of Canada said that the main concern in Article 7.3 should be to assure that adequate provision was made for member States to supervise the Secretariat and to control effectively the operations of the organization; the authority and responsibility of the constituent organs should therefore be clearly defined. Final authority for policy, programme and budget had to rest with the Conference. The responsibility of the Conference for the adoption of the financial regulations and staff regulations of the organization should be clarified. He pointed out that all three versions of the draft constitution assigned responsibility to the Conference for proposing to members conventions or agreements with respect to matters within the competence of the organization; in the opinion of his delegation, however, conventions or agreements should be recognized to be important matters requiring a two-thirds majority; his delegation would submit a proposal to that effect to the Contact Group.

46. The representative of Madagascar said that the provisions proposed in Article 7.3(c) BIS in the Group B draft would create an undesirable precedence; reference to document A/AC.180/CRP.1 showed that it was not the practice in the specialized agencies for the Deputy Director-General to be appointed by a policy-making organ; that matter was left to the discretion of the Director-General himself, taking into account the principle of equitable geographical distribution. He also said that his delegation preferred Article 7.4(a) in the Group of 77 draft to the corresponding provision in the Group B draft. He said that, in the opinion of his delegation, Article 7.5 in the Secretariat and Group B drafts went too far in stating that the rules of procedure might include provisions for decisions to be taken without a meeting of the members.

47. The representative of the United States of America said that Article 7 also reflected a wide measure of agreement among the various groups and that there was considerable merit in the Secretariat and Group B drafts, which included provision for associate members and observers. He said that his delegation preferred the more detailed approach in the Group B draft of Articles 7.3 and 7.4. He proposed a redrafting of the last sentence of Article 7.6 in the Secretariat and the Group B drafts to read as follows: "All majorities specified herein shall be calculated by reference to the members of the organization".

#### Article 8 (Industrial Development Board)

48. With regard to the composition of the Board, the representative of Italy said his delegation shared the view that it would be easier to reach a compromise on the text of Article 8 once the functional and financial powers of the Conference and the Board had been established.

49. The representative of the Union of Soviet Socialist Republics<sup>2/</sup> said that the election of members to the Board was the main prerogative of the Conference; membership of

the Board should be based on the principle of equitable geographical distribution, which should also be applied to the recruitment of Secretariat staff, taking into account the question of competence.

50. The representative of the United States of America pointed out that a broad degree of substantive overlap, which characterized Articles 6 and 7, was also present in Article 8. He said his delegation proposed the redrafting of that article in somewhat greater detail; in particular, the following should be added to Article 8.1:

"and shall accordingly observe the following distribution of seats:

- (a) 18 from the States listed in Part A of the annex to this Constitution;
- (b) 15 from the States listed in Part B of the annex to this Constitution;
- (c) 7 from the States listed in Part C of the annex to this Constitution;
- (d) 5 from the States listed in Part D of the annex to this Constitution."

51. The representative of Japan said that his Government regarded Article 8.1, which stipulated the size of the membership to the Board and the criteria by which its members would be elected, as one of the most important parts of Chapter III. In the opinion of his delegation, from the viewpoint of effectiveness and efficiency, the membership of the Board should remain small. He drew attention to the size of the executive organs and governing councils of other specialized agencies; in all 14 specialized agencies within the United Nations system, the average number of members of executive organs was 29. Even if membership to the Board of the new agency remained at 45, the organization would have a larger executive organ than any other specialized agency. He said that Article 8.1 in the Group B draft fully reflected the views of his Government; it was also the belief of his Government that in electing members of the Board, due regard should be given in the first instance to the contribution of members to the organization and also to equitable geographical distribution.

52. The delegation of China, referring to Article 8.1 in the Group B draft, said the provision that the Conference should "give due regard in the first instance to the contributions of members of the Organization" should be deleted.

53. As regards Article 8.3, the representative of Canada said his delegation would prefer a fixed schedule of sessions for the Board, preferably biannual, with provision for convening of special sessions.

54. The representative of Switzerland suggested the addition of the words "at the request of at least one third of the members" to Article 8.3 in the Secretariat draft.

55. The representative of Madagascar said his delegation would prefer the wording in Article 8.3 in the Group B draft to be augmented by the phrase "at the request of a majority of members", a wording that also occurred in the Secretariat draft. As regards Article 8.4(b) in the Group B draft, he remarked that although the Board could make

recommendations, it could not take initiatives. He also pointed out that Article 8.4(d) BIS in the Group B draft was a duplication of Article 9.2 in the same draft. In that connexion, he called attention to the repeated references in the Group B draft to the appointment of a Deputy Director-General.

56. The representative of Sweden said that, in order to facilitate an understanding of the roles and respective areas of competence of the different organs of the new ... specialized agency, all the functions and duties of the Conference and the Board should be explicitly enumerated under Articles 7 and 9 respectively, even at the risk of duplicating subsequent provisions. He stressed that Articles 7 and 8 in the Group B draft attempted to list these various functions and that his Government fully supported those proposals.

57. As regards Articles 8.3 and 8.4, the representative of the United States of America said that his delegation preferred the provisions contained in the Group B draft. In view of the important role and responsibilities of the Board, his delegation proposed a new text to Article 8.6:

"Each member of the Board shall have one vote. Decisions shall be made by a simple majority unless otherwise specified in this Constitution. Decisions on recommendations relating to the regular budget estimates, or otherwise constituting budgetary questions shall be by a two-thirds majority. All majorities shall be calculated by reference to the membership of the Board".

#### Article 9 (The Secretariat)

58. The representative of the United States of America said that the approach contained in Article 9.2 of the Group B draft seemed to be widely accepted; it would thus be useful to spell that matter out at that point of the Constitution. On the other hand, he considered that Article 9.3 in the Group of 77 draft was the most precise and his delegation would be pleased to support it; the same criteria made Articles 9.4 and 9.5 in the Group B draft preferable to his delegation.

#### Seat

59. Referring to Article 10 in the Group of 77 draft, which had also been included in the Group D draft, the representative of Hungary said that in view of the excellent facilities which the Austrian Government had provided to UNIDO and other international organizations and of the even better working conditions that might be expected in the United Nations City under construction in Vienna, his delegation supported the idea of establishing UNIDO's headquarters in Vienna, particularly as other solutions would entail unnecessary expense and inconvenience. His delegation intended to submit a slight amendment to that Article to the Contact Group.



#### Chapter IV

(Programme of work and financial matters)

60. The representative of the Union of Soviet Socialist Republics<sup>2/</sup> said that the viability of any organization depended largely on the reliability of its programme and budgetary machinery. It should be borne in mind that some of the matters dealt with in Chapter IV had already been raised in General Assembly resolution 2089 (XX) on the establishment of UNIDO, and others had been discussed more recently at various international gatherings.

#### Resources and expenditures (Article 10 BIS in the Group B draft)

61. In referring to Article 10 BIS in the Group B draft, a number of delegations (Italy, Japan, Switzerland, New Zealand, United States of America) supported the principle of separation of costs of operational activities from those of administrative and research activities; the first category was to be financed from the regular budget and the second from voluntary contributions. In that context, the representative of Switzerland said that operational activities should be financed mainly through UNDP while the possibility of maintaining voluntary contributions to the organization for specific purposes should be retained.

62. The representative of the United States of America opined that Article 10 BIS in the Group B draft should not give rise to much difficulty as it was no more than a precise expression of the principles embodied in paragraph 20 of General Assembly resolution 2152 (XXI).

63. The representative of Italy said his Government could only support those solutions that would make the agency workable for its major potential contributors. In the opinion of his delegation, only the administrative expenses should be subject to assessment.

64. The representative of Switzerland said that over and above its purely administrative activities, the organization should continue to act as an intermediary between all parties desirous of participating in international industrial co-operation. The organization might also be provided with a centre that would study policies and strategies for industrial co-operation and development. He also said that the greater part of the resources should be used for technical assistance and the agency's purely administrative machinery should be kept as light as possible.

65. The representative of New Zealand said that, in the opinion of his delegation, tight control had to be exercised over the budget of the new organization, and the separation of budgetary provisions was an essential element for such control.

66. In referring to the Group B draft, Article 10 BIS, the representative of Sweden said it was difficult to understand how a Constitution, that was to be drafted for an organization designed to lend assistance to the developing countries, could provide that operational assistance activities should be financed entirely by means of voluntary contributions. As a matter of principle, some field activities should be financed also from the regular budget, as was the case in the current UNIDO and a number of specialized agencies such as FAO, UNESCO, WHO and ILO; his delegation fully adhered, however, to the principle that the bulk of operational activities should be financed under the UNDP country programme system.

#### Article 11 (Programme and budget)

67. The representative of Italy said that his delegation favoured the voting formula proposed in Article 11 in the Group B draft; while it was aware of the difficulties that formula might cause, it foresaw many political and economic obstacles to the budget control machinery, as proposed in Article 12 in the Group of 77 draft.

68. The representative of the United States of America said his delegation wished to put forward three modifications to Article 11 in the Group B draft, in which a two-year budget cycle was proposed. The first modification, which would be a consequential change based on the language concerning the provisions for a programme and budget committee in Article 6.2, would be to include in Article 11.1 a provision requiring the Director-General to submit the draft programme of work and corresponding estimates to the programme and budget committee rather than directly to the Board. The second modification, which was consequential upon the first, would be to reflect in Article 11.2 the fact that the Board would have the benefit of the recommendations of that committee. Finally, Article 11.3 should be amended to make it clear that the process contemplated was that followed by the International Atomic Energy Agency. His delegation had submitted written amendments to that effect to the Contact Group for consideration.

69. The representative of the Union of Soviet Socialist Republics,<sup>2/</sup> reiterating the decision of the Second General Conference on the establishment of a programme and budget committee, said that all programme and budgetary problems of the organization should be the constant concern of that committee.

70. Several representatives (Sweden, Norway) pointed out that the provision in Article 11.3 in the Secretariat draft, to the effect that the approval of the programme of work and budgetary estimates would also require the affirmative vote of members that were to contribute at least one half of the Organization's resources, would involve a departure from the principle of "one State, one vote". Pledges of voluntary contributions or the size of a country's regular contribution should not confer a right to greater influence. In the opinion of their delegations, the only requirement for budget approval should be a two-thirds majority, as was the case in other specialized agencies. The programme of work and the corresponding budgetary estimates should be approved for the entire two-year budget period. There appeared to be little merit in the proposal made in the Secretariat draft that appropriations be approved only for the first fiscal year; provisions might, however, be included that would enable the Board to consider and approve adjustments to the programme of work and budget estimates for the second fiscal year, although such a decision would require a two-thirds majority. In that context, the representative of Sweden said that his delegation opposed the concept that financial contributions of member Governments should be a factor in the appointment of members to the Board.

71. The representative of Sri Lanka said that the balance of power in any organization should be based on the principle of "one man, one vote", as set out in the United Nations Charter. The role of the Conference should be strengthened, although not at the expense of the Board, and the primacy of the Conference should be ensured in the programme and budgetary matters and in other respects.

72. The representative of China said that the provision in Article 11.3 in the Secretariat and the Group B drafts, stipulating that the approval of the programme of work and regular budget and appropriations should be subject to the affirmative vote of members that were to contribute at least one half of the organization's resources, should be deleted.

73. The representative of New Zealand affirmed the view that the principle of equality of representation of States was fundamental in the voting procedures for the work programme and budget and should not be departed from; in his opinion, a two-thirds majority provided a sufficient financial safeguard against important questions. His delegation supported the principles set out in Article 11.4 in the Secretariat draft which gave the Board some flexibility to adjust the work programme in the light of

developments subsequent to the preceding conference session; it also recognized the need for provisions enabling the Board to adjust the available financial resources to changes in price-levels and currency fluctuations, but in order to preserve the Conference's primacy, the powers of the Board in that area should be severely limited and should not exceed 10 per cent flexibility with respect to Articles 11.4(a) and 11.4(b), taken together.

Article 12 (Assessed contributions)

74. The representative of Switzerland noted that it might be appropriate to specify in Article 12 that the criteria to be adopted by the Conference for drawing up the scales of assessing contributions by members to the organization should be based on the principles adopted by the United Nations.

75. A number of representatives (Norway, Sri Lanka, Sweden) said that their delegations agreed to the provisions in Article 12.2 in the Group B draft that the scale of assessment of contributions to the organization should be based on that currently employed by the United Nations.

76. The representative of the United States of America said that, in the opinion of his delegation, Article 12 in the Secretariat draft and Article 13 in the Group of 77 draft constituted a marked and unacceptable departure from both General Assembly resolution 2152 (XXI) and the general United Nations approach to the issues concerned. Article 12 in the Group B draft, on the other hand, reflected the commonly accepted approach of the United Nations system, particularly the provisions in Article 12.2 which would fully preserve the established ceiling and floor percentages.

77. The representative of the Union of Soviet Socialist Republics<sup>2/</sup> said that - in addition to voluntary contributions - UNIDO's income would come from contributions assessed in accordance with a scale determined and approved by a two-thirds majority of the Conference; that scale should correspond as far as possible to the one used by the United Nations for the immediately preceding fiscal year. The assessed contributions should constitute the regular budget of the organization, to be spent on administrative and research activities, comprising general headquarters expenses, expenses of staff other than staff engaged in the direct support of operational activities, various technical meetings in connexion with the organization's programme of work and expenditure on research activities other than those which would constitute technical assistance to a member or a limited number of members of the organization.

78. The representative of China said that Article 12.1 in the Group B draft should be deleted since it provided that the adoption of the scales of assessment should be subject to the affirmative vote of members contributing at least one half of the regular budget resources during the preceding financial period.

79. The representative of Japan reiterated the views of its Government, expressed during the first session of the Committee, that due regard should be paid to some kind of protection for the interest, as well as to the participation, of potential contributors..

#### Article 13 (Voluntary Contributions)

80. The representative of the United States of America said that although his delegation endorsed the general approach taken in Article 13 in the Secretariat draft, it preferred the more detailed and precise approach to the same Article in the Group B draft.

81. The representative of the Union of Soviet Socialist Republics<sup>2/</sup> said that all aspects of the organization's activity, other than those covered by assessed contributions, should be financed from voluntary contributions.

82. The representative of Sri Lanka said his delegation was not opposed in principle to the use of voluntary contributions for operational activities, but objected to the idea of using extra-budgetary funds for nearly all the most important activities of direct concern to the developing countries. His Government would be prepared to negotiate further with a view to reaching a more generally acceptable balance, but could not accept Article 13 in the Group B draft as it stood.

#### Article 14 (Industrial Development Fund)

83. The representative of New Zealand recalled that his Government had not opposed paragraph 72 of the Lima Plan of Action recommending the establishment of the Industrial Development Fund; it could not, however, support the provision in Article 15 in the Group of 77 draft that the Industrial Development Fund should also be financed from assessed contributions, as such a step would be incompatible with his Government's views on separation of budgetary powers.

84. The representative of Japan also recalled that his Government had agreed to the establishment of the Industrial Development Fund on the understanding that the Fund would be financed by voluntary contributions.

85. The representative of the Union of Soviet Socialist Republics<sup>2/</sup> referred to the Lima Plan of Action in which it was stated that the Industrial Development Fund was to be established through voluntary contributions to UNIDO and that existing voluntary funds under the authority of UNIDO were to be consolidated as part of the new fund. He said that it would be desirable, when reflecting those provisions in the Constitution, to stress the need for more representative control over the Industrial Development Fund, for example by appointing a board of directors consisting of one representative each from the Group of 77 and Groups B and D, to assist the Director-General in administering the Fund.

#### Article 15 (Loans)

86. Several representatives (United States of America, Union of Soviet Socialist Republics)<sup>2/</sup> said that their delegations saw no particular need to include a provision concerning loans in the Constitution. The representative of the Union of Soviet Socialist Republics<sup>2/</sup> noted that resort to loans was a rare and extraordinary measure unconnected with the normal activity of an international organization; where necessary, appropriate decisions might be taken by the Conference as the supreme organ of UNIDO.

### Chapter VI

#### (Legal matters)

#### Article 18 (Privileges and immunities)

87. The representative of Italy said his delegation preferred the version of Article 18.3 in the Secretariat draft to that in the Group B draft, which was without precedent in the United Nations system. The problem might be solved by including a reference to either the Convention of the Privileges and Immunities of the Specialized Agencies or an ad hoc convention or protocol to be adopted together with the Constitution.

88. The representative of China said that as his Government had not yet acceded to the Convention, his delegation would reserve its position with regard to the provisions relating to privileges and immunities.

89. The representative of Switzerland said that the provisions in the Constitution concerning the legal capacity and the privileges and immunities of the organization and its staff should guarantee the minimum standards currently written into the law

of nations. The specific relations between the organization and the host Government could be spelt out in a headquarters agreement.

#### Article 19 (Settlement of disputes)

90. The representative of Sri Lanka voiced the willingness of his delegation to discuss the articles in Chapter VI referring to privileges and immunities, relations with the United Nations and other organizations, and the settlement of disputes; he said that there were, however, a number of provisions in the three drafts available which his delegation found unacceptable, including those relating to advisory opinion of the International Court of Justice with regard to the settlement of disputes.

91. The representative of China said that no dispute should be referred to the International Court of Justice without prior consent of the parties concerned and that his delegation, therefore, supported Article 20.1 in the Group of 77 draft.

92. The representative of Italy said that Article 19.3 in the Group B draft was unprecedented in the United Nations system; the normal procedure of appointing an arbitrator should be retained, or the paragraph should be deleted.

93. Concerning the settlement of disputes, the representative of Switzerland said that provision should be made also for settling disputes between one or more members of the organization, on the one hand, and the organization itself, on the other.

### Chapter VII

#### (Final clauses)

#### Article 22 (Entry into force)

94. The representative of Switzerland said he would comment on Article 22, as well as on the two annexes of document A/10202, at a later stage, since the provisions contained therein needed further clarification as regards both the content and the terminology.

### III. CONCLUSION OF THE SECOND SESSION

#### Concluding statement by the Chairman

95. At the last meeting of the second session, on 2 April 1976, the Chairman, in reviewing the work accomplished by the Committee, observed that considerable progress had been made in drawing up a Constitution for UNIDO as a specialized agency. As he had envisaged, the Committee had come to terms with some of the crucial issues that had to be resolved in order to reach agreement on a set of articles in the draft Constitution under consideration. The Chairman recalled that the Secretary-General of the United Nations, in his message to the Committee, at its first session, had stressed the challenging and unprecedented task of the Committee in effecting the transformation of a United Nations organ into a specialized agency; the difficulty and complexity of that task, the Chairman said, had not been underestimated by the members of the Committee.

96. The Chairman also noted that, at its current session, the Committee had completed the preliminary examination of the draft Constitution and had set up a Contact Group for negotiating substantive aspects. He said that in the Contact Group a co-operative and constructive spirit had prevailed during the in-depth study of the entire draft Constitution. On many points, he said, broad areas of agreement had been reached in the Group and, although the Group had not been able to overcome all obstacles, it had succeeded in identifying and analysing the obstacles, which in itself was no mean accomplishment.

97. In the opinion of the Chairman, the deliberations of the Committee, and particularly of the Contact Group, had been most fruitful and were characterized by a frank and open dialogue that was a prerequisite for achieving an understanding of the various positions of the geographical groups; that was an encouraging development and, no doubt, the right words and the right language would be found in the coming session to express the common view of all groups on the various substantive aspects of the Constitution. He also noted that the manner in which the dialogue in the Plenary and in the Contact Group had been conducted boded well for the future work of the Committee.

98. The Chairman recalled the agreement at the first session, according to which the Rapporteur was to prepare an informal working resumé of the proceedings of each session of the Committee; the working resumé of the second session would be sent to



all representatives. The resumé, as prepared by the Rapporteur, was subject to any amendments and corrections that representatives might want to make. It was understood, said the Chairman, that the resumé of the second session, like the first one, would be without prejudice to the form and content of the official report to be adopted at the end of the Committee's work.

99. The Chairman informed the Committee that the Rapporteur had also agreed to draw up an informal tabulated synthesis of the views expressed and proposals made in the Contact Group on the individual chapters and articles of the draft Constitution; such a synthesis would not only provide visual evidence of the progress made in the Contact Group and of the work still ahead of it, but also facilitate the deliberations of the Committee at its coming session.

100. The Chairman said that the two months between the current session and the third session of the Committee, which was to start on 28 June 1976, should be made use of for informal consultations within and among the various geographical groups. He assured the members of the Committee that he would be available and ready at all times to assist in efforts towards bringing the various points of view of the individual groups into closer harmony. To that end, he was looking forward to remaining in touch with the representatives during the intersessional period; he would shirk no personal efforts in order to seek a common basis for a Constitution for UNIDO so that the Committee could successfully complete its task during the third session. He called attention to the heavy schedule of work ahead of the Committee and stressed that it would be vitally important that representatives came to the third session fully prepared to negotiate constructively and successfully on the important aspects of the draft Constitution.

101. In conclusion, the Chairman thanked the members of the Committee for their contributions and co-operation; particular thanks were due to the spokesmen of the various geographical groups for their whole-hearted participation in a fruitful dialogue in both the Plenary and the Contact Group. He also expressed his gratitude and appreciation to the Executive Director of UNIDO who had been representing the Secretary-General of the United Nations in the Committee. Thanks were also due to the Under-Secretary-General for Legal Affairs, and the Assistant Under-Secretary-General for Financial Matters for their presence in the Committee and their valuable co-operation and contributions. The Chairman also expressed his warmest thanks to the Secretariat of UNIDO, in particular to the Executive Secretary of the Committee and his colleagues and supporting staff.

#### Closure of the session

102. The Committee concluded its second session at 7 p.m. on 2 April 1976.