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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 fifteenth 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 1977. Decisions given in 1977 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 1977 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
ACC	Advisory Committee on Coordination
ADB	African Development Bank
Bank World Bank IBRD	International Bank for Reconstruction and Development
CCOP	Committee for Co-ordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas
ECA	Economic Commission for Africa
ECE	Economic Commission for Europe
ECLA	Economic Commission for Latin America
ECWA	Economic Commission for Western Asia
ESCAP	Economic and Social Commission for Asia and the Pacific
EURATOM	European Atomic Energy Committee
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
ICSC	International Civil Service Commission
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
ILO	International Labour Organisation
IMCO	Inter-Governmental Maritime Consultative Organization
IMF	International Monetary Fund
ITU	International Telecommunication Union
JIU	Joint Inspection Unit
OECD	Organization for Economic Co-operation and Development
OPANAL	Organization of the Treaty for the Prohibition of Nuclear Weapons in Latin America
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNDRC	United Nations Disaster Relief Co-ordinator
UNEF	United Nations Emergency Force
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNEP	United Nations Environment Programme
UNFPA	United Nations Fund for Population Activities
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNITAR	United Nations Institute for Training and Research
UNJSPF	United Nations Joint Staff Pension Fund
UPU	Universal Postal Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	World Tourism 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. Austria

FEDERAL ACT OF 14 DECEMBER 1977 ON THE GRANTING OF PRIVILEGES AND IMMUNITIES TO INTERNATIONAL ORGANIZATIONS

The National Council has resolved that:

Article 1

(1) The Federal Government shall be empowered to grant by Ordinance or governmental agreement to the international organizations referred to in paragraph (7), the permanent missions referred to in paragraph (9) and the persons referred to in paragraph (10) some or all of the privileges and immunities provided for in this Federal Act.

(2) The international organizations referred to in paragraph (7) and the persons referred to in paragraph (10) may also be granted such privileges and immunities (para. (1)) as are contained either in the statutes of those organizations or in an international treaty, under international law, on privileges and immunities which relates to the international organization concerned and is applicable in its member States, or as provided, for the fulfilment of its functions, by the generally recognized rules of international law.

(3) The empowerment referred to in paragraphs (1) and (2) shall also be valid for the granting of privileges and immunities in connexion with the holding of international conferences connected with the activities of the organizations referred to in paragraph (7) or convened by States.

(4) Ordinances of the Federal Government issued in accordance with paragraphs (1) and (2) must, if their content is not covered by paragraph (3), have the consent of the Main Committee of the National Council.

(5) (Constitutional rule) Before the conclusion of governmental agreements in accordance with paragraphs (1) and (2), the Federal Government shall, if their content is not covered by paragraph (3), arrange to obtain the consent of the Main Committee of the National Council.

(6) The Federal Government shall inform the Main Committee of the National Council without delay of the conclusion of any governmental agreement or the issuance of any Ordinance relating to an international conference (para. (3)).

(7) For the purposes of this Federal Act, international organizations shall be:

1. Organizations consisting exclusively of States or of associations of States;
2. Organizations either consisting wholly of public-law juridical persons of several States or of juridical persons under similar arrangements or consisting partly of juridical persons and partly of States or associations of States;
3. The World Tourism Organization (WTO).

(8) Privileges and immunities may be granted only to those international organizations of which the Republic of Austria or any other Austrian juridical person under public law is a member, or whose activity in Austria is designated by the Federal Government as being in the foreign-policy interest of the Republic of Austria.

(9) Permanent missions within the meaning of this Federal Act shall be permanent missions of the members of the international organizations referred to in paragraph (7), subparagraph 1, to the said organizations. Permanent observer missions accredited to such organizations may be fully or partly assimilated to such missions.

(10) Persons within the meaning of this Federal Act shall be:

1. Representatives of the members of the international organizations referred to in paragraph (7), subparagraph 1, who participate in meetings of those organizations or exercise any other official functions in connexion with them. Representatives of non-members and observers at such meetings may be fully or partly assimilated to the aforementioned representatives;
2. Members of the permanent missions or observer missions referred to in paragraph (9);
3. Staff members of the international organizations. Experts acting on behalf of the international organizations may be fully or partly assimilated to the said staff members.

(11) The term "Vienna Convention on Diplomatic Relations" means the Vienna Convention on Diplomatic Relations of 18 April 1961 (Bundesgesetzblatt No. 66/1966).[1]

Article 2

(1) In so far as no precise description is contained in this Federal Act, the determination of the scope of the privileges and immunities which may be granted by the Federal Government in individual instances to international organizations and persons within the meaning of this Federal Act shall depend upon whether their headquarters are situated within or outside the country, their juridical status (art. 1, para. (7)), the international standing and operations of the organizations concerned, the nature of the functions to be exercised by the person to whom privileges and immunities are to be granted, whether or not he is an Austrian national and whether his stay in the Federal territory is of considerable duration or merely temporary.

(2) The privileges and immunities provided for in this Federal Act may be granted retroactively if the headquarters of the international organization concerned already were situated in the Federal territory at the time of the entry into force of this Federal Act.

Article 3

(1) The international organizations may be exempted from taxation in respect of their official activity. The term "official activity" means the activity of international organizations as determined by their statutory purpose, in so far as such activity does not bring them into competition with Austrian enterprises. This provision shall not apply to persons performing services for the said organizations.

(2) Deliveries or other services received by the international organizations in connexion with their official activity may be exempted from the taxes overtly or covertly passed on in the cost of such deliveries or other services.

(3) Legal transactions in which the international organizations engage in the exercise of their official activity and all documents relating to such transactions may be exempted from taxation.

(4) The international organizations may be exempted from the obligation to pay

[1] United Nations, *Treaty Series*, vol. 500, p. 95.

the employer's contribution to the family allowance equalization fund (*Ausgleichsfonds für Familienbeihilfen*). Where such an exemption is made, staff members of international organizations who are not Austrian nationals shall be excluded from the receipt of benefits from the fund; the same shall apply to spouses and minor children living in the staff member's household.

(5) Articles imported or exported by the international organizations for the purposes of their official activity may be exempted at the point of entry or exit from customs and other duties and from import prohibitions and restrictions.

(6) The international organizations may, in connexion with the import of service vehicles and spare parts for them, in so far as they are required for the organizations' official activity, be exempted from customs and other duties and from import prohibitions and restrictions.

(7) Duties not collected at the time of import must be paid if the articles imported free of duty under paragraphs (5) and (6) are ceded or transferred to other persons in Austria by the international organizations before the expiry of a period which is to be determined more precisely but which shall continue not less than 2 years after the clearance of such articles for free circulation. In the case of articles which are not the property of the organizations, it shall be specified that the exemption from customs and other duties shall continue only while the articles remain in use by the organizations concerned.

(8) The above exemptions shall not apply to duties constituting a *de facto* payment for public services.

Article 4

The international organizations may be exempted from all obligatory contributions to social insurance schemes in the Republic of Austria. Such exemption may not be granted where the organizations employ persons to whom the exemptions provided for in article 10 apply only partly or not at all.

Article 5

(1) Any pension or benefit fund established for the staff members of the international organizations which possesses juridical personality in Austria shall enjoy the same privileges as the organization itself, provided that its activities do not extend beyond the administration of property.

(2) Funds and foundations established by the international organizations for official purposes shall enjoy the same privileges as the organizations themselves, provided that their activities do not extend beyond the administration of property.

Article 6

The privileges and immunities granted to diplomatic missions in the Republic of Austria on the basis of the Vienna Convention on Diplomatic Relations may be granted to permanent missions of foreign members of the international organizations referred to in article 1, paragraph (7), subparagraph 1. Article 3, paragraph (4), shall apply *mutatis mutandis*.

Article 7

The privileges and immunities granted to the members of diplomatic missions accredited in the Republic of Austria on the basis of the Vienna Convention on Diplomatic Relations may be granted to the persons referred to in article 1, paragraph (10), subparagraphs 1 and 2, and to members of their families living in the same household.

Article 8

(1) The following privileges and immunities may be granted to staff members of the international organizations:

1. Immunity from all jurisdictions in respect of oral or written statements made by them in the exercise of their official functions and all actions carried out by them in the exercise of their official functions, such immunity to continue even when the persons concerned are no longer staff members of the organizations;
2. Immunity from seizure of their personal and official baggage;
3. Immunity from inspection of their official baggage and, in the case of staff members to whom article 9 applies, immunity from inspection of private baggage;
4. Exemption from taxation of wages, earnings, remuneration and retirement benefits which they receive in respect of present or past services for the organization; such exemption may also apply to maintenance benefits for the members of a staff member's family;
5. Exemption from taxation of all income and property of the staff members and of members of their families living in the same household, provided that such income and property are not subject to limited tax liability under Austrian income-tax or property-tax legislation;
6. Exemption from succession and gift taxes, where such taxes arise solely because the staff member or a member of his family living in the same household is domiciled or habitually resident in the Republic of Austria;
7. The right to import the following articles for personal use, free of tax and customs duties and free from import prohibitions and restrictions:
   (*a*) On first taking up their duties, articles for their household establishment and personal items, in one or several separate deliveries, and within six months thereafter, any necessary supplementary items;
   (*b*) One motorcar every four years;
   (*c*) Limited quantities of specific articles intended for personal use and consumption but not for disposal as gifts or by sale;
8. Exemption from restrictions on travel into and out of the country for the staff member, his spouse, his dependent relatives and other members of his household; any necessary visas shall be issued free of charge;
9. The right to obtain and possess, in the Republic of Austria or elsewhere, foreign securities, assets in foreign currencies and other movable property, together with the right, upon termination of their service with the organization, to export their means of payment through legally permissible channels, without reservation or restriction, in the same currency and up to the same amounts as they brought into the Republic of Austria.

(2) The granting of the income-tax privileges provided for in paragraph (1), subparagraphs 4 and 5, may be made subject to the condition that the privileged persons are wholly or partly excluded from the rules for favourable treatment which are not applicable under Austrian income-tax legislation to persons with reduced tax liability.

Article 9

High-ranking officials of the organizations referred to in article 1, paragraph (7), subparagraph 1, may, in addition to the privileges and immunities enumerated in article 8, be granted the same privileges and immunities as those granted to members of the

diplomatic staff of diplomatic missions in the Republic of Austria pursuant to the Vienna Convention on Diplomatic Relations.

Article 10

(1) Persons referred to in article 1, paragraph (10), subparagraph 3, who are not Austrian nationals and are not permanently resident in the Republic of Austria as refugees or stateless persons may be exempted from the application of Austrian social security legislation in respect of their activity.

(2) Persons referred to in article 1, paragraph (10), subparagraph 3, who are Austrian nationals or are permanently resident in the Republic of Austria as refugees or stateless persons may be granted an exemption within the meaning of paragraph (1) in so far as the organization provides them with protection in respect of the risks of sickness, maternity, unemployment, industrial accident, occupational disease, disability, old age and death.

Article 11

In cases where liability to specific taxes is dependent on residence, it may be determined that periods during which experts acting on behalf of the international organizations are resident in the Republic of Austria for the purpose of performing their duties shall not be regarded as periods of residence for taxation purposes. This provision shall not apply to experts domiciled in Austria.

Article 12

(1) Unless otherwise provided in this Federal Act, the granting of tax exemption in respect of the import and export of goods in accordance with article 3, paragraphs (5) and (6), article 6, article 7, article 8, paragraph (1), subparagraph 7, and article 9 shall be governed, *mutatis mutandis,* by the customs legislation applicable to the granting of customs exemption for diplomatic and consular property (art. 40 of the 1955 Customs Act). Unless otherwise provided in an Ordinance or governmental agreement pursuant to article 1, paragraphs (1) and (2), permanent missions and their members shall be granted tax exemption only to the extent to which such exemption is granted, on the basis of existing reciprocal practice, to the diplomatic mission of the State concerned in the Republic of Austria and to the staff members of the said mission.

(2) Unless otherwise provided in headquarters agreements under international law concluded by the Republic of Austria with international organizations, the provisions of paragraph (1) shall also apply to the granting of tax exemptions which are to be granted under such agreements.

Article 13

(1) Upon the entry into force of this Federal Act, the Federal Act of 24 February 1954, Bundesgesetzblatt No. 74/1954, on the Granting of Privileges and Immunities to International Organizations, as amended by the Federal Act of 13 February 1957, Bundesgesetzblatt No. 56/1957, shall cease to have effect.

(2) Where reference is made in legislative texts to the Federal Act mentioned in paragraph (1), the present Federal Act shall be substituted.

Article 14

This Federal Act shall enter into force on 1 January 1978.

Article 15

The Federal Government shall be responsible for the execution of this Federal Act.

KIRCHSCHLÄGER
KREISKY ANDROSCH PAHR MOSER
STARIBACHER LANC BRODA
RÖSCH HAIDEN WEISSENBERG SINOWATZ
LAUSECKER FIRNBERG

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2. Ghana

NOTE DATED 3 MAY 1978 FROM THE PERMANENT MISSION OF GHANA TO THE UNITED NATIONS TRANSMITTING INFORMATION RECEIVED FROM THE GOVERNMENT OF GHANA REGARDING LEGISLATION RELATING TO PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS AND ITS SPECIALIZED AGENCIES

. . .

Section 3(1) (v) of the Income Tax Decree, 1975 (SMCD.5) exempts from tax the official emoluments and any income not accruing in or derived from Ghana of:

(iii) any expert, adviser, technician or official whose salary or principal emolument is not payable by the Government of Ghana and who is brought to Ghana through any Specialized Agency of the United Nations Organisation or any similar Organisation approved by the Supreme Military Council; and

(iv) any expert, advisor, technician, official or trainee from abroad who is sent to Ghana under any of the Technical Co-operation Programmes of the United Nations Organisation and its Specialized Agencies or of any similar organisation approved by the Supreme Military Council.

Part 5 of the Second Schedule to the Customs and Excise Tariff Regulations, 1973 (L.I.858) exempts from import duty

(*a*) All goods imported by or for the official use of any United Nations, Commonwealth or Foreign Embassy, Mission or Consulate:

(*b*) On first arrival in Ghana the household and personal effects of an employee of any United Nations, Commonwealth, Foreign Embassy, Mission, Consulate, if such employee is not engaged in any other business or profession in Ghana;

(*c*) All goods imported by or for use of a permanent member of the United Nations, of the Diplomatic Service of any Commonwealth or Foreign country provided such member is exempted by the Commissioner for Foreign Affairs from the payment of customs duties.

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3. United Kingdom of Great Britain and Northern Ireland

(*a*) THE INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT (IMMUNITIES AND PRIVILEGES) ORDER 1977[2]

Laid before Parliament in draft

Made . . . . . 11th May 1977

Coming into Operation . . . . . On a date to be notified in the London, Edinburgh and Belfast Gazettes

[2] S.I. No. 824 of 1977.

At the Court at Buckingham Palace, the 11th day of May 1977

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before Parliament in accordance with section 10 of the International Organisations Act 1968[3] (hereinafter referred to as the Act) and has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred on Her by section 1 of the said Act or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

PART I

GENERAL

1. This Order may be cited as the International Fund for Agricultural Development (Immunities and Privileges) Order 1977. It shall come into operation on the date on which the Agreement establishing the International Fund for Agricultural Development,[4] signed at New York on 7th January 1977, enters into force in respect of the United Kingdom. This date shall be notified in the London, Edinburgh and Belfast Gazettes.

2. (1) In this Order "the 1961 Convention Articles" means the Articles (being certain Articles of the Vienna Convention on Diplomatic Relations signed in 1961)[5] which are set out in Schedule 1 to the Diplomatic Privileges Act 1964.

(2) The Interpretation Act 1889 shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

PART II

THE FUND

3. The International Fund for Agricultural Development (hereinafter referred to as the Fund) is an organisation of which the United Kingdom and foreign sovereign Powers are members.

4. The Fund shall have the legal capacities of a body corporate.

5. (1) The Fund shall have immunity from suit and legal process except:

(*a*) to the extent that it shall, by a decision of the Executive Board, have waived such immunity in a particular case. However, the Fund shall be deemed to have waived such immunity if, upon receiving a request for waiver submitted either by the person or body before which the proceedings are pending, or by another party to the proceedings, it has not given notice, within two months after receipt of the request, that it does not waive immunity;

(*b*) in respect of a civil action by a third party for loss, injury or damage arising from an accident caused by a vehicle belonging to or operated on behalf of the Fund, or in respect of a traffic offence involving such a vehicle;

(*c*) in the event of the attachment, pursuant to the order of a court of law, of the salaries, wages or other emoluments owed by the Fund to a member of its staff; or

(*d*) in respect of the enforcement of an arbitration award made under Article 11 of the Agreement establishing the Fund,

[3] Reproduced in the *Juridical Yearbook*, 1968, p. 20.

[4] Document IFAD/1. The Agreement was concluded at Rome on 13 June 1976 and came into force on 30 November 1977.

[5] United Nations, *Treaty Series*, vol. 500, p. 95.

provided that no proceedings may be brought against the Fund by a Member or person acting for or deriving claims from a Member.

(2) The provisions of paragraph 1 of this Article shall not prevent the taking of such measures as may be permitted by law in relation to the execution of judgment against the Fund.

6. The Fund shall have the like inviolability of official archives and premises as in accordance with the 1961 Convention Articles is accorded in respect of the official archives and premises of a diplomatic mission.

7. The Fund shall have the like exemption or relief from taxes, other than customs duties and taxes on the importation of goods, as is accorded to a foreign sovereign power.

8. The Fund shall have the like relief from rates as in accordance with Article 23 of the 1961 Convention Articles is accorded in respect of the premises of a diplomatic mission.

9. The Fund shall have exemption from customs duties and taxes on the importation of goods imported by the Fund for its official use in the United Kingdom, or on the importation of any publications of the Fund imported by it or on its behalf, such exemption to be subject to compliance with such conditions as the Commissioners of Customs and Excise may prescribe for the protection of the revenue.

10. The Fund shall have exemption from prohibitions and restrictions on importation or exportation in the case of goods imported or exported by the Fund for its official use and in the case of any publications of the Fund imported or exported by it.

11. The Fund shall have relief, under arrangements made by the Commissioners of Customs and Excise, by way of refund of customs duty paid on any hydrocarbon oil (within the meaning of the Hydrocarbon Oil (Customs and Excise) Act 1971) which is bought in the United Kingdom and necessary for the official purposes of the Fund, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

12. The Fund shall have relief, under arrangements made by the Secretary of State, by way of refund of car tax paid on any vehicle and value added tax paid on the supply of any goods which are necessary for the official purposes of the Fund, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

PART III

REPRESENTATIVES

13. (1) Except in so far as in any particular case any privilege or immunity is waived by the Government of the Member State whom they represent, representatives of Member States of the Fund, including Governors and members of the Executive Board, shall enjoy immunity from suit and legal process in respect of things done or omitted to be done by them in the exercise of their functions, except in the case of loss, injury or damage caused by a vehicle belonging to or driven by them or an offence involving such a vehicle.

(2) Part IV of Schedule 1 to the Act shall not operate so as to confer any privilege or immunity on the official staff of representatives.

(3) Neither the provisions of the preceding paragraphs of this Article, nor those of Part IV of Schedule 1 to the Act, shall operate so as to confer any privilege or immunity on any person as the representative of Her Majesty's Government in the United Kingdom or on any person who is a citizen of the United Kingdom and Colonies.

(4) Part IV of Schedule 1 to the Act shall not operate so as to confer any privilege or immunity on families of representatives.

PART IV

OFFICERS

14. Except in so far as in any particular case any privilege or immunity is waived by the Fund the President and any officer of the Fund shall enjoy:

(*a*) immunity from suit and legal process in respect of things done or omitted to be done by him in the course of the performance of his official duties, except in the case of loss, injury or damage caused by a vehicle belonging to or driven by him or in the case of an offence involving such a vehicle; and

(*b*) unless he is a citizen of the United Kingdom and Colonies or resident in the United Kingdom, exemption from income tax in respect of emoluments received by him as an officer or servant of the Fund, provided that this exemption shall not apply to annuities and pensions received by him from the Fund.

(*b*) THE INTERNATIONAL MONETARY FUND (IMMUNITIES AND PRIVILEGES) ORDER 1977[6]

Laid before Parliament in draft

Made ..... 11th May 1977

Coming into Operation ..... On dates to be notified in the London, Edinburgh and Belfast Gazettes.

At the Court at Buckingham Palace, the 11th day of May 1977

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before Parliament in accordance with section 10 of the International Organisations Act 1968[7] (hereinafter referred to as the Act) and has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred on Her by section 3(3) of the Bretton Woods Agreements Act 1945[8] and section 1 of the International Organisations Act 1968 or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. (1) This Order may be cited as the International Monetary Fund (Immunities and Privileges) Order 1977.

(2) (*a*) Articles 1 to 6 of this Order shall come into operation on the date on which the Second Amendment to the Articles of Agreement of the International Monetary Fund[9] enters into force. This date shall be notified in the London, Edinburgh and Belfast Gazettes.

(*b*) Article 7 of this Order shall come into operation on the date on which a Council is established under Article XII, Section 1 of the Articles of Agreement of the International Monetary Fund as amended (hereinafter referred to as the Fund Agreement). This date shall be notified in the London, Edinburgh and Belfast Gazettes.

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[6] S.I. No. 825 of 1977.

[7] Reproduced in the *Juridical Yearbook*, 1968, p. 20.

[8] United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (ST/LEG/SER.B/11 — Sales No. 61.V.3), p. 84.

[9] The Second Amendment to the Articles of Agreement was approved by the Board of Governors of the International Monetary Fund on 30 April 1976. It entered into force on 1 April 1978.

2. The Interpretation Act 1889 shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. Section 8 of Article IX of the Fund Agreement set out in Part I of the Schedule to the Bretton Woods Agreements Order in Council 1946[10] is hereby revoked.

4. The International Monetary Fund (hereinafter referred to as the Fund) is an organisation of which the United Kingdom and foreign sovereign Powers are members.

Representatives

5. (1) All Governors, Executive Directors, Alternates, members of committees, and representatives of Member States appointed to attend a meeting of the Executive Board under Article XII, Section 3(*j*) of the Fund Agreement shall enjoy immunity from suit and legal process with respect to acts performed by them in their official capacity except when the Fund waives this immunity.

(2) Part IV of Schedule I to the Act shall not operate so as to confer any immunity on the families of persons to whom this Article applies.

(3) Part IV of Schedule I to the Act shall not operate so as to confer any immunity on the official staff, other than advisers, of persons to whom this Article applies.

(4) This Article shall not operate so as to confer any immunity on any person as the representative of Her Majesty's Government in the United Kingdom or as a member of the staff of such a representative.

Officers

6. All officers and employees of the Fund shall enjoy immunity from suit and legal process with respect to acts performed by them in their official capacity except when the Fund waives this immunity.

Representatives to the Council

7. (1) All Councillors, their Alternates and Associates, shall enjoy immunity from suit and legal process with respect to acts performed by them in their official capacity except when the Fund waives this immunity.

(2) Part IV of Schedule I to the Act shall not operate so as to confer any immunity on the families of persons to whom this Article applies.

(3) Part IV of Schedule I to the Act shall not operate so as to confer any immunity on the official staff, other than advisers, of persons to whom this Article applies.

(4) This Article shall not operate so as to confer any immunity on any person as the representative of Her Majesty's Government in the United Kingdom or as a member of the staff of such a representative.

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4. United States of America

EXECUTIVE ORDER 11966 OF 19 JANUARY 1977 DESIGNATING CERTAIN PUBLIC INTERNATIONAL ORGANIZATIONS ENTITLED TO ENJOY CERTAIN PRIVILEGES, EXEMPTIONS AND IMMUNITIES[11]

By virtue of the authority vested in me by Section 1 of the International Organizations Immunities Act (59 Stat. 669, 22 U.S.C. 288),[12] and as President of the United

[10] United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (ST/LEG/SER.B/11 — Sales No. 61.V.3), p. 86.

[11] Federal Register, vol. 42, No. 15.

[12] United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10 — Sales No. 60.V.2), p. 52.

States of America, having found that the United States participates in the following organizations, it is hereby ordered as follows:

SECTION 1. The International Development Association, in which the United States participates pursuant to the Act of Congress approved June 30, 1960 (74 Stat. 293, 22 U.S.C. 284) and the Articles of Agreement of the International Development Association (11 U.S.T. 2284, T.I.A.S. 4607),[13] is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act, provided that, this designation shall not affect in any way the applicability of Section 3, Article VIII, of the Articles of Agreement of the International Development Association.

SEC. 2. The International Centre for Settlement of Investment Disputes, in which the United States participates, pursuant to the Act of Congress approved August 11, 1966 (80 Stat. 344, 22 U.S.C. 1650) and the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (17 U.S.T. 1270, T.I.A.S. 6090),[14] is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act.

. . .

SEC. 4. Executive Order No. 11718 of May 14, 1973, is revoked.

SEC. 5. This Order shall be effective as of November 24, 1976.

(Signed) Gerald R. FORD

The White House,
January 19, 1977.

[13] United Nations, *Treaty Series,* vol. 439, p. 249.
[14] *Ibid.,* vol. 575, p. 159. Also reproduced in the *Juridical Yearbook,* 1966, p. 196.

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 1977:[2]

State	*Date of receipt of instrument of accession*[3]
Bahamas	17 March 1977 d
Sudan	21 March 1977

This brought up to 114 the number of States parties to this Convention.

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2. AGREEMENTS RELATING TO MEETINGS AND INSTALLATIONS

(*a*) Interim Arrangement on Privileges and Immunities of the United Nations concluded between the Secretary-General of the United Nations and the Swiss Federal Council.[4] Signed at Berne on 11 June 1946 and at New York on 1 July 1946

Letter dated 29 June 1977 from the Permanent Observer of Switzerland to the United Nations

I have just received the reply of the Swiss authorities to the request you addressed to this Mission on 14 January last concerning exemption from the federal *droit de timbre* for the United Nations Joint Staff Pension Fund. In this connexion, I have the honour to inform you that the United Nations is exempt from the *droit de timbre de négotiation.* This exemption derives from article II, section 5, paragraph (*a*), of the Headquarters Agreement concluded in 1946 and applies to the United Nations Joint Staff Pension

[1] United Nations, *Treaty Series,* vol. 1, p. 5.

[2] The Convention is in force in 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] United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations,* vol. I (ST/LEG/SER.B/10 — Sales No. 60.V.2), p. 196.

Fund, although it is not stated therein that the latter enjoys the same privileges and immunities as the Organization itself.

As a result of this situation, the Federal Tax Administration is prepared to exempt the aforementioned Fund from the *droit de timbre de négotiation;* the Fund is thus entitled to request reimbursement of the amounts it has paid in that connexion, on presentation of the relevant documents.

(*b*) Agreement between the United Nations and Argentina concerning arrangements for the United Nations Water Conference, to be held at Mar del Plata, Argentina, from 14 to 25 March 1977.[5] Signed at New York on 7 January 1977

Article IX

LIABILITY

1. The Government shall be responsible for dealing with any action, claim or other demand arising out of:

(*a*) injury to person or damage to or loss of property (whether United Nations property or other) in the premises referred to in Article IV above, including damage to those premises;

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

(*c*) the employment of the locally recruited personnel referred to in Article VII above;

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

2. The Government shall be subrogated to the rights and remedies of the United Nations in respect of any action, causes of action, claims or other demands referred to in paragraph 1 of this Article, except that it is understood that the Government shall not be subrogated to the immunity from legal process enjoyed by the United Nations.

Article X

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, to which the Government acceded in 12 October 1956, shall be applicable in respect of the Conference.

2. Representatives of States invited to the Conference, officials of the United Nations performing functions in connexion with the Conference and experts on mission for the United Nations at the Conference shall enjoy the privileges and immunities provided under Articles IV, V, VI and VII respectively, of the said Convention in respect of the Conference.

3. Representatives of the specialized agencies at the Conference shall enjoy the privileges and immunities provided under Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies to which the Government acceded on 10 October 1963. Representatives of the International Atomic Energy Agency at the Conference shall enjoy the privileges and immunities provided under Articles VI and IX

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

of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency to which the Government acceded on 15 October 1963. Representatives of other intergovernmental organizations invited to the Conference as observers shall enjoy the same privileges and immunities as are accorded to officials of comparable rank of the specialized agencies.

4. Observers invited by the United Nations and referred to in Article I (*e*) and (*f*) shall, in respect of words spoken or written and acts done by them in connexion with the Conference, be immune from legal process of every kind. They shall be accorded such facilities as are necessary for the independent exercise of their functions in connexion with the Conference.

5. The personnel provided by the Government under Article VII of the present Agreement with the exception of those assigned to hourly rates shall 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 not apply in any case of accident caused by a vehicle, vessel or aircraft.

6. Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, 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.

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 of the present Agreement and their families;

(*b*) representatives of the press or of other information media referred to in Article II 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 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 Argentine law for such persons shall be granted promptly on application and without charge.

8. Persons officially invited to the Conference by the Government shall be given access to the Conference area by the United Nations.

9. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, conference premises shall be deemed to constitute premises of the United Nations and access thereto shall be under the control and authority of the United Nations.

Article XI

IMPORT DUTIES AND TAX

The Government shall allow the temporary importation 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.

(*c*) Memorandum of Understanding between the United Nations and Italy on the second international training course on remote sensing applications for agriculture, to be held in Rome, Italy, from 25 April to 13 May 1977.[6]

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

Signed at New York on 23 March 1977

This Memorandum of Understanding contains an article similar to article V of the memorandum of understanding between the United Nations and Italy, reproduced on p. 47 of the *Juridical Yearbook*, 1976.

(*d*) Agreement between the United Nations and Austria regarding the arrangements for the fifteenth session of the United Nations Committee on the Elimination of Racial Discrimination, to be held in Vienna from 28 March to 15 April 1977.[7] Signed at Geneva on 28 March 1977

Article XIII

PRIVILEGES AND IMMUNITIES

1. The provisions relating to privileges and immunities in the Agreement between the United Nations and the Republic of Austria regarding the Headquarters of the UNIDO shall be applicable with regard to the conference. The Convention on the Privileges and Immunities of the United Nations is hereby not affected.

2. Members of the Committee, observers for States Parties to the Convention, invited to attend the conference, officials of the United Nations performing functions in connection with the conference, experts on mission for the United Nations at the conference and representatives of the specialized agencies, the International Atomic Energy Agency and other intergovernmental organizations invited to attend the conference 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 outlined in paragraph 1.

3. Without prejudice to the provisions of paragraph 2 of this Article, observers invited by the United Nations to attend the conference shall enjoy immunity from legal process in respect of words spoken or written or any act performed by them in their official capacity in connection with the conference.

4. Personnel provided by the Government under Article XI of this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the conference 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.

5. Without prejudice to the preceding paragraphs of this Article, representatives of non-governmental organizations invited by the United Nations to the conference 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 connection with the conference.

6. The Government shall ensure that no impediment is imposed on transit to and from the conference of the following categories of persons invited by the United Nations to attend the Conference: Members of the Committee, observers for States Parties to the Convention and their immediate families; officials and experts of the United Nations and their immediate families; observers invited to the conference and their immediate families; observers of non-governmental organizations invited to the conference and their immediate families; representatives of the press or of radio, television, film or other information agencies accredited by the United Nations in its discretion after consultation with the Government and other persons officially invited to the conference by the United Nations.

7. All persons referred to in this Article and all persons performing functions in connection with the conference who are not nationals of Austria shall have the right of

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

entry into and exit from Austria. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and, when applications are made at least 2½ weeks before the opening of the conference, not later than two weeks before the date of the opening of the conference. If the application for the visa is not made at least 2½ weeks before the opening of the conference, the visa shall be granted not later than three days from the receipt of the application.

8. During the conference, including the preparatory and final stage of the conference, the buildings and areas referred to in Article III shall be deemed to constitute United Nations premises and access thereto shall be subject to the authority and control of the United Nations.

Article XIV

LIABILITY

1. The Government shall 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 on the premises referred to in Articles III, IV and V above;

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

(*c*) the employment for the session of the personnel referred to in Article XI above.

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

(*e*) Agreement between the United Nations and Nigeria for the World Conference for Action against *Apartheid* to be held at Lagos, Nigeria, from 22 to 26 August 1977.[8] Signed at New York on 31 March 1977

This agreement contains articles similar to articles IX and XI of an agreement between the United Nations and Cuba, reproduced on p. 41 of the *Juridical Yearbook*, 1976.

(*f*) Agreement between the United Nations and Austria regarding the arrangements for the United Nations Conference on Succession of States in Respect of Treaties.[9] Signed at Geneva on 1 April 1977

This agreement contains articles similar to articles XIII and XIV of the agreement referred to under (*d*) above.

(*g*) Agreement between the United Nations and Austria regarding the arrangements for the tenth session of the United Nations Commission on International Trade Law to be held at Vienna from 23 May to 17 June 1977.[10] Signed at Geneva on 6 May 1977

This agreement contains articles similar to articles XIII and XIV of the agreement referred to under (*d*) above.

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

(*h*) Agreement between the United Nations and the Philippines regarding arrangements for the third session of the World Food Council of the United Nations, to be held at Metro Manila, Philippines, from 20 to 24 June 1977.[11] Signed at Rome on 12 May 1977

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. The United Nations shall co-operate with the Government to enable it to discharge its responsibilities under this Article.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947, to which Conventions the Government is a party, shall be applicable in respect of the Session.

2. Representatives of States Members of the United Nations and representatives of States not members of the United Nations attending the Session shall enjoy the privileges and immunities accorded to representatives of States Members of the United Nations by Article IV of the Convention on the Privileges and Immunities of the United Nations.

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 on the Privileges and Immunities of the United Nations. 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 privileges and immunities accorded to officials of the specialized agencies under the Convention on the Privileges and Immunities of the Specialized Agencies.

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.

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

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

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 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 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.

(*i*) Exchange of letters constituting an agreement between the United Nations and the United States of America regarding the arrangements for the United Nations *Ad Hoc* Meeting of experts on expeditious and equitable handling of criminal cases, to be held at Reno, Nevada, from 23 to 27 May 1977.[12] New York, 19 May 1977

I

Letter from the Director, General Legal Division
Office of legal Affairs of the United Nations

19 May 1977

I am writing to you regarding an invitation received by the United Nations from . . . [the] Dean of the National College of the State Judiciary, University of Nevada, to host an *ad hoc* expert group meeting to be convened under the auspices of the United Nations.

. . .

(*a*) Officials of the United Nations Secretariat performing functions in connexion with the meeting shall enjoy the privileges and immunities provided for such individuals under the Convention on the Privileges and Immunities of the United Nations or in the United States International Organizations Immunities Act, Public Law 291, 79th Congress, as amended;

(*b*) Experts on mission for the United Nations performing functions in connexion with the meeting shall enjoy the privileges and immunities provided for such individuals under the Convention on the Privileges and Immunities of the United Nations;

(*c*) With respect to the issuance of visas and entry to the site of the meeting, the United States Government accepts the same obligations which it has under the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations.

. . .

I hope that this proposal by the United Nations is acceptable to your Government and should be grateful if you would let me have your comments at your earliest convenience.

[12] Came into force on 19 May 1977.

II

Letter from the Director, General Legal Division
Office of Legal Affairs of the United Nations

19 May 1977

I wish to refer to my letter of today's date addressed to yourself regarding the arrangements for the meeting of an *ad hoc* expert group at the College of the State Judiciary, University of Nevada, during the latter part of May 1977.

In this connexion I wish to inform you that for the purposes of the meeting those participants in the meeting, whose names are listed in the annex, are considered experts on mission for the United Nations, and as such shall enjoy the privileges and immunities provided by Article VI of the Convention on the Privileges and Immunities of the United Nations.

Annex

[Not reproduced.]

III

Letter from the Adviser, Legal Affairs
United States Mission to the United Nations

19 May 1977

This is to advise you that the United States agrees with the terms and conditions contained in your letter of May 19 concerning the *ad hoc* expert meeting in Nevada.

(*j*) Agreement between the United Nations and Austria regarding the arrangements for the twentieth session of the United Nations Committee on the Peaceful Uses of Outer Space, to be held in Vienna, Austria, from 20 June to 1 July 1977.[13] Signed at Geneva on 1 June 1977

This agreement contains articles similar to articles XIII and XIV of the agreement referred to under (*d*) above.

(*k*) Agreement between the United Nations and Ghana relating to their continued support for the Regional Institute for Population Studies established in Accra in February 1972.[14] Signed at Accra on 14 July 1977

Article VII

COOPERATION OF THE GOVERNMENT

3. It shall be the responsibility of the Government to deal with any claims which may be brought by third parties residing within its territory against the United Nations and its personnel, and to hold the United Nations or its personnel harmless in case of any such claims or liabilities resulting from operations under this Agreement, except where it is agreed by the parties hereto that such claims or liabilities arise from gross negligence or the wilful misconduct of such personnel.

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

[14] Came into force on 14 July 1977 with retroactive effect from 1 July 1977, the date of expiry of the agreement between the United Nations and the Government of Ghana relating to the establishment of a Regional Institute for Demographic Training and Research signed at Accra on 3 December 1971.

Article VIII

FACILITIES, PRIVILEGES AND IMMUNITIES

1. Scientific apparatus, equipment and educational materials, articles and provisions (such as calculating machines, books, films, etc.) procured for the Institute shall be imported without restrictions or prohibitions and shall be exempted from custom duties and other duties or taxes. It is understood, however, that such articles and goods shall not be sold or traded in the Republic of Ghana except under conditions agreed by the Government.

2. Officials of the United Nations performing functions in connection with the Institute shall enjoy the privileges and immunities provided under Articles V and VII of the Convention on Privileges and Immunities of the United Nations, and the members of the Governing Council and of the Advisory Committee designated by the United Nations who are not otherwise officials of the United Nations or the Specialized Agencies, shall enjoy the privileges and immunities under Article VI of the Convention. The members of the teaching staff provided by the United Nations also shall enjoy the privileges and immunities under Article VI of the Convention, if they are not officials of the United Nations or of the specialized agencies.

3. Without prejudice to the foregoing provision, the Government undertakes to accord all members of the Governing Council and of the Advisory Committee such facilities and courtesies as are necessary for the exercise of their functions in connection with the Institute.

4. All holders of United Nations Fellowships at the Institute who are not nationals of the Republic of Ghana shall have right of entry into and exit from the Republic of Ghana and of sojourn there for the period necessary for their training. They shall be granted facilities for speedy travel, visas, where required, shall be granted promptly and free of charge.

(*l*) Agreement between the United Nations and the Philippines concerning arrangements for the fourteenth session of the Committee for Co-ordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas, to be held at Manila, Philippines, from 21 September to 4 October 1977.[15] Signed at Manila on 30 August 1977

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 Co-operating Members of the CCOP 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. Without prejudice to the provisions of the preceding paragraphs, all participants and all persons performing functions in connexion with the Conference shall enjoy such

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

privileges and immunities, facilities and courtesies, as are necessary for the independent exercise of their functions in connexion with the Conference.

5. All persons referred to in this article and all persons performing functions in connexion with the Conference who are not nationals of the Philippines shall have the right of entry into and exit from the Philippines. 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 a half weeks before the opening of the Conference. If the application for the visa is not 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 to participants who were unable to obtain them prior to their 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 VIII

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.

(*m*) Agreement between the United Nations and the Philippines concerning arrangements for the Seminar on Generation and Maturation of Hydrocarbons in Sedimentary Basins to be held at Manila, Philippines, from 12 to 19 September 1977.[16] Signed at Manila on 30 August 1977

This agreement contains articles similar to articles VII and VIII of the agreement referred to under (*k*) above.

(*n*) Agreement between the United Nations and Canada concerning the Headquarters and operations of the United Nations Audio-Visual Information Centre on Human Settlements.[17] Signed at New York on 27 September 1977

PREAMBLE

Whereas Habitat: United Nations Conference on Human Settlements (hereinafter referred to as "the Conference"), by resolution 5 of 11 June 1976, expressed its appreciation for the offer of the University of British Columbia to provide the necessary services and facilities for the storage, maintenance, distribution and augmentation of the audio-visual materials prepared for the Conference, and authorized the Secretary-General of the United Nations (hereinafter referred to as "the Secretary-General") to enter into an arrangement

[16] Came into force on the date of signature.
[17] Came into force on the date of signature.

with the University for the temporary care and custody of the audio-visual materials, pending a decision of the General Assembly of the United Nations as to their future use;

Whereas an arrangement was concluded for this purpose on 12 June 1976 between the United Nations and the University of British Columbia, which arrangement was extended three times and is due to expire on 30 September 1977;

Whereas the General Assembly, by resolution 31/115 of 16 December 1976, decided to establish the United Nations Audio-Visual Information Centre on Human Settlements (hereinafter referred to as "the Centre") and authorized the Secretary-General to conclude an agreement with the appropriate Canadian authorities for the provision of the necessary facilities and financial support to enable the Centre to carry out its responsibilities for the custody, reproduction and international distribution, until 31 March 1980, of the audio-visual materials entrusted to the Centre;

Whereas the Government of Canada is providing financial support for the programme and the operations of the Centre for the period of 31 March 1980 and in co-operation with the Government of British Columbia and in conjunction with the University of British Columbia the necessary equipment and facilities for the Centre during the same period;

Now therefore the United Nations and the Government of Canada, for the purpose of carrying out the objectives set out in the aforementioned resolutions, have agreed as follows:

Article I

PREMISES AND FACILITIES OF THE CENTRE

The Centre shall be located on the campus of the University of British Columbia, Vancouver, B.C., Canada, in adequate premises to be provided by the Government of the province of British Columbia in conjunction with the University of British Columbia. The Government of Canada shall make proper arrangements with the University of British Columbia and the Government of the province of British Columbia for providing to the Centre, free of charge to the United Nations, the necessary equipment and facilities required for the Centre's operations until 31 March 1980.

Article II

The Government of Canada hereby undertakes to provide up to a maximum of CDN $3,452,000 to enable the Centre to carry out its responsibilities for the custody, reproduction and international distribution, until 31 March 1980, of the audio-visual materials prepared for the Conference or subsequently provided to the United Nations. The aforementioned sum includes monies made available since the Conference for the purposes just stated and for the emoluments for the Director. The Canadian contribution shall be made available in Canada.

Article III

ADMINISTRATION OF THE CENTRE AND MANAGEMENT OF ITS PROGRAMME

1. Until the establishment by the General Assembly of any new United Nations intergovernmental arrangements at the global level in the field of human settlements that will, *inter alia,* create a governing body of the Centre and provide guidance to the Director with respect to the administration of the Centre and the preparation and implementation of its programme, the Secretary-General shall establish an Advisory Committee of the Centre, consisting of representatives of the competent units of the Secretariat of the United Nations,

representatives and experts designated by the Government of Canada and, as appropriate, independent experts of international standing in the field of human settlements.

2. The specific functions of the Advisory Committee will be to review and evaluate the annual work programme and budget of the Centre and to recommend appropriate policies to implement the programme with a view to carrying out the objectives of the Centre in accordance with the pertinent United Nations resolutions and policies.

3. Should the General Assembly establish any new United Nations intergovernmental arrangements at the global level in the field of human settlements and should these include, *inter alia,* a governing body of the Centre, any references in this Agreement to the Advisory Committee shall be taken to mean that governing body.

4. The Director of the Centre shall be appointed by the Government of Canada upon the recommendation of the Secretary-General and shall serve at the pleasure of the Government of Canada and of the Secretary-General. He shall be designated as United Nations Special Representative for the Centre and, as such, be responsible to the Secretary-General in the exercise of functions under this Agreement.

5. The Director shall be responsible, under the over-all policy guidance of the Advisory Committee of the Centre, for the administration of the Centre and the management of its programme. He shall report, as appropriate, to the Secretary-General and to the Advisory Committee on the operations of the Centre and the use which is being made of the audio-visual materials in its custody. He shall prepare, in consultation with the United Nations Offices concerned, an annual work programme and budget of the Centre for review by the Advisory Committee and for submission to the Government of Canada and to the Secretary-General, and shall maintain monthly statements of accounts and such other information as may be appropriate to indicate the current financial position of the Centre.

6. The Director shall appoint the members of the staff of the Centre.

Article IV

Obtaining of copyrights and printing materials

The United Nations shall use its best efforts to obtain, from the governmental and other authorities that contributed the audio-visual materials in the custody of the Centre, the necessary distribution rights and clearances, including the original printing materials, international copyrights, permission to reprint, re-edit and distribute, so as to permit the Centre to make the widest and most effective use of such materials.

Article V

Use of United Nations Secretariat facilities

The facilities and services of all appropriate units of the United Nations Secretariat throughout the world shall be made available for the purpose of aiding and facilitating the use and distribution of the audio-visual materials in the custody of the Centre to interested Governments, organizations and individuals.

Article VI

Liaison Officer

The Secretary-General shall appoint a Liaison Officer at United Nations Headquarters to maintain regular contact with the Centre, to represent the Centre at United Nations Headquarters and, in particular, to assist in carrying out the activities referred to in articles IV and V above.

Article VII

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as "the Convention") will apply in respect of the Centre.

2. For the purposes of sections 2, 3, 4 and 7, respectively, of the Convention, the expressions "assets", "archives" and "publications" shall include audio-visual materials in the custody of the Centre. The immunity from censorship provided under section 9 of the Convention shall extend to audio-visual materials in the custody of the Centre. Incoming and outgoing audio-visual materials to and from the Centre shall be exempt from all customs duties and quantitative restrictions. No delays shall be imposed on the entry or exit of such materials.

3. The Secretary-General shall designate the Director of the Centre, in his capacity as United Nations Special Representative, as having the status of an expert on mission for the United Nations within the meaning of article VI of the Convention; the Secretary-General may similarly designate other members of the staff of the Centre as having the status of experts on mission.

4. Other members of the staff of the Centre shall, in respect of their functions, enjoy the privileges and immunities provided for in section 22 (*b*) of the Convention. Such immunity, however, shall not apply in case of a traffic accident.

5. The Secretary-General shall communicate to the Canadian authorities the list of the members of the staff of the Centre referred to in paragraphs 3 and 4 of this article.

6. In addition to the exemption from immigration restrictions granted to persons specified in articles IV, V and VI of the Convention on the Privileges and Immunities of the United Nations, other persons officially invited by the Director of the Centre or who have official business with the Centre shall be granted any visa required by Canadian law promptly upon application. Where necessary, the United Nations will furnish official invitees with a certificate, pursuant to section 26 of the Convention, that they are travelling on official business of the United Nations.

Article VIII

LIABILITY

The Director shall make appropriate arrangements for insurance to cover liability for dealing with any action, claim or other demand that may be brought against the Centre arising out of the operations of the Centre.

Article IX

SETTLEMENT OF DISPUTES

Any dispute between the United Nations and the Government of Canada concerning the interpretation or application of this Agreement, or any question affecting the Centre or the relationship between the Centre and the Government of Canada, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators: one to be appointed by the Secretary-General, one to be appointed by the Government of Canada, and the third, who shall be chairman of the tribunal, to be appointed by the first two arbitrators. Should either party fail to appoint its arbitrator within two months of the appointment of the other party's arbitrator, or if the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, the President of the International Court of Justice shall, at the request of either party, designate any necessary arbitrator. The procedure of the arbi-

tration shall be determined by the tribunal, all of whose decisions shall require a majority vote.

Article X

ENTRY INTO FORCE, DURATION AND AMENDMENT OF THE AGREEMENT

1. This Agreement shall enter into force upon signature and shall remain in force until the 31st day of March 1980.

2. This Agreement may be modified by agreement between the parties. Each party shall give full and sympathetic consideration to any request from the other party for such modification. If, in the opinion of either party, decisions taken by the General Assembly with respect to institutional arrangements for international co-operation in the field of human settlements make it necessary or desirable to amend any provision of this Agreement with a view to adapting it to such decisions, the parties shall, at the request of either, enter into consultations with a view to determining by mutual consent what amendments would be necessary for this purpose. Irrespective of the provisions of the preceding sentence, the provisions of this Agreement shall be subject to review in 1979.

3. This Agreement may be terminated by either party, by means of a written notice of termination to the other party, which shall take effect six months after its receipt by the other party. Upon termination of the Agreement any uncommitted funds which have been provided by the Government of Canada to the Centre, other than those required for winding up the operations of the Centre, shall revert to the Government of Canada.

IN WITNESS WHEREOF the undersigned, duly authorized representatives of the United Nations and of the Government of Canada, respectively, have signed this Agreement.

DONE in duplicate at New York on the twenty-seventh day of September, 1977, in the English and French languages, both versions being equally authentic.

For the United Nations
(*Signed*) Kurt WALDHEIM
Secretary-General

For the Government of Canada
(*Signed*) DONALD C. JAMIESON
Secretary of State for External Affairs

(*o*) Agreement between the United Nations and Bolivia concerning arrangements for the United Nations/FAO Regional Training Seminar on Remote Sensing Applications from Satellite, to be held at La Paz, Bolivia, from 1 to 9 December 1977.[18] Signed at New York on 7 October 1977

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 seminar shall enjoy the privileges and immunities provided under Articles V and VII of the said Convention.

2. Officials of the specialized agencies attending the seminar in pursuance of paragraph (*d*) 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 seminar 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.

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

4. Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and all persons performing functions in connexion with the seminar shall enjoy such privileges and immunities, facilities, and courtesies as are necessary for the independent exercise of their functions in connexion with the seminar.

5. All persons enumerated in Article II of this Agreement and all persons performing functions in connexion with the seminar who are not nationals of Bolivia will be immune from immigration restrictions and Aliens Registration. They shall be granted facilities for speedy travel. Entry and exit visas, if required, shall be granted free of charge and without delay.

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 (*i*) and (*j*); (*c*) recruitment for the seminar of the personnel referred to in Article IV 3 (*b*), (*d*), (*f*) and (*g*) and Article IV 4 and the Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands.

(*p*) Agreement between the United Nations and the Federal Republic of Germany concerning arrangements for the European Regional Preparatory Meeting for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to be held at Bonn, Federal Republic of Germany, from 10 to 14 October 1977.[19] Signed at New York on 7 October 1977

Article V

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 (*e*), (*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

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

connexion, exit and entry visas, when required, shall be granted free of charge, as speedily as possible and within eight days of an application being made. Exit permits, when required, shall be granted free of charge and without delay.[20]

. . .

Article VII

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, para. (2) (*a*);

(*b*) The recruitment and/or the exercise of the functions of the personnel of the Meeting referred to in Article IV, para. (1);

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

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3. AGREEMENTS RELATING TO THE UNITED NATIONS CHILDREN'S FUND: REVISED MODEL AGREEMENT CONCERNING THE ACTIVITIES OF UNICEF[21]

Article VI

CLAIMS AGAINST UNICEF

[See *Juridical Yearbook*, 1965, pp. 31 and 32.]

Article VII

PRIVILEGES AND IMMUNITIES

[See *Juridical Yearbook*, 1965, p. 32.]

Agreements between the United Nations (United Nations Children's Fund) and the Governments of Papua-New-Guinea[22] and Mozambique[23] concerning assistance from UNICEF. Signed, respectively, at Manila on 31 March 1977 and at Maputo on 12 May 1977

These agreements contain provisions similar to articles VI and VII of the revised model agreement.

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[20] The following statement was made by the Permanent Representative of the Federal Republic of Germany on the occasion of the signing of the above Agreement:

"With reference to the States mentioned in Article V of the Agreement, I should like, on behalf of the Government of the Federal Republic of Germany, to draw attention to a difficulty which may arise in the event that the courts in the Federal Republic of Germany should question the applicability of this Agreement to States other than States members of the United Nations on the ground that no legal basis exists in that respect under domestic law."

[21] UNICEF *Field Manual*, vol. II, Part IV-2, Appendix A (1 October 1964).

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

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

4. AGREEMENTS RELATING TO THE UNITED NATIONS DEVELOPMENT PROGRAMME: STANDARD BASIC AGREEMENT CONCERNING ASSISTANCE BY THE UNITED NATIONS DEVELOPMENT PROGRAMME[24]

Article III

EXECUTION OF PROJECTS

...

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

...

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.]

(*a*) Agreements between the United Nations (United Nations Development Programme) and the Governments of Mozambique[25], Portugal[26], the United Arab Emirates[27], Rwanda[28], Togo[29], Yemen[30], Uganda[31] Niger[32], Guyana[33], Somalia[34], Malawi[35], Algeria[36], Paraguay[37], Chad[38], Swaziland[39], Seychelles[40], and Sierra Leone[41], concerning assistance from the United Nations Development Programme. Signed, respectively, at Maputo on 15 September 1976, at New York on 22 December 1976, at Abu Dhabi on 19 January 1977, at Kigali on 2 Feb-

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

[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.

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

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

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

[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 16 May 1977.

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

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

[37] Applied provisionally from 7 October 1977.

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

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

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

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

ruary 1977, at Lomé on 21 March 1977, at San'a on 11 April 1977, at Kampala on 29 April 1977, at Niamey on 2 May 1977, at Georgetown on 3 May 1977, at Mogadiscio on 16 May 1977, at New York on 15 July 1977, at Algiers on 20 July 1977, at New York on 7 October 1977, at New York on 14 October 1977, at Mbabane on 28 October 1977, at Victoria on 18 November 1977 and at Freetown on 21 December 1977

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

(*b*) Agreement between the United Nations (United Nations Development Programme) and Liberia concerning assistance from the United Nations Development Programme.[42] Signed at Monrovia on 27 April 1977

This agreement contains provisions similar to articles III, 5, IX, X and XII of the standard basic agreement and is accompanied by the following exchange of letters:

I

Letter from the Minister for Foreign Affairs of Liberia

Monrovia
24 January 1977

I have the honour to refer to the new UNDP Standard Basic Agreement regulating the Government of Liberia and UNDP working relations to be executed between the Government of Liberia and the UNDP, and to advise that my Government proposes, in accordance with the established practice of granting diplomatic immunities and privileges only to heads of missions and diplomatic agents or personnel of related status, that Article IX, subparagraph 4(*a*) of the above-mentioned Agreement be amended to read as follows:

"Except as the parties may otherwise agree in project documents relating to specific projects, the Government shall grant all persons, other than Government nationals and aliens employed locally, performing services on behalf of the UNDP, a specialized agency or the IAEA who are not covered by paragraphs 1 and 2 above the same privileges and immunities as officials of the United Nations, the specialized agency concerned or the IAEA under Sections 18, 19, or 18 respectively of the conventions on the privileges and immunities of the United Nations or of the specialized agencies, or of the Agreement on the privileges and immunities of the IAEA".

If this proposal is acceptable to the UNDP, this Note and your reply concurring therein shall constitute an amendment to the aforementioned agreement.

...

II

Letter from the Resident Representative of the United Nations Development Programme

Monrovia
21 April 1977

I have the honour to refer to your letter of 24 January 1977 regarding the signing of the new UNDP Standard Basic Assistance Agreement regulating the Government of Liberia and UNDP working relations and wish to state that UNDP is in full concurrence with the amendment suggested by you in the Note attached to your above-referenced letter concerning Article IX, sub-paragraph 4(*a*) of the Agreement.

[42] Applied provisionally from 27 April 1977.

As previously recommended by UNDP your Note and this reply agreeing to the contents of your Note shall constitute an amendment to the Standard Basic Agreement, specifically as regards the non-privileged status of aliens locally employed by UNDP or any other UN mission in Liberia. Accordingly, by appending your Note and this letter to the signed new Standard Basic Assistance Agreement, the amendment proposed by you in the text under Article IX, sub-paragraph 4(*a*) stands formally accepted.

(*c*) Agreement between the United Nations (United Nations Development Programme) and the Philippines concerning assistance from the United Nations Development Programme.[43] Signed at New York on 21 July 1977

This agreement contains provisions similar to articles III, 5, IX, X and XII of the standard basic agreement and is accompanied by the following exchange of letters:

I

Letter from the Permanent Representative of the Philippines to the United Nations

21 July 1977

I have the honour to refer to the Agreement signed today by and between the Government of the Philippines (the Government) and the United Nations Development Programme (UNDP) concerning assistance by the UNDP to the development projects of the Government.

I have the honour to place on record the following understandings of my Government with respect to the provisions of the Agreement:

. . .

3. The Parties shall review the provisions of the Agreement on privileges and immunities at a time in the future convenient to both of them.

. . .

If the foregoing understandings are also those of the UNDP, I have the honour to suggest that this letter and your reply in that sense should be regarded as constituting an Agreement placing on record the understandings of the Parties in the matter.

II

Letter from the Administrator, United Nations Development Programme

21 July 1977

I have the honour to refer to the Agreement concerning assistance from the United Nations Development Programme (UNDP) to the development projects of the Government of the Philippines signed today by the Government and the UNDP, and to acknowledge receipt of your letter of even date, placing on record certain understandings of the Parties with respect to the Agreement, which letter reads as follows:

[*See letter I.*]

I have the honour to inform you that the foregoing understandings are also those of the UNDP, which therefore agrees that your letter and this reply should be regarded as constituting an Agreement placing on record the understandings of the Parties in the matter.

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[43] Came into force on 12 December 1977.

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.[44] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

(*a*) Status of the Convention

In 1977, the following States acceded to the Convention or, if already parties, undertook by a subsequent notification to apply the provisions of the Convention, in respect of the specialized agencies indicated below:[45]

State		*Date of receipt of instrument of accession or notification*	*Specialized agencies*
Bahamas	Notification of Succession	17 March 1977	ILO, FAO, ICAO, UNESCO, WHO (second revised text of Annex VII), UPU, ITU WMO, IMCO (revised text of Annex XII)[46]
Greece	Accession	21 June 1977	ILO, FAO (second revised text of Annex II)[47], ICAO, UNESCO, IMF, IBRD, WHO (third revised text of Annex VII), UPU, ITU, WMO, IMCO (revised text of Annex XII)[46], IFC, IDA
Republic of Korea	Accession	13 May 1977	FAO (second revised text of Annex II)[47], ICAO, UNESCO, IMF, IBRD, WHO (third revised text of Annex VII), UPU, ITU, WMO
Uruguay	Accession	29 December 1977	ILO, FAO, ICAO, UNESCO, IMF, IBRD, WHO, UPU, ITU

As of 31 December 1977, 87 States were parties to the Convention.[48]

(*b*) Letter dated 22 December 1977 from the Permanent Representative of the Federal Republic of Germany to the United Nations

In reply to your letter of 27 April 1977 concerning two notices for turnover or added-value tax, issued by the Hamburg Revenue Office for Corporations, I am now in

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

[45] 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.

[46] See *Juridical Yearbook*, 1968, p. 66.

[47] See *Juridical Yearbook*, 1965, p. 48.

[48] For the list of those States, see *Multilateral Treaties in respect of which the Secretary-General performs Depository Functions* (ST/LEG/SER.D/11, United Nations publication, Sales No. E.78.V.6), p. 40.

a position to transmit to you the following reply from the competent Federal authorities:

"The Revenue Office for Corporations in Hamburg assessed UNICEF for turnover tax for the calendar years 1969 and 1974 in respect of licences granted by UNICEF to the Norddeutscher and Westdeutscher Rundfunk on a royalty basis. The view expressed by the Revenue Office that neither the Statutory Order concerning the Granting of Privileges and Immunities to the United Nations of 16 June 1970[49] nor the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations of 21 November 1947 apply to UNICEF revenue is correct. However, from the review of the case conducted upon my instruction it emerged that UNICEF as a permanent body of the UN General Assembly has the status of a corporation under public law and has not obtained the revenue in question from gainful commercial activity. As a result, no turnover tax can be collected from UNICEF under the provision of the Federal Turnover Tax Law. The Fiscal Department of the City of Hamburg therefore instructed the competent revenue office to cancel the tax assessment. UNICEF is thus not liable to the Federal Government for turnover tax."

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2. INTERNATIONAL LABOUR ORGANISATION

Agreement between the International Labour Organisation and the Government of the Ivory Coast concerning the establishment of an office of the Organisation in Abidjan.[50] Signed at Abidjan on 30 October 1977

PREAMBLE

Whereas the International Labour Organisation has decided to establish an office of the International Labour Organisation at Abidjan,

Whereas the Government of the Republic of the Ivory Coast has informed the International Labour Organisation of its readiness to grant all the facilities necessary for the establishment of that office,

The Government of the Republic of the Ivory Coast and the International Labour Organisation have agreed as follows:

Article 1

The Government of the Republic of the Ivory Coast shall afford every assistance within its power in securing for the office of the International Labour Organisation at Abidjan facilities to be determined by mutual agreement.

Article 2

The Government shall grant to the office of the International Labour Organisation and to the staff assigned to the said office the privileges and immunities provided for in the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947.

Article 3

The Government of the Republic of the Ivory Coast shall facilitate the entry into,

[49] Reproduced in the *Juridical Yearbook*, 1970, p. 7.
[50] Came into force on the date of signature.

sojourn in and departure from the Ivory Coast of the staff and experts, and their families, having official business with the office of the International Labour Organisation.

Article 4

The Government of the Republic of the Ivory Coast shall afford the International Labour Organisation every assistance within its power in securing appropriate office accommodation and a residence for the Director, as well as the necessary telephone, water and electricity installations.

Article 5

The Government of the Republic of the Ivory Coast shall grant the office of the International Labour Organisation and its staff treatment which shall not be less favourable than that generally granted to other intergovernmental or international organisations represented at Abidjan.

Article 6

Any dispute which arises between the International Labour Organisation and the Government of the Republic of the Ivory Coast concerning the application or interpretation of this Agreement, and which cannot be settled by negotiation or by another agreed method of settlement, shall be submitted to arbitration if one of the parties so requests. Each party shall appoint an arbitrator, and the two arbitrators thus appointed shall appoint a third, who shall preside. If within 30 days of the request for arbitration one of the parties has not appointed an arbitrator, or if in the 15 days following the appointment of two arbitrators the third arbitrator has not been appointed, either of the parties may request the President of the International Court of Justice to appoint an arbitrator. The arbitration procedure shall be fixed by the arbitrators and the costs of the arbitration shall be borne by the parties in proportions to be decreed by the arbitrators. The reasons for the arbitration award shall be stated, and the award shall be accepted by the parties as constituting a definitive settlement of the dispute.

Article 7

1. This Agreement shall come into force on signature and remain in force so long as it has not been denounced in accordance with paragraph 3 below.

2. This Agreement may be modified in writing by mutual agreement between the two parties.

3. This Agreement may be denounced by either of the parties by notice in writing to the other and shall cease to be effective one year after the receipt of the notice.

IN WITNESS WHEREOF the undersigned, duly authorised representatives of the International Labour Organisation and of the Government of the Republic of the Ivory Coast respectively, have signed this Agreement on behalf of the parties, in two copies in the French language.

DONE at Abidjan on 3 October 1977.

For the International Labour Organisation

(*Signed*): Francis BLANCHARD
Director-General of the
International Labour Office

For the Government of the Ivory Coast

(*Signed*): Vanié Bi TRA
Minister of Labour and of
Ivorianisation of Senior Staff

3. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) 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 1977 with the governments of the following countries acting as hosts to such sessions:

Australia[51], Austria, Benin, Burundi[51], Colombia[51], France[51], Ghana[51], Hungary, India[51], Indonesia, Iran, Italy[51], Kenya[51], Malaysia, Morocco, Nepal, Netherlands[51], Norway, Philippines, Qatar, Spain, Tunisia, Uruguay, United Kingdom[51], Venezuela, Yugoslavia.

(*b*) Agreements based on the standard "Memorandum of Responsibilities" in respect of group seminars, workshops, training courses or 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 1977 with the governments of the following countries acting as hosts to such training activities:

Austria, India, Kenya, Kuwait, Mexico[51], Pakistan, Peru, Philippines, Saudi Arabia, Senegal, Singapore, Sri Lanka[51], United Kingdom[51], United Republic of Cameroon.

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4. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) Agreement between the Government of Austria and the United Nations Educational, Scientific and Cultural Organization concerning the Fifth Session of the International Co-ordinating Council of the Programme on Man and the Biosphere. Signed at Paris on 27 September 1977

III. *Privileges and immunities*

The Government of Austria shall apply, in respect of this meeting, the provisions of 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 21 July 1950. In particular, it shall ensure that no restriction is placed upon the right of entry into, sojourn in and departure from its territory of all persons entitled to attend the 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 Bangladesh, Bulgaria, Colombia, Czechoslovakia, Ecuador, Egypt, the Federal Republic of Germany, Ghana, Hungary, India, Jordan, Kenya, Kuwait, Malaysia, Morocco, Mexico, Nepal, the Netherlands, Nigeria, Peru, the Philippines, Poland, the Republic of Korea, Spain, Sri Lanka, the Union of Soviet Socialist

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

Republics, the United Arab Emirates, the United Republic of Cameroon, Venezuela and Yugoslavia.

5. WORLD HEALTH ORGANIZATION

Basic agreements between the World Health Organization and the Governments of Zaire and Cape Verde for the provision of technical advisory assistance. Signed respectively at Kinshasa on 22 April and Brazzaville on 29 April 1977, and at Praia on 22 April and Brazzaville on 17 May 1977

These agreements contain 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.

6. INTERNATIONAL ATOMIC ENERGY AGENCY

1. Agreement on the Privileges and Immunities of the International Atomic Energy Agency[52], approved by the Board of Governors of the Agency on 1 July 1959

(*a*) Deposit of instruments of acceptance

The following Member States accepted the Agreement on the Privileges and Immunities of the International Atomic Energy Agency in 1977, on the date as indicated[53]:

Morocco[54]	30 March 1977
Nicaragua	17 October 1977

(*b*) This brought up to 48 the number of States parties to this Agreement.

2. Incorporation of provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency by reference in other Agreements:

Application of safeguards in connection with the NPT

Agreement and Protocol of 26 February 1975 between Sudan and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons. Article 10. Entered into force on 7 January 1977 (INFCIRC/245).

Agreement and Protocol of 5 April 1973, between Belgium, Denmark, the Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands, the European Atomic Energy Community and the International Atomic Energy Agency in implementation of Article III(1) and 4 of the Treaty on the Non-Proliferation of Nuclear Weapons. Article 10. Entered into force on 21 February 1977 (INFCIRC/193, and Add.1).

[52] United Nations, *Treaty Series*, vol. 374, p. 147.

[53] The Agreement enters into force as between the Agency and the accepting State on the date of deposit of the instrument of acceptance.

[54] With the following reservations:

"— IAEA must take the national laws and regulations into account in the acquisition and use of immovable property in Morocco.

"— The privileges and immunities accorded by the Agreement do not extend to IAEA staff of Moroccan nationality working in Morocco.

"— In case of dispute, any recourse to the International Court of Justice must be made with the consent of all parties concerned."

Agreement and Protocol of 2 October 1977 between Maldives and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons. Article 10. Entered into force on 2 October 1977 (INFCIRC/253).

Agreement and Protocol between the Republic of Singapore and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons. Article 10. Signed on 6 and 18 October 1977. Entered into force on 18 October 1977.

Agreement and Protocol of 4 March 1977 between Japan and the International Atomic Energy Agency in implementation of Article III.i and 4 of the Treaty on the Non-Proliferation of Nuclear Weapons. Article 10. Entered into force on 2 December 1977 (INFCIRC/255).

Agreement and Protocol between Ethiopia and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons. Article 10. Signed on 12 October and 2 December 1977. Entered into force on 2 December 1977.

(*b*) Trilaterial safeguards agreements

Agreement of 5 January 1977 between the International Atomic Energy Agency, France and South Africa for the application of safeguards in respect of the Koeber Nuclear Power Station. Section 19. Entered into force on 5 January 1977 (INFCIRC/244).

Agreement of 10 February 1977 between the International Atomic Energy Agency, Canada and Spain for the application of safeguards in relation to the Agreement of 7 July 1975 between the two Governments for the development and application of atomic energy for peaceful purposes. Section 26. Entered into force on 10 February 1977 (INFCIRC/247).

Protocol of 28 March 1977 prolonging the Agreement of 9 December 1970 between the International Atomic Energy Agency, Colombia and the United States of America for the application of safeguards. Section 25 of the Agreement. The Protocol entered into force on 28 March 1977 (INFCIRC/144, and Add.1).

Protocol of 7 April 1977 prolonging the Agreement of 4 April 1975 between the International Atomic Energy Agency, Israel and the United States of America for the application of safeguards. Section 25 of the Agreement. The Protocol entered into force on 7 April 1977 (INFCIRC/249, and Add.1).

(*c*) Unilateral safeguard submissions

Agreement of 2 March 1977 between the International Atomic Energy Agency and Pakistan for the application of safeguards in connection with the supply of uranium concentrate. Section 15. Entered into force on 2 March 1977 (INFCIRC/248).

Agreement of 20 July 1977 between the International Atomic Energy Agency and the Democratic People's Republic of Korea for the application of safeguards in respect of a research reactor facility. Section 16. Entered into force on 20 July 1977 (INFCIRC/252).

Agreement of 22 July 1977 between Argentina and the International Atomic Energy Agency for the application of safeguards in connection with a contract concluded between the Comisión Nacional de Energía Atómica (Argentina) and the Reaktor Brennelement Union GmbH Hanau (Federal Republic of Germany) for co-operation in the field of fabrication of fuel elements for peaceful nuclear activities. Section 17. Entered into force on 22 July 1977 (INFCIRC/250).

Agreement of 22 July 1977 between Argentina and the International Atomic Energy Agency for the application of safeguards in connection with the Agreement of 30 January 1976 between the Governments of Argentina and Canada for co-operation in the develop-

ment and application of atomic energy for peaceful purposes. Section 23. Entered into force on 22 July 1977 (INFCIRC/251).

Agreement between the International Atomic Energy Agency and the Government of India for the application of safeguards in connection with the supply of heavy water from the Union of Soviet Socialist Republics. Section 15. Signed on 17 November 1977. Entered into force on 17 November 1977.

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7. GENERAL AGREEMENT ON TARIFFS AND TRADE

Exchange of letters between the Director-General of GATT and the Swiss Département politique fédéral relating to the application to GATT, by analogy, of the Agreement on privileges and immunities of the United Nations concluded between the Swiss Federal Council and the Secretary-General of the United Nations on 19 April 1946

I

Bern, 18 August 1977

Sir,

Following the recent discussions between representatives of the Département politique fédéral and members of the GATT secretariat, we have the honour to advise you that the federal authorities are prepared to apply to GATT, by analogy, the Agreement on privileges and immunities of the United Nations concluded between the Swiss Federal Council and the Secretary-General of the United Nations on 19 April 1946.

We would be glad if you would kindly confirm your agreement to the foregoing. This letter and your reply will then be considered as an agreement between the federal authorities and the Director-General of GATT, acting in the name of and on behalf of the CONTRACTING PARTIES. This agreement can be denounced at any time by either of the parties, subject to one year's advance notice.

Accept, Sir, the assurance of my highest consideration.

Director of the International Organizations Division
F. de ZIEGLER

Mr. Olivier LONG
Director-General of GATT
Geneva

II

Geneva, 18 August 1977

Your Excellency,

I have the honour to acknowledge receipt of your letter of today's date, reading as follows:

> "Following the recent discussions between representatives of the Département politique fédéral and members of the GATT secretariat, we have the honour to advise you that the federal authorities are prepared to apply to GATT, by analogy, the Agreement on privileges and immunities of the United Nations concluded between the Swiss Federal Council and the Secretary-General of the United Nations on 19 April 1946.

"We would be glad if you would kindly confirm your agreement to the foregoing. This letter and your reply will then be considered as an agreement between the federal authorities and the Director-General of GATT, acting in the name of and on behalf of the CONTRACTING PARTIES. This agreement can be denounced at any time by either of the parties, subject to one year's advance notice."

In reply, I have the honour to inform you that the proposals which form the subject of your letter reproduced above were approved by the Council of Representatives at its meeting on 26 July 1977. In consequence, your letter together with this reply constitute an agreement between the Federal Authorities and the Director-General of GATT, acting in the name and on behalf of the CONTRACTING PARTIES.

Please accept, Your Excellency, the assurance of my highest consideration.

Olivier LONG

H.E. Ambassador François de ZIEGLER
Director of the International Organizations Division
Federal Political Department
3003 Bern

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*) Comprehensive approaches to disarmament

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

Background

In the Political Declaration adopted at the Fifth Conference of Heads of State or Government of Non-Aligned Countries, held at Colombo in 1976,[2] it was recommended that, pending the convening of a world disarmament conference, the members of the non-aligned movement should request the holding of a special session of the General Assembly not later than 1978.

Following that decision, at the initiative of the non-aligned countries, a draft resolution on the convening of the special session, sponsored by 72 States from various political and geographical groups, was submitted to the General Assembly at its thirty-first session.[3] It was adopted without a vote on 21 December 1976 as resolution 31/189 B. By that resolution, it was decided to convene a special session of the General Assembly devoted to disarmament in New York in May/June 1978, to establish a Preparatory Committee for the Special Session of the General Assembly Devoted to Disarmament composed of 54 Member States and to invite all Member States to communicate to the Secretary-General their views on the agenda and the other relevant questions relating to the special session.

During 1977, the Preparatory Committee held three sessions, one organizational (28-30 March) and two substantive (9-20 May and 31 August–9 September). Its report on the work of those three sessions[4] was submitted to the General Assembly at its thirty-second session.

Work of the Preparatory Committee

At its organizational session, the Committee among other things agreed to a recommendation of its Chairman concerning the procedure to be followed for the adoption of decisions. In submitting this recommendation, the Chairman said that the Committee would be governed by the relevant parts of the rules of procedure of the General Assembly; notwithstanding the fact, it had been generally agreed that every effort should be made to ensure that, as far as possible, decisions on matters of substance were adopted

[1] This summary has been prepared on the basis of *The United Nations Disarmament Yearbook*, vol. 2:1977 (United Nations publication, Sales No. E.78.IX.4).

[2] See A/31/197.

[3] See the report of the First Committee to the thirty-first session of the General Assembly on agenda item 39 in *Official Records of the General Assembly, Thirty-first Session*, agenda items 34 to 50 and 116, document A/31/376.

[4] *Official Records of the General Assembly, Thirty-second Session, Supplement No. 41* (A/32/41).

by consensus. The Committee also decided that States non-members of the Committee could fully participate in its work, without the right to vote.

The two substantives sessions of the Preparatory Committee (second and third sessions) were devoted to the consideration of the various issues pertaining to the organization of the work of the special session and the future work of the Committee itself.

With regard to the special session, the subjects to which the Committee devoted special attention were the provisional agenda of the special session — on which a consensus was reached at the 12th meeting of the Committee on 20 May 1977[5] — and the rules of procedure of the special session, in relation to which the Committee included the following paragraph in its report:

> "The rules of procedure of the General Assembly should apply in the special session without amendments, on the understanding that, regarding the adoption of decisions by the Assembly at the special session, every effort should be made to ensure that, in so far as possible, decisions on matters of substance will be adopted by consensus."[6]

Consideration by the General Assembly[7]

The question of the special session of the General Assembly devoted to disarmament received a great deal of attention from Member States at the thirty-second session, both during the general debate in the Assembly and in the First Committee. Almost all States which referred to the issue in their statements expressed satisfaction with the timely decision to convene the special session and pledged themselves to contribute to its successful work. The General Assembly concluded its consideration of the item at its thirty-second session with the adoption of two resolutions namely resolution 32/88 A in which it endorsed the recommendation of the Preparatory Committee concerning the preparation of a study on the relationship between disarmament and development, and resolution 32/88 B in which it *inter alia* requested the Preparatory Committee to continue its work.

(2) *Consideration of general and complete disarmament*

In 1977 as in previous years, general and complete disarmament continued to be recognized, within the Conference of the Committee on Disarmament, as the ultimate goal of all disarmament efforts.[8]

At the thirty-second session of the General Assembly, many delegations made reference to general and complete disarmament during the general debate, both in the plenary meetings and in the First Committee.[9] As in recent years, emphasis was placed on the increasing dangers and cost of the arms race, on the urgent need for halting and reversing it and on the priority to be given to the curbing of nuclear armaments. General and complete disarmament was often envisaged mainly as an ultimate goal — the ideal culmination of all disarmament efforts which it was important to keep in view. States from all political groupings spoke in terms of setting priorities and implementing concrete measures which would be achievable in the short term and which, they held, would lead towards that goal.

On the topic of general and complete disarmament the General Assembly adopted, among others, resolution 32/87 B in which it reaffirmed the provisions of its resolution 31/189 C and urged the nuclear-weapon States to take expeditious action in relevant

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[5] *Ibid.*, paras. 16 and 17.

[6] *Ibid.*, para. 26.

[7] See the report of the First Committee to the thirty-second session of the General Assembly on agenda item 52 (A/32/381).

[8] For the report of the Conference of the Committee on Disarmament, see *Official Records of the General Assembly, Thirty-second session, Supplement No. 27* (A/32/27).

[9] See the report of the First Committee to the thirty-second session of the General Assembly on agenda item 51 (A/32/380).

forums to strengthen the security of non-nuclear weapon States and resolution 32/87 C in which it requested the Secretary-General to submit a study on the interrelationship between disarmament and international security.

(3) *Disarmament Decade*[10]

In its resolution 32/80, the General Assembly deplored that the purposes and objectives of the Disarmament Decade as defined in its resolution 2602 E (XXI) had not been fulfilled in terms of effective disarmament agreements and that the arms race, especially the nuclear arms race continued unabated, and expressed its deep concern at the continued wastage of resources on armaments and the consequent detrimental effect on international security and the achievement of the objectives of the new international economic order. It also requested the Conference of the Committee on Disarmament to continue its work on the elaboration of a comprehensive programme for disarmament and called upon Member States and the Secretary-General to intensify their efforts in support of the link between disarmament and development.

(4) *World Disarmament Conference*

The proposal for holding a world disarmament conference was examined both within the *Ad Hoc* Committee on the World Disarmament Conference[11] and within the Preparatory Committee for the Special Session of the General Assembly Devoted to Disarmament.[12] It was also referred to at the 1977 session of the Conference on the Committee on Disarmament.[13]

In the resolution it adopted on the topic at its thirty-second session,[14] the General Assembly *inter alia* requested the *Ad Hoc* Committee to submit to the Assembly's special session devoted to disarmament a special report on the state of its work and deliberations and requested the *Ad Hoc* Committee to maintain close contact with the representatives of States possessing nuclear weapons in order to remain currently informed of their respective attitudes.

(*b*) Nuclear disarmament

(1) *Prohibition of the use of nuclear weapons*

Nuclear disarmament has been a constant preoccupation of the international community ever since the emergence of nuclear weapons. Over the years it has come to be recognized that nuclear war constitutes the greatest single peril to the survival of mankind and that, consequently, nuclear disarmament is the most important and pressing item on the disarmament agenda.

Various initiatives have been taken for the prohibition of the use of nuclear weapons. Reference is made in particular to General Assembly resolution 2936 (XXVII) and to the Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatlelolco).[15] Proposals have also been made prohibiting the first

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[10] See the report of the First Committee to the thirty-second session of the General Assembly on agenda item 42 (A/32/373).

[11] For the report of the *Ad Hoc* Committee to the thirty-second session of the General Assembly, see *Official Records of the General Assembly, Thirty-second Session, Supplement No. 28* (A/32/28).

[12] See foot-note 4 above.

[13] See foot-note 8 above.

[14] See the report of the First Committee to the thirty-second session of the General Assembly on agenda item 53 (A/32/382).

[15] United Nations, *Treaty Series*, vol. 634, p. 326. Also reproduced in the *Juridical Yearbook*, 1967, p. 284.

use of nuclear weapons, an alternative being the conditional prohibition of the use of nuclear weapons. In addition, a wide range of measures have been put forward aiming at the creation of the nuclear arms race and nuclear disarmament and involving, in one form or another, limitations, reductions and/or the elimination of nuclear weapons.

The paramount importance of nuclear disarmament was underlined in 1977 both in the Preparatory Committee for the Special Session for Disarmament[16] and in the Conference of the Committee on Disarmament.[17] It was also emphasized at the thirty-second session of the General Assembly[18] where the absolute priority and utmost urgency of effective measures to halt the nuclear arms race and begin the process of nuclear disarmament were generally stressed.

(2) *Strategic Arms Limitation Talks*

Although outside the scope of the negotiations taking place in the Conference of the Committee on Disarmament, the SALT negotiations were referred to in that forum in the context of the debate on measures relating to the cessation of the nuclear arms race.[19] They also received particular attention at the thirty-second session of the General Assembly[20] where the consideration of the issue was markedly influenced by the bilateral consultations held between the United States and the Soviet Union concurrently with the beginning of the session and also the unilateral declarations made by both parties to the effect that they would continue to observe the provisions of the SALT I agreement after it expired. In the resolution it adopted on the question (resolution 32/87 G), the Assembly took note with satisfaction of the statements made by the heads of State of the USSR and the United States in connexion with the reduction and eventual elimination of nuclear weapons and invited the Governments of both countries to adopt without delay all relevant measures to achieve that objective.

(3) *Cessation of nuclear-weapon tests*

As appears from its report for the year 1977, the Conference of the Committee on Disarmament discussed at length the subject of a nuclear-weapon-test ban.[21] The discussion, which confirmed general agreement on the urgent need for a general ban on all nuclear-weapon tests, continued to centre on the same three principal obstacles namely (*a*) the question of verification of compliance with the ban; (*b*) the question of whether the participation of all nuclear-weapons Powers in the ban, or in its negotiation, should be required; and (*c*) the question of peaceful nuclear explosions.

At the thirty-second session of the General Assembly,[22] the question of the cessation of nuclear tests appeared for the third consecutive year under two separate agenda items: item 40, entitled "Urgent need for cessation of nuclear and thermonuclear tests and conclusion of a treaty designed to achieve a comprehensive test ban", which was concerned with the traditional item of a comprehensive test ban, and item 49, entitled "Conclusion of a treaty on the complete and general prohibition of nuclear-weapon tests", which concerned the negotiation of an agreement on the matter by a special negotiating group and had been included on the agenda in 1975 as a result of a Soviet initiative (General Assembly resolution 3478 (XXX)).

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[16] See foot-note 4 above.

[17] See foot-note 8 above.

[18] See *Official Records of the General Assembly, Thirty-second Session, First Committee,* 7th to 38th, 40th and 44th meetings; and *ibid., First Committee, Sessional Fascicle.*

[19] *Ibid., Supplement No. 27* (A/32/27), paras. 20–32.

[20] See the report of the First Committee to the thirty-second session of the General Assembly on agenda item 51 (A/32/380).

[21] See *Official Records of the General Assembly, Thirty-second Session, Supplement No. 27* (A/33/27), paras. 33–95.

[22] See the report of the First Committee to the thirty-second session of the General Assembly on agenda items 40 and 49 (A/32/371).

In its resolution 32/78, the General Assembly *inter alia* reaffirmed its conviction that the cessation of nuclear-weapon testing by all parties would be in the supreme interest of mankind, recalled the determination of the parties to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water[23] and the Treaty on the Non-Proliferation of Nuclear Weapons[24] to continue negotiations to achieve the discontinuance of all test explosions of nuclear weapons for all time and urged the three nuclear-weapon States among which negotiations had begun with a view to the drafting of an agreement on the subject to expedite their negotiations with a view to bringing them to a positive conclusion.

(4) *Treaty on the Non-Proliferation of Nuclear Weapons*[24]

The discussions on the non-proliferation Treaty during 1977 within the Preparatory Committee for the Special Session of the General Assembly Devoted to Disarmament,[25] the Conference of the Committee on Disarmament[26] and the General Assembly[27] reveal continued and broad support for the Treaty as the central element of an effective international regime to prevent the proliferation of nuclear weapons. Many States stressed the need of consolidating the regime by promoting universal adherence to the Treaty. The main issues that emerged in the discussions relating to the international regime for the prevention of the proliferation of nuclear weapons were the cessation of the nuclear arms race, the guarantees against the use or threat of use of nuclear weapons and international co-operation in peaceful uses of nuclear energy. Those issues are referred to in General Assembly resolution 32/87 F in which the Assembly, *inter alia,* urgently called for determined efforts by all nuclear-weapon States to bring about the cessation of the nuclear arms race, reaffirmed that all States have the right, as provided for, *inter alia,* in article IV of the non-proliferation Treaty to acquire and develop nuclear energy for peaceful purposes under effective and non-discriminatory safeguards against the proliferation of nuclear weapons, urged States that had not yet adhered to the Treaty to do so at an early date and solemnly affirmed that (*a*) States should not convert civil nuclear materials or facilities to the production of nuclear weapons and (*b*) all States have the right, in accordance with the principle of sovereign equality, to develop their programmes for the peaceful use of nuclear technology for economic and social development and should have, without discrimination, access to and be free to acquire technology, equipment and materials for the peaceful use of nuclear energy under effective and non-discriminatory safeguards against the proliferation of nuclear weapons.[28] The latter principle was reaffirmed in General Assembly resolution 32/50 entitled "Peaceful use of nuclear energy for economic and social development".

(5) *Nuclear-weapon free zones*

Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatlelolco)

In this connexion, the General Assembly at its thirty-second session adopted two resolutions concerning, respectively, Additional Protocol I and Additional Protocol II to the Treaty of Tlatlelolco. In the first one (resolution 32/76), the Assembly noted with satisfaction that Additional Protocol I had been signed on 26 May 1977 by the United States and again urged France to sign and ratify the Protocol as soon as possible. In the

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[23] United Nations, *Treaty Series,* vol. 480, p. 43. Also reproduced in the *Juridical Yearbook,* 1963, p. 107.

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

[25] See foot-note 4 above.

[26] See foot-note 8 above.

[27] See the report of the First Committee to the thirty-second session of the General Assembly on agenda item 51 (A/32/380).

[28] For a description of the safeguard activities of the International Atomic Energy Agency, which are referred to in several paragraphs of resolution 32/87 F, see the *United Nations Disarmament Yearbook,* vol. 2, 1977, pp. 183–189.

second resolution (32/79), the Assembly again urged the Soviet Union to sign and ratify Additional Protocol II to the Treaty of Tlatleloco.[29]

(c) Prohibition of other weapons

(1) *Chemical weapons*

In 1977, the Conference of the Committee on Disarmament continued its efforts towards a prohibition of chemical weapons in pursuance of General Assembly resolution 31/65. It devoted the major part of its substantive consideration of the subject[30] to the three issues of the scope of a ban, the definition of agents to be included and the question of verification. In addition to having a general discussion on the various issues involved in a chemical weapons ban, the Committee considered in detail the draft convention submitted by the United Kingdom in 1976.[31]

In the course of debate in the General Assembly and in the First Committee,[32] many delegations emphasized that the prohibition of chemical weapons was one of the pressing issues related to the curbing of the arms race and disarmament and called for an early agreement on a chemical weapons ban. The discussion centered on the questions of the scope of a ban and verification. In its resolution 32/77, the General Assembly *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, invited all States that had not yet done so to accede to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction,[33] as well as to accede to or ratify the 1925 Protocol for the Prohibition on the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare,[34] and called again for strict observance by all States of the principle and objectives of these instruments.

(2) *New weapons of mass destruction*

The international community has long been aware that military research may result in new devices whose destruction effect is comparable to that of nuclear weapons. As early as 1948, when atomic weapons had been in existence for only a few years, the Commission for Conventional Armaments of the Security Council adopted a resolution which reflected the realization that in the future weapons might be developed with characteristics comparable in destructive effect to those of atomic explosive weapons, radioactive material weapons and lethal biological and chemical weapons.[35] In the General Assembly, the question was discussed for the first time in 1969 (General Assembly resolutions 2602 C (XXIV) and 2602 D (XXIV).

The question of the prohibition of the development and manufacture of new types of weapons of mass destruction and new systems of such weapons was first included in

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[29] With respect to the question of nuclear-weapon-free zones, reference is also made to General Assembly resolutions 32/81, 32/82 and 32/83 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".

[30] *Official Records of the General Assembly, Thirty-second Session, Supplement No. 27* (A/33/27), paras. 117–206.

[31] Ibid., *Thirty-first Session, Supplement No. 27* (A/31/27), annex III, document CCD/512.

[32] See the report of the First Committee to the thirty-second session of the General Assembly on agenda item 39 (A/32/370).

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

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

[35] For details, see *The United Nations and Disarmament: 1945–1970* (United Nations publication, Sales No. 70.IX.1), chap. 2 and *The United Nations Disarmament Yearbook,* vol. 1: 1976 (United Nations publication, Sales No. E.77/IX.2), chap. XV.

the agenda of the General Assembly at its thirtieth session in 1975 further to an invitation of the Soviet Union.[36]

In 1977, the Conference of the Committee on Disarmament gave considerable attention to the subject. The discussions which were based on the draft convention sub mitted by the Soviet Union the year before[37] centered on the scope of a convention on the prohibition of new types of weapons of mass destruction and the definition of such weapons, the verification aspect of such a convention and the question of how to avoid hampering technological and scientific research for peaceful purposes.

The discussion at the thirty-second session of the General Assembly[38] centred around the same main issues as in the Conference of the Committee on Disarmament. Two resolutions were adopted on the subject, resolution 32/84 A as an essentially procedural nature and resolution 32/84 B in which the Assembly *inter alia* urged States to refrain from developing new weapons of mass destruction based on new scientific principles, called upon States to apply scientific discovery for the benefit of mankind and reaffirmed the definition of weapons of mass destruction contained in the resolution of the Commission of Conventional Armaments of 12 August 1948.[39]

(3) *Napalm and other specific conventional weapons*

The question of a ban on the use of incendiary weapons and of other categories of weapons such as blast and fragmentation weapons, delayed action and treacherous weapons and high velocity small-calibre projectiles was considered in detail at three sessions of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, held from 1974 to 1976, by an *Ad Hoc* Committee on conventional weapons established for that purpose by the Conference. At its final session held in 1977, the Diplomatic Conference made some progress towards agreement on restricting the use of certain specific conventional weapons but took no final decision with regard to any weapons. In its resolution 22 (IV),[40] it recommended that a conference should be convened not later than 1979 with a view to reaching agreement on prohibitions or restrictions on the use of certain specific conventional weapons for humanitarian reasons.

At its thirty-second session,[41] the General Assembly, in its resolution 32/44, welcomed the above-mentioned recommendation and its resolution 32/152 decided to convene in 1979 a United Nations Conference with a view to reaching agreements on prohibitions or restrictions of the use of specific conventional weapons, including those which may

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[36] See *Official Records of the General Assembly, Thirtieth Session, Annexes* agenda item 126.

[37] See General Assembly resolution 3478 (XXX), annex.

[38] See the report of the First Committee to the thirty-second session of the General Assembly on agenda item 46 (A/32/377).

[39] The resolution defines weapons of mass destruction as atomic explosive weapons, radioactive material weapons, lethal chemical and biological weapons and any weapons developed in the future which might have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above.

In connexion with radiological weapons, it should be noted that although the prohibition of such weapons has not been in the forefront of the discussions either in the General Assembly or in the Conference of the Committee on Disarmament, it has on several occasions retained the attention of States: mention should be made in this connexion of General Assembly resolution 2602 C (XXIV), of the reference, in the draft agreement on the prohibition of the development and manufacture of new types of weapons of mass destruction submitted in 1975 by the Soviet Union, to "radiological means of the non-explosive type acting with the aid of radioactive materials", and of the bilateral talks between the Soviet Union and the United States on an agreement on the topic.

[40] See document A/32/124, annex II.

[41] See the report of the Sixth Committee to the thirty-second session of the General Assembly on agenda item 115 (A/32/396) and the report of the First Committee to the thirty-second session of the General Assembly on agenda item 38 (A/32/369).

be deemed to be excessively injurious or to have indiscriminate effects taking into account humanitarian and military considerations.[42]

(*d*) Review Conference of the 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[43]

The first review Conference of the Parties to the above-mentioned Treaty was held at Geneva from 20 June to 1 July 1977 pursuant to article VII of the Treaty, with the participation of 42 States parties. The Conference's Final Document[44] was transmitted to the Secretary-General of the United Nations for distribution to all Member States at the thirty-second session of the Assembly.[45] In its resolution 32/87 A, the Assembly *inter alia* welcomed with satisfaction the positive assessment by the Review Conference of the effectiveness of the Treaty since its entry into force, invited all States that had not yet done so to ratify or accede to the Treaty and called upon all States to refrain from any action which might lead to the extension of the arms race to the sea-bed and the ocean floor.

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2. OTHER POLITICAL AND SECURITY QUESTIONS

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

In its resolution 32/153, the General Assembly[46] *inter alia* urged all States to abide by the provisions of paragraphs 3 and 4 of General Assembly resolution 31/91 which denounce any form of interference in the internal or external affairs of other States and condemn all forms and techniques of coercion, subversion and defamation aimed at disrupting the political, social or economic order of other States; called once again upon all States to undertake necessary measures in order to prevent any hostile act or activity taking place within their territory and being directed against the sovereignty, territorial integrity and political independence of another State and expressed the view that a declaration on non-interference in the internal affairs of States would be an important contribution to the former elaboration of the principles for strengthening equitable co-operation and friendly relations among States, based on sovereign equality and mutual respect.

(*b*) Implementation of the Declaration on the Strengthening of International Security

In its resolution 32/154, the General Assembly[47] *inter alia* called upon all States to adhere fully to, and implement consistently, the purposes and principles of the United Nations and all the provisions of the Declaration on the Strengthening of International

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[42] Pursuant to resolution 32/152, a preparatory conference for the above-mentioned Conference was convened in 1978. Its report (A/33/44) was before the General Assembly at its thirty-third session.

[43] Reproduced in the *Juridical Yearbook*, 1970, p. 121.

[44] SBT/CONF/25 (also circulated as documents CCD/543 and A/C.1/32/4).

[45] See the report of the First Committee to the thirty-second session of the General Assembly on agenda item 51 (A/32/380).

[46] See the report of the First Committee to the thirty-second session of the General Assembly on agenda item 50 (A/32/450).

[47] *Ibid.*

Security (resolution 2734 (XXV)) and to contribute effectively to the increasing peace-keeping and peace-making role of the United Nations; called for the extension of the process of relaxation of tensions, which is still limited, to all regions of the world and the implementation of the principle of non-use of force or the threat thereof in order to help bring about just and lasting solutions to international problems with the participation of all States so that peace and security will be based on effective respect for the sovereignty and independence of all States and the inalienable right of all peoples to determine their own destiny freely and without outside interference, coercion or pressure; reaffirmed that any measure or pressure directed against any State while exercising its sovereign right freely to dispose of its natural resources constitutes a flagrant violation of the right of self-determination of peoples and the principle of non-intervention, as set forth in the Charter, which, if pursued, would constitute a threat to international peace and security; and urged effective measures to put an end to the arms race and to promote disarmament.

(*c*) Declaration on the Deepening and Consolidation of International Détente

On 19 December 1977, the General Assembly,[48] by resolution 32/155, adopted the Declaration on the Deepening and Consolidation of International Détente by which the States Members of the United Nations declared their determination:

1. To adhere firmly to and promote the implementation of the provisions of the Charter of the United Nations, as well as the universally accepted principles and declarations aimed at enhancing world peace and security and the development of friendly and co-operative relations among States, and to fulfill their obligations arising from multilateral treaties and agreements serving the achievement of these objectives;

2. To consider taking new and meaningful steps, both in bilateral and multilateral arms control negotiation forums, aimed at achieving the objective of a cessation of the arms race, in particular the nuclear arms race, at an early stage and realization of disarmament measures, especially nuclear disarmament, with the ultimate objective of general and complete disarmament under strict and effective international control;

3. To facilitate the peaceful and speedy settlement of outstanding international problems and to strive to remove both causes and effects of international tension so that relations among all States may evolve in the direction of co-operation and friendship in order to prevent the recurrence of situations which might endanger international peace and security;

4. To strengthen the role of the United Nations as a primary instrument in the maintenance of international peace and security by reinforcing both the peace-making and peace-keeping capabilities of the Organization;

5. To refrain from the threat or use of force and to abide in their relations with other States by the principles of sovereign equality, territorial integrity, inviolability of international frontiers, inadmissibility of the acquisition and occupation of the territories of other States by force, settlement of disputes — including frontier disputes — strictly by peaceful means, non-intervention and non-interference in the internal affairs of other States, respect for human rights, respect for the right of all nations to choose freely their social, political and economic systems and to develop their external relations in the way they deem best for the interest of their respective peoples in conformity with the Charter of the United Nations;

6. To ensure the free exercise of the right of the peoples under colonial and alien domination to self-determination and to promote majority rule, especially where racial oppression, in particular *apartheid,* has deprived peoples from exercising their inalienable rights;

[48] See the report of the First Committee to the thirty-second session of the General Assembly on agenda item 127 (A/32/451).

7. To work towards the establishment and development of just and balanced economic relations among States and to strive to narrow the gap between the developed and developing countries, in accordance with the resolutions of the General Assembly adopted by consensus at its sixth and seventh special sessions on the establishment of the new international economic order;[49]

8. To encourage and promote respect for human rights and fundamental freedoms for all in conformity with the Universal Declaration of Human Rights and other relevant international treaties and instruments, including the International Covenants on Human Rights;[50]

9. To foster mutual understanding and trust among peoples by promoting and facilitating cultural exchanges, freer movement and contacts among them both on an individual and a collective basis;

10. To develop further their relations and co-operation in conformity with the purposes and principles of the Charter of the United Nations and to observe the principles set forth above which derive from the Charter, recognizing that nothing in the present Declaration could either alter or detract from obligations they might have undertaken in relation to other States in accordance with the principles of international law and the Charter.

(*d*) Safety of international civil aviation

This question was included in the agenda of the thirty-second session of the General Assembly further to an initiative of 42 Member States, prompted by the serious concern caused by the recent escalation of unlawful interference with civil air travel and its consequences for the safety of international civil aviation.[51] The question was allocated to the Special Political Committee which decided to begin its debate thereon by hearing statements by the President of the Council of ICAO[52] and by the representatives of the International Federation of Airline Pilots Associations.[52]

On 3 November 1977, the General Assembly, on the recommendation of the Special Political Committee,[53] adopted resolution 32/8 in which it *inter alia* reiterated and reaffirmed its condemnation of acts of aerial hijacking or other interference with civil air travel through the threat or use of force, and all acts of violence which may be directed against passengers, crew and aircraft, whether committed by individuals or States; called upon all States to take all necessary steps to prevent such acts; appealed to all States which have not yet become parties to the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963,[54] the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970,[55] and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971,[56] to give urgent consideration to ratifying or acceding to those conventions; called upon the International Civil Aviation Organization to undertake urgently further efforts with a view to ensuring the security of air travel and preventing the recurrence of acts of the nature referred to

[49] Resolutions 3201 (S-VI), 3202 (S-VI) and 3362 (S-VI).

[50] Resolution 2200 A (XXI), annex. Also reproduced in the *Juridical Yearbook*, 1966, p. 170.

[51] See document A/32/245.

[52] See document A/SPC.32/PV.7.

[53] See the report of the Special Political Committee to the thirty-second session of the General Assembly on agenda item 129 (A/32/320 and Corr.1).

[54] United Nations, *Treaty Series*, vol. 704, p. 219. Also reproduced in the *Juridical Yearbook*, 1963, p. 136.

[55] See *Juridical Yearbook*, 1970, p. 131.

[56] *Ibid.*, 1971, p. 143.

above, including the reinforcement of annex 17[57] to the Convention on International Civil Aviation, signed at Chicago on 7 December 1944;[58] and appealed to all Governments to make serious studies of the abnormal situation related to hijacking.

(*e*) Peaceful uses of outer space

The Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space held its sixteenth session in New York from 14 March to 8 April 1977.[59]

At that session, it re-established its Working Groups I, II and III entrusted, respectively, with the consideration of the 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 I decided, as it had done at previous sessions of the Sub-Committee, to give priority to the question of the natural resources of the moon which was generally regarded as the key issue whose solution could facilitate an agreement on the two main outstanding issues, namely the question of the scope of the treaty and that of the information to be furnished on missions to the moon. The Working Group was unable to arrive at a consensus on the question of the natural resources of the moon. In the Legal Sub-Committee, the discussion principally concerned the question of the legal status of the moon and its natural resources; no compromise solution could be reached.

Working Group II (on direct broadcast satellites) decided that it would continue to consider the formulation of the three remaining principles ("consent and participation", "programme content" and "unlawful/inadmissible broadcasts"). The Working Group expressed the hope that in view of the progress made during the session all delegations would do their best to overcome the remaining differences so that the task entrusted to the Sub-Committee in General Assembly resolution 31/8[60] would be fulfilled at the following session of the Committee on the Peaceful Uses of Outer Space. In the Legal Sub-Committee, the statements made principally concerned the questions of prior agreements and free flow of information.

Working Group III (on remote sensing) was successful in formulating six additional draft principles, a fact of which the Legal Sub-Committee took note with appreciation.

In addition to reviewing the work of its Working Groups, the Legal Sub-Committee also devoted some time, in plenary, to the question of the definition and/or delimitation of outer space.

The report of the Legal Sub-Committee was considered by the Committee on the Peaceful Uses of Outer Space at its twentieth session held at Vienna from 20 June to 1 July 1978.[61] The Committee (1) agreed that the Legal Sub-Committee at its seventeenth session should continue its work on the draft treaty relating to the moon as a matter of high priority; (2) established a working party of the whole to review the outstanding matters concerning direct broadcast satellites, and recommended, in the light of the progress achieved, that the Legal Sub-Committee should continue to consider, as a matter of high priority, the elaboration of principles governing the use by States of artificial

[57] See *International Standards and Recommended Practices: Security — Safeguarding international civil aviation against acts of unlawful interference* (International Civil Aviation Organization (Montreal, August 1974). This first edition of annex 17 was adopted by the Council of the International Civil Aviation Organization) on 22 March 1974.

[58] United Nations, *Treaty Series*, vol. 15, p. 295.

[59] For the report of the Sub-Committee, see document A/AC.105/196.

[60] Namely, under operative paragraph 4 (*a*) (ii), "to consider completing the elaboration of draft principles governing the use by States of artificial earth satellites for direct television broadcasting with a view to concluding an international agreement or agreements".

[61] For the report of the Committee, see *Official Records of the General Assembly, Thirty-second Session, Supplement No. 20* (A/32/20).

earth satellites for direct television broadcasting; and (3) recommended that the Sub-Committee should continue, on the basis of high priority, to give detailed consideration to the legal implications of remote sensing, with the aim of formulating draft principles relating to remote sensing.

On 20 December 1977, the General Assembly adopted two resolutions, 32/195 and 32/196, under its agenda item "International co-operation in the peaceful uses of outer space".

Resolution 32/195, adopted by consensus, commemorated the tenth anniversary of the entry into force 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.[62] The General Assembly, *inter alia,* invited States which had not yet become parties to the Treaty to ratify or accede to it as soon as possible.

Resolution 32/196, on international co-operation in the peaceful uses of outer space, contained two parts: part A, which concerned the work of the Committee on the Peaceful Uses of Outer Space and of its Sub-Committees; and part B, which provided for an increase in the membership of the Committee.

In part A, which was adopted by consensus, the General Assembly invited States which had not yet become Parties to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies;[63] to the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space;[64] to the Convention on International Liability for Damage Caused by Space Objects[65] and to the Convention on Registration of Objects Launched into Outer Space[66] to give early consideration to ratifying or acceding to those international agreements. The Assembly further noted with satisfaction the considerable progress achieved by the Legal Sub-Committee and by a Working Party of the Committee on the Peaceful Uses of Outer Space, in the elaboration of draft principles governing the use by States of artificial earth satellites for direct television broadcasting, and the work done in formulating a tentative text of a principle of "consultation and agreements between States" and a draft preamble. It further noted with satisfaction that the Legal Sub-Committee had achieved significant progress by formulating six additional draft principles relating to the legal implications of remote sensing of the earth from space, had continued its efforts to complete the draft treaty relating to the moon, and had discussed questions relating to the definition and/or delimitation of outer space and outer space activities. The Assembly recommended that the Legal Sub-Committee at its next session should continue, as matters of high priority, (*a*) its efforts to complete the elaboration of draft principles governing the use by States of artificial earth satellites for direct television broadcasting; (*b*) its detailed consideration of the legal implications of remote sensing of the earth from space, with the aim of formulating draft principles; (*c*) its consideration of the draft treaty relating to the moon. It also recommended that the Legal Sub-Committee at its next session should continue to discuss questions relating to the definition and/or delimitation of outer space activities, and also bear in mind questions relating to the geostationary orbit.

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[62] Reproduced in the *Juridical Yearbook,* 1965, p. 166.
[63] *Ibid.*
[64] *Ibid.,* 1967, p. 269.
[65] *Ibid.,* 1971, p. 111.
[66] *Ibid.,* 1974, p. 89.

3. ECONOMIC, SOCIAL AND HUMANITARIAN ACTIVITIES

(*a*) Human rights questions[67]

(1) *Status and implementation of international instruments*

International Covenants on Human Rights[68]

As at 31 December 1977, the International Covenant on Economic, Social and Cultural Rights, which entered into force on 3 January 1976, had been ratified or acceded to by 46 States, the International Covenant on Civil and Political Rights, which entered into force on 23 March 1976, had been ratified or acceded to by 44 States and the Optional Protocol to the latter Covenant, which entered into force on the same date, had been ratified or acceded to by 16 States.[69]

By its resolution 32/66, adopted on the report of the Third Committee[70] the General Assembly, *inter alia,* recognized the importance of the Covenants as a major step in the international efforts to promote universal respect for and observance of human rights and fundamental freedom, noted with appreciation the report of the Human Rights Committee on its first and second sessions[71] and invited again all States which had not yet done so to become parties to the Covenants and to consider the possibilities of acceding to the Optional Protocol thereto.

International Convention on the Elimination of All Forms of Racial Discrimination[72]

As of 31 December 1977, the Convention had been ratified or acceded to by 97 States.[73] In its resolution 32/11, adopted on the recommendation of the Third Committee,[74] the General Assembly, *inter alia,* appealed to States which had not yet become parties to the Convention to ratify it or accede thereto and further appealed to States parties to the Convention to study the possibility of making the declaration provided for in article 14 of the Convention.

The General Assembly further adopted, also on the recommendation of the Third Committee,[75] resolution 32/13 on the report of the Committee on the Elimination of Racial Discrimination on its fifteenth and sixteenth sessions[76] in which it, *inter alia,* commended the Committee for furthering the implementation of the Convention, invited the States parties to the Convention to observe fully the provisions of the Convention and other international instruments and agreements to which they were parties concerning the elimination of all forms of discrimination based on race, colour, descent or

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[67] For detailed information, see the report of the Commission on Human Rights on its thirty-third session (*Official Records of the Economic and Social Council, Sixty-second Session, Supplement No. 6* (E/5927).

[68] See General Assembly resolution 2200 A (XXI), annex. Also reproduced in the *Juridical Yearbook,* 1966, p. 170. *et seq.*

[69] For the list of the States parties to those instruments as at 31 December 1977, see *Multilateral Treaties in Respect of which the Secretary-General Performs Depositary Functions* (ST/LEG/SER.D/11—United Nations publication, Sales No. E.78.V.6).

[70] See the report of the Third Committee to the thirty-second session of the General Assembly on agenda item 81 (A/32/333).

[71] *Official Records of the General Assembly, Thirty-second Session, Supplement No. 44* (A/32/44 and Corr.1).

[72] See General Assembly resolution 2106 A (XX), annex. Also reproduced in the *Juridical Yearbook,* 1965, p. 63.

[73] See foot-note 69 above.

[74] See the report of the Third Committee to the thirty-second session of the General Assembly on agenda item 74 (A/32/307 and Add.1).

[75] *Ibid.*

[76] *Official Records of the General Assembly, Thirty-second Session, Supplement No. 18* (A/32/18).

national or ethnic origin and invited all States not yet parties to the Convention to be guided by its provisions in their internal and foreign policies.

International Convention on the Suppression and Punishment of the Crime of Apartheid[77]

As of 31 December 1977, the Convention had been ratified or acceded to by 38 States.[78] In its resolution 32/12, adopted on the recommendation of the Third Committee,[79] the General Assembly, *inter alia,* requested all States which had not yet become parties to the Convention to accede thereto as soon as possible, welcomed the establishment of a group as provided for by article IX of the Convention[80] and invited the Commission on Human Rights to continue its efforts to undertake the functions set out in article X of the Convention.

(2) *Question of torture and other cruel, inhuman or degrading treatment or punishment*

In connexion with this question, the General Assembly adopted three resolutions at its thirty-second session.[81] In resolution 32/62, it recalled the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[82] and requested the Commission on Human Rights to draw up a draft convention on that question in the light of the principles embodied in the Declaration. In resolution 32/63, it requested the Secretary-General to draw up and circulate among Member States a questionnaire soliciting information concerning the steps they had taken to put into practice the principles of the Declaration. In resolution 32/64, it called upon all Member States to reinforce their support of the Declaration by making unilateral declarations against torture and other cruel, inhuman or degrading treatment or punishment along the lines of the model unilateral declaration annexed to the resolution.[83]

(3) *Human rights of migrant workers*

By its resolution 32/120, adopted on the recommendation of the Third Committee,[84] the General Assembly, *inter alia,* invited all States (*a*) to extend to migrant workers having regular status in their territories treatment equal to that enjoyed by their own nationals with regard to the enjoyment of fundamental human rights; (*b*) to promote and facilitate by all means in their power the implementation of the relevant international instruments and the adoption of bilateral agreements designed, *inter alia,* to eliminate the illicit traffic in alien workers; (*c*) to take all necessary and appropriate measures to ensure

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[77] See General Assembly resolution 3068 (XXVIII), annex. Also reproduced in the *Juridical Yearbook,* 1973, p. 70.

[78] See foot-note 69 above.

[79] See the report of the Third Committee to the thirty-second session of the General Assembly on agenda item 74 (A/32/307).

[80] The Working Group on the Implementation of the International Convention on the Suppression and Punishment of the Crime of *Apartheid* established by the Chairman of the Commission on Human Rights at its thirty-third session consists of the following members: Cuba, Nigeria and Syrian Arab Republic.

[81] See the report of the Third Committee to the thirty-second session of the General Assembly on agenda item 80 (A/32/355).

[82] See General Assembly resolution 3452 (XXX), annex. Also reproduced in the *Juridical Yearbook,* 1975, p. 48.

[83] The model unilateral declaration reads as follows:

"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."

[84] See the report of the Third Committee to the thirty-second session of the General Assembly on agenda item 12 (A/32/458).

that the fundamental human rights and acquired social rights of all migrant workers, irrespective of their status, are fully respected under their national legislation. The General Assembly further called upon all States to give consideration to ratifying the ILO Migrant Workers (Supplementary Provisions) Convention, 1975.[85]

(4) *International Declaration against* Apartheid *in Sports*

By its resolution 32/105 M, the General Assembly adopted an International Declaration against *Apartheid* in Sports (annexed to the resolution) and requested the *Ad Hoc* Committee on the Drafting of an International Convention against *Apartheid* in Sports to draft such a convention for submission to the General Assembly at its thirty-third session.

(*b*) Status of women

The legal instruments dealing with the protection and promotion of women's rights which have been adopted under the auspices of the United Nations include the 1966 International Covenants on Human Rights,[86] the 1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,[87] the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery[88] and the 1956 Convention on the Recovery Abroad of Maintenance.[89] Other legally-binding instruments which deal exclusively with women's rights are the 1953 Convention on the Political Rights of Women,[90] the 1957 Convention on the Nationality of Married Women[91] and the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage.[92, 93]

At its sixty-second session in 1977, the Economic and Social Council had before it a draft convention on the elimination of discrimination against women adopted by the Commission on the Status of Women at its resumed twenty-sixth session held in December 1976.[94] By its resolution 2058 (LXII), the Council requested the General Assembly to take up consideration of the draft convention as a matter of urgency at the outset of its thirty-second session with a view to its adoption at that session.

At the thirty-second session of the General Assembly, the Third Committee established a Working Group of the Convention on the Elimination of Discrimination against Women. In its resolution 32/136, adopted on the report of the Third Committee,[95] the General Assembly took note with satisfaction of the report of the Working Group[96] and recommended that a working group should be established at the beginning of the thirty-third session to continue consideration of the articles which had not yet been completed.

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[85] International Labour Office, *Official Bulletin,* vol. LVIII, 1975, Series A, No. 1, Convention No. 143.

[86] See foot-note 68 above.

[87] United Nations, *Treaty Series,* vol. 96, p. 271.

[88] *Ibid.,* vol. 266, p. 3.

[89] *Ibid.,* vol. 268, p. 3.

[90] *Ibid.,* vol. 193, p. 135.

[91] *Ibid.,* vol. 309, p. 65.

[92] *Ibid.,* vol. 521, p. 231.

[93] For a list of the States parties to those instruments see *Multilateral Treaties in Respect of which the Secretary-General Performs Depositary Functions* (ST/LEG/SER.D/11), United Nations publication, Sales No. E.78.V.6).

[94] For the text of the draft, see *Official Records of the Economic and Social Council, Sixty-second Session, Supplement No. 3* (E/5909), p. 2.

[95] See the report of the Third Committee to the thirty-second session of the General Assembly on agenda item 85 (A/32/440).

[96] A/C.3/32/L.59.

(c) Crime prevention and criminal justice

(1) *Range of application and implementation of the Standard Minimum Rules for the Treatment of Prisoners*

The recommendations of the Committee on Crime Prevention and Control on the range of application and the implementation of the Standard Minimum Rules for the Treatment of Prisoners,[97] prepared in pursuance of Economic and Social Council resolution 1993 (LX) and included in the Committee's report on its fourth session,[98] were submitted to the Commission for Social Development at its twenty-fifth session. The Commission, having considered the report, adopted a draft resolution recommending to the Council, *inter alia,* the adoption of the draft resolution proposed by the Committee on this subject.[99]

The Council, having considered the reports of the Commission for Social Development and of the Committee on Crime Prevention and Control, on 13 May 1977 adopted without a vote, on the recommendation of its Social Committee,[100] resolution 2076 (LXII) in which it decided to add a new rule, 95, to the Standard Minimum Rules approved by the Council on 31 July 1957,[97] in order to widen their scope to all categories of detainees, in particular to any person deprived of liberty, regardless of whether a criminal charge had been lodged against that individual. The new rule also mentioned the International Covenant on Civil and Political Rights and warned against the application of re-educational or rehabilitative measures to persons who had not yet been convicted of any criminal offence.

(2) *Capital punishment*

In its resolution 32/61, the General Assembly reaffirmed that the main objective to be pursued in the field of capital punishment was that of progressively restricting the number of offences for which the death penalty might be imposed, with a view to the desirability of abolishing this punishment. The Assembly also urged Member States to provide the Secretary-General with information for his 1980 reports on capital punishment and invited the Economic and Social Council to report to the Assembly on this question in 1980. Moreover, the Assembly called upon the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to discuss the question of capital punishment and requested the Committee on Crime Prevention and Control to undertake the necessary preparations for this purpose.

(d) United Nations Environment Programme

At its fifth session held at Nairobi from 9 to 25 May 1977,[101] the Governing Council of the United Nations Environment Programme *inter alia* adopted a resolution (91 (V)) on environmental law in which it expressed the desire to promote the further development of international law related to the protection of the environment as well as to develop further the relevant principles contained in the Declaration of the United Nations Conference on the Human Environment[102] as they relate to liability for pollution and other environmental damage and compensation for such damage. Having taken note of the report of the Group of Experts on Liability for Pollution and Other Environmental

[97] *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A.

[98] E/CN.5/536.

[99] See *Official Records of the Economic and Social Council, Sixty-second Session, Supplement No. 5* (E/5915).

[100] For the report of the Social Committee of the Council, see document E/5964 and Corr.1 reproduced in *Official Records of the General Assembly, Thirty-second Session, Supplement No. 3* (A/32/3), paras. 330–335.

[101] For detailed information, see *Official Records of the General Assembly, Thirty-second Session, Supplement No. 25* (A/32/25).

[102] United Nations publication, Sales No. E.73.II.A.14 and Corr.1, chap. I.

Damage and Compensation for such Damage,[103] the Governing Council *inter alia* requested the Executive Director to convene as soon as possible a small working group on environmental law composed of government experts to examine and further pursue the work undertaken in the area under consideration.

With respect to marine pollution, the Governing Council in its resolution 88 (V) noted that the application of the international conventions concluded with a view to reducing pollution of the seas was still limited and that not all interested States had yet become parties to them; it therefore recommended that States which had not yet acceded to this convention do so as soon as possible.

On the question of co-operation in the field of the environment concerning natural resources shared by two or more States, the Governing Council having considered the reports of the Intergovernmental Working Group of Experts on Natural Resources Shared by Two or More States[104] adopted resolution 99 (V) in which it *inter alia* requested the Executive Director to reconvene the Working Group as soon as possible. At its January 1977 session, the Working Group completed a first reading of a series of draft principles of conduct in the field of the environment for the guidance of States in the conservation and harmonious exploitation of natural resources shared by two or more States, and tentatively drafted a compromise text or texts for each principle.

(*e*) Office of the United Nations High Commissioner for Refugees[105]

In providing international protection to refugees under resolution 428 (V) of the General Assembly and the Statute of his Office annexed thereto, the High Commissioner was faced in 1977 with an increased influx of refugees, particularly in Africa and Asia. In accordance with article 8 of the Statute, the High Commissioner pursued the promotion of accession to international legal instruments affecting refugees, notably the 1951 Convention on the Status of Refugees[106] and its 1967 Protocol.[107] In 1977 the number of parties to the 1951 Convention rose from 68 to 72, and the number of parties to the 1967 Protocol rose from 63 to 67.[108] Accessions to the OAU Convention of 1969 Governing Specific Aspects of Refugee Problems[109] remained unchanged at 18.

An important development was the adoption by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts of Protocol I[110] to the Geneva Conventions of 12 August 1949[111] which includes provisions of benefit to refugees and stateless persons.

A number of countries throughout the world admitted thousands of asylum-seekers. The grant of asylum has nevertheless continued to be problematical in certain respects. Thus in some cases refugees were denied asylum, and in others they were admitted on a temporary basis only.

The problem of persons leaving the Indo-Chinese peninsula in small boats and seeking asylum has remained acute. As of 31 March 1978, the total number of such persons known to UNHCR was nearly 27,000, of whom some 20,000 had already been resettled or accepted for resettlement. The High Commissioner issued, jointly with the Inter-

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[103] UNEP/WG.8/3.

[104] See UNEP/GC/74 and UNEP/GC/101.

[105] For detailed information, see *Official Records of the General Assembly, Thirty-second Session, Supplement No. 12 and 12 A* (A/32/12 and Add.1) and *ibid., Thirty-third Session, Supplement No. 12 and 12 A* (A/33/12 and Add.1).

[106] United Nations, *Treaty Series*, vol. 189, p. 137.

[107] *Ibid.*, vol. 606, p. 267. Also reproduced in the *Juridical Yearbook*, 1967, p. 285.

[108] For the list of the States parties to those instruments, see *Multilateral Treaties in Respect of which the Secretary-General Performs Depositary Functions* (ST/LEG/SER.D/11, United Nations publication, Sales No. E.78.V.6).

[109] Organization of African Unity document CM/267/Rev.1.

[110] Reproduced on p. 95 of this *Yearbook*.

[111] United Nations, *Treaty Series*, vol. 75.

Governmental Maritime Consultative Organization, an appeal aimed at ensuring that ships' masters observe scrupulously the obligations of international instruments regarding rescue at sea. The High Commissioner also continues to appeal to competent authorities to permit the landing of persons so rescued for temporary asylum pending their resettlement.

The fundamental principles of asylum and non-refoulement were emphasized in the conclusions of the twenty-eighth session of the UNHCR Executive Committee,[112] where the Committee, *inter alia,* appealed to Governments to follow, or continue to follow, liberal practices in granting permanent or at least temporary asylum to refugees coming directly to their territory,[113] and by the General Assembly, which, in resolution 32/67 adopted on 8 December 1977 urged Governments to co-operate with the High Commissioner in promoting permanent and speedy solutions through voluntary repatriation and assistance in rehabilitation of returnees, integration in countries of asylum or resettlement in other countries, and further urged Governments to facilitate the High Commissioner's efforts in the field of international protection through accessions to and effective implementation of international and regional instruments relating to refugees, as well as by following humanitarian principles in granting asylum and by ensuring that they were scrupulously observed.

The related problem of expulsion has also continued to receive close attention.

Measures to ensure the physical protection of refugees were again required in some countries. While they are primarily the responsibility of the governments of the countries of residence, UNHCR is nevertheless called upon to investigate and intervene with the competent national authorities in cases, for instance, where refugees are in physical danger or in prolonged detention.

During 1977, procedures for the determination of refugee status in accordance with the definition contained in the 1951 Convention and the 1967 Protocol have been established by the authorities of Djibouti, Greece, Australia and Canada. Other countries are giving consideration to the matter. UNHCR has also continued to advise Governments on the issue of travel and identity documents to refugees.

Efforts aimed at the reunification of refugee families have been pursued, whether by helping relatives of refugees to receive authorization to leave their country of origin, or by helping them to leave the country of asylum and gain admission to a country of resettlement.

UNHCR efforts under the 1951 Convention to promote the economic and social rights of refugees have led to an improvement in their position in certain countries. UNHCR has also continued to promote naturalization, as provided for under the 1951 Convention. Positive measures were taken to this end notably in Belgium, the Federal Republic of Germany and Spain.

The Government of the Federal Republic of Germany has pursued its co-operation with UNHCR in providing compensation payments to refugees or former refugees who had suffered persecution under the national-socialist régime on account of their nationality. Furthermore, the Government of Uganda has embarked upon a 10-year programme of payments to Ugandan Asians outside Uganda to compensate for the loss of their assets.

(*f*) International drug control[114]

In 1977, the United Nations, within the framework of the international treaties, continued to carry out, through its organs and its Secretariat the work entrusted to it in the

[112] Document A/AC.96/549, also reproduced in *Official Records of the General Assembly, Thirty-second Session, Supplement No. 12 A* (A/32/12/Add.1).

[113] *Ibid.,* p. 13.

[114] For detailed information, see the report of the Commission on Narcotic Drugs on its twenty-seventh session in *Official Records of the Economic and Social Council, Sixty-second Session, Supplement No. 7* (E/5933).

field of international drug control aimed at restricting the supply and use of narcotic drugs and psychotropic substances to medical and scientific purposes.

In connexion with the Single Convention on Narcotic Drugs 1961,[115] the International Narcotics Control Board requested an opinion of the Office of Legal Affairs of the United Nations Secretariat on the question whether international shipments of small quantities of drugs seized in the illicit drug traffic for the purpose of examination in foreign laboratories or of evidence to be produced in the course of court proceedings should be exempt from the provisions of article 31 of the Single Convention.[116, 117]

In connexion with the 1971 Convention on Psychotropic Substances[118] the opinion of the Office of Legal Affairs was requested on the question of salts, esters, isomers and ethers of substances listed in schedules I-IV annexed to the Convention.[119, 120]

4. THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

The sixth session of the Third United Nations Conference on the Law of the Sea was held from 23 May to 15 July 1977 at New York.

The first session of the Conference, held at New York from 3 to 15 December 1973,[121] had been devoted primarily to organizational and procedural matters.[122] The second session, held at Caracas, Venezuela, from 20 June to 29 August 1974,[123] had begun substantive work on the question of ocean law before the Conference. At the third session, held at Geneva, Switzerland, from 17 March to 9 May 1975,[124] the three Chairmen of the three Committees prepared a single negotiating text which was issued on 7 May 1975 and presented to the Conference at the final day of the plenary on 9 May 1975 (A/CONF.62/WP.8/Parts I, II and III).[125] After the third session, the President circulated a fourth part of the single negotiating text on settlement of disputes (A/CONF.62/WP.9). At the fourth session, the Chairmen of the main Committees revised the single negotiating text (A/CONF.62/WP.8/Rev.1)[126] and the President prepared a first revision of the part on the settlement of disputes (A/CONF.62/WP.9/Rev.1).[127] At the fifth session, the President prepared a second revision of that same part (A/CONF.62/WP.9/Rev.2).[128]

A total of 148 States participated in the sixth session. In addition, two territories — the Netherlands Antilles and the Trust Territory of the Pacific Islands[129] — 10 specialized agencies or United Nations bodies, 11 intergovernmental organizations, 32 non-govern-

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[115] United Nations, *Treaty Series,* vol. 520, p. 151.

[116] For the text of the opinion, see p. 228 of this *Yearbook.*

[117] For the relevant decision of the Commission on Narcotic Drugs, see *Official Records of the Economic and Social Council, 1978, Supplement No. 5* (E/1978/35), resolution 4 (S-V), p. 80.

[118] A/CONF.58/6.

[119] For the text of the opinion, see p. 230 of this *Yearbook.*

[120] For the relevant decision of the Commission on Narcotic Drugs see *Official Records of the Economic and Social Council, Sixty-second Session, Supplement No. 7* (E/5933), paras. 442–448.

[121] See *Official Records of the Third United Nations Conference on the Law of the Sea,* vols. I and III (United Nations publication, Sales Nos. E.75.V.3 and E.75.V.5).

[122] *Ibid.,* vols. II and III (United Nations publication, Sales Nos. E.75.V.4. and E.75.V.5.).

[123] *Ibid.,* vol. IV (United Nations publication, Sales No. E.75.V.10).

[124] *Ibid.,* p. 137.

[125] *Ibid.,* vol. V (United Nations publication, Sales No. E.76.V.8), p. 111.

[126] *Ibid.,* p. 125.

[127] *Ibid.,* p. 185.

[128] *Ibid.,* vol. VI (United Nations publication, Sales No. E.77.V.2), p. 144.

[129] See General Assembly resolution 3334 (XXIX).

mental organizations having consultative status with the Economic and Social Council, and 4 national liberation movements recognized by the Organization of African Unity or the League of Arab States, participated as observers.

The rules of procedure of the Conference remained as adopted at the second session and as amended at the third, as did the "gentleman's agreement" annexed to the rules, by which the Conference was to make every effort to reach agreement on substantive matters by consensus, and by which there was to be no voting on such matters until all efforts at consensus had been exhausted.[130]

The aim of the Third United Nations Conference on the Law of the Sea was to have a comprehensive convention on all ocean issues including those which were outstanding from the first two Conferences, held in 1958[131] and 1960.[132] In particular, the Conference was to try to establish a definition of an international régime for the sea-bed and ocean floor beyond the limits of national jurisdiction and to ensure that the resources of the marine environment would be exploited for the benefit of mankind. This involved questions as to who might exploit the sea-bed and ocean floor beyond national jurisdiction and what the basic conditions of exploration and exploitation should be. These subjects were assigned to the First Committee. Definitions of and régimes for such concepts as the territorial sea, international straits, the continental shelf and an exclusive economic zone, were dealt with by the Second Committee, and regulations to cover the preservation of the marine environment, marine scientific research and the development and transfer of technology, were covered by the Third Committee.

The subject of the settlement of disputes was dealt with by the Plenary and, as relevant to their mandates, by each of the Committees. Other subjects such as the preamble and final clauses and the peaceful uses of the sea were also dealt with in plenary. The basis for the work of the Conference at its sixth session was the revised single negotiating text.

Organization of work

At its 77th meeting, on 23 May 1977,[133] following upon its conclusions at its 76th meeting on 17 September 1976, the Conference adopted its programme of work based on the recommendation of the President in document A/CONF.62/BUR.5. The first three weeks would be devoted to First Committee matters but the Second and Third Committee could meet to decide on their organization of work.

The Conference also agreed to authorize the President, after the fifth week of the session, to prepare an "informal composite negotiating text" that would serve as a basis for further negotiations. This text would consolidate and replace the existing revised single negotiating text drawn up at the fifth session in 1976 (A/CONF.62/WP.8/Rev.1 and WP.9/Rev. 2). The President added that negotiations should proceed through informal meetings, as at previous sessions.

The Conference agreed without objection to invite a delegation from the United Nations Council for Namibia to sit with delegations and participate fully in the work of the Conference.

Work of the Committees

The First Committee established an informal Chairman's Working Group of the Whole — subsequently renamed Chairman's Negotiating Group, which concentrated on

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[130] A/CONF.62/30/Rev.1 (United Nations publication, Sales No. E.74.I.18).

[131] See *United Nations Conference on the Law of the Sea, Official Records,* vols. I to VII (United Nations publication, Sales No. 58.V.4, vols. I-VII).

[132] See *Second United Nations Conference on the Law of the Sea. Official Records,* vol. I (United Nations publication, Sales No. 60.V.6) and vol. II (United Nations publication, Sales No. 62.V.3).

[133] *Third United Nations Conference on the Law of the Sea, Official Records,* vol. VII, p. 3.

the problems of exploitation, notably the modalities of the system, including its duration, basic conditions of exploration and exploitation, the viability of the Enterprise and the resource policies of the Authority.

The Second Committee considered a proposal that the Secretariat should prepare a study demonstrating the implications of various formulae for the definition of the outer edge of the continental margin. It was agreed that the study would be a preliminary one, including maps and that the purpose would be to show both on maps and in figures the difference in area between various approaches to the problem of the limit of national jurisdiction over the continental shelf. The Second Committee continued its work through informal meetings of the Committee of the whole and of negotiating groups: one on the legal status of the exclusive economic zone and the rights and duties of the coastal State and other States in that zone; another on the definition of the outer edge of the continental margin and payments and contributions in respect of the exploitation of the continental shelf beyond 200 miles; and the third on the delimitation of the territorial sea, the exclusive economic zone and the continental shelf between States adjacent to one another or facing one another across a body of water.

The Third Committee continued its negotiations through two working groups, one on the protection of the marine environment and the other on marine scientific research.

The Informal Plenary acting as a Committee conducted negotiations on the subject of settlement of disputes, based on part IV of the revised single negotiating text (A/CONF.62/WP.9/Rev.2) prepared by the Conference at its fifth session. The negotiations were centred on the following main issues (1) the freedom of choice of forum by States and the forum having jurisdiction where the parties to a dispute had not agreed on the forum; (2) the question as to whether there should be a choice of alternative forums for disputes relating to the Area, or whether a chamber of the Law of the Sea Tribunal would have compulsory jurisdiction over such disputes; (3) applications for the expeditious release of vessels detained by a coastal State; (4) provisional measures pending final settlement of disputes; (5) delimitation disputes between States with opposite or adjacent coasts; and (6) optional exceptions from the compulsory settlement of disputes which the Security Council is dealing with, and those concerning military and law-enforcement activities in the exclusive economic zone; (7) the exception from compulsory jurisdiction of disputes relating to the exercise of sovereign rights by coastal States in the exclusive economic zone.

At the 78th meeting on 28 June 1977, the President presented his proposals for the preparation of an informal composite negotiating text (A/CONF.62/L.20). These proposals were adopted by the Conference. The informal composite negotiating text which was completed after the adjournment of the sixth session (A/CONF.62/WP.10)[134] — contains a preamble, 16 parts divided into 303 articles and 7 annexes. Part I deals with use of terms, parts II to X with the general aspects of the Law of the Sea, part XI with the sea-bed régime and machinery, part XII with the protection and preservation of the marine environment, part XIV with the development and transfer of marine technology, part XV with the settlement of disputes and part XVI with the final clauses.

At the end of the text appears an unnumbered provision carried over from the previous text, stating that the rights recognized or established by the convention to the resources of a dependent territory or one under foreign domination shall be vested in the inhabitants, and that the foreign administering or occupying Power must not exercise, profit or benefit from, or infringe such rights.

Site Offers

During the final week of the session, Fiji became the third country offering to provide the site for the proposed International Sea-bed Authority (A/CONF.62/56).[135] Jamaica had offered its capital, Kingston, in 1974. Malta had made a similar offer in 1975.

[134] *Ibid.*, vol. VIII (United Nations publication, Sales No. E.78.V.4).
[135] *Ibid.*, vol. VII, p. 50.

Portugal offered facilities in Lisbon for the proposed Law of the Sea Tribunal (A/CONF.62/55).[136] This was the first offer received concerning the Tribunal.

Decision of the General Assembly

On 20 December 1977, the General Assembly adopted resolution 32/194 by which it approved the convening of the seventh session at Geneva from 28 March to 12 May 1978 with a possible extension to 19 May if the Conference so decided, and empowered the Conference, if the progress of its work warranted, to decide at that stage to hold further meetings under arrangements to be determined in consultation with the Secretary-General.

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5. INTERNATIONAL COURT OF JUSTICE[137, 138]

(*a*) Cases submitted to the Court[139]

Aegean Sea Continental Shelf
(Greece v. *Turkey)*

On 10 August 1976 the Government of Greece filed an Application instituting proceedings against Turkey, and a request for the indication of interim measures of protection, in respect of a dispute concerning the *Aegean Sea Continental Shelf*. On 26 August 1976, the Registrar of the Court received from the Turkish Ministry of Foreign Affairs a letter expressing the view that the Greek Application was premature, that the request for interim measures should be rejected and that, in view of lack of jurisdiction, the case should be removed from that list. On 11 September 1976, the Court made an Order finding that the circumstances were not such as to require the exercise of its power to indicate interim measures of protection and that it would be necessary to resolve as the next step the question of its jurisdiction. By an order of 14 October 1976, the President fixed time-limits for the filing of written pleadings on that question. The Greek Government having requested that the time-limit for the Memorial be extended by three months in order to facilitate to the fullest extent possible the negotiations in progress with Turkey on the subject of the delimitation of the continental shelf between the two countries, the Court, by an order of 18 April 1977, extended to 18 July 1977 the time-limit for the Memorial of the Government of Greece and to 24 April 1978 the time-limit for the Counter-Memorial of the Government of Turkey. The Greek Government filed its Memorial on jurisdiction within the time-limit as thus extended.[140]

(*b*) Other activities

Work on the over-all revision of the Rules of Court, begun in 1967, continued in

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[136] *Ibid.*, p. 49.

[137] For the composition of the Court, see *Official Records of the General Assembly, Thirty-third Session, Supplement No. 4* (A/33/4), sect. I.

[138] As of 31 December 1977, 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.

[139] For detailed information, see *I.C.J. Reports* 1977; *I.C.J. Yearbook 1976–1977*, No. 31; and *I.C.J. Yearbook 1977–1978*, No. 32.

[140] The Government of Turkey did not file any Counter-Memorial within the extended time-limit of 24 April 1978 but on that date the Registrar received a letter in which the Ambassador of Turkey in The Hague informed the Court that his Government, considering the Court to lack jurisdiction, did not intend to appoint an agent or submit a Counter-Memorial. Following a request by the Government of Greece, the President fixed 4 October 1978 as the date for the opening of oral proceedings on the question of the Court's jurisdiction with respect to the case.

1977 and, following a general reconsideration by the special committee set up in 1967, the Court was seized of proposals which it discussed from 4 October to 8 November 1977.[141]

6. INTERNATIONAL LAW COMMISSION[142]

TWENTY-NINTH DECISION OF THE COMMISSION[143]

The International Law Commission held its twenty-ninth session at Geneva from 9 May to 29 July 1977. In accordance with General Assembly resolution 31/97 of 15 December 1976, the Commission at its 1977 session continued on a high priority basis its work on State responsibility. The three new articles provisionally adopted in 1977 relate to the following aspects: breach of an international obligation requiring the adoption of a particular course of conduct (article 20); breach of an international obligation requiring the achievement of a specified result (article 21); and exhaustion of local remedies (article 22).

Also in accordance with the above-mentioned resolution of the General Assembly, the Commission continued on a priority basis the preparation of draft articles on succession of States in respect of matters other than treaties. It provisionally adopted six additional articles, all dealing with the question of the succession of States to State debts and relating in particular to the definition of State debt (article 18), the obligations of the successor State in respect of State debts passing to it (article 19) and the effects of the passing of State debts with regard to creditors (article 20).

The Commission also continued on a priority basis its preparation of draft articles on treaties of international organizations, as requested by the Assembly. At the conclusion of its 1977 session, the Commission had provisionally adopted the draft articles constituting part I (Introduction) and part II (Conclusion and entry into force of treaties) of the draft and had begun consideration of part III (Observance, application and interpretation of treaties). In accordance with the method adopted by the Commission from the outset, it endeavours in the preparation of draft articles on the topic to follow the provisions of the 1969 Vienna Convention on the Law of Treaties[144] as a guide.

The Commission decided, on the recommendation of a Working Group it had established on the question of the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, to undertake the study of that topic in 1978. It also considered the question of the status, privileges and immunities of international organizations, their officials, experts and other persons engaged in their activities not being representatives of States.[145] Finally it singled out as topics which were possibilities for active consideration by the Commission: international liability for injurious consequences arising out of acts not prohibited by interna-

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[141] The revision of the texts was completed on 13 and 14 April 1978 and the new Rules of Court which were adopted on 14 April 1978 came into force on 1 July 1978. The 1972 Rules however continued to apply to the *Aegean Sea Continental Shelf Case*, which had been submitted to the Court before 1 July 1978.

[142] For the membership of the Commission, see *Official Records of the General Assembly, Thirty-third Session, Supplement No. 10* (A/33/10), chap. I.

[143] For detailed information, see *Yearbook of the International Law Commission, 1977*, vol. I and vol. II, parts one and two (United Nations publications, Sales No. E.78.V.1 (Part I) and E.78.V.2 (Part II)).

[144] Reproduced in the *Juridical Yearbook*, 1969, p. 140.

[145] This question is the second part of the topic "Relations between States and international organizations", the first part of which was completed with the adoption in 1975 of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character. (For the text see *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II (United Nations publication, Sales No. E.75.V.12), p. 207; the Convention is also reproduced in the *Juridical Yearbook* 1975, p. 87.)

tional law; jurisdictional immunities of States and their property; and draft Code of Offences against the Peace and Security of Mankind.

Consideration by the General Assembly

At its thirty-second session, the General Assembly had before it the report of the Commission on its twenty-ninth session.[146] By its resolution 32/151, adopted on the recommendation of the Sixth Committee[147] the Assembly *inter alia* recommended that the Commission should (*a*) complete at its thirtieth (1978) session the second reading of the draft articles on the most-favoured nation clause adopted by the Commission in 1976;[148] (*b*) continue on a high priority basis its work on State responsibility; (*c*) proceed with the preparation, on a priority basis, of draft articles on (i) succession of States in respect of matters other than treaties, and (ii) treaties of international organizations and (*d*) continue its work on the law of the non-navigational uses of international watercourses.

The Assembly endorsed the conclusion reached by the Commission to study the proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, as well as the Commission's conclusion regarding the second part of the topic of relations between States and international organizations.

Furthermore, it invited the Commission, at an appropriate time and in the light of progress made on the draft articles on State responsibility and on other topics in its current programme of work, to commence work on the topics of international liability for injurious consequences arising out of acts not prohibited by international law and jurisdictional immunities of States and their property.

7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[149]

Tenth session of the Commission[150]

At its tenth session held at Vienna from 23 May to 17 June 1977 the Commission approved the text of a draft Convention on the International Sale of Goods and continued its consideration of the subjects of international payments, international commercial arbitration and liability for damage caused by products intended for or involved in international trade.

The above-mentioned draft convention on the International Sale of Goods[151] had been prepared by the Commission's Working Group on the International Sale of Goods. The Commission requested the Secretary-General to prepare a commentary on the provisions of the draft Convention, to circulate the draft Convention, together with the commentary, to Governments and interested international organizations for comments and proposals, and to prepare an analytical compilation of these comments and proposals. The Commission also recommended that the General Assembly convene, at an appro-

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[146] *Official Records of the General Assembly, Thirty-second Session, Supplement No. 10* (A/32/10).

[147] See the report of the Sixth Committee to the thirty-second session of the General Assembly on agenda item 112 (A/32/433).

[148] See *Official Records of the General Assembly, Thirty-first Session, Supplement No. 10* (A/31/10), chap. II.

[149] For the membership of the Commission, see *Official Records of the General Assembly, Thirty-third Session, Supplement No. 17* (A/33/17), chap. I.

[150] For detailed information see *Yearbook of the United Nations Commission on International Trade Law*, vol. VIII: 1977 (United Nations publication, Sales No. E.78.V.7).

[151] For the text, see *Official Records of the General Assembly, Thirty-second Session, Supplement No. 17* (A/32/17), para. 35.

priate time, an international Conference of Plenipotentiaries to conclude, on the basis of the draft as approved, a Convention on the International Sale of Goods.

With respect to international payments, the Commission considered two reports of the Secretary-General and a note by the Secretariat on the subject of security interests in goods. The Commission requested the Secretary-General to prepare for its twelfth session a further report on the feasibility and possible content of uniform rules on security interests and to carry out the further work in consultation with international organizations and banking and trade institutions.

The Commission also considered the subject of contract guarantees and decided to review this item at its eleventh session when the work of the International Chamber of Commerce on contract guarantees will have been concluded.

Regarding international commercial arbitration, the Commission considered a recommendation by the Asian-African Legal Consultative Committee (AALCC) by which it invited the Commission to consider the possibility of preparing a protocol to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958,[152] aimed at clarifying certain questions that arose in the practice of international commercial arbitration. The Commission expressed the view that the questions raised by the AALCC deserved thorough study and consideration, and requested the Secretary-General to prepare, in consultation with interested organizations and arbitration centres, studies on these matters.

Finally, the Commission considered the subject of liability for damage caused by products intended for or involved in international trade on the basis of a report of the Secretary-General and an analysis of replies by Governments to a questionnaire on the subject. The Commission decided not to continue its work on the subject of products liability at this time and to review the matter in the context of its future programme of work.

Consideration by the General Assembly

The report of the Commission on the work of its tenth session[153] was considered by the Sixth Committee at the General Assembly's 1977 regular session. On the recommendation of the Sixth Committee,[154] the General Assembly adopted by consensus, on 16 December 1977, resolution 32/145 whereby it, *inter alia,* noted with satisfaction that a draft Convention on the International Sale of Goods had been prepared and that the Commission intended to place before the General Assembly, at its thirty-third session, draft provisions on the formation and validity of contracts for the international sale of goods. The Assembly expressed the view that both the draft Convention and the draft provisions on formation and validity of contracts should be considered by a conference of plenipotentiaries at an appropriate time.

The Assembly recommended that the Commission continue its work on the topics included in its programme of work and maintain close collaboration with the United Nations Conference on Trade and Development, to continue to maintain liaison with the Commission on Transnational Corporations, and to continue to give special consideration to the interests of developing countries — bearing in mind the special problems of land-locked countries.

The Assembly further called upon the Commission to take account of the relevant provisions of the resolutions of the sixth and seventh special sessions of the General Assembly that laid down the foundations of the new international economic order, and

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[152] United Nations, *Treaty Series,* vol. 330, p. 3.

[153] *Official Records of the General Assembly, Thirty-second Session, Supplement No. 17* (A/32/17).

[154] See the report of the Sixth Committee to the thirty-second session of the General Assembly on agenda item 113 (A/32/402).

welcomed the decision of the Commission to review, in the near future, its long-term programme of work.

8. OTHER LEGAL QUESTIONS

(*a*) Human rights in armed conflicts

In considering this item at its 1977 session, the General Assembly had before it the report of the Secretary-General (A/32/144 and Add.1) on relevant developments concerning human rights in armed conflicts, in particular the proceedings and results of the fourth session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, convened by the Swiss Federal Council at Geneva from 17 March to 11 June 1977.

Following consideration of the item by the Sixth Committee[155] the General Assembly adopted resolution 32/44 in which it *inter alia* welcomed the adoption by the Conference, on 8 June 1977, of two Protocols Additional to the Geneva Conventions of 12 August 1949.[156]

(*b*) Questions concerning the Charter of the United Nations and the strengthening of the role of the Organization

Pursuant to General Assembly resolution 31/28, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met at Headquarters from 14 February to 11 March 1977. It established an open-ended Working Group which completed the consideration, begun at the previous session, of the analytical study, prepared by the Secretary-General, of Government's views, suggestions and proposals on various aspects of the functioning of the United Nations, including those relating specifically to the Charter.[157]

At its thirty-second session, the General Assembly, on the recommendation of the Sixth Committee,[158] adopted resolution 32/45 in which it *inter alia* decided that the Special Committee should continue its work and requested it to be mindful of the importance of reaching general agreement whenever it had significance for the outcome of its work.

(*c*) Measures to prevent international terrorism

Further to General Assembly resolution 31/102, the *Ad Hoc* Committee on International Terrorism established by General Assembly resolution 3034 (XXVII) was reconvened in 1977. It met at United Nations Headquarters from 14 to 25 March and held a general debate on the subjects outlined in its mandate. The debate revealed that the members of the *Ad Hoc* Committee shared the concern of the international community at the development of international terrorism. Some delegations reaffirmed the view that condemnation and repression of international terrorism should take place with-

[155] See the report of the Sixth Committee of the General Assembly on agenda item 115 (A/32/396).

[156] For the text of those Protocols and a summary of General Assembly resolution 32/44, see chapter IV of this *Yearbook*, p. 95 *et seq.*

[157] For the report of the Special Committee, see *Official Records of the General Assembly, Thirty-second Session, Supplement No. 33* (A/32/33). For the text of the above-mentioned analytical study, see *ibid.*, annex II.

[158] See the report of the Sixth Committee to the thirty-second session of the General Assembly on agenda item 116 (A/32/338).

out any qualification. Others expressed the view that only a precise definition of the acts to be condemned and in-depth study of the underlying causes of terrorism could remove the obstacles which had so far blocked any effective action by the international community.[159]

At its thirty-second session, the General Assembly, on the recommendation of the Sixth Committee,[160] adopted resolution 32/147 in which it *inter alia* expressed deep concern over increasing acts of international terrorism; urged States to continue to seek just and peaceful solutions to the underlying causes of such acts of violence; reaffirmed the inalienable right to self-determination and independence of all peoples under colonial and racist régimes and appealed to States which had not yet done so to examine the possibility of becoming parties to the existing relevant Conventions. The Assembly further decided to reconvene the *Ad Hoc* Committee in 1979 and instructed it to continue its work first by studying the underlying causes of terrorism and then by recommending practical measures to combat terrorism.

(*d*) Proposal for an international convention against the taking of hostages

The *Ad Hoc* Committee on the Drafting of an International Convention against the Taking of Hostages established by General Assembly resolution 31/103 met at United Nations Headquarters from 1 to 19 August 1977. It had before it a set of draft articles submitted by the Federal Republic of Germany, as well as a number of proposals submitted by other delegations.[161] The general debate as well as the discussion of the various proposals revealed considerable differences of view concerning the scope and/or definition in the convention, issues which, some delegations argued, should be resolved at an early stage of the Committee's work. Nevertheless there was a useful exchange of views on a number of issues. During the debate in the Committee, members expressed the view that some progress had been made and that the spirit of the discussion had shown a genuine willingness of the members of the Committee to continue the work.[162]

At its thirty-second session, the General Assembly, on the recommendation of the Sixth Committee,[163] adopted resolution 32/148 in which it *inter alia* decided that the *Ad Hoc* Committee should continue to draft at the earliest possible date an international convention against the taking of hostages and would meet again in 1978.

(*e*) United Nations Conference on Succession of States in respect of Treaties

In accordance with General Assembly resolutions 3496 (XXX) and 31/18, the United Nations Conference on Succession of States in respect of Treaties met at Vienna, Austria, from 4 April to 6 May 1977, to examine the draft articles prepared on the topic by the International Law Commission[164] and embody the results of its work in an international convention and such other instruments as it might deem appropriate. The Governments of 89 States participated in the Conference; in addition, two governments

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[159] For the report of the *Ad Hoc* Committee, see *Official Records of the General Assembly, Thirty-second Session, Supplement No. 37* (A/32/37).

[160] See the report of the Sixth Committee to the thirty-second session of the General Assembly on agenda item 118 (A/32/453).

[161] For the report of the *Ad Hoc* Committee, see *Official Records of the General Assembly, Thirty-second Session, Supplement No. 39* (A/32/39).

[162] *Ibid.*

[163] See the report of the Sixth Committee to the thirty-second session of the General Assembly on agenda item 119 (A/32/467).

[164] See *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10* (A/9610/Rev.1), chap. II.

were represented by observers. The Conference adopted 25 of the 39 articles contained in the basic proposal as well as two proposed new articles.[165]

Having been unable to complete its task in view of the intrinsic complexity of the subject-matter, the Conference recommended that the General Assembly decide to reconvene the Conference in 1978 in Vienna for a final session of four weeks. This recommendation was endorsed by the General Assembly in its resolution 32/47.[166]

(*f*) Proposed treaty on the non-use of force in international relations

At its thirty-second session, the General Assembly decided to refer this question — which it had included for the first time in its agenda at its thirty-first session further to an initiative of the Soviet Union[167] — to the Sixth Committee.[168]

By its resolution 32/150, the Assembly decided to establish a Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations which would meet in 1978 with the goal of drafting a world treaty on the non-use of force in international relations, as well as peaceful settlement of disputes, or such other recommendations deemed appropriate by the Committee.

(*g*) Review of the multilateral treaty-making process

By a letter dated 19 July 1977,[169] the representatives of seven Member States including Australia, Kenya, Mexico and Sri Lanka requested the inclusion in the provisional agenda of the thirty-second session of the General Assembly of an item entitled "Review of the multilateral treaty-making process". In the memorandum attached to that letter it was explained that the purpose of the initiative was to occasion examination of the methods of multilateral treaty-making employed in the United Nations and under its auspices, towards an assessment of whether the methods in questions were as efficient and economical as the needs of the community required or circumstances permitted. It was suggested, *inter alia,* that the item should be referred to the Sixth Committee for debate, with a view, in the first place, to the adoption of a resolution seeking a detailed study of the subject.

The General Assembly, by its resolution 32/48 which it adopted on the recommendation of the Sixth Committee,[170] requested the Secretary-General to prepare a report on the techniques and procedures used in the elaboration of multilateral treaties and invited Governments and the International Law Commission to submit their observations on the subject.[171]

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[165] For the report of the Conference, see A/CONF.80/15.

[166] See the report of the Sixth Committee to the thirty-second session of the General Assembly on agenda item 122 (A/32/366).

[167] See *Official Records of the General Assembly, Thirty-first Session, Annexes,* agenda item 124, document A/31/243.

[168] See the report of the Sixth Committee to the thirty-second session of the General Assembly on agenda item 37 (A/32/466).

[169] A/32/143 and Corr.1.

[170] See the report of the Sixth Committee to the thirty-second session of the General Assembly on agenda item 124 (A/32/363).

[171] Consideration of three other questions of legal interest which were on the agenda of the thirty-second session of the General Assembly was postponed, for lack of time, to the thirty-third session. One of those questions related to the consolidation and progressive evolution of the norms and principles of international economic development law (see General Assembly decision

9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH[172]

As in previous years, UNITAR assumed responsibility for the 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). A number of fellowships were awarded to legal advisers to Governments and teachers of international law, mostly from developing countries. The programme included participation in the courses on international law at The Hague Academy of International Law and in the special courses and seminars organized by UNITAR in 1977.[173]

In accordance with General Assembly resolution 2099 (XX), UNITAR also organized, jointly with the Office of Legal Affairs, a regional training and refresher course in international law for the Caribbean region at Nassau, Bahamas, from 21 November to 3 December 1977. The main subject of the course was an examination of various legal aspects relating to a new international economic order, with special reference to the Caribbean context.

Among the studies published by UNITAR in 1977, mention should be made of a volume entitled *Dispute Settlement through the United Nations,* consisting of eight monographs previously published by UNITAR on the various procedural aspects of the peaceful settlement of disputes through the United Nations system, as well as of a study entitled *Protecting the Human Environment: Procedures and Principles of Preventing and Resolving International Controversies.*

B. General review of the activities of intergovernmental organizations related to the United Nations

1. INTERNATIONAL LABOUR ORGANISATION[174]

1. The International Labour Conference (ILO) which held its 63rd Session in Geneva in June 1977, adopted the following instruments: a Convention and a Recom-

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32/440); another one concerned the two resolutions 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 Convention in future activities of the United Nations (both reproduced in the *Juridical Yearbook, 1975,* p. 114) (see General Assembly decision 32/439); the third question was that of the Draft Code of Offences against the Peace and Security of Mankind which had been included in the agenda of the thirty-second session at the request of seven States, including Fiji, Mexico, Nigeria and the Syrian Arab Republic (see General Assembly decision 32/441).

In the course of its thirty-second session, the General Assembly also considered the report of the Committee on Relations with the Host Country (*Official Records of the General Assembly, Thirty-second Session, Supplement No. 26* (A/32/26)), in connexion with which it adopted resolution 32/46, and the question of the computerization of treaty information and registration and publication of treaties and international agreements pursuant to Article 102 of the Charter of the United Nations (for the relevant proposals of the Secretary-General see document A/32/214), in connexion with which the Assembly adopted resolution 32/144.

[172] For detailed information, see *Official Records of the General Assembly, Thirty-second Session, Supplement No. 14* (A/32/14 and corrigendum) and *ibid., Thirty-third Session, Supplement No. 14* (A/33/14).

[173] For the relevant report of the Secretary-General, see document A/32/326. The debate of the Sixth Committee on this question at the thirty-second session of the General Assembly resulted in the adoption by the General Assembly of resolution 32/146.

[174] With regard to the adoption of instruments, 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.

mendation concerning the Working Environment[175] and a Convention and a Recommendation Concerning Employment and Conditions of Work and Life of Nursing Personnel.[176]

2. The International Labour Conference (ILC) also adopted certain amendments to its Standing Orders:

(i) Articles 12, 14 and 25 of the Standing Orders of the International Labour Conference were modified to reflect decisions taken in the consideration of questions of structure.[177]

(ii) Article 18 of the Standing Orders of the International Labour Conference was modified in order to render more practical and less cumbersome the reference of Conference motions and resolutions involving expenditure to the Governing Body and its Programme, Financial and Administrative Committee.[178]

(iii) Article 69 of the Standing Orders of the International Labour Conference was deleted in order to achieve the greatest possible economy in Conference arrangements.[179]

3. The Committee of Experts on the Application of Conventions and Recommendations met in Geneva from 17-30 March 1977, and presented its report.[180]

4. The Governing Body Committee on Freedom of Association met in Geneva and adopted Reports Nos. 164,[181] 165,[181] 166,[181] and 167[181] (202nd Session of the Governing Body, February-March 1977); Reports Nos. 168,[182] 169,[182] 170[182] and 171[182] (203rd Session of the Governing Body, May-June 1977), and Reports Nos. 172,[183] 173,[183] 174,[183] 175[183] and 176[183] (204th Session of the Governing Body, November 1977).

5. It should also be mentioned that the ILO entered into the Agreements listed below which came into force on the dates indicated:

(i) Understanding between the Director-General of the International Labour

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[175] *Official Bulletin,* Vol. LX, 1977, Series A, No. 3, pp. 136–142; 146–151; English, French, Spanish. Regarding preparatory work, see: *First Discussion*—Working Environment, ILC, 61st Session (1976), Report VI(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 VI(2), 39 and 109 pages respectively; English, French, Spanish, German and Russian. See also, ILC, 61st Session (1976) *Record of Proceedings,* pp. 157–177; 281–284; 337–338; English, French, Spanish. *Second Discussion*—Working Environment: Atmospheric Pollution, Noise and Vibration, ILC, 63rd Session (1977), Report IV(1) and Report IV(2), 61 and 73 pages respectively; English, French, Spanish, German, Russian. See also ILC, 63rd Session (1977) *Record of Proceedings,* pp. 359–380; 497–501; English, French, Spanish.

[176] *Official Bulletin,* Vol. LX, 1977, Series A, No. 3, pp. 142–146; 151–166; English, French, Spanish. Regarding preparatory work, see: *First Discussion*—Employment and Conditions of Work and Life of Nursing Personnel, ILC, 61st Session (1976) 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), 108 and 85 pages respectively; English, French, Spanish. See also, ILC, 61st Session (1976), *Record of Proceedings,* pp. 314–317; 338; 247–278; English, French, Spanish. *Second Discussion*—Employment and Conditions of Work and Life of Nursing Personnel, ILC, 63rd Session (1977), Report VI(1) and Report VI(2), 97 and 126 pages respectively; English, French, Spanish, German, Russian. See also ILC, 63rd Session (1977) *Record of Proceedings,* pp. 457–496; 673–678; 731–732; English, French, Spanish.

[177] ILC, 63rd Session (1977), *Record of Proceedings,* pp. 17–18; 186; 424; English, French, Spanish.

[178] ILC, 63rd Session (1977), *Record of Proceedings,* pp. 18; 186–187; 424; English, French, Spanish.

[179] ILC, 63rd Session (1977), *Record of Proceedings,* pp. 18; 187; 424; English, French, Spanish.

[180] This report has been published as Report III (Part 4) to the 63rd Session of the Conference and comprises two volumes: Vol. A: "General Report and Observations concerning Particular Countries" (Report III (Part 4A)), 302 pages; English, French, Spanish. Vol. B: "General Survey of the Reports relating to the Equality of Treatment (Social Security) Convention, 1962 (No. 118)" (Report III (Part 4B)), 90 pages; English, French, Spanish.

[181] *Official Bulletin,* Vol. LX, 1977, Series B, No. 2.

[182] *Ibid.,* Vol. LX, 1977, Series B, No. 3.

[183] *Ibid.,* Vol. LXI, 1978, Series B.

Office and the Executive Director of the United Nations Industrial Development Organization concerning co-operation between and co-ordination of the activities of the ILO and UNIDO, 31 August, 1976.[184]

(ii) Understanding between the Director-General of the International Labour Office and the United Nations Disaster Relief Co-ordinator concerning collaboration between the ILO and UNDRC in providing advice and technical assistance in the matter of prevention of, and preparedness for, natural disasters, as well as for reconstruction and rehabilitation activities in stricken States, 14 July 1977.[185]

(iii) Agreement between the International Labour Organisation and the African Development Bank concerning collaboration between the ILO and ADB in matters of common interest, 18 April 1977.[186]

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2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

I. Office of the Legal Counsel[187]

1. *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.

The Conference adopted, at its nineteenth session (12 November-1 December 1977) the following resolutions or decisions of a legal nature:

(a) *Amendments to the Basic Texts of the Organization*

— a resolution amending Article V.1 of the FAO Constitution and Rule XXII.1b of the General Rules of the Organization (GRO) to increase the number of Council seats from 42 to 49 in order to improve the geographical representation of certain regions;[188]

— a resolution amending Article VII of the Constitution to provide that a Director-General shall be eligible for re-appointment, without limitation on the number, or variation in the duration, of terms of office;[189]

— a resolution amending Article XXII of the Constitution to make the Chinese text of the Constitution equally authoritative with the texts in Arabic, English, French and Spanish;[190]

— a resolution amending Rules XXVI and XXVII of the General Rules of the Organization (GRO) relating to the Programme and Finance Committees to provide for a moderate increase in the membership of those Committees which should be composed

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[184] *Official Bulletin*, Vol. LX, 1977, Series A. No. 2, pp. 77–81.
[185] *Ibid.*, Vol. LXI, 1978, Series A, No. 1, pp. 71–74.
[186] *Ibid.*, Vol. LXI, 1978, Series A, No. 1, pp. 75–78.
[187] For general information on the organization and functions of the Office of the Legal Counsel, see *Juridical Yearbook*, 1972, p. 60.
[188] C 77/REP, paras. 288–292, C 77/LIM/13, paras. 208–211, C 77/LIM/13–Sup.1/Rev.1, *Appendix B*, C 77/III/PV/1, C 77/III/PV/2, C 77/PV/17.
[189] C 77/REP, paras. 292–296, C 77/LIM/13, C 77/LIM/13–Sup.1–Rev.1, C/77/LIM/33, C 77/III/PV/4, C 77/PV/20.
[190] C 77/REP, paras. 297–299, C 77/LIM/13, C 77/LIM/13-Sup.1–Rev.1, CL 71/REP, paras. 218–220, C 77/III/PV/3, C 77/III/PV/7, C 77/PV/19.

of Member Nations of the Organization, represented by persons chosen on the basis of personal merit;[191]

— a resolution amending Rule XXXVII.4 of the General Rules of the Organization (GRO) to require the Director-General to satisfy himself, when determining the site of all meetings convened by the Organization, that the host government will grant participants all the "immunities that are necessary for the independent exercise of their functions";[192]

— a resolution amending Rule XLI of the General Rules of the Organization (GRO) to eliminate the classification of the languages of the Organization as "official", "working" and "working languages for limited purposes";[193]

— a resolution amending Financial Regulations 4.2, 4.3 and 10.1 to permit the carry-over of unobligated funds under the Technical Cooperation Programme and the delegation of disbursement authority to persons who are not staff members of the Organization but who perform functions on behalf of the Organization.[194]

(b) *Inter-agency agreements and arrangements*

— authorization granted to the Director-General to sign a Supplementary Arrangement between the Organization and the United Nations regarding cooperation between the Organization and the World Food Council;[195]

— authorization to the Director-General to sign, subject to confirmation in accordance with Rule XXIV.4(*c*) of the General Rules of the Organization (GRO) a Relationship Agreement between the Organization and the International Fund for Agricultural Development (IFAD), if the Executive Board of IFAD should approve a text identical with that approved by the Council;[196]

— a resolution authorizing the Director-General to accept, on behalf of the Organization, the Statute of the Joint Inspection Unit, on the understanding that notice of acceptance provided for in Article 1, paragraph 2 of the Statute shall contain an interpretative declaration to the effect that, for constitutional reasons, the Joint Inspection Unit will not be considered as a subsidiary organ of the legislative bodies of the Organization;[197]

(c) *Treaties concluded within the Organization*

— a resolution amending the Convention Placing the International Poplar Commission Within the Framework of FAO, to change the interval of the regular sessions of the Commission from two to four years and to reduce the term of office of the members of its Executive Committee from six to four years;[198]

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[191] C 77/REP, paras. 280–287, C 77/LIM/2, CL 71/REP, para. 237.H, C 77/III/PV/1, C 77/III/PV/2, C 77/III/PV/3, C 77/III/PV/7, C 77/PV/19, CL 72/REP, paras. 101–113.

[192] C 77/REP, paras. 308–310, C 77/18, C 77/LIM/33, C 77/III/PV/5, C 77/PV/20.

[193] C 77/REP, paras. 300–307; C 77/LIM/13, C 77/LIM/13–Sup.1–Rev.1, C 77/III/PV/3, C 77/PV/19.

[194] C 77/REP, paras. 323–324; C 77/LIM/7, C 77/LIM/34, CL 72/REP, paras. 89–92, C 77/III/PV/5, C 77/PV/20.

[195] C 77/REP, paras. 240–243, 314–317, C 77/LIM/25, C 75/REP, paras. 30 and 331, CL 69/REP, paras. 59–60, CL 72/REP, paras. 115–120 and *Appendix G*, C 77/III/PV/5, C 77/III/PV/9, C 77/II/PV/17, C 77/II/PV/19, C 77/PV/20.

[196] C 77/REP, paras. 245, 318–319, C 77/LIM/24, C 75/REP, para. 3.34, CL 72/REP, paras. 121–129 and *Appendix H*, C 77/III/PV/5, C 77/III/PV/19, C 77/II/PV/17, C 77/II/PV/19, C 77/PV/20.

[197] C 77/REP, paras. 251–253, C 77/17, C 77/LIM/37-Rev.1, C 77/II/PV/15, C 77/II/PV/19, C 77/PV/23.

[198] C 77/REP, paras. 329–331, C 77/LIM/27, C 77/III/PV/6, C 77/III/PV/10, C 77/PV/22.

— a decision to postpone consideration and final approval of a revised version of the International Plant Protection Convention which included a proposed revision of the Model Phytosanitary Certificate annexed to the Convention and the introduction of a "Model Phytosanitary Certificate for Re-export";[199]

(d) *Admission to membership*

— a decision to admit to membership in the Organization, by secret ballot requiring a two-thirds majority in accordance with Article II-2 of the Constitution and Rule XII-9 of the General Rules of the Organization (GRO), Angola, the Comoros, the Democratic People's Republic of Korea, Djibouti, Mozambique, Namibia,[200] Sao Tome and Principe and Seychelles.[201]

The Council, in addition to making recommendations to the Conference on the above-mentioned matters, took at its seventy-first (6-17 June 1977) and seventy-second (8-11 November 1977) sessions, decisions on the following items of legal interest:

— a resolution approving amendments to the Agreement for the Establishment of the Indo-Pacific Fisheries Council (IPFC) to make it clear that the IPFC should concern itself with all aspects of fishery management and development and to become more action-oriented;[202]

— a decision that the Regional Conferences of the Organizations should play a greater role in formulating regional policies regarding cooperation for agricultural development and food production and, further, that participation of Member Nations in each Regional Conference, including the modalities of attendance by observers, should be decided by the countries that in fact belonged to the region concerned.[203]

The Office of the Legal Counsel also provided legal services to the Preparatory Commission of the International Fund for Agricultural Development (IFAD), *inter alia* for the drafting and negotiation of a Headquarters Agreement with the Government of Italy. Legal services were also provided for the first sessions of the IFAD's Governing Council and Executive Board.

2. *Law of the Sea and International Fisheries*

At its fifth session in March 1977, the Fishery Committee for the Eastern Central Atlantic adopted a series of measures which had been suggested by its Sub-Committee on Management of Resources within the Limits of National Jurisdiction. It requested FAO to organize a series of meetings to enable the States concerned to reach agreement, within the framework of the Committee, on appropriate management schemes.[204]

As in previous years, the FAO Committee on Fisheries considered the progress achieved at the United Nations Conference on the Law of the Sea. It requested the Secretariat to work out a comprehensive programme to assist with the development of fisheries in the exclusive economic zones of developing countries. The Secretariat was also asked to prepare documents analysing national legislation and bilateral agreements relating to extended zones of jurisdiction over fisheries.[205]

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[199] C 77/REP, paras. 325–328, C 77/LIM/26, C 69/REP, para. 414, C 71/REP, para. 187, CL 72/5, paras. 37–52, CL 72/REP, paras. 133–137, C 77/III/PV/6, C 77/III/PV/7, C 77/III/PV/8, C 77/III/PV/9, C 77/III/PV/10, C 77/PV/22.

[200] The application for membership for Namibia was submitted by the United Nations Council for Namibia.

[201] C 77/REP, paras. 352–354, C 77/14, C 77/14-Sup.1 C 77/INF/7, C 77/PV/3, C 77/PV/4, C 77/PV/20.

[202] CL 72/REP, paras. 133–135, CL 72/5, paras. 31–36, CL 70/REP, paras. 164–165, CL 72/PV/5, CL 72/PV/6, CL 72/PV/7. The designation "Council" was changed to "Commission."

[203] CL 71/REP, paras. 229–232, CL 71/12, CL 71/PV/11, CL 71/PV/12.

[204] COFI/77/Inf.5.

[205] FID/R196.

At its fifth session in October 1977, the Indian Ocean Fishery Commission considered some of the implications of extensions of jurisdiction for the management of fisheries in its geographic area. It noted that the successful management of stocks migrating through several economic zones would depend on a determination of the total allowable catch from each stock as a whole, regardless of the area of capture, followed by an agreement on how the total allowable catch can be divided. FAO was requested to undertake a study of the various criteria that could be considered when apportioning the stock among the countries concerned.[206]

The Indo-Pacific Fishery Commission adopted in November 1976 amendments to the 1948 Agreement under which it had been established. These amendments, which were designed to make it clear that the Commission should concern itself with all aspects of fishery management and development, were approved by the Council of FAO at its seventy-second session in November 1977 and are now effective.[207]

At its nineteenth session in November-December 1977, the Conference of FAO reviewed in detail current developments in the regime of the sea and their implications for fisheries. Recognizing that the new regime would give coastal States increased rights and responsibilities, it stressed the magnitude of the task that was facing many developing coastal States if they were to make full use of the resources at their disposal. It urged FAO to be ready to discharge its responsibilities for technical cooperation and agreed that regional fishery bodies, particularly those established within the framework of FAO, should contribute to increasing the capability of coastal States especially as regards management and development activities as well as protection of the marine environment.[208]

3. *Environment Law*

On 13 July 1977, a Memorandum of Understanding concerning cooperation between FAO and the United Nations Environment Programme (UNEP) was signed by the Executive Director of UNEP and the Director-General of FAO. The areas of mutual interest enumerated in section 7(*b*)(v) of the Memorandum include the "development of environmental law and institutions at the national and the international level"; specific areas of cooperation within such main areas of mutual interest are to be agreed upon in the course of joint programming by FAO and UNEP.

In 1977, the FAO Legal Office completed a joint FAO/UNEP pilot project for the indexing of approximately 17,000 legislative texts on environment and natural resources, in the context of the UNEP International Referral System (IRS);[209] and initiated another joint FAO/UNEP project on "Preparatory Work for the Protection of the Marine Environment in the Gulf of Guinea and Adjacent Coastal Areas" (FP/0503-7702), which will include surveys of national legislation, of applicable international agreements and of the scientific basis for legal controls of marine pollution in the West African region concerned.

The Legal Office participated in the UNEP Intergovernmental Consultations concerning a Draft Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources held in Athens in February 1977 and in Venice in October 1977; in the Geneva meetings of the UNEP Working Group of Experts on Natural Resources Shared by Two or More States, in August-September 1977; and in the ESCAP Expert Group Meeting on Environmental Protection Legislation in Asia and the Pacific, held in Bangkok in December 1977. Legal Office staff contributed papers to the OECD publication "Legal Aspects of Transfrontier Pollution";[210] and to the Symposium on

[206] FID/R199.

[207] Resolution 4/72; see p. 75 above.

[208] C 77/REP, paras. 62–68.

[209] Summary Report: Catalogue of Legislation on Environment and Natural Resources, FAO/UNEP Project No. FP/0302–75–02, Rome 1977, 80 pp.

[210] P. H. Sand, The Role of Domestic Procedures in Transnational Environmental Disputes, pp. 146–202.

Environmental Law and Transfrontier Pollution, held by the Environmental Law Committee of the International Law Association at Goettingen in October 1977.[211]

Technical assistance was provided in July and August 1977 to the Government of Honduras for expert review of its draft environmental legislation. FAO published translations and summaries of environmental laws of various countries and references to other current national legislation in this field.[212] A survey of "legislative aspects of environmental problems" is contained in a special chapter on the state of natural resources and the human environment in the 1977 FAO Report on "The State of Food and Agriculture".[213]

II. Legislation Branch[214]

(a) *Activities connected with international meetings*

The Legislation Branch participated in and provided contributions to the following international meetings and missions:

— Seminar on legal and institutional problems relating to boundary rivers between the U.S.A. and Mexico, organized by American and Mexican Universities (Quaxtepec, Mexico, 4-13 March 1977).

— United Nations Water Conference (Mar del Plata, Argentina, 14-26 March 1977).

— Intergovernmental consultation, convened jointly by FAO and OIE (International Office of Epizootics to consider a revised draft convention for the Control of the Spread of Major Communicable Fish Diseases (Paris, France, 25-28 January 1977).[215]

— Seminar on the Changing Law of the Sea and the Fisheries of West Africa (Banjul, The Gambia, September 1977).

— *Ad Hoc* Government Consultation on International Standardization of Pesticide Registration Requirements (Rome, 24-28 October 1977).[216]

(b) *Legislative assistance and expert advice in the field*

The principal activities in this area included:

— Assistance to the Sene-Gambia Basin Commission and its Coordinating Committee on international water resources law and other related matters.

— Assistance to the Lake Chad Basin Commission on international water resources law and other related matters, including the Logone development project.

— Assistance to Indonesia on national water resources legislation.

— Assistance to Governments in the drafting of fisheries legislation and other aspects of fisheries law and joint ventures in Mexico, the Solomon Islands, Papua New Guinea, the Philippines and Thailand; on the implications of developments in the regime of the sea in Somalia; and on wildlife legislation in the Central African Empire.

— Assistance to Costa Rica in the revision of the draft national seed law.

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[211] "Activities of the Food and Agriculture Organization of the United Nations in the Field of Environmental Law", 9 pp.

[212] Food and Agricultural Legislation, Volume XXVI, Nos. 1 and 2.

[213] FAO Conference Document C 77/INF/19, November 1977, pp. 57–59; annotated version published under the title of "Trends in International Environmental Law" in the FAO periodical UNASYLVA, vol. 29, No. 116, pp. 26–28.

[214] For general information on the organization and functions of the Legislation Branch, see *Juridical Yearbook*, 1972, p. 62, note 59.

[215] It is envisaged that the draft convention will be submitted to a Conference of Plenipotentiaries to be convened by an interested Government.

[216] In this connexion a paper was prepared on the "Legal Aspects of International Standardization with Special Reference to Pesticide Registration Requirements. A preliminary Review".

(c) *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: Law and Woman; Proceedings of the National Conference on Agricultural Credit (Santo Domingo, 8-10 November 1976); Draft Plan of Action to Combat Desertification; Legislative Aspects of Forming Cooperatives in New Development Areas in Libya; Agrarian Reform in selected Asian and European Countries; Fisheries Legislation in Kenya and the Yemen Arab Republic; Fish Quality Legislation in Bangladesh and Italy; Draft Decree for the Tunisian National Council for Food Inspection; Dairy Legislation in Pakistan; Seed Production and Control in Iran; and Statutes of Animal Husbandry Association or Bodies in Zaire.

(d) *Legislative research and publications*

Research was conducted, *inter alia,* on water legislation and administration in various European and African countries, and on international water resources treaties; the role of Central Bank Legislation on agricultural credit in selected countries; national legislation for the management and development of fisheries under extended jurisdiction and on parastatal bodies in fisheries deveolpment. Studies and other research documents were published on legal and institutional responses to growing water demand, and on water legislation and administration in Chad, The Gambia, Indonesia, Iraq, Libya, Malaysia, Mali, Mauritania, Niger, Oman, Saudi Arabia, Senegal, Sudan, Syria and the United Arab Emirates agrarian law and agrarian judiciary; international food standards and national laws; seed legislation in Argentina, Canada, Chile, Finland, Germany, Federal Republic of, India, Kenya, Morocco, Romania, Spain, Tunisia, the United States of America, Uruguay, Yugoslavia and Zambia; legal and institutional aspects of fisheries development in the Philippines and in The Gambia.[217]

(e) *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.*

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

1. Constitutional and procedural questions

Membership of the Organization

The Constitution of UNESCO was signed and instruments of its acceptance were deposited on behalf of the following States:

State	*Date of Signature*	*Date of deposit of instrument of acceptance*
Angola	11 March 1977	9 November 1976
Comoros	22 March 1977	22 March 1977

Under the terms of the relevant provisions of the Constitution[218] each of the above-mentioned States became a member of the Organization on the respective date its acceptance took effect.

[217] See the Bibliography, p. 315 below.
[218] See Articles II and XV of the Constitution.

In the case of Angola, as it was then not a Member State of the United Nations, Article II(2) of the UNESCO Constitution applied to it. Thus, before Angola deposited its instrument of acceptance, the General Conference had, following an application received from the Government of this State and upon recommendation of the Executive Board, adopted by the required two-thirds majority a resolution admitting it to membership of UNESCO.[219]

2. International regulations

(a) *Transmission of certified copies of instruments previously adopted*

In pursuance of Article 15 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", the Director-General transmitted to Member States certified copies of the following six Recommendations which were adopted by the General Conference during its nineteenth session held at Nairobi, Kenya, from 26 October to 30 November 1976:

— Recommendation on the development of adult education;

— Recommendation concerning the international exchange of cultural property;

— Recommendation concerning the safeguarding and contemporary role of historic areas;

— Recommendation on participation by the people at large in cultural life and their contribution to it;

— Recommendation on the legal protection of translators and translations and the practical means to improve the status of translators;

— Recommendation concerning the international standardization of statistics on radio and television.

The certified copies were sent to Member States in order that they could submit these Recommendations to their competent authorities, in accordance with Article IV, paragraph 4, of the Constitution.

Transmitted with the certified copies were copies of a "Memorandum concerning the obligation to submit conventions and recommendations adopted by the General Conference to the 'competent authorities' and the submission of initial special reports on the action taken upon these conventions and recommendations". This Memorandum has been prepared, upon instructions from the General Conference, by the Director-General. It contains the various provisions of the Constitution and the regulations applicable, together with the other suggestions that the General Conference itself has found it necessary to formulate, at its earlier sessions, concerning the matters indicated by the Memorandum's comprehensive title.

(b) *Preparation of new instruments*

In implementation of decisions[220] taken by the General Conference at its nineteenth session to that effect, and in accordance with Article 10(1) and (2) 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", the Director-General prepared and transmitted to Member States for their comments and observations preliminary reports on the following:

— international competitions in architecture and town planning;[221]

— prevention and coverage of risks to movable cultural property;[222]

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[219] See 19C/Res. 0.71, 1 November 1976.

[220] See Resolutions 19C/3.142, 19C/4.123, 19C/6.23 and 19C/6.22.

[221] See document SS 77/WS/14, English, French, Russian, Spanish.

[222] See document CC 77/WS/45, English, French, Russian, Spanish.

— international standardization of educational statistics;[223]

— international standardization of statistics relating to science and technology.[224]

These reports set forth the position with regard to the problems to be regulated and to the possible scope of the regulating action proposed in each case.

In conformity with certain decisions[225] taken by the General Conference at its nineteenth session and in implementation of relevant work plans[226] noted by the General Conference at the same session, preparatory work was done in respect of some other instruments scheduled for adoption in 1978 by the General Conference or by an international conference of States convened by UNESCO. These concerned the following subjects:

— international recognition of studies, diplomas and degrees in higher education in the Arab States;

— race and racial prejudice;

— fundamental principles governing the use of the mass media in strengthening peace and international understanding and in combating war propaganda, racialism and *apartheid.*

3. Copyright and neighbouring rights

(a) *Universal Copyright Convention*

The Intergovernmental Copyright Committee, which was established under article XI of the revised Convention and whose secretariat is provided by UNESCO, held its second regular session at UNESCO headquarters from 28 November to 6 December 1977.

On that occasion the Committee discussed a number of questions which also concerned the Executive Committee of the Berne Union, which was holding its twelfth session (fourth special session) at the same time and place, specifically: the problems raised by the application of the Acts of Paris (1971), the Universal Copyright Convention and the Berne Copyright Convention in matters relating to the access of developing countries to protected works; the problems raised by the application of those Conventions to materials specially intended for the blind; the problems arising out of the use of electronic computers in the memorization and recovery of protected works, on the one hand, and in the creation of works, on the other hand; the copyright problems arising from the use of videocassettes and audiovisual discs; and the problems raised by the distribution of television programmes by cable. Each of these questions will be considered either by a working group or (in the case of videocassettes and cable television) by a sub-committee of the Intergovernmental Copyright Committee or of the Executive Committee of the Berne Union which will meet in 1978 or 1979.

The Committee was also informed of the results achieved by the Committee of Experts which has, at the invitation of the Government of Tunisia, been convened at Tunis by the Director-General of UNESCO from 11 to 15 July 1977 to consider the problems raised by the protection of folklore. Studies on this subject are to continue.

(b) *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)*[227]

The Intergovernmental Committee established under article 32 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, whose secretariat is provided by the International Labour Office, UNESCO and WIPO, held its sixth regular session at the headquarters of the International Labour Office from 7 to 9 December 1977.

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[223] See document ST 77/WS/12, English, French, Russian, Spanish.
[224] See document ST/MD/1, English, French, Russian, Spanish.
[225] See Resolutions 19 C/1.181, para. 2; 10 C/3.173 and 19 C/4.143.
[226] See document 19 C/5 approved, paras. 1219, 3126 and 4179.
[227] United Nations, *Treaty Series,* vol. 496, p. 43.

At that session the Committee discussed in particular three questions: the problems involved in the application and implementation of the Convention; the problems arising from the use of videocassettes and audiovisual discs in relation to performers, producers of phonograms and broadcasting organizations; and the problems arising from the distribution of television programmes by cable in relation to the same categories of persons. The Committee decided to constitute itself a sub-committee to continue the study of each of these three questions in 1978 and 1979.

(c) *Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite*

In order to facilitate the application of the Convention and promote accession to it, studies were undertaken to prepare guiding principles which would take account of the various ways and means by which States could assume the obligation provided for under the Convention (copyright, penal provisions, administrative provisions). A working group will be convened for this purpose in 1978.

(d) *Working Group on the Problems Arising from the Use of Videocassettes and Audiovisual Discs*

A Working Group on the Problems Arising from the Use of Videocassettes and Audiovisual Discs from the point of view of copyrights and so-called neighbouring rights met at Geneva from 21 to 25 February 1977. The Working Group arrived, *inter alia,* at the conclusion that the appearance of this new technique for the distribution of works did not call for a revision either of the Rome Convention or for the elaboration of a new international instrument and that solutions should, instead, be found at the level of national legislation. The report of the Working Group was submitted to the Committees on the Copyright Conventions and the Committee on the Rome Convention, which decided to constitute themselves sub-committees to continue studying the question.

(e) *Working Group on the Problems Raised by the Distribution of Television Programmes by Cable*

A Working Group on the Problems in the Field of Copyright and so-called Neighbouring Rights Raised by the Distribution of Television Programmes by Cable met at Paris from 13 to 17 June 1977.

The report of the Working Group was submitted to the Committees on the Copyright Conventions and the Committee on the Rome Convention, which decided to constitute themselves sub-committees to continue studying the question.

4. Human rights

(a) *Examination of communications addressed to UNESCO in connection with specific cases involving human rights in education, science and culture*

In the year under review, 47 communications of the nature indicated in the above title were, in conformity with the procedure provided for under decision 77 EX/8.3 adopted by the Executive Board at its seventy-seventh session, brought to the notice of the Board's Committee on Conventions and Recommendations in Education after they had been transmitted to the Governments concerned. The replies submitted by some of these Governments were also put before the Committee. The communications, together with the replies, were examined by the Committee at its meetings held in September 1977 in the course of the 103rd session of the Executive Board.[228]

[228] See documents 103 EX/CR/PRIV.1, 103 EX/CR/PRIV.1 Add.1, 103 EX/CR/PRIV.1 Add.2, 103 EX/CR/PRIV.INF.1, 103 EX/CR/PRIV.INF.1 Add.1, 103 EX/CR/PRIV.2, 103 EX/CR/PRIV.2 Add.1, 103 EX/CR/PRIV.2 Add.2, 103 EX/CR/PRIV.2 Add.3, 103 EX/CR/PRIV.3, 103 EX/CR/PRIV.3 Add.1, 103 EX/CR/PRIV.4 and 103 EX/CR/PRIV.4 Add.1.

After this examination, the Committee submitted its report to the Executive Board.[229]

(b) *Procedures which should be followed in the examination of cases and questions concerning human rights*

The Executive Board, at its 102nd session, after having made a preliminary examination of document 102 EX/19 (on the study of procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective) adopted a decision[230] under item 5.6.2 of its agenda by which it invited all its members to send to the Director General before 15 July 1977 further comments concerning this subject and the contents of document 102 EX/19 and decided to set up a Working Party of 13 members (with the Chairman of the Executive Board as Chairman) to meet in the early part of August 1977 with the following terms of reference:

(i) to carry out an in-depth study of document 102 EX/19, the analytical summary of the discussions that took place at the 102nd session, and the written comments of members of the Executive Board mentioned above;

(ii) to identify points of agreement and divergence and, working to the extent possible on a basis of consensus, try to reduce divergences;

(iii) to prepare for submission to the 103rd session of the Board a report on its work containing suggestions regarding the procedures to be followed in the future (proposing several alternatives whenever necessary).

At its 103rd session the Executive Board took note of the first report of this Working Party.[231] By a decision[232] taken under item 5.5.2 of its agenda, the Executive Board confirmed that the procedure as laid down in 77 EX/Decision 8.3 and 98 EX/Decisions 9.4, 9.5 and 9.6, for handling communications on specific cases by its Committee on Conventions and Recommendations in Education would remain in force for the time being and requested the Working Party to meet again in January 1978, in order to prepare a final report, in accordance with the terms of reference laid down in 102 EX/Decision 5.6.2, and taking into consideration the comments of the Committee on Conventions and Recommendations in Education contained in document 103 EX/17, Part II, for submission to it at its 104th session.

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4. INTERNATIONAL CIVIL AVIATION ORGANIZATION

1. Lease, charter and interchange of aircraft in international operations

Pursuant to Resolution A21-22, the Council of ICAO convened a Special Subcommittee which met in Montreal from 23 March to 5 April 1977 to study the problems raised when an aircraft registered in one State is operated by an operator belonging to another State. Among other tasks, the Subcommittee was charged with studying the problems raised by such operations under Articles 12, 31 and 32 of the Chicago Convention, formulating a Draft Protocol for amendment of the Rome Convention and the Tokyo Convention which would solve the problems raised under similar circumstances in respect to those Conventions, and examining the question of potential conflicts between the Chicago Convention and a separate multilateral convention which would include specific provisions regarding the operation of an aircraft registered in one State and operated by a foreign operator.

[229] See document 103 EX/17 PRIV., 29 September 1977.
[230] See 102 EX/Decision 5.6.2, 25 April–12 May 1977.
[231] See document 103 EX/19.
[232] See 103 EX/Decision 5.5.2.

With respect to the Chicago Convention, the Subcommittee drafted an Article 83 bis (Transfer of certain functions and duties of the State of registry); the Subcommittee also prepared two amendments to the Rome Convention of 1952 (Article 15, paragraphs 1 and 7 (*a*) and Article 23, paragraph 1). With respect to the amendment to the Tokyo Convention, the Subcommittee did not draft a specific text.

On 10 May 1977, the Council noted the Report of the Subcommittee and its conclusion that the matter was ripe for study by the Legal Committee. The 22nd Session of the Assembly (Montreal, 13 September–4 October 1977) expressed its appreciation for the work done by ICAO with respect to the implementation of Assembly Resolution A21-22 and adopted Resolution 22/28.

2. Unlawful interference with international civil aviation and its facilities

The Committee on Unlawful Interference with Civil Aviation and its Facilities held 12 meetings during the year. It examined certain proposals from States for amendments to Annex 17 (Security) and the problem of the transfer of Chapter 9 (Security Provisions) from Annex 9 (Facilitation) to Annex 17 or another appropriate document. As a result of the recommendation made by the Committee, and taking into account the comments made by Contracting States and interested international organizations which had been consulted on these matters, the Council adopted Amendment 2 to Annex 17 on 15 December 1977 and prescribed 15 April 1978 as the date on which the said Amendment 2 would become effective, except for any part concerning which a majority of Contracting States registered their disapproval before this date. The date of applicability of the amendment, to the extent it would have become effective, was set at 10 August 1978.

It will be noted that the Assembly adopted Resolution A22-16 (Strengthening of measures to suppress acts of unlawful interference with civil aviation) urging all Contracting States which have not yet done so to become party to the Tokyo Convention of 1963,[233] the Hague Convention of 1970[234] and the Montreal Convention of 1971.[235]

3. Authentic Russian text of the Convention on International Civil Aviation

In accordance with ICAO Assembly Resolution A21-13 concerning the preparation of the authentic text of the Convention on International Civil Aviation in the Russian language, the Council convened an International Conference of Plenipotentiaries concurrently with the 22nd Session of the Assembly for the purpose of adopting the authentic text of the Convention on International Civil Aviation and the amendments thereto in the Russian language; the International Conference met in Montreal from 19 to 30 September.

As a result of its deliberations, the Conference adopted the Protocol on the Authentic Quadrilingual Text of the Convention on International Civil Aviation. By the end of the year, 18 States had signed the Protocol without reservation as to acceptance; 16 States that had signed the Protocol with reservation as to acceptance had not deposited instruments of acceptance when the year closed.

4. Digest of judicial decisions

Pursuant to Assembly Resolution A21-14, the Council studied the feasibility of the preparation of a digest of judicial decisions relating to multilateral international private air law conventions and studied the comments on the subject received from States at its invitation. At its 90th Session in 1977, the Council had for consideration a draft Assembly

[233] Reproduced in the *Juridical Yearbook* 1963, p. 136.
[234] *Ibid.*, 1970, p. 131.
[235] *Ibid.*, 1971, p. 143.

Working Paper prepared by the Secretary General containing a sample or model of judicial decisions. The 22nd Session of the Assembly, on 3 October 1977, decided that a repertory of significant judicial decisions be published from time to time in a suitable existing ICAO publication in all official languages of ICAO; the repertory should include only such data as the indication of the country where the decision was issued, short description of the facts and of the decision, the international convention referred to by the court as well as a reference to the appropriate sources where the text in full can be found.

5. WORLD HEALTH ORGANIZATION

CONSTITUTIONAL AND LEGAL DEVELOPMENTS

1. On 12 July 1976, the Socialist Republic of Viet-Nam had notified the Director-General of the unification of the former Democratic Republic of Viet-Nam and of the Republic of South Viet-Nam (both WHO Members) and stated that it would continue to exercise the official membership. This notification was brought to the attention of the Thirtieth World Health Assembly in May 1977. As a result of this change the Organization had, at the end of 1977, 150 Members and two Associate Members.[236]

2. Twelve instruments of acceptance of the further amendment to Articles 24 and 25 of the Constitution of 17 May 1976, increasing to 31 the number of seats on the Executive Board, were deposited in 1977, bringing the total number of such instruments up to eighteen.

3. The amendments to Articles 34 and 55 of the Constitution which had been adopted in 1973 and which permit a transition to biennial budgeting came into force on 3 February 1977 upon the deposit of the 100th instrument of acceptance. The Thirtieth World Health Assembly thereupon introduced biennial budgeting with effect from the biennium 1980-1981.

4. In October 1977, following a resolution of Subcommittee A of the Regional Committee for the Eastern Mediterranean, the Government of Kuwait proposed an amendment to Article 71 of the Constitution which would provide for an authentic Arabic text (in addition to the Chinese, English, French, Russian and Spanish texts) and submitted such text for adoption by the World Health Assembly. The Director-General communicated this proposal to Members informing them that the necessary steps would be taken to enable the Executive Board to put this item on the provisional agenda of the Thirty-first World Health Assembly to be held in May 1978.

5. During the year 1977, four Members (Bahamas, Greece, Republic of Korea and Uruguay) became bound, through instruments of accession or declarations of succession, by the Convention on the Privileges and Immunities of the Specialized Agencies together with its Annex VII, which relates specifically to the World Health Organization.

6. Under a project agreement with the United Nations Environment Programme, WHO prepared a series of studies serving as the basis for the drafting of a Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources. Drafts for this Protocol, which is to supplement the Convention adopted in Barcelona on 16 February 1976, were considered at intergovernmental meetings held with WHO participation in February 1977 in Athens and in October 1977 in Venice. It is expected that the Protocol will be adopted before the end of 1979.

[236] The associate membership of one of these, Southern Rhodesia, is regarded as being in suspense.

7. By resolution WHA30.44 of 19 May 1977, the World Health Assembly requested the Director-General:

(1) to strengthen WHO's programme in health legislation, with a view to assisting Member States, upon their request, in the development of appropriate health legislation adapted to their needs and enhance technical cooperation in health legislation and its administration, particularly in developing countries; and

(2) to strengthen collaboration with other specialized agencies in the development of guidelines on various aspects of health legislation.

Measures are now under way to implement these provisions on the basis of a questionnaire to Member States giving them an opportunity to indicate how the programme can best be made responsive to their needs.

8. The dissemination of information on national health legislation, both through the *International Digest of Health Legislation* (of which four issues appeared in 1977) and in response to specific enquiries, continued to be the main activity in 1977. Consultant assistance was provided to a number of countries. Close contact was maintained with a number of intergovernmental and nongovernmental organizations with an interest in health legislation.

9. In December 1977 the Council for International Organizations of Medical Sciences (a nongovernmental organization closely associated with WHO) held a Round Table Conference devoted to "Trends and Prospects in Drug Research and Development", and giving considerable attention to legislative and regulatory problems.

10. Contributions on legislative aspects were made to technical meetings dealing *inter alia* with safety measures in microbiological work, food control strategies, the deliberate exposure of humans to ionizing radiation for non-medical purposes, protection against non-ionizing radiation, the discharge of radioactive wastes into the sea, smallpox eradication, and human rights in relation to health. Further work was devoted to legislative means of improving the status of women in health and development.

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6. 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

As of March 1, 1978, seventy-six States had signed the Convention,[237] Kuwait, Seychelles and Western Samoa being the most recent signatories. Sixty-nine States had taken the final step toward becoming Contracting States by depositing instruments of ratification.[238]

Disputes submitted to the Centre

On December 15, 1977, the Centre received a request from *Société Ltd. Benvenuti & Bonfant SRL,* an Italian company, for the institution of arbitration proceedings against *the Government of the People's Republic of Congo.*

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[237] The Convention on the Settlement of Investment Disputes between States and Nationals of Other States is reproduced in the *Juridical Yearbook* 1966, p. 196.

[238] The list of Contracting States and Other Signatories of the Convention is reproduced in Document ICSID/3.

On October 13, 1977, the Centre received a request from *AGIP SpA,* an Italian company, for the institution of arbitration proceedings against *the Government of the People's Republic of Congo.*

In the case of *Adriano Gardella SpA* vs. *Government of Ivory Coast,* the Arbitral Tribunal rendered a unanimous award on August 29, 1977.

Reynolds Metals Company and Reynolds Jamaica Mines, Ltd. vs. *the Government of Jamaica,* the last of the three bauxite cases that had been submitted to the Centre in June of 1974, was terminated on October 12, 1977, when the Arbitral Tribunal issued a Procedural Order pursuant to Arbitration Rule 44 noting the discontinuance of the proceeding at the request of Reynolds. Reynolds had previously notified the Centre that on March 31, 1977 it had concluded an agreement with the Government of Jamaica which provided a basis for terminating their dispute.

In the case of *the Government of Gabon* vs. *Société SERETE S.A.* a joint request for discontinuance of the proceedings pursuant to Arbitration Rule 43(1) was received by the Centre on October 5, 1977. The Arbitral Tribunal was constituted on February 28, 1977. Neither party had taken any further step in the proceeding.

The proceedings in *Holiday Inns/Occidental Petroleum* vs. *Government of Morocco* are continuing. The case was registered on December 27, 1971.

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7. INTERNATIONAL MONETARY FUND

The Legal Department participates in most of the activities of the International Monetary Fund by giving legal opinions, drafting texts and documents for adoption as decisions of the Fund or other elements in its *corpus juris,* and engaging in legal research. Members of the staff of the Legal Department assist the various organs and committees of the Fund (including the Board of Governors, the Interim Committee of the Board of Governors on the International Monetary System, the Joint Ministerial Committee of the Boards of Governors of the Bank and the Fund on the Transfer of Real Resources to Developing Countries (Development Committee), and the Executive Board), participate in consultations of the staff with member countries and attend meetings with other international organizations. The Legal Department also participates in various projects of technical assistance provided by the Fund to its members.

The principal activities of the Fund during 1977 are summarized below.

Second Amendment of the Articles of Agreement

As of the end of 1977, the proposed Second Amendment of the Articles of Agreement, reported in the *Juridical Yearbook,* 1976, had been accepted by 66 members having 66.04 per cent of the total voting power. To become effective the proposed amendment requires acceptance by three-fifths of the members having four-fifths of the total voting power.[239] The Second Amendment includes new provisions dealing with exchange arrangements, a gradual reduction in the role of gold in the international monetary system, changes in the characteristics and expansion of the uses of the SDR that are intended to enhance its status as an international reserve asset, simplification and expansion of the Fund's financial operations and transactions, the possible establishment in the future of a Council as a new organ composed of Governors of the Fund and ministers or persons of comparable rank, and improvements in other organizational aspects of the Fund. The Fund's Articles of Agreement, adopted in 1945, were amended for the first time in 1969, when the SDR was established.

[239] The Second Amendment entered into force for all members on April 1, 1978 following its acceptance.

Article IV, Section 3 of the proposed Second Amendment provides:

"Section 3. Surveillance over exchange arrangements

"(*a*) The Fund shall oversee the international monetary system in order to ensure its effective operation, and shall oversee the compliance of each member with its obligations under Section 1 of this Article.

"(*b*) In order to fulfill its functions under (*a*) above, the Fund shall exercise firm surveillance over the exchange rate policies of members, and shall adopt specific principles for the guidance of all members with respect to those policies. Each member shall provide the Fund with the information necessary for such surveillance, and, when requested by the Fund, shall consult with it on the member's exchange rate policies. The principles adopted by the Fund shall be consistent with cooperative arrangements by which members maintain the value of their currencies in relation to the value of the currency or currencies of other members, as well as with other exchange arrangements of a member's choice consistent with the purposes of the Fund and Section 1 of this Article. These principles shall respect the domestic social and political policies of members, and in applying these principles the Fund shall pay due regard to the circumstances of members."

On April 29, 1977, the Executive Board of the Fund approved a document entitled *Surveillance over Exchange Rate Policies*.[240] The decision approving the document states that the "Fund shall act in accordance with this document when the second amendment becomes effective." The document sets forth three principles for the guidance of members' exchange rate policies:

"A. A member shall avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members.

"B. A member should intervene in the exchange market if necessary to counter disorderly conditions which may be characterized *inter alia* by disruptive short-term movements in the exchange value of its currency.

"C. Members should take into account in their intervention policies the interests of other members, including those of the countries in whose currencies they intervene."

The document includes principles of surveillance by the Fund over the exchange rate policies of members and specifies certain developments that will be considered by the Fund indications of the need for special discussion with a member.

The document also sets forth procedures for surveillance, including procedures for notification by members to the Fund of exchange arrangements and any changes in them, regular consultations with members, and periodic review by the Fund of broad developments in exchange rates. The Managing Director is to maintain close contact with members and if, in the interval between Article IV consultations, he considers that a member's exchange rate policies may not be in accord with the exchange rate principles, he must discuss the matter on a confidential basis with the member and report to the Executive Board on the results of the discussion. The procedures further provide that the Executive Board will review annually the general implementation of the Fund's surveillance over members' exchange rate policies.

TRANSACTIONS AND OPERATIONS

During 1977 purchases of exchange from the Fund totaled approximately SDR 3.4 billion or slightly less than half the volume of purchases in 1976. Repurchases by

[240] International Monetary Fund. Annual Report of the Executive Directors for the fiscal year ended April 30, 1977, pp. 107–109.

members in 1977 amounted to an unprecedented SDR 2,934 million, compared with SDR 1,266 million in 1976. The major portion of the total purchases consisted of use of the credit tranches following a decision by the Fund in 1976 to extend the size of the credit tranches until the effective date of the proposed Second Amendment of the Articles of Agreement.

Members' purchases under the compensatory financing facility, which has been in existence since 1963, were considerably lower in 1977 than in 1976 because of a strong recovery of commodity prices.

Supplementary financing facility

The Executive Board of the Fund adopted a decision on August 29, 1977 according to which the Fund would be prepared to provide supplementary financing, in conjunction with use of the ordinary resources of the Fund, to members facing serious payments imbalances that would be large in relation to their quotas. The decision will become effective on the date on which loan agreements between the Fund and lenders providing resources to finance the Facility are entered into for a total amount not less than SDR 7.75 billion, including at least six agreements each of which provides for an amount not less than SDR 500 million. As of the end of 1977, thirteen member countries or their institutions and the Swiss National Bank had expressed their willingness to lend a total of SDR 8.71 billion to the Fund to finance purchases under the Facility.

Members will be able to use the Facility under a stand-by or extended arrangement reaching into the upper credit tranches or beyond and the arrangement must be in accordance with the Fund's policies, including *inter alia* its policies on conditionality, phasing, and performance criteria. A request for a purchase in accordance with a stand-by or extended arrangement approved under the decision will be met from ordinary resources and supplementary financing in varying proportions determined under the provisions of the decision. The period of a stand-by arrangement will normally exceed one year and may extend up to three years in appropriate cases. An extended arrangement is approved normally for periods of three years. The Facility is designed to assist members that, because of the seriousness of their payments problems, can be expected to need resources in larger amounts and for longer periods than could be available to them under the regular credit tranches. Repurchases in respect of outstanding purchases under the decision will be made in accordance with the terms of the stand-by or extended arrangement under which the purchases were made. A member will be expected to repurchase in respect of purchases, whether made with ordinary resources or with supplementary financing, as its balance of payments and reserve position improves if the Fund represents, after consultation with the member, that repurchase should be made because of an improvement. The terms will also provide that with respect to purchases financed with ordinary resources repurchase will be made in accordance with the Fund's policies on the credit tranches or under the Extended Fund Facility; and that with respect to purchases made with supplementary financing repurchase will be made in equal semi-annual installments that begin not later than three and one-half years and are completed not later than seven years after the purchase.

Allocation of Special Drawing Rights

Under Article XXIV, Section 4(c) of the Articles of Agreement, the Managing Director must submit to the Board of Governors, not later than six months before the end of a basic period for the allocation of SDRs, a proposal with respect to the allocation of special drawing rights in the next basic period. If he finds that there is no proposal consistent with the Articles that has broad support among participants, he must so report to the Board of Governors and to the Executive Board. Basic periods for the allocation or cancellation of SDRs are for consecutive periods of five years each unless otherwise des-

ignated. The first basic period, in which an allocation of SDRs was made, began on January 1, 1970 and was for three years. The second basic period began on January 1, 1973, and the third basic period is to begin on January 1, 1978. On June 29, 1977, the Managing Director reported to the Board of Governors that there was no proposal for a new allocation that he considered to be consistent with the provisions of the Articles that had broad support among participants.

Gold disposition program

At meetings in August 1975 and January 1976, the Interim Committee of the Board of Governors reached understandings that provision should be made for the sale over a four-year period of one-sixth of the Fund's gold (25 million ounces) for the benefit of developing countries and for the proportionate distribution, at the price of SDR 35 per ounce, of a further one-sixth to members. In 1976 the Executive Board established a Trust Fund to be administered by the Fund as Trustee for the purposes of providing special balance of payments assistance to developing member countries with the profits from the sale of gold, and with any financing that may be available from voluntary contributions or from loans. The Executive Board also decided at that time that, over the first two years of the four-year period, arrangements would be made for the sale of 12.5 million ounces of gold at 16 public auctions. During 1977, the Fund as Trustee for the Trust Fund made the first and second interim loan disbursements and conducted sales of gold at public auction in the second year of the four-year program.

Beginning in January 1977, the Fund also carried out the first phase of the "restitution" of one-sixth of its gold to members.

By-laws, Rules and Regulations

The Legal Department of the Fund devoted much time in 1977 to the extensive revision by the Board of Governors and the Executive Board of the Fund's By-laws, Rules and Regulations, and general decisions in order to conform them with the amended Articles of Agreement.

Board of Governors Committee

The Interim Committee of the Board of Governors on the International Monetary System held its eighth and ninth meetings in Washington, D.C., in April and September 1977. The Committee held discussions and reached agreement on the need for a supplementary facility (see above) that would allow the Fund to expand its financial assistance to certain members. The Committee expressed its views on the functioning of the international adjustment process, the main issues relating to the seventh general review of quotas, and the question of a further allocation of SDRs. The Committee also reaffirmed its request to the Executive Board to review the characteristics and uses of the SDR, including the objective of making the SDR the principal reserve asset in the international monetary system.

Technical assistance

The Legal Department participates in the training and technical assistance provided by the Fund to member countries in various forms, including a training institute at headquarters, Fund staff missions, and the assignment of experts from outside the staff. The Central Banking Service provides advisory services on a wide range of central banking and related activities, such as drafting or amending central bank and general banking legislation, organization and administration of central monetary authorities, and development of local financial institutions. The Legal Department has cooperated in the drafting

of legislation in this area as well as in the field of taxation.

Members of the Legal Department staff continued to cooperate with the United Nations Commission on International Trade Law Study Group on International Payments and to attend various international conferences and meetings of international organizations at which issues of interest to the Fund arise.

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8. INTERNATIONAL TELECOMMUNICATION UNION

1. Membership of the Union

In 1977, the following two countries became Members of the International Telecommunication Union: the Republic of San Marino (on 25 March) and the Republic of Djibouti (on 22 November). At 31 December 1977, the number of Members of the ITU was 154.

2. Questions relating to radiocommunications

At the end of a World Administrative Radio Conference held in Geneva from 10 January to 13 February 1977, the delegates of 106 Members of the ITU adopted, subject to the approval of the competent authorities of their respective countries, some provisions and an associated Plan for the Broadcasting-Satellite Service in frequency bands 12 GHz for Regions 1 and 3 (the world except for the Americas). With regard to Region 2 (the Americas), provisions were adopted governing the Broadcasting-Satellite Service in the Region pending the establishment of a detailed Plan by a future Regional Administrative Radio Conference.

The Final Acts of the Conference will enter into force on 1 January 1979.

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9. WORLD METEOROLOGICAL ORGANIZATION

Membership of the Organization

1. The following countries deposited their Instruments of Accession to the Convention of the World Meteorological Organization during 1977. The date of deposit and the effectve date of Membership are indicated in each case, in chronological order:

State	*Date of deposit of the instrument of accession*	*Date of membership*
Seychelles	15 February 1977 (under Article 3(*b*) of the Convention)	17 March 1977
People's Republic of Angola	16 March 1977 (under Article 3(*b*) of the Convention)	15 April 1977
Guinea-Bissau	15 December 1977 (under Article 3(*b*) of the Convention)	14 January 1977

2. St. Pierre and Miquelon, a Member Territory withdrew from the Membership of WMO, consequent on its change of status from an overseas Territory to an overseas Department of France and the resulting incorporation of its Meteorological Service in the French National Meteorological Service. In accordance with Article 30(*b*) of the WMO Convention, the withdrawal became effective as from 28 September 1977, twelve months after the notice of withdrawal had been received.

Working Arrangements with the International Institute for Applied Systems Analysis (IIASA)

3. Under the authority given by the twenty-ninth session of the Executive Committee of the World Meteorological Organization, working arrangements were established by an exchange of letters, between the World Meteorological Organization and the International Institute for Applied Systems Analysis (IIASA) and came into force on 13 September 1977.

The texts of the correspondence will be included in a new edition of the Publication entitled "Agreements and Working Arrangements with other international organizations" (WMO-No. 60).

Working Arrangements with the International Seismological Centre

4. The twenty-ninth session of the Executive Committee approved also the establishment of working arrangements between the World Meteorological Organization and the International Seismological Centre. The working arrangements were established by an exchange of letters between WMO and the Centre and came into force on 5 October 1977.

The texts of the correspondence will be included in the publication entitled "Agreements and Working Arrangements with other international organizations" (WMO-No. 60).

Agreement for Joint Financing of North Atlantic Ocean Stations

5. An amendment to the Agreement for Joint Financing of North Atlantic Ocean Stations (NAOS) was adopted by the second session of the NAOS Board which concluded in Geneva on 6 October 1977. The amendment refers to the final part of the Agreement containing the list of countries signatory to the Agreement.[241]

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10. INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

(*a*) INTERNATIONAL CONFERENCES CONVENED BY IMCO IN 1977

International Conference on Safety of Fishing Vessels, 1977

The Conference, held in Torremolinos (Spain) from March 7 to 2 April 1977, adopted as a result of its deliberations, the Torremolinos Convention for the Safety of Fishing Vessels, 1977. In addition, it adopted also, a number of recommendations and resolutions.

This Convention, aimed at promoting the safety of fishing vessels, was deemed necessary to provide special rules for this kind of vessels which are exempt from almost all the requirements of the international conventions for the life at sea and international conventions on load lines.

(*b*) DECISIONS AND OTHER LEGAL ACTIVITIES

The Legal Committee considered *inter alia:*

(1) Questions relating to the extension of the 1969 International Convention on Civil Liability for Oil Pollution Damage and possible extension of the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage or other Substances;

[241] Decision No. 1 (NAOS-II), Geneva, 4–7 July and 5–6 October 1977.

(2) Questions relating to the legal status of novel types of craft;

(3) Questions relating to a new convention on liability and compensation in connexion with the carriage of noxious and hazardous substances by sea;

(4) Questions relating to a draft international convention for the unification of certain rules concerning civil jurisdiction, choice of law and recognition and enforcement of judgments in matters of collision.

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11. INTERNATIONAL ATOMIC ENERGY AGENCY

1. Statute and Membership of the Agency. Actions taken by States in connection with the Statute

(a) *Instruments of Acceptance deposited during 1977*

Nicaragua, 25 March

(b) *At the end of 1977, the Agency's membership stood at 109*

2. Status of the Vienna Convention on Civil Liability for Nuclear Damage[242]

The Vienna Convention on Civil Liability for Nuclear Damage adopted in Vienna on 21 May 1963 by an international conference convened by the IAEA, entered into force on 12 November 1977 in accordance with Article XXIII, three months after the deposit of the fifth instrument of ratification by the Socialist Federal Republic of Yugoslavia on 12 August 1977. The Convention is in force with respect to the following States:

Argentina, Bolivia (accession), Cuba, Egypt, the Philippines, Trinidad and Tobago (accession), the United Republic of Cameroon (accession) and Yugoslavia.

The other Signatories to the Convention are Colombia, Spain and the United Kingdom.

3. Legal activities

(a) *Safeguards agreements*

A substantial part of the legal activities of the Agency concerned the negotiation, conclusion and implementation of safeguard agreements (see p. 37 above).

(b) *Standardization of irradiated food*

An Advisory Group on International Acceptance of Irradiated Food was convened jointly by the Agency, FAO and WHO at the end of 1977. The Group reviewed standardization in food irradiation and harmonization in the regulatory control of irradiation process, so as to ensure that only irradiated food which is safe for public consumption enters international trade. The Group recommended some regulatory measures and enforcement procedures which could be adopted by national authorities, and also an international coding system on labels or on documents accompanying bulk goods which enter the international market.

(c) *International Nuclear Fuel Cycle Evaluation*

The Legal Division has been providing legal advice to the International Nuclear Fuel Cycle Evaluation. The Division is particularly concerned with institutional problems and extensive time has also been devoted to Agency sponsored studies on plutonium management and spent fuel storage.

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[242] Reproduced in the *Juridical Yearbook*, 1963, p. 148.

(d) *Peaceful Nuclear Explosions*

The *Ad Hoc* Advisory Group on Nuclear Explosions for Peaceful Purposes, established in June 1975 by the Board of Governors of the IAEA, submitted its report in September 1977. The report contains a large chapter on "Legal Aspects and Treaty Obligations", a chapter on "Principles or Matters to be Considered in Formulating International Arrangements . . .", and a chapter on "Some Alternative International Legal Instruments". The Board of Governors, on 23 September 1977, resolved to keep the subject matter of the report under review and to continue consideration of the matter when appropriate.

(e) *Regional Co-operative Agreement*

In 1972 the IAEA concluded a five-year Regional Co-operative Agreement (RCA) with Member States in Asia and the Pacific for research, development and training related to nuclear science and technology, which was extended in June 1977 for a further five-year period.

(f) *The Study Project on Regional Nuclear Fuel Cycle Centres*

This project was started by the IAEA in 1975, to cover the technological and economic aspects of spent fuel transport and storage, fuel reprocessing, fuel fabrication, radioactive waste processing and disposal as well as financial, non-proliferation and safeguards, institutional and legal material security and environmental aspects of the establishment of nuclear fuel cycle centres on a regional basis. The study was completed early in 1977 and submitted to the International Conference on Nuclear Power and its Fuel Cycle, held by the IAEA at Salzburg, Austria, in May 1977.

(g) *Preparatory work for a Convention on Physical Protection of Nuclear Facilities and Materials*

A meeting of governmental representatives was convened by the IAEA from 31 October to 10 November 1977 to consider the drafting of a convention on the physical protection of nuclear material. The meeting was attended by representatives of 36 Member States and observers from 10 other States and from EURATOM, OECD/NEA and the Organization of the Treaty for the Prohibition of Nuclear Weapons in Latin America (OPANAL). The meeting was provided with a draft convention prepared by the United States and comments on that draft received by the IAEA from Member States.

It was decided that a second meeting should be held in April 1978 for consideration of the scope, preamble, and final clauses of the convention, as well as further consideration of the draft articles revised by the two working groups.

(h) *IAEA responsibilities under the London Dumping Convention*

In the discharge of its responsibilities under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, the IAEA continued a review of its Provisional Definition and Recommendations with respect to radioactive wastes or other radioactive matter. The review was aimed at refining and consolidating the IAEA Definition and Recommendations in response to a request made by the Contracting Parties at their First Consultative Meeting held in London in September 1976. In this conjunction the Board of Governors decided in February 1977 that the IAEA should expand its activities in the area of radioactive waste dumping at sea by establishing safety codes and guides relating to such operations, and by providing advisory services as is currently done in other areas of IAEA activities.

(i) *Regional workshop on nuclear law*

In co-operation with the Brazilian Nuclear Energy Commission the IAEA organized a Regional Workshop on Nuclear Law in Rio de Janeiro from 27 June to 1 July 1977. The purpose of the Workshop was to review trends and developments in some major areas of nuclear law and to discuss the needs for corresponding legislation in Latin American

countries. Lectures on regulatory control of nuclear installations, safeguards, physical protection of nuclear materials, export licensing, nuclear liability and insurance were presented by IAEA staff members and experts from the Federal Republic of Germany, the United Kingdom and the United States of America. More than 50 lawyers and officials involved in nuclear energy matters in Latin American countries participated in the Workshop; they were from Argentina, Brazil, Chile, Costa Rica, Peru and Venezuela.

(j) *Advisory services in nuclear legislation*

Advisory services in nuclear legislation and regulatory matters were provided by the Legal Division to the Governments of Malaysia and Morocco in 1977 at the latter's request. In Malaysia, such services consisted in a review of a draft atomic energy act prepared earlier with the IAEA assistance and covering both the licensing and liability aspects of nuclear installations. In Morocco, discussions were held with the relevant authorities to advise them on the legislative framework and regulatory steps required for the implementation of a nuclear power programme.

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

ADDITIONAL PROTOCOLS TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949. ADOPTED BY THE DIPLOMATIC CONFERENCE ON THE REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS ON 8 JUNE 1977[1]

(*a*) Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)

PREAMBLE

The High Contracting Parties,

Proclaiming their earnest wish to see peace prevail among peoples,

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Believing it necessary nevertheless to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement measures intended to reinforce their application,

Expressing their conviction that nothing in this Protocol or in the Geneva Conven-

[1] By its resolution 32/44 of 8 December 1977, the General Assembly, after declaring itself convinced of the continuing value of established humanitarian rules relating to armed conflicts, in particular the Hague Conventions of 1899 and 1907 (Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907*), the Geneva Protocol of 1925 (League of Nations, *Treaty Series,* vol. XCIV, p. 65) and the Geneva Conventions of 1949 (League of Nations, *Treaty Series,* vol. 75) welcomed the successful conclusion of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts which had resulted in two Protocols Additional to the Geneva Conventions of 12 August 1949, namely Protocol I relating to the protection of victims of international armed conflicts and Protocol II relating to the protection of victims of non-international armed conflicts. The Assembly further urged States to consider without delay the matter of signing and ratifying or acceding to the two Protocols. The above-mentioned Diplomatic Conference held four sessions in 1974, 1975, 1976 and 1977 at Geneva at the initiative of the Swiss Government. It had before it two draft Protocols additional to the Geneva Conventions of 1949 which had been prepared by the International Committee of the Red Cross. At the conclusion of its 1977 session, the Conference adopted, in addition to the two Protocols, several resolutions which are reproduced on pages 38 to 46 of document A/32/144. Both protocols were opened for signature on 12 December 1977 in Berne. As of 21 June 1978, the Swiss Federal Council, as depository, had received an instrument of ratification from Ghana on 28 February 1977 and an instrument of accession from the Libyan Arab Jamahiriya on 7 June 1978. The Protocols will enter into force six months after the deposit of the second instrument of ratification or accession, i.e. on 7 December 1978.

tions of 12 August 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations,

Reaffirming further that the provisions of the Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict,

Have agreed on the following:

Part 1

GENERAL PROVISIONS

Article 1 — General principles and scope of application

1. The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.

2. In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from dictates of public conscience.

3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.

4. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Article 2 — Definitions

For the purposes of this Protocol:

(*a*) "First Convention", "Second Convention", "Third Convention" and "Fourth Convention" mean, respectively, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Ship-wrecked Members of Armed Forces at Sea of 12 August 1949; the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949; the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949; "the Conventions" means the four Geneva Conventions of 12 August 1949 for the protection of war victims;

(*b*) "Rules of international law applicable in armed conflict" means the rules applicable in armed conflict set forth in international agreements to which the Parties to the conflict are Parties and the generally recognized principles and rules of international law which are applicable to armed conflict;

(*c*) "Protecting Power" means a neutral or other State not a Party to the conflict which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and this Protocol;

(*d*) "Substitute" means an organization acting in place of a Protecting Power in accordance with Article 5.

Article 3 — Beginning and end of application

Without prejudice to the provisions which are applicable at all times:

(*a*) the Conventions and this Protocol shall apply from the beginning of any situation referred to in Article 1 of this Protocol;

(*b*) the application of the Conventions and of this Protocol shall cease, in the territory of Parties to the conflict, on the general close of military operations and, in the case of occupied territories, on the termination of the occupation, except, in either circumstance, for those persons whose final release, repatriation or re-establishment takes place thereafter. These persons shall continue to benefit from the relevant provisions of the Conventions and of this Protocol until their final release, repatriation or re-establishment.

Article 4 — Legal status of the Parties to the conflict

The application of the Conventions and of this Protocol, as well as the conclusion of the agreements provided for therein, shall not affect the legal status of the Parties to the conflict. Neither the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question.

Article 5 — Appointment of Protecting Powers and of their substitute

1. It is the duty of the Parties to a conflict from the beginning of that conflict to secure the supervision and implementation of the Conventions and of this Protocol by the application of the system of Protecting Powers, including *inter alia* the designation and acceptance of those Powers, in accordance with the following paragraphs. Protecting Powers shall have the duty of safeguarding the interests of the Parties to the conflict.

2. From the beginning of a situation referred to in Article 1, each Party to the conflict shall without delay designate a Protecting Power for the purpose of applying the Conventions and this Protocol and shall, likewise without delay and for the same purpose, permit the activities of a Protecting Power which has been accepted by it as such after designation by the adverse Party.

3. If a Protecting Power has not been designated or accepted from the beginning of a situation referred to in Article 1, the International Committee of the Red Cross, without prejudice to the right of any other impartial humanitarian organization to do likewise, shall offer its good offices to the Parties to the conflict with a view to the designation without delay of a Protecting Power to which the Parties to the conflict consent. For that purpose it may *inter alia* ask each Party to provide it with a list of at least five States which that Party considers acceptable to act as Protecting Power on its behalf in relation to an adverse Party and ask each adverse Party to provide a list of at least five States which it would accept as the Protecting Power of the first Party; these lists shall be communicated to the Committee within two weeks after the receipt of the request; it shall compare them and seek the agreement of any proposed State named on both lists.

4. If, despite the foregoing, there is no Protecting Power, the Parties to the conflict shall accept without delay an offer which may be made by the International Committee of the Red Cross or by any other organization which offers all guarantees of impartiality and efficacy, after due consultations with the said Parties and taking into account the result of these consultations, to act as a substitute. The functioning of such a substitute is subject to the consent of the Parties to the conflict; every effort shall be made by the Parties to the conflict to facilitate the operations of the substitute in the performance of its tasks under the Conventions and this Protocol.

5. In accordance with Article 4, the designation and acceptance of Protecting Powers for the purpose of applying the Conventions and this Protocol shall not affect the legal status of the Parties to the conflict or of any territory, including occupied territory.

6. The maintenance of diplomatic relations between Parties to the conflict or the entrusting of the protection of a Party's interests and those of its nationals to a third State

in accordance with the rules of international law relating to diplomatic relations is no obstacle to the designation of Protecting Powers for the purpose of applying the Conventions and this Protocol.

7. Any subsequent mention in this Protocol of a Protecting Power includes also a substitute.

Article 6 — Qualified persons

1. The High Contracting Parties shall, also in peacetime, endeavour, with the assistance of the national Red Cross (Red Crescent, Red Lion and Sun) Societies, to train qualified personnel to facilitate the application of the Conventions and of this Protocol, and in particular the activities of the Protecting Powers.

2. The recruitment and training of such personnel are within domestic jurisdiction.

3. The International Committee of the Red Cross shall hold at the disposal of the High Contracting Parties the lists of persons so trained which the High Contracting Parties may have established and may have transmitted to it for that purpose.

4. The conditions governing the employment of such personnel outside the national territory shall, in each case, be the subject of special agreements between the Parties concerned.

Article 7 — Meetings

The depositary of this Protocol shall convene a meeting of the High Contracting Parties, at the request of one or more of the said Parties and upon the approval of the majority of the said Parties, to consider general problems concerning the application of the Conventions and of the Protocol.

Part II

WOUNDED, SICK AND SHIPWRECKED

Section I

GENERAL PROTECTION

Article 8 — Terminology

For the purposes of this Protocol:

(1) "Wounded" and "sick" mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility;

(2) "Shipwrecked" means persons, whether military or civilian, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility. These persons, provided that they continue to refrain from any act of hostility, shall continue to be considered shipwrecked during their rescue until they acquire another status under the Conventions or this Protocol;

(3) "Medical personnel" means those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under (5) or to the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent or temporary. The term includes:

(*a*) medical personnel of a Party to the conflict, whether military or civilian, including those described in the First and Second Conventions, and those assigned to civil defence organizations;

(*b*) medical personnel of national Red Cross (Red Crescent, Red Lion and Sun) Societies and other national voluntary aid societies duly recognized and authorized by a Party to the conflict;

(*c*) medical personnel of medical units or medical transports described in Article 9, paragraph 2.

(4) "Religious personnel" means military or civilian persons, such as chaplains, who are exclusively engaged in the work of their ministry and attached:

(*a*) to the armed forces of a Party to the conflict;

(*b*) to medical units or medical transports of a Party to the conflict;

(*c*) to medical units or medical transports described in Article 9, paragraph 2; or

(*d*) to civil defence organizations of a Party to the conflict.

The attachment of religious personnel may be either permanent or temporary, and the relevant provisions mentioned under (11) apply to them;

(5) "Medical units" means establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment — including first-aid treatment — of the wounded, sick and shipwrecked, or for the prevention of disease. The term includes, for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units. Medical units may be fixed or mobile, permanent or temporary;

(6) "Medical transportation" means the conveyance by land, water or air of the wounded, sick, shipwrecked, medical personnel, religious personnel, medical equipment or medical supplies protected by the Conventions and by this Protocol;

(7) "Medical transports" means any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict;

(8) "Medical vehicles" means any medical transports by land;

(9) "Medical ships and craft" means any medical transports by water;

(10) "Medical aircraft" means any medical transports by air;

(11) "Permanent medical personnel", "permanent medical units" and "permanent medical transports" mean those assigned exclusively to medical purposes for an indeterminate period. "Temporary medical personnel", "temporary medical units" and "temporary medical transports" mean those devoted exclusively to medical purposes for limited periods during the whole of such periods. Unless otherwise specified, the terms "medical personnel", "medical units" and "medical transports" cover both permanent and temporary categories;

(12) "Distinctive emblem" means the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground when used for the protection of medical units and transports, or medical and religious personnel, equipment or supplies;

(13) "Distinctive signal" means any signal or message specified for the identification exclusively of medical units or transports in Chapter III of Annex I to this Protocol.

Article 9 — Field of application

1. This Part, the provisions of which are intended to ameliorate the condition of the wounded, sick and shipwrecked, shall apply to all those affected by a situation referred to in Article 1, without any adverse distinction founded on race, colour, sex, language,

religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria.

2. The relevant provisions of Articles 27 and 32 of the First Convention shall apply to permanent medical units and transports (other than hospital ships, to which Article 25 of the Second Convention applies) and their personnel made available to a Party to the conflict for humanitarian purposes:

(*a*) by a neutral or other State which is not a Party to that conflict;

(*b*) by a recognized and authorized aid society of such a State;

(*c*) by an impartial international humanitarian organization.

Article 10 — Protection and care

1. All the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected.

2. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

Article 11 — Protection of persons

1. The physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1 shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty.

2. It is, in particular, prohibited to carry out on such persons, even with their consent:

(*a*) physical mutilations;

(*b*) medical or scientific experiments;

(*c*) removal of tissue or organs for transplantation, except where these acts are justified in conformity with the conditions provided for in paragraph 1.

3. Exceptions to the prohibition in paragraph 2 (*c*) may be made only in the case of donations of blood for transfusion or of skin for grafting, provided that they are given voluntarily and without any coercion or inducement, and then only for therapeutic purposes, under conditions consistent with generally accepted medical standards and controls designed for the benefit of both the donor and the recipient.

4. Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person who is in the power of a Party other than the one on which he depends and which either violates any of the prohibitions in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of this Protocol.

5. The persons described in paragraph 1 have the right to refuse any surgical operation. In case of refusal, medical personnel shall endeavour to obtain a written statement to that effect, signed or acknowledged by the patient.

6. Each Party to the conflict shall keep a medical record for every donation of blood for transfusion or skin for grafting by persons referred to in paragraph 1, if that donation is made under the responsibility of that Party. In addition, each Party to the conflict shall endeavour to keep a record of all medical procedures undertaken with respect to any person who is interned, detained or otherwise deprived of liberty as a result of a

situation referred to in Article 1. These records shall be available at all times for inspection by the Protecting Power.

Article 12 — Protection of medical units

1. Medical units shall be respected and protected at all times and shall not be the object of attack.

2. Paragraph 1 shall apply to civilian medical units, provided that they:

(*a*) belong to one of the Parties to the conflict;

(*b*) are recognized and authorized by the competent authority of one of the Parties to the conflict; or

(*c*) are authorized in conformity with Article 9, paragraph 2, of this Protocol or Article 27 of the First Convention.

3. The Parties to the conflict are invited to notify each other of the location of their fixed medical units. The absence of such notification shall not exempt any of the Parties from the obligation to comply with the provisions of paragraph 1.

4. Under no circumstances shall medical units be used in an attempt to shield military objectives from attack. Whenever possible, the Parties to the conflict shall ensure that medical units are so sited that attacks against military objectives do not imperil their safety.

Article 13 — Discontinuance of protection of civilian medical units

1. The protection to which civilian medical units are entitled shall not cease unless they are used to commit, outside their humanitarian function, acts harmful to the enemy. Protection may, however, cease only after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

2. The following shall not be considered as acts harmful to the enemy:

(*a*) that the personnel of the unit are equipped with light individual weapons for their own defence or for that of the wounded and sick in their charge;

(*b*) that the unit is guarded by a picket or by sentries or by an escort;

(*c*) that small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the units;

(*d*) that members of the armed forces or other combatants are in the unit for medical reasons.

Article 14 — Limitations on requisition of civilian medical units

1. The Occupying Power has the duty to ensure that the medical needs of the civilian population in occupied territory continue to be satisfied.

2. The Occupying Power shall not, therefore, requisition civilian medical units, their equipment, their *matériel* or the services of their personnel, so long as these resources are necessary for the provision of adequate medical services for the civilian population and for the continuing medical care of any wounded and sick already under treatment.

3. Provided that the general rule in paragraph 2 continues to be observed, the Occupying Power may requisition the said resources, subject to the following particular conditions:

(*a*) that the resources are necessary for the adequate and immediate medical treatment of the wounded and sick members of the armed forces of the Occupying Power or of prisoners of war;

(*b*) that the requisition continues only while such necessity exists; and

(*c*) that immediate arrangements are made to ensure that the medical needs of the civilian population, as well as those of any wounded and sick under treatment who are affected by the requisition, continue to be satisfied.

Article 15 — Protection of civilian medical and religious personnel

1. Civilian medical personnel shall be respected and protected.

2. If needed, all available help shall be afforded to civilian medical personnel in an area where civilian medical services are disrupted by reason of combat activity.

3. The Occupying Power shall afford civilian medical personnel in occupied territories every assistance to enable them to perform, to the best of their ability, their humanitarian functions. The Occupying Power may not require that, in the performance of those functions, such personnel shall give priority to the treatment of any person except on medical grounds. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.

4. Civilian medical personnel shall have access to any place where their services are essential, subject to such supervisory and safety measures as the relevant Party to the conflict may deem necessary.

5. Civilian religious personnel shall be respected and protected. The provisions of the Conventions and of this Protocol concerning the protection and identification of medical personnel shall apply equally to such persons.

Article 16 — General protection of medical duties

1. Under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.

2. Persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to the rules of medical ethics or to other medical rules designed for the benefit of the wounded and sick or to the provisions of the Conventions or of this Protocol, or to refrain from performing acts or from carrying out work required by those rules and provisions.

3. No person engaged in medical activities shall be compelled to give to anyone belonging either to an adverse Party, or to his own Party except as required by the law of the latter Party, any information concerning the wounded and sick who are, or who have been, under his care, if such information would, in his opinion, prove harmful to the patients concerned or to their families. Regulations for the compulsory notification of communicable diseases shall, however, be respected.

Article 17 — Role of the civilian population and of aid societies

1. The civilian population shall respect the wounded, sick and shipwrecked, even if they belong to the adverse Party, and shall commit no act of violence against them. The civilian population and aid societies, such as national Red Cross (Red Crescent, Red Lion and Sun) Societies, shall be permitted, even on their own initiative, to collect and care for the wounded, sick and shipwrecked, even in invaded or occupied areas. No one shall be harmed, prosecuted, convicted or punished for such humanitarian acts.

2. The Parties to the conflict may appeal to the civilian population and the aid societies referred to in paragraph 1 to collect and care for the wounded, sick and shipwrecked, and to search for the dead and report their location; they shall grant both protection and the necessary facilities to those who respond to this appeal. If the adverse Party gains or regains control of the area, that Party also shall afford the same protection and facilities for so long as they are needed.

Article 18 — Identification

1. Each Party to the conflict shall endeavour to ensure that medical and religious personnel and medical units and transports are identifiable.

2. Each Party to the conflict shall also endeavour to adopt and to implement methods and procedures which will make it possible to recognize medical units and transports which use the distinctive emblem and distinctive signals.

3. In occupied territory and in areas where fighting is taking place or is likely to take place, civilian medical personnel and civilian religious personnel should be recognizable by the distinctive emblem and an identity card certifying their status.

4. With the consent of the competent authority, medical units and transports shall be marked by the distinctive emblem. The ships and craft referred to in Article 22 of this Protocol shall be marked in accordance with the provisions of the Second Convention.

5. In addition to the distinctive emblem, a Party to the conflict may, as provided in Chapter III of Annex I to this Protocol, authorize the use of distinctive signals to identify medical units and transports. Exceptionally, in the special cases covered in that Chapter, medical transports may use distinctive signals without displaying the distinctive emblem.

6. The application of the provisions of paragraphs 1 to 5 of this article is governed by Chapters I to III of Annex I to this Protocol. Signals designated in Chapter III of the Annex for the exclusive use of medical units and transports shall not, except as provided therein, be used for any purpose other than to identify the medical units and transports specified in that Chapter.

7. This article does not authorize any wider use of the distinctive emblem in peacetime than is prescribed in Article 44 of the First Convention.

8. The provisions of the Conventions and of this Protocol relating to supervision of the use of the distinctive emblem and to the prevention and repression of any misuse thereof shall be applicable to distinctive signals.

Article 19 — Neutral and other States not Parties to the conflict

Neutral and other States not Parties to the conflict shall apply the relevant provisions of this Protocol to persons protected by this Part who may be received or interned within their territory, and to any dead of the Parties to that conflict whom they may find.

Article 20 — Prohibition of reprisals

Reprisals against the persons and objects protected by this Part are prohibited.

Section II

MEDICAL TRANSPORTATION

Article 21 — Medical vehicles

Medical vehicles shall be respected and protected in the same way as mobile medical units under the Conventions and this Protocol.

Article 22 — Hospital ships and coastal rescue craft

1. The provisions of the Conventions relating to:

(*a*) vessels described in Articles 22, 24, 25 and 27 of the Second Convention,

(*b*) their lifeboats and small craft,

(*c*) their personnel and crews, and

(*d*) the wounded, sick and shipwrecked on board,

shall also apply where these vessels carry civilian wounded, sick and shipwrecked who do not belong to any of the categories mentioned in Article 13 of the Second Convention. Such civilians shall not, however, be subject to surrender to any Party which is not their own, or to capture at sea. If they find themselves in the power of a Party to the conflict other than their own they shall be covered by the Fourth Convention and by this Protocol.

2. The protection provided by the Conventions to vessels described in Article 25 of the Second Convention shall extend to hospital ships made available for humanitarian purposes to a Party to the conflict:

(*a*) by a neutral or other State which is not a Party to that conflict; or

(*b*) by an impartial international humanitarian organization,

provided that, in either case, the requirements set out in that Article are complied with.

3. Small craft described in Article 27 of the Second Convention shall be protected even if the notification envisaged by that Article has not been made. The Parties to the conflict are, nevertheless, invited to inform each other of any details of such craft which will facilitate their identification and recognition.

Article 23 — Other medical ships and craft

1. Medical ships and craft other than those referred to in Article 22 of this Protocol and Article 38 of the Second Convention shall, whether at sea or in other waters, be respected and protected in the same way as mobile medical units under the Conventions and this Protocol. Since this protection can only be effective if they can be identified and recognized as medical ships or craft, such vessels should be marked with the distinctive emblem and as far as possible comply with the second paragraph of Article 43 of the Second Convention.

2. The ships and craft referred to in paragraph 1 shall remain subject to the laws of war. Any warship on the surface able immediately to enforce its command may order them to stop, order them off, or make them take a certain course, and they shall obey every such command. Such ships and craft may not in any other way be diverted from their medical mission so long as they are needed for the wounded, sick and shipwrecked on board.

3. The protection provided in paragraph 1 shall cease only under the conditions set out in Articles 34 and 35 of the Second Convention. A clear refusal to obey a command given in accordance with paragraph 2 shall be an act harmful to the enemy under Article 34 of the Second Convention.

4. A Party to the conflict may notify any adverse Party as far in advance of sailing as possible of the name, description, expected time of sailing, course and estimated speed of the medical ship or craft, particularly in the case of ships of over 2,000 gross tons, and may provide any other information which would facilitate identification and recognition. The adverse Party shall acknowledge receipt of such information.

5. The provisions of Article 37 of the Second Convention shall apply to medical and religious personnel in such ships and craft.

6. The provisions of the Second Convention shall apply to the wounded, sick and shipwrecked belonging to the categories referred to in Article 13 of the Second Convention and in Article 44 of this Protocol who may be on board such medical ships and craft. Wounded, sick and shipwrecked civilians who do not belong to any of the categories mentioned in Article 13 of the Second Convention shall not be subject, at sea, either to surrender to any Party which is not their own, or to removal from such ships or craft; if they find themselves in the power of a Party to the conflict other than their own, they shall be covered by the Fourth Convention and by this Protocol.

Article 24 — Protection of medical aircraft

Medical aircraft shall be respected and protected, subject to the provisions of this Part.

Article 25 — Medical aircraft in areas not controlled by an adverse Party

In and over land areas physically controlled by friendly forces, or in and over sea areas not physically controlled by an adverse Party, the respect and protection of medical aircraft of a Party to the conflict is not dependent on any agreement with an adverse Party. For greater safety, however, a Party to the conflict operating its medical aircraft in these areas may notify the adverse Party, as provided in Article 29, in particular when

such aircraft are making flights bringing them within range of surface-to-air weapons systems of the adverse Party.

Article 26 — Medical aircraft in contact or similar zones

1. In and over those parts of the contact zone which are physically controlled by friendly forces and in and over those areas the physical control of which is not clearly established, protection for medical aircraft can be fully effective only by prior agreement between the competent military authorities of the Parties to the conflict, as provided for in Article 29. Although, in the absence of such an agreement, medical aircraft operate at their own risk, they shall nevertheless be respected after they have been recognized as such.

2. "Contact zone" means any area on land where the forward elements of opposing forces are in contact with each other, especially where they are exposed to direct fire from the ground.

Article 27 — Medical aircraft in areas controlled by an adverse Party

1. The medical aircraft of a Party to the conflict shall continue to be protected while flying over land or sea areas physically controlled by an adverse Party, provided that prior agreement to such flights has been obtained from the competent authority of that adverse Party.

2. A medical aircraft which flies over an area physically controlled by an adverse Party without, or in deviation from the terms of, an agreement provided for in paragraph 1, either through navigational error or because of an emergency affecting the safety of the flight, shall make every effort to identify itself and to inform the adverse Party of the circumstances. As soon as such medical aircraft has been recognized by the adverse Party, that Party shall make all reasonable efforts to give the order to land or to alight on water, referred to in Article 30, paragraph 1, or to take other measures to safeguard its own interests, and, in either case, to allow the aircraft time for compliance, before resorting to an attack against the aircraft.

Article 28 — Restrictions on operations of medical aircraft

1. The Parties to the conflict are prohibited from using their medical aircraft to attempt to acquire any military advantage over an adverse Party. The presence of medical aircraft shall not be used in an attempt to render military objectives immune from attack.

2. Medical aircraft shall not be used to collect or transmit intelligence data and shall not carry any equipment intended for such purposes. They are prohibited from carrying any persons or cargo not included within the definition of Article 8 (6). The carrying on board of the personal effects of the occupants or of equipment intended solely to facilitate navigation, communication or identification shall not be considered as prohibited.

3. Medical aircraft shall not carry any armament except small arms and ammunition taken from the wounded, sick and shipwrecked on board and not yet handed to the proper service, and such light individual weapons as may be necessary to enable the medical personnel on board to defend themselves and the wounded, sick and shipwrecked in their charge,

4. While carrying out the flights referred to in Articles 26 and 27, medical aircraft shall not, except by prior agreement with the adverse Party, be used to search for the wounded, sick and shipwrecked.

Article 29 — Notifications and agreements concerning medical aircraft

1. Notifications under Article 25, or requests for prior agreement under Articles 26, 27, 28, paragraph 4, or 31 shall state the proposed number of medical aircraft, their flight plans and means of identification, and shall be understood to mean that every flight will be carried out in compliance with Article 28.

2. A Party which receives a notification given under Article 25 shall at once acknowledge receipt of such notification.

3. A Party which receives a request for prior agreement under Articles 26, 27, 28, paragraph 4, or 31 shall, as rapidly as possible, notify the requesting Party:

(*a*) that the request is agreed to;

(*b*) that the request is denied; or

(*c*) of reasonable alternative proposals to the request. It may also propose a prohibition or restriction of other flights in the area during the time involved. If the Party which submitted the request accepts the alternative proposals, it shall notify the other Party of such acceptance.

4. The Parties shall take the necessary measures to ensure that notifications and agreements can be made rapidly.

5. The Parties shall also take the necessary measures to disseminate rapidly the substance of any such notifications and agreements to the military units concerned and shall instruct those units regarding the means of identification that will be used by the medical aircraft in question.

Article 30 — Landing and inspection of medical aircraft

1. Medical aircraft flying over areas which are physically controlled by an adverse Party, or over areas the physical control of which is not clearly established, may be ordered to land or to alight on water, as appropriate, to permit inspection in accordance with the following paragraphs. Medical aircraft shall obey any such order.

2. If such an aircraft lands or alights on water, whether ordered to do so or for other reasons, it may be subjected to inspection solely to determine the matters referred to in paragraphs 3 and 4. Any such inspection shall be commenced without delay and shall be conducted expeditiously. The inspecting Party shall not require the wounded and sick to be removed from the aircraft unless their removal is essential for the inspection. That Party shall in any event ensure that the condition of the wounded and sick is not adversely affected by the inspection or by the removal.

3. If the inspection discloses that the aircraft:

(*a*) is a medical aircraft within the meaning of Article 8 (10),

(*b*) is not in violation of the conditions prescribed in Article 28, and

(*c*) has not flown without or in breach of a prior agreement where such agreement is required,

the aircraft and those of its occupants who belong to the adverse Party or to a neutral or other State not a Party to the conflict shall be authorized to continue the flight without delay.

4. If the inspection discloses that the aircraft:

(*a*) is not a medical aircraft within the meaning of Article 8 (10),

(*b*) is in violation of the conditions prescribed in Article 28, or

(*c*) has flown without or in breach of a prior agreement where such agreement is required,

the aircraft may be seized. Its occupants shall be treated in conformity with the relevant provisions of the Conventions and of this Protocol. Any aircraft seized which had been assigned as a permanent medical aircraft may be used thereafter only as a medical aircraft.

Article 31 — Neutral or other States not Parties to the conflict

1. Except by prior agreement, medical aircraft shall not fly over or land in the territory of a neutral or other State not a Party to the conflict. However, with such an agreement, they shall be respected throughout their flight and also for the duration of any calls

in the territory. Nevertheless they shall obey any summons to land or to alight on water, as appropriate.

2. Should a medical aircraft, in the absence of an agreement or in deviation from the terms of an agreement, fly over the territory of a neutral or other State not a Party to the conflict, either through navigational error or because of an emergency affecting the safety of the flight, it shall make every effort to give notice of the flight and to identify itself. As soon as such medical aircraft is recognized, that State shall make all reasonable efforts to give the order to land or to alight on water referred to in Article 30, paragraph 1, or to take other measures to safeguard its own interests, and, in either case, to allow the aircraft time for compliance, before resorting to an attack against the aircraft.

3. If a medical aircraft, either by agreement or in the circumstances mentioned in paragraph 2, lands or alights on water in the territory of a neutral or other State not Party to the conflict, whether ordered to do so or for other reasons, the aircraft shall be subject to inspection for the purposes of determining whether it is in fact a medical aircraft. The inspection shall be commenced without delay and shall be conducted expeditiously. The inspecting Party shall not require the wounded and sick of the Party operating the aircraft to be removed from it unless their removal is essential for the inspection. The inspecting Party shall in any event ensure that the condition of the wounded and sick is not adversely affected by the inspection or the removal. If the inspection discloses that the aircraft is in fact a medical aircraft, the aircraft with its occupants, other than those who must be detained in accordance with the rules of international law applicable in armed conflict, shall be allowed to resume its flight, and reasonable facilities shall be given for the continuation of the flight. If the inspection discloses that the aircraft is not a medical aircraft, it shall be seized and the occupants treated in accordance with paragraph 4.

4. The wounded, sick and shipwrecked disembarked, otherwise than temporarily, from a medical aircraft with the consent of the local authorities in the territory of a neutral or other State not a Party to the conflict shall, unless agreed otherwise between that State and the Parties to the conflict, be detained by that State where so required by the rules of international law applicable in armed conflict, in such a manner that they cannot again take part in the hostilities. The cost of hospital treatment and internment shall be borne by the State to which those persons belong.

5. Neutral or other States not Parties to the conflict shall apply any conditions and restrictions on the passage of medical aircraft over or on the landing of medical aircraft in, their territory equally to all Parties to the conflict.

Section III

MISSING AND DEAD PERSONS

Article 32 — General principle

In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives.

Article 33 — Missing persons

1. As soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party. Such adverse Party shall transmit all relevant information concerning such persons in order to facilitate such searches.

2. In order to facilitate the gathering of information pursuant to the preceding

paragraph, each Party to the conflict shall, with respect to persons who would not receive more favourable consideration under the Conventions and this Protocol:

(*a*) record the information specified in Article 138 of the Fourth Convention in respect of such persons who have been detained, imprisoned or otherwise held in captivity for more than two weeks as a result of hostilities or occupation, or who have died during any period of detention;

(*b*) to the fullest extent possible, facilitate and, if need be, carry out the search for and the recording of information concerning such persons if they have died in other circumstances as a result of hostilities or occupation.

3. Information concerning persons reported missing pursuant to paragraph 1 and requests for such information shall be transmitted either directly or through the Protecting Power or the Central Tracing Agency of the International Committee of the Red Cross or national Red Cross (Red Crescent, Red Lion and Sun) Societies. Where the information is not transmitted through the International Committee of the Red Cross and its Central Tracing Agency, each Party to the conflict shall ensure that such information is also supplied to the Central Tracing Agency.

4. The Parties to the conflict shall endeavour to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas, including arrangements, if appropriate, for such teams to be accompanied by personnel of the adverse Party while carrying out these missions in areas controlled by the adverse Party. Personnel of such teams shall be respected and protected while exclusively carrying out these duties.

Article 34 — Remains of deceased

1. The remains of persons who have died for reasons related to occupation or in detention resulting from occupation or hostilities and those of persons not nationals of the country in which they have died as a result of hostilities shall be respected, and the gravesites of all such persons shall be respected, maintained and marked as provided for in Article 130 of the Fourth Convention, where their remains or gravesites would not receive more favourable consideration under the Conventions and this Protocol.

2. As soon as circumstances and the relations between the adverse Parties permit, the High Contracting Parties in whose territories graves and, as the case may be, other locations of the remains of persons who have died as a result of hostilities or during occupation or in detention are situated, shall conclude agreements in order:

(*a*) to facilitate access to the gravesites by relatives of the deceased and by representatives of official graves registration services and to regulate the practical arrangements for such access;

(*b*) to protect and maintain such gravesites permanently;

(*c*) to facilitate the return of the remains of the deceased and of personal effects to the home country upon its request or, unless that country objects, upon the request of the next of kin.

3. In the absence of the agreements provided for in paragraph 2 (*b*) or (*c*) and if the home country of such deceased is not willing to arrange at its expense for the maintenance of such gravesites, the High Contracting Party in whose territory the gravesites are situated may offer to facilitate the return of the remains of the deceased to the home country. Where such an offer has not been accepted the High Contracting Party may, after the expiry of five years from the date of the offer and upon due notice to the home country, adopt the arrangements laid down in its own laws relating to cemeteries and graves.

4. A High Contracting Party in whose territory the gravesites referred to in this Article are situated shall be permitted to exhume the remains only:

(*a*) in accordance with paragraphs 2 (*c*) and 3, or

(*b*) where exhumation is a matter of overriding public necessity, including cases of medical and investigative necessity, in which case the High Contracting Party shall at all times respect the remains, and shall give notice to the home country of its intention to exhume the remains together with details of the intended place of reinterment.

Part III

METHODS AND MEANS OF WARFARE COMBATANT AND PRISONER-OF-WAR STATUS

Section I

METHODS AND MEANS OF WARFARE

Article 35 — Basic rules

1. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.

2. It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

3. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

Article 36 — New weapons

In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

Article 37 — Prohibition of perfidy

1. It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy. The following acts are examples of perfidy:

(*a*) the feigning of an intent to negotiate under a flag of truce or of a surrender;

(*b*) the feigning of an incapacitation by wounds or sickness;

(*c*) the feigning of civilian, non-combatant status; and

(*d*) the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict.

2. Ruses of war are not prohibited. Such ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of international law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law. The following are examples of such ruses: the use of camouflage, decoys, mock operations and misinformation.

Article 38 — Recognized emblems

1. It is prohibited to make improper use of the distinctive emblem of the red cross, red crescent or red lion and sun or of other emblems, signs or signals provided for by the Conventions or by this Protocol. It is also prohibited to misuse deliberately in an armed

conflict other internationally recognized protective emblems, signs or signals, including the flag of truce, and the protective emblem of cultural property.

2. It is prohibited to make use of the distinctive emblem of the United Nations, except as authorized by that Organization.

Article 39 — Emblems of nationality

1. It is prohibited to make use in an armed conflict of the flags or military emblems, insignia or uniforms of neutral or other States not Parties to the conflict.

2. It is prohibited to make use of the flags or military emblems, insignia or uniforms of adverse Parties while engaging in attacks or in order to shield, favour, protect or impede military operations.

3. Nothing in this Article or in Article 37, paragraph 1 (*d*), shall affect the existing generally recognized rules of international law applicable to espionage or to the use of flags in the conduct of armed conflict at sea.

Article 40 — Quarter

It is prohibited to order that there shall be no survivors, to threaten an adversary therewith or to conduct hostilities on this basis.

Article 41 — Safeguard of an enemy hors de combat

1. A person who is recognized or who, in the circumstances should be recognized to be *hors de combat* shall not be made the object of attack.

2. A person is *hors de combat* if:

(*a*) he is in the power of an adverse Party;

(*b*) he clearly expresses an intention to surrender; or

(*c*) he has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of defending himself;

provided that in any of these cases he abstains from any hostile act and does not attempt to escape.

3. When persons entitled to protection as prisoners of war have fallen into the power of an adverse Party under unusual conditions of combat which prevent their evacuation as provided for in Part III, Section I, of the Third Convention, they shall be released and all feasible precautions shall be taken to ensure their safety.

Article 42 — Occupants of aircraft

1. No person parachuting from an aircraft in distress shall be made the object of attack during his descent.

2. Upon reaching the ground in territory controlled by an adverse Party, a person who has parachuted from an aircraft in distress shall be given an opportunity to surrender before being made the object of attack, unless it is apparent that he is engaging in a hostile act.

3. Airborne troops are not protected by this Article.

Section II

COMBATANT AND PRISONER-OF-WAR STATUS

Article 43 — Armed forces

1. The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not

recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, *inter alia,* shall enforce compliance with the rules of international law applicable in armed conflict.

2. Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.

3. Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

Article 44 — Combatants and prisoners of war

1. Any combatant, as defined in Article 43, who falls into the power of an adverse Party shall be a prisoner of war.

2. While all combatants are obliged to comply with the rules of international law applicable in armed conflict, violations of these rules shall not deprive a combatant of his right to be a combatant or, if he falls into the power of an adverse Party, of his right to be a prisoner of war, except as provided in paragraphs 3 and 4.

3. In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:

(*a*) during each military engagement, and

(*b*) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.

Acts which comply with the requirements of this paragraph shall not be considered as perfidious within the meaning of Article 37, paragraph 1 (*c*).

4. A combatant who falls into the power of an adverse Party while failing to meet the requirements set forth in the second sentence of paragraph 3 shall forfeit his right to be a prisoner of war, but he shall, nevertheless, be given protections equivalent in all respects to those accorded to prisoners of war by the Third Convention and by this Protocol. This protection includes protections equivalent to those accorded to prisoners of war by the Third Convention in the case where such a person is tried and punished for any offences he has committed.

5. Any combatant who falls into the power of an adverse Party while not engaged in an attack or in a military operation preparatory to an attack shall not forfeit his rights to be a combatant and a prisoner of war by virtue of his prior activities.

6. This Article is without prejudice to the right of any person to be a prisoner of war pursuant to Article 4 of the Third Convention.

7. This Article is not intended to change the generally accepted practice of States with respect to the wearing of the uniform by combatants assigned to the regular, uniformed armed units of a Party to the conflict.

8. In addition to the categories of persons mentioned in Article 13 of the First and Second Conventions, all members of the armed forces of a Party to the conflict, as defined in Article 43 of this Protocol, shall be entitled to protection under those Conventions if they are wounded or sick or, in the case of the Second Convention, shipwrecked at sea or in other waters.

Article 45 — Protection of persons who have taken part in hostilities

1. A person who takes part in hostilities and falls into the power of an adverse Party shall be presumed to be a prisoner of war, and therefore shall be protected by the

Third Convention, if he claims the status of prisoner of war, or if he appears to be entitled to such status, or if the Party on which he depends claims such status on his behalf by notification to the detaining Power or to the Protecting Power. Should any doubt arise as to whether any such person is entitled to the status of prisoner of war, he shall continue to have such status and, therefore, to be protected by the Third Convention and this Protocol until such time as his status has been determined by a competent tribunal.

2. If a person who has fallen into the power of an adverse Party is not held as a prisoner of war and is to be tried by that Party for an offence arising out of the hostilities, he shall have the right to assert his entitlement to prisoner-of-war status before a judicial tribunal and to have that question adjudicated. Whenever possible under the applicable procedure, this adjudication shall occur before the trial for the offence. The representatives of the Protecting Power shall be entitled to attend the proceedings in which that question is adjudicated, unless, exceptionally, the proceedings are held *in camera* in the interest of State security. In such a case the detaining Power shall advise the Protecting Power accordingly.

3. Any person who has taken part in hostilities, who is not entitled to prisoner-of-war status and who does not benefit from more favourable treatment in accordance with the Fourth Convention shall have the right at all times to the protection of Article 75 of this Protocol. In occupied territory, any such person, unless he is held as a spy, shall also be entitled, notwithstanding Article 5 of the Fourth Convention, to his rights of communication under that Convention.

Article 46 — Spies

1. Notwithstanding any other provision of the Conventions or of this Protocol, any member of the armed forces of a Party to the conflict who falls into the power of an adverse Party while engaging in espionage shall not have the right to the status of prisoner of war and may be treated as a spy.

2. A member of the armed forces of a Party to the conflict who, on behalf of that Party and in territory controlled by an adverse Party, gathers or attempts to gather information shall not be considered as engaging in espionage if, while so acting, he is in the uniform of his armed forces.

3. A member of the armed forces of a Party to the conflict who is a resident of territory occupied by an adverse Party and who, on behalf of the Party on which he depends, gathers or attempts to gather information of military value within that territory shall not be considered as engaging in espionage unless he does so through an act of false pretences or deliberately in a clandestine manner. Moreover, such a resident shall not lose his right to the status of prisoner of war and may not be treated as a spy unless he is captured while engaging in espionage.

4. A member of the armed forces of a Party to the conflict who is not a resident of territory occupied by an adverse Party and who has engaged in espionage in that territory shall not lose his right to the status of prisoner of war and may not be treated as a spy unless he is captured before he has rejoined the armed forces to which he belongs.

Article 47 — Mercenaries

1. A mercenary shall not have the right to be a combatant or a prisoner of war.

2. A mercenary is any person who:

(*a*) is specially recruited locally or abroad in order to fight in an armed conflict;

(*b*) does, in fact, take a direct part in the hostilities;

(*c*) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;

(*d*) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;

(*e*) is not a member of the armed forces of a Party to the conflict; and

(*f*) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

Part IV

CIVILIAN POPULATION

Section I

GENERAL PROTECTION AGAINST EFFECTS OF HOSTILITIES

CHAPTER I

BASIC RULE AND FIELD OF APPLICATION

Article 48 — Basic rule

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

Article 49 — Definition of attacks and scope of application

1. "Attacks" means acts of violence against the adversary, whether in offence or in defence.

2. The provisions of this Protocol with respect to attacks apply to all attacks in whatever territory conducted, including the national territory belonging to a Party to the conflict but under the control of an adverse Party.

3. The provisions of this section apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air.

4. The provisions of this section are additional to the rules concerning humanitarian protection contained in the Fourth Convention, particularly in part II thereof, and in other international agreements binding upon the High Contracting Parties, as well as to other rules of international law relating to the protection of civilians and civilian objects on land, at sea or in the air against the effects of hostilities.

CHAPTER II

CIVILIANS AND CIVILIAN POPULATION

Article 50 — Definition of civilians and civilian population

1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 (A) (1), (2), (3), and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

2. The civilian population comprises all persons who are civilians.

3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

Article 51 — Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:

(*a*) those which are not directed at a specific military objective;

(*b*) those which employ a method or means of combat which cannot be directed at a specific military objective; or

(*c*) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

5. Among others, the following types of attacks are to be considered as indiscriminate:

(*a*) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and

(*b*) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

6. Attacks against the civilian population or civilians by way of reprisals are prohibited.

7. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

8. Any violation of these prohibitions shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians, including the obligations to take the precautionary measures provided for in Article 57.

CHAPTER III

CIVILIAN OBJECTS

Article 52 — General protection of civilian objects

1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

Article 53 — Protection of cultural objects and of places of worship

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited:

(*a*) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;

(*b*) to use such objects in support of the military effort;

(*c*) to make such objects the object of reprisals.

Article 54 — Protection of objects indispensable to the survival of the civilian population

1. Starvation of civilians as a method of warfare is prohibited.

2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

3. The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party:

(*a*) as sustenance solely for the members of its armed forces; or

(*b*) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.

4. These objects shall not be made the object of reprisals.

5. In recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion, derogation from the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity.

Article 55 — Protection of the natural environment

1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

2. Attacks against the natural environment by way of reprisals are prohibited.

Article 56 — Protection of works and installations containing dangerous forces

1. Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population. Other military objectives located at or in the vicinity of these works or installations shall not be made the object of attack if such attack may cause the release of dangerous forces from the works or installations and consequent severe losses among the civilian population.

2. The special protection against attack provided by paragraph 1 shall cease:

(*a*) for a dam or a dyke only if it is used for other than its normal function and in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support;

(*b*) for a nuclear electrical generating station only if it provides electric power in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support;

(*c*) for other military objectives located at or in the vicinity of these works or installations only if they are used in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support.

3. In all cases, the civilian population and individual civilians shall remain entitled to all the protection accorded them by international law, including the protection of the precautionary measures provided for in Article 57. If the protection ceases and any of the works, installations or military objectives mentioned in paragraph 1 is attacked, all practical precautions shall be taken to avoid the release of the dangerous forces.

4. It is prohibited to make any of the works, installations or military objectives mentioned in paragraph 1 the object of reprisals.

5. The Parties to the conflict shall endeavour to avoid locating any military objectives in the vicinity of the works or installations mentioned in paragraph 1. Nevertheless, installations erected for the sole purpose of defending the protected works or installations from attack are permissible and shall not themselves be made the object of attack, provided that they are not used in hostilities except for defensive actions necessary to respond to attacks against the protected works or installations and that their armament is limited to weapons capable only of repelling hostile action against the protected works or installations.

6. The High Contracting Parties and the Parties to the conflict are urged to conclude further agreements among themselves to provide additional protection for objects containing dangerous forces.

7. In order to facilitate the identification of the objects protected by this article, the Parties to the conflict may mark them with a special sign consisting of a group of three bright orange circles placed on the same axis, as specified in Article 16 of Annex I to this Protocol. The absence of such marking in no way relieves any Party to the conflict of its obligations under this Article.

CHAPTER IV

PRECAUTIONARY MEASURES

Article 57 — Precautions in attack

1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.

2. With respect to attacks, the following precautions shall be taken:

(*a*) those who plan or decide upon attack shall:

(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;

(ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;

(iii) refrain from deciding to launch any attacks which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(*b*) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(*c*) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.

3. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.

4. In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.

5. No provision of this article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects.

Article 58 — Precautions against the effects of attacks

The Parties to the conflict shall, to the maximum extent feasible:

(*a*) without prejudice to Article 49 of the Fourth Convention, endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives;

(*b*) avoid locating military objectives within or near densely populated areas;

(*c*) take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.

CHAPTER V

LOCALITIES AND ZONES UNDER SPECIAL PROTECTION

Article 59 — Non-defended localities

1. It is prohibited for the Parties to the conflict to attack, by any means whatsoever, non-defended localities.

2. The appropriate authorities of a Party to the conflict may declare as a non-defended locality any inhabited place near or in a zone where armed forces are in contact which is open for occupation by an adverse Party. Such a locality shall fulfill the following conditions:

(*a*) all combatants, as well as mobile weapons and mobile military equipment must have been evacuated;

(*b*) no hostile use shall be made of fixed military installations or establishments;

(*c*) no acts of hostility shall be committed by the authorities or by the population; and

(*d*) no activities in support of military operations shall be undertaken.

3. The presence, in this locality, of persons specially protected under the Conventions and this Protocol, and of police forces retained for the sole purpose of maintaining law and order, is not contrary to the conditions laid down in paragraph 2.

4. The declaration made under paragraph 2 shall be addressed to the adverse Party and shall define and describe, as precisely as possible, the limits of the non-defended locality. The Party to the conflict to which the declaration is addressed shall acknowledge its receipt and shall treat the locality as a non-defended locality unless the conditions laid down in paragraph 2 are not in fact fulfilled, in which event it shall immediately so inform the Party making the declaration. Even if the conditions laid down in paragraph 2 are not fulfilled, the locality shall continue to enjoy the protection provided by the other provisions of this Protocol and the other rules of international law applicable in armed conflict.

5. The Parties to the conflict may agree on the establishment of non-defended localities even if such localities do not fulfil the conditions laid down in paragraph 2. The agreement should define and describe, as precisely as possible, the limits of the non-defended locality; if necessary, it may lay down the methods of supervision.

6. The Party which is in control of a locality governed by such an agreement shall mark it, so far as possible, by such signs as may be agreed upon with the other Party, which shall be displayed where they are clearly visible, especially on its perimeter and limits and on highways.

7. A locality loses its status as a non-defended locality when it ceases to fulfil the conditions laid down in paragraph 2 or in the agreement referred to in paragraph 5. In such an eventuality, the locality shall continue to enjoy the protection provided by the other provisions of this Protocol and the other rules of international law applicable in armed conflict.

Article 60 — Demilitarized zones

1. It is prohibited for the Parties to the conflict to extend their military operations to zones on which they have conferred by agreement the status of demilitarized zone, if such extension is contrary to the terms of this agreement.

2. The agreement shall be an express agreement, may be concluded verbally or in writing, either directly or through a Protecting Power or any impartial humanitarian organization, and may consist of reciprocal and concordant declarations. The agreement may be concluded in peacetime, as well as after the outbreak of hostilities, and should define and describe, as precisely as possible, the limits of the demilitarized zone and, if necessary, lay down the methods of supervision.

3. The subject of such an agreement shall normally be any zone which fulfils the following conditions:

(*a*) all combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;

(*b*) no hostile use shall be made of fixed military installations or establishments;

(*c*) no acts of hostility shall be committed by the authorities or by the population; and

(*d*) any activity linked to the military effort must have ceased.

The Parties to the conflict shall agree upon the interpretation to be given to the condition laid down in subparagraph (*d*) and upon persons to be admitted to the demilitarized zone other than those mentioned in paragraph 4.

4. The presence, in this zone, of persons specially protected under the Conventions and this Protocol, and of police forces retained for the sole purpose of maintaining law and order, is not contrary to the conditions laid down in paragraph 3.

5. The Party which is in control of such a zone shall mark it, so far as possible, by such signs as may be agreed upon with the other Party, which shall be displayed where they are clearly visible, especially on its perimeter and limits and on highways.

6. If the fighting draws near to a demilitarized zone, and if the Parties to the con-

flict have so agreed, none of them may use the zone for purposes related to the conduct of military operations or unilaterally revoke its status.

7. If one of the Parties to the conflict commits a material breach of the provisions of paragraphs 3 or 6, the other Party shall be released from its obligations under the agreement conferring upon the zone the status of demilitarized zone. In such an eventuality, the zone loses its status but shall continue to enjoy the protection provided by the other provisions of this Protocol and the other rules of international law applicable in armed conflict.

CHAPTER VI

CIVIL DEFENCE

Article 61 — Definitions and scope

For the purpose of this Protocol:

(1) "Civil defence" means the performance of some or all of the undermentioned humanitarian tasks intended to protect the civilian population against the dangers, and to help it to recover from the immediate effects, of hostilities or disasters and also to provide the conditions necessary for its survival. These tasks are:

(*a*) warning;

(*b*) evacuation;

(*c*) management of shelters;

(*d*) management of blackout measures;

(*e*) rescue;

(*f*) medical services, including first aid, and religious assistance;

(*g*) fire-fighting;

(*h*) detection and marking of danger areas;

(*i*) decontamination and similar protective measures;

(*j*) provision of emergency accommodation and supplies;

(*k*) emergency assistance in the restoration and maintenance of order in distressed areas;

(*l*) emergency repair of indispensable public utilities;

(*m*) emergency disposal of the dead;

(*n*) assistance in the preservation of objects essential for survival;

(*o*) complementary activities necessary to carry out any of the tasks mentioned above, including, but not limited to, planning and organization;

(2) "Civil defence organizations" means those establishments and other units which are organized or authorized by the competent authorities of a Party to the conflict to perform any of the tasks mentioned under (1), and which are assigned and devoted exclusively to such tasks;

(3) "Personnel" of civil defence organizations means those persons assigned by a Party to the conflict exclusively to the performance of the tasks mentioned under (1), including personnel assigned by the competent authority of that Party exclusively to the administration of these organizations;

(4) "Matériel" of civil defence organizations means equipment, supplies and transports used by these organizations for the performance of the tasks mentioned under (1).

Article 62 — General protection

1. Civilian civil defence organizations and their personnel shall be respected and

protected, subject to the provisions of this Protocol, particularly the provisions of this section. They shall be entitled to perform their civil defence tasks except in case of imperative military necessity.

2. The provisions of paragraph 1 shall also apply to civilians who, although not members of civilian civil defence organizations, respond to an appeal from the competent authorities and perform civil defence tasks under their control.

3. Buildings and *matériel* used for civil defence purposes and shelters provided for the civilian population are covered by Article 52. Objects used for civil defence purposes may not be destroyed or diverted from their proper use except by the Party to which they belong.

Article 63 — Civil defence in occupied territories

1. In occupied territories, civilian civil defence organizations shall receive from the authorities the facilities necessary for the performance of their tasks. In no circumstances shall their personnel be compelled to perform activities which would interfere with the proper performance of these tasks. The Occupying Power shall not change the structure or personnel of such organizations in any way which might jeopardize the efficient performance of their mission. These organizations shall not be required to give priority to the nationals or interests of that Power.

2. The Occupying Power shall not compel, coerce or induce civilian civil defence organizations to perform their tasks in any manner prejudicial to the interests of the civilian population.

3. The Occupying Power may disarm civil defence personnel for reasons of security.

4. The Occupying Power shall neither divert from their proper use nor requisition buildings or *matériel* belonging to or used by civil defence organizations if such diversion or requisition would be harmful to the civilian population.

5. Provided that the general rule in paragraph 4 continues to be observed, the Occupying Power may requisition or divert these resources, subject to the following particular conditions:

(*a*) that the buildings or *matériel* are necessary for other needs of the civilian population; and

(*b*) that the requisition or diversion continues only while such necessity exists.

6. The Occupying Power shall neither divert nor requisition shelters provided for the use of the civilian population or needed by such population.

Article 64 — Civilian civil defence organizations of neutral or other States not Parties to the conflict and international co-ordinating organizations

1. Articles 62, 63, 65 and 66 shall also apply to the personnel and *matériel* of civilian civil defence organizations of neutral or other States not Parties to the conflict which perform civil defence tasks mentioned in Article 61 in the territory of a Party to the conflict, with the consent and under the control of that Party. Notification of such assistance shall be given as soon as possible to any adverse Party concerned. In no circumstances shall this activity be deemed to be an interference in the conflict. This activity should, however, be performed with due regard to the security interests of the Parties to the conflict concerned.

2. The Parties to the conflict receiving the assistance referred to in paragraph 1 and the High Contracting Parties granting it should facilitate international co-ordination of such civil defence actions when appropriate. In such cases the relevant international organizations are covered by the provisions of this Chapter.

3. In occupied territories, the Occupying Power may only exclude or restrict the activities of civilian civil defence organizations of neutral or other States not Parties to

the conflict and of international co-ordinating organizations if it can ensure the adequate performance of civil defence tasks from its own resources or those of the occupied territory.

Article 65 — Cessation of protection

1. The protection to which civilian civil defence organizations, their personnel, buildings, shelters and *matériel* are entitled shall not cease unless they commit or are used to commit, outside their proper tasks, acts harmful to the enemy. Protection may, however, cease only after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

2. The following shall not be considered as acts harmful to the enemy:

(*a*) that civil defence tasks are carried out under the direction or control of military authorities;

(*b*) that civilian civil defence personnel co-operate with military personnel in the performance of civil defence tasks, or that some military personnel are attached to civilian civil defence organizations;

(*c*) that the performance of civil defence tasks may incidentally benefit military victims, particularly those who are *hors de combat.*

3. It shall also not be considered as an act harmful to the enemy that civilian civil defence personnel bear light individual weapons for the purpose of maintaining order or for self-defence. However, in areas where land fighting is taking place or is likely to take place, the Parties to the conflict shall undertake the appropriate measures to limit these weapons to handguns, such as pistols or revolvers, in order to assist in distinguishing between civil defence personnel and combatants. Although civil defence personnel bear other light individual weapons in such areas, they shall nevertheless be respected and protected as soon as they have been recognized as such.

4. The formation of civilian civil defence organizations along military lines, and compulsory service in them, shall also not deprive them of the protection conferred by this Chapter.

Article 66 — Identification

1. Each Party to the conflict shall endeavour to ensure that its civil defense organizations, their personnel, buildings and *matériel,* are identifiable while they are exclusively devoted to the performance of civil defence tasks. Shelters provided for the civilian population should be similarly identifiable.

2. Each Party to the conflict shall also endeavour to adopt and implement methods and procedures which will make it possible to recognize civilian shelters as well as civil defence personnel, buildings and *matériel* on which the international distinctive sign of civil defence is displayed.

3. In occupied territories and in areas where fighting is taking place or is likely to take place, civilian civil defence personnel should be recognizable by the international distinctive sign of civil defence and by an identity card certifying their status.

4. The international distinctive sign of civil defence is an equilateral blue triangle on an orange ground when used for the protection of civil defence organizations, their personnel, buildings and *matériel* and for civilian shelters.

5. In addition to the distinctive sign, Parties to the conflict may agree upon the use of distinctive signals for civil defence identification purposes.

6. The application of the provisions of paragraphs 1 to 4 is governed by Chapter V of Annex I to this Protocol.

7. In time of peace, the sign described in paragraph 4 may, with the consent of the competent national authorities, be used for civil defence identification purposes.

8. The High Contracting Parties and the Parties to the conflict shall take the measures necessary to supervise the display of the international distinctive sign of civil defence and to prevent and repress any misuse thereof.

9. The identification of civil defence medical and religious personnel, medical units and medical transports is also governed by Article 18.

Article 67 — Members of the armed forces and military units assigned to civil defence organizations

1. Members of the armed forces and military units assigned to civil defence organizations shall be respected and protected, provided that:

(*a*) such personnel and such units are permanently assigned and exclusively devoted to the performance of any of the tasks mentioned in Article 61;

(*b*) if so assigned, such personnel do not perform any other military duties during the conflict;

(*c*) such personnel are clearly distinguishable from the other members of the armed forces by prominently displaying the international distinctive sign of civil defence, which shall be as large as appropriate, and such personnel are provided with the identity card referred to in Chapter V of Annex I to this Protocol certifying their status;

(*d*) such personnel and such units are equipped only with light individual weapons for the purpose of maintaining order or for self-defence. The provisions of Article 65, paragraph 3 shall also apply in this case;

(*e*) such personnel do not participate directly in hostilities, and do not commit, or are not used to commit, outside their civil defence tasks, acts harmful to the adverse Party;

(*f*) such personnel and such units perform their civil defence tasks only within the national territory of their Party.

The non-observance of the conditions stated in (*e*) above by any member of the armed forces who is bound by the conditions prescribed in (*a*) and (*b*) above is prohibited.

2. Military personnel serving within civil defence organizations shall, if they fall into the power of an adverse Party, be prisoners of war. In occupied territory they may, but only in the interest of the civilian population of that territory, be employed on civil defence tasks in so far as the need arises, provided however that, if such work is dangerous, they volunteer for such tasks.

3. The buildings and major items of equipment and transports of military units assigned to civil defence organizations shall be clearly marked with the international distinctive sign of civil defence. This distinctive sign shall be as large as appropriate.

4. The *matériel* and buildings of military units permanently assigned to civil defence organizations and exclusively devoted to the performance of civil defence tasks shall, if they fall into the hands of an adverse Party, remain subject to the laws of war. They may not be diverted from their civil defence purpose so long as they are required for the performance of civil defence tasks, except in case of imperative military necessity, unless previous arrangements have been made for adequate provision for the needs of the civilian population.

Section II

RELIEF IN FAVOUR OF THE CIVILIAN POPULATION

Article 68 — Field of application

The provisions of this Section apply to the civilian population as defined in this Protocol and are supplementary to Articles 23, 55, 59, 60, 61 and 62 and other relevant provisions of the Fourth Convention.

Article 69 — Basic needs in occupied territories

1. In addition to the duties specified in Article 55 of the Fourth Convention concerning food and medical supplies, the Occupying Power shall, to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship.

2. Relief actions for the benefit of the civilian population of occupied territories are governed by Articles 59, 60, 61, 62, 108, 109, 110 and 111 of the Fourth Convention, and by Article 71 of this Protocol, and shall be implemented without delay.

Article 70 — Relief actions

1. If the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with the supplies mentioned in Article 69, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions. Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts. In the distribution of relief consignments, priority shall be given to those persons, such as children, expectant mothers, maternity cases and nursing mothers, who, under the Fourth Convention or under this Protocol, are to be accorded privileged treatment or special protection.

2. The Parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided in accordance with this Section, even if such assistance is destined for the civilian population of the adverse Party.

3. The Parties to the conflict and each High Contracting Party which allows the passage of relief consignments, equipment and personnel in accordance with paragraph 2:

(*a*) shall have the right to prescribe the technical arrangements, including search, under which such passage is permitted;

(*b*) may make such permission conditional on the distribution of this assistance being made under the local supervision of a Protecting Power;

(*c*) shall, in no way whatsoever, divert relief consignments from the purpose for which they are intended nor delay their forwarding, except in cases of urgent necessity in the interest of the civilian population concerned.

4. The Parties to the conflict shall protect relief consignments and facilitate their rapid distribution.

5. The Parties to the conflict and each High Contracting Party concerned shall encourage and facilitate effective international co-ordination of the relief actions referred to in paragraph 1.

Article 71 — Personnel participating in relief actions

1. Where necessary, relief personnel may form part of the assistance provided in any relief action, in particular for the transportation and distribution of relief consignments; the participation of such personnel shall be subject to the approval of the Party in whose territory they will carry out their duties.

2. Such personnel shall be respected and protected.

3. Each Party in receipt of relief consignments shall, to the fullest extent practicable, assist the relief personnel referred to in paragraph 1 in carrying out their relief mission. Only in case of imperative military necessity may the activities of the relief personnel be limited or their movements temporarily restricted.

4. Under no circumstances may relief personnel exceed the terms of their mission under this Protocol. In particular they shall take account of the security requirements of

the Party in whose territory they are carrying out their duties. The mission of any of the personnel who do not respect these conditions may be terminated.

Section III

TREATMENT OF PERSONS IN THE POWER OF A PARTY TO THE CONFLICT

CHAPTER I

FIELD OF APPLICATION AND PROTECTION OF PERSONS AND OBJECTS

Article 72 — Field of application

The provisions of this Section are additional to the rules concerning humanitarian protection of civilians and civilian objects in the power of a Party to the conflict contained in the Fourth Convention, particularly Parts I and III thereof, as well as to other applicable rules of international law relating to the protection of fundamental human rights during international armed conflict.

Article 73 — Refugees and stateless persons

Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction.

Article 74 — Reunion of dispersed families

The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the reunion of families dispersed as a result of armed conflicts and shall encourage in particular the work of the humanitarian organizations engaged in this task in accordance with the provisions of the Conventions and of this Protocol and in conformity with their respective security regulations.

Article 75 — Fundamental guarantees

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.

2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

(*a*) violence to the life, health, or physical or mental well-being of persons, in particular:

(i) murder;

(ii) torture of all kinds, whether physical or mental;

(iii) corporal punishment; and

(iv) mutilation;

(*b*) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

(*c*) the taking of hostages;

(*d*) collective punishments; and

(*e*) threats to commit any of the foregoing acts.

3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:

(*a*) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(*b*) no one shall be convicted of an offence except on the basis of individual penal responsibility;

(*c*) no one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(*d*) anyone charged with an offence is presumed innocent until proved guilty according to law;

(*e*) anyone charged with an offence shall have the right to be tried in his presence;

(*f*) no one shall be compelled to testify against himself or to confess guilt;

(*g*) anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(*h*) no one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;

(*i*) anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and

(*j*) a convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.

6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this Article until their final release, repatriation or re-establishment, even after the end of the armed conflict.

7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:

(*a*) persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and

(*b*) any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this Article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.

8. No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1.

CHAPTER II

MEASURES IN FAVOUR OF WOMEN AND CHILDREN

Article 76 — Protection of women

1. Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.

2. Pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority.

3. To the maximum extent feasible, the Parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women.

Article 77 — Protection of children

1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest.

3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.

4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.

5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.

Article 78 — Evacuation of children

1. No Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety, so require. Where the parents or legal guardians can be found, their written consent to such evacuation is required. If these persons cannot be found, the written consent to such evacuation of the persons who by law or custom are primarily

responsible for the care of the children is required. Any such evacuation shall be supervised by the Protecting Power in agreement with the Parties concerned, namely, the Party arranging for the evacuation, the Party receiving the children and any Parties whose nationals are being evacuated. In each case, all Parties to the conflict shall take all feasible precautions to avoid endangering the evacuation.

2. Whenever an evacuation occurs pursuant to paragraph 1, each child's education, including his religious and moral education as his parents desire, shall be provided while he is away with the greatest possible continuity.

3. With a view to facilitating the return to their families and country of children evacuated pursuant to this Article, the authorities of the Party arranging for the evacuation and, as appropriate, the authorities of the receiving country shall establish for each child a card with photographs, which they shall send to the Central Tracing Agency of the International Committee of the Red Cross. Each card shall bear, whenever possible, and whenever it involves no risk of harm to the child, the following information:

(*a*) surname(s) of the child;

(*b*) the child's first name(s);

(*c*) the child's sex;

(*d*) the place and date of birth (or, if that date is not known, the approximate age);

(*e*) the father's full name;

(*f*) the mother's full name and her maiden name;

(*g*) the child's next-of-kin;

(*h*) the child's nationality;

(*i*) the child's native language, and any other languages he speaks;

(*j*) the address of the child's family;

(*k*) any identification number for the child;

(*l*) the child's state of health;

(*m*) the child's blood group;

(*n*) any distinguishing features;

(*o*) the date on which and the place where the child was found;

(*p*) the date on which and the place from which the child left the country;

(*q*) the child's religion, if any;

(*r*) the child's present address in the receiving country;

(*s*) should the child die before his return, the date, place and circumstances of death and place of interment.

CHAPTER III

JOURNALISTS

Article 79 — Measures of protection for journalists

1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.

2. They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4 (A) (4) of the Third Convention.

3. They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the

journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist.

Part V

EXECUTION OF THE CONVENTIONS AND OF THIS PROTOCOL

Section I

GENERAL PROVISIONS

Article 80 — Measures for execution

1. The High Contracting Parties and the Parties to the conflict shall without delay take all necessary measures for the execution of their obligations under the Conventions and this Protocol.

2. The High Contracting Parties and the Parties to the conflict shall give orders and instructions to ensure observance of the Conventions and this Protocol, and shall supervise their execution.

Article 81 — Activities of the Red Cross and other humanitarian organizations

1. The Parties to the conflict shall grant to the International Committee of the Red Cross all facilities within their power so as to enable it to carry out the humanitarian functions assigned to it by the Conventions and this Protocol in order to ensure protection and assistance to the victims of conflicts; the International Committee of the Red Cross may also carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict concerned.

2. The Parties to the conflict shall grant to their respective Red Cross (Red Crescent, Red Lion and Sun) organizations the facilities necessary for carrying out their humanitarian activities in favour of the victims of the conflict, in accordance with the provisions of the Conventions and this Protocol and the fundamental principles of the Red Cross as formulated by the International Conferences of the Red Cross.

3. The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the assistance which Red Cross (Red Crescent, Red Lion and Sun) organizations and the League of Red Cross Societies extend to the victims of conflicts in accordance with the provisions of the Conventions and this Protocol and with the fundamental principles of the Red Cross as formulated by the International Conferences of the Red Cross.

4. The High Contracting Parties and the Parties to the conflict shall, as far as possible, make facilities similar to those mentioned in paragraphs 2 and 3 available to the other humanitarian organizations referred to in the Conventions and this Protocol which are duly authorized by the respective Parties to the conflict and which perform their humanitarian activities in accordance with the provisions of the Conventions and this Protocol.

Article 82 — Legal advisers in armed forces

The High Contracting Parties at all times, and the Parties to the conflict in time of armed conflict, shall ensure that legal advisers are available, when necessary, to advise military commanders at the appropriate level on the application of the Conventions and this Protocol and on the appropriate instruction to be given to the armed forces on this subject.

Article 83 — Dissemination

1. The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the Conventions and this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that those instruments may become known to the armed forces and to the civilian population.

2. Any military or civilian authorities who, in time of armed conflict, assume responsibilities in respect of the application of the Conventions and this Protocol shall be fully acquainted with the text thereof.

Article 84 — Rules of application

The High Contracting Parties shall communicate to one another, as soon as possible, through the depositary and, as appropriate, through the Protecting Powers, their official translations of this Protocol, as well as the laws and regulations which they may adopt to ensure its application.

Section II

REPRESSION OF BREACHES OF THE CONVENTIONS AND OF THIS PROTOCOL

Article 85 — Repression of breaches of this Protocol

1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol.

2. Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons in the power of an adverse Party protected by Articles 44, 45 and 73 of this Protocol, or against the wounded, sick and shipwrecked of the adverse Party who are protected by this Protocol, or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse Party and are protected by this Protocol.

3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

(*a*) making the civilian population or individual civilians the object of attack;

(*b*) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (*a*) (iii);

(*c*) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (*a*) (iii);

(*d*) making non-defended localities and demilitarized zones the object of attack;

(*e*) making a person the object of attack in the knowledge that he is *hors de combat*;

(*f*) the perfidious use, in violation of Article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions or this Protocol.

4. In addition to the grave breaches defined in the preceding paragraphs and in

the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:

(*a*) the transfer by the occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;

(*b*) unjustifiable delay in the repatriation of prisoners of war or civilians;

(*c*) practices of *apartheid* and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;

(*d*) making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, subparagraph (*b*), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;

(*e*) depriving a person protected by the Conventions or referred to in paragraph 2 of this Article of the rights of fair and regular trial.

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

Article 86 — Failure to act

1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.

2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

Article 87 — Duty of commanders

1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol.

2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.

3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.

Article 88 — Mutual assistance in criminal matters

1. The High Contracting Parties shall afford one another the greatest measure

of assistance in connexion with criminal proceedings brought in respect of grave breaches of the Conventions or of this Protocol.

2. Subject to the rights and obligations established in the Conventions and in Article 85, paragraph 1 of this Protocol, and when circumstances permit, the High Contracting Parties shall co-operate in the matter of extradition. They shall give due consideration to the request of the State in whose territory the alleged offence has occurred.

3. The law of the High Contracting Party requested shall apply in all cases. The provisions of the preceding paragraphs shall not, however, affect the obligations arising from the provisions of any other treaty of a bilateral or multilateral nature which governs or will govern the whole or part of the subject of mutual assistance in criminal matters.

Article 89 — Co-operation

In situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter.

Article 90 — International Fact-Finding Commission

1. (*a*) An International Fact-Finding Commission (hereinafter referred to as "the Commission") consisting of 15 members of high moral standing and acknowledged impartiality shall be established;

(*b*) When not less than 20 High Contracting Parties have agreed to accept the competence of the Commission pursuant to paragraph 2, the depositary shall then, and at intervals of five years thereafter, convene a meeting of representatives of those High Contracting Parties for the purpose of electing the members of the Commission. At the meeting, the representatives shall elect the members of the Commission by secret ballot from a list of persons to which each of those High Contracting Parties may nominate one person;

(*c*) The members of the Commission shall serve in their personal capacity and shall hold office until the election of new members at the ensuing meeting;

(*d*) At the election, the High Contracting Parties shall ensure that the persons to be elected to the Commission individually possess the qualifications required and that, in the Commission as a whole, equitable geographical representation is assured;

(*e*) In the case of a casual vacancy, the Commission itself shall fill the vacancy, having due regard to the provisions of the preceding subparagraphs;

(*f*) The depositary shall make available to the Commission the necessary administrative facilities for the performance of its functions.

2. (*a*) The High Contracting Parties may at the time of signing, ratifying or acceding to the Protocol, or at any other subsequent time, declare that they recognize *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the Commission to inquire into allegations by such other Party, as authorized by this Article;

(*b*) The declarations referred to above shall be deposited with the depositary, which shall transmit copies thereof to the High Contracting Parties;

(*c*) The Commission shall be competent to:

(i) inquire into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violation of the Conventions or of this Protocol;

(ii) facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol;

(*d*) In other situations, the Commission shall institute an inquiry at the request of a Party to the conflict only with the consent of the other Party or Parties concerned;

(*e*) Subject to the foregoing provisions of this paragraph, the provisions of Article 52 of the First Convention, Article 53 of the Second Convention, Article 132 of the Third Convention and Article 149 of the Fourth Convention shall continue to apply to any alleged violation of the Conventions and shall extend to any alleged violation of this Protocol.

3. (*a*) Unless otherwise agreed by the Parties concerned, all inquiries shall be undertaken by a Chamber consisting of seven members appointed as follows:

(i) five members of the Commission, not nationals of any Party to the conflict, appointed by the President of the Commission on the basis of equitable representation of the geographical areas, after consultation with the Parties to the conflict;

(ii) two *ad hoc* members, not nationals of any Party to the conflict, one to be appointed by each side;

(*b*) Upon receipt of the request for an inquiry, the President of the Commission shall specify an appropriate time-limit for setting up a Chamber. If any *ad hoc* member has not been appointed within the time-limit, the President shall immediately appoint such additional member or members of the Commission as may be necessary to complete the membership of the Chamber.

4. (*a*) The Chamber set up under paragraph 3 to undertake an inquiry shall invite the Parties to the conflict to assist it and to present evidence. The Chamber may also seek such other evidence as it deems appropriate and may carry out an investigation of the situation *in loco;*

(*b*) All evidence shall be fully disclosed to the Parties, which shall have the right to comment on it to the Commission;

(*c*) Each Party shall have the right to challenge such evidence.

5. (*a*) The Commission shall submit to the Parties a report on the findings of fact of the Chamber, with such recommendations as it may deem appropriate;

(*b*) If the Chamber is unable to secure sufficient evidence for factual and impartial findings, the Commission shall state the reasons for that inability;

(*c*) The Commission shall not report its findings publicly, unless all the Parties to the conflict have requested the Commission to do so.

6. The Commission shall establish its own rules, including rules for the presidency of the Commission and the presidency of the Chamber. Those rules shall ensure that the functions of the president of the Commission are exercised at all times and that, in the case of an inquiry, they are exercised by a person who is not a national of a Party to the conflict.

7. The administrative expenses of the Commission shall be met by contributions from the High Contracting Parties which made declarations under paragraph 2, and by voluntary contributions. The Party or Parties to the conflict requesting an inquiry shall advance the necessary funds for expenses incurred by a Chamber and shall be reimbursed by the Party or Parties against which the allegations are made to the extent of 50 per cent of the costs of the Chamber. Where there are counter-allegations before the Chamber each side shall advance 50 per cent of the necessary funds.

Article 91 — Responsibility

A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

Part VI

FINAL PROVISIONS

Article 92 — Signature

This Protocol shall be open for signature by the Parties to the Conventions six months after the signing of the Final Act and will remain open for a period of twelve months.

Article 93 — Ratification

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Federal Council, depositary of the Conventions.

Article 94 — Accession

This Protocol shall be open for accession by any Party to the Conventions which has not signed it. The instruments of accession shall be deposited with the depositary.

Article 95 — Entry into force

1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.

2. For each Party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession.

Article 96 — Treaty relations upon entry into force of this Protocol

1. When the Parties to the Conventions are also Parties to this Protocol, the Conventions shall apply as supplemented by this Protocol.

2. When one of the Parties to the conflict is not bound by this Protocol, the Parties to the Protocol shall remain bound by it in their mutual relations. They shall furthermore be bound by this Protocol in relation to each of the Parties which are not bound by it, if the latter accepts and applies the provisions thereof.

3. The authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in Article 1, paragraph 4, may undertake to apply the Conventions and this Protocol in relation to that conflict by means of a unilateral declaration addressed to the depositary. Such declaration shall, upon its receipt by the depositary, have in relation to that conflict the following effects:

(*a*) the Conventions and this Protocol are brought into force for the said authority as a Party to the conflict with immediate effect;

(*b*) the said authority assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Conventions and this Protocol; and

(*c*) the Conventions and this Protocol are equally binding upon all Parties to the conflict.

Article 97 — Amendment

1. Any High Contracting Party may propose amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary, which shall decide, after consultation with all the High Contracting Parties and the International Committee of the Red Cross, whether a conference should be convened to consider the proposed amendment.

2. The depositary shall invite to that conference all the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol.

Article 98 — Revision of Annex I

1. Not later than four years after the entry into force of this Protocol and thereafter at intervals of not less than four years, the International Committee of the Red Cross shall consult the High Contracting Parties concerning Annex I to this Protocol and, if it considers it necessary, may propose a meeting of technical experts to review Annex I and to propose such amendments to it as may appear to be desirable. Unless, within six months of the communication of a proposal for such a meeting to the High Contracting Parties, one third of them object, the International Committee of the Red Cross shall convene the meeting, inviting also observers of appropriate international organizations. Such a meeting shall also be convened by the International Committee of the Red Cross at any time at the request of one third of the High Contracting Parties.

2. The depositary shall convene a conference of the High Contracting Parties and the Parties to the Conventions to consider amendments proposed by the meeting of technical experts if, after that meeting, the International Committee of the Red Cross or one third of the High Contracting Parties so request.

3. Amendments to Annex I may be adopted at such a conference by a two-thirds majority of the High Contracting Parties present and voting.

4. The depositary shall communicate any amendment so adopted to the High Contracting Parties and to the Parties to the Conventions. The amendment shall be considered to have been accepted at the end of a period of one year after it has been so communicated, unless within that period a declaration of non-acceptance of the amendment has been communicated to the depositary by not less than one third of the High Contracting Parties.

5. An amendment considered to have been accepted in accordance with paragraph 4 shall enter into force three months after its acceptance for all High Contracting Parties other than those which have made a declaration of non-acceptance in accordance with that paragraph. Any Party making such a declaration may at any time withdraw it and the amendment shall then enter into force for that Party three months thereafter.

6. The depositary shall notify the High Contracting Parties and the Parties to the Conventions of the entry into force of any amendment, of the Parties bound thereby, of the date of its entry into force in relation to each Party, of declarations of non-acceptance made in accordance with paragraph 4, and of withdrawals of such declarations.

Article 99 — Denunciation

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect one year after receipt of the instrument of denunciation. If, however, on the expiry of that year the denouncing Party is engaged in one of the situations referred to in Article I, the denunciation shall not take effect before the end of the armed conflict or occupation and not, in any case, before operations connected with the final release, repatriation or re-establishement of the persons protected by the Convention or this Protocol have been terminated.

2. The denunciation shall be notified in writing to the depositary, which shall transmit it to all the High Contracting Parties.

3. The denunciation shall have effect only in respect of the denouncing Party.

4. Any denunciation under paragraph 1 shall not affect the obligations already incurred, by reason of the armed conflict, under this Protocol by such denouncing Party in respect of any act committed before this denunciation becomes effective.

Article 100 — Notifications

The depositary shall inform the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol, of:

(*a*) signatures affixed to this Protocol and the deposit of instruments of ratification and accession under Articles 93 and 94;

(*b*) the date of entry into force of this Protocol under Article 95;

(*c*) communications and declarations received under Articles 84, 90 and 97;

(*d*) declarations received under Article 96, paragraph 3, which shall be communicated by the quickest methods; and

(*e*) denunciations under Article 99.

Article 101 — Registration

1. After its entry into force, this Protocol shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

2. The depositary shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to this Protocol.

Article 102 — Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Conventions.

Annex I

REGULATIONS CONCERNING IDENTIFICATION

[Not reproduced.[2]]

Annex II

IDENTITY CARD FOR JOURNALISTS ON DANGEROUS PROFESSIONAL MISSIONS

[Not reproduced.[3]]

(*b*) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II)

PREAMBLE

The High Contracting Parties,

Recalling that the humanitarian principles enshrined in Article 3 common to the Geneva Conventions of 12 August 1949, constitute the foundation of respect for the human person in cases of armed conflict not of an international character,

Recalling furthermore that international instruments relating to human rights offer a basic protection to the human person,

Emphasizing the need to ensure a better protection for the victims of those armed conflicts,

Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience,

Have agreed on the following:

[2] For the text of Annex I see document A/32/144.

[3] *Ibid.*

Part I

SCOPE OF THIS PROTOCOL

Article 1 — Material field of application

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

Article 2 — Personal field of application

1. This Protocol shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (hereinafter referred to as "adverse distinction") to all persons affected by an armed conflict as defined in Article 1.

2. At the end of the armed conflict, all the persons who have been deprived of their liberty or whose liberty has been restricted for reasons related to such conflict, as well as those deprived of their liberty or whose liberty is restricted after the conflict for the same reasons, shall enjoy the protection of Articles 5 and 6 until the end of such deprivation or restriction of liberty.

Article 3 — Non-intervention

1. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

2. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

Part II

HUMANE TREATMENT

Article 4 — Fundamental guarantees

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph I are and shall remain prohibited at any time and in any place whatsoever:

(*a*) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(*b*) collective punishments;

(*c*) taking of hostages;

(*d*) acts of terrorism;

(*e*) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(*f*) slavery and the slave trade in all their forms;

(*g*) pillage;

(*h*) threats to commit any of the foregoing acts.

3. Children shall be provided with the care and aid they require, and in particular:

(*a*) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;

(*b*) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

(*c*) children who have not attained the age of fifteen years shall neither be recruited in the armed forces, or groups nor allowed to take part in hostilities;

(*d*) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (*c*) and are captured;

(*e*) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.

Article 5 — Persons whose liberty has been restricted

1. In addition to the provisions of Article 4 the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained:

(*a*) the wounded and the sick shall be treated in accordance with Article 7;

(*b*) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;

(*c*) they shall be allowed to receive individual or collective relief;

(*d*) they shall be allowed to practise their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;

(*e*) they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

2. Those who are responsible for the internment or detention of the persons referred to in paragraph 1 shall also, within the limits of their capabilities, respect the following provisions relating to such persons:

(*a*) except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women;

(*b*) they shall be allowed to send and receive letters and cards, the number of which may be limited by competent authority if it deems necessary;

(*c*) places of internment and detention shall not be located close to the combat zone. The persons referred to in paragraph 1 shall be evacuated when the places where they are interned or detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out under adequate conditions of safety;

(*d*) they shall have the benefit of medical examinations;

(*e*) their physical or mental health and integrity shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances.

3. Persons who are not covered by paragraph 1 but whose liberty has been restricted in any way whatsoever for reasons related to the armed conflict shall be treated humanely in accordance with Article 4 and with paragraphs 1 (*a*), (*c*) and (*d*), and 2 (*b*) of this Article.

4. If it is decided to release persons deprived of their liberty, necessary measures to ensure their safety shall be taken by those so deciding.

Article 6 — Penal prosecutions

1. This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.

2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality. In particular:

(*a*) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(*b*) no one shall be convicted of an offence except on the basis of individual penal responsibility;

(*c*) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(*d*) anyone charged with an offence is presumed innocent until proved guilty according to law;

(*e*) anyone charged with an offence shall have the right to be tried in his presence;

(*f*) no one shall be compelled to testify against himself or to confess guilt.

3. A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

4. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

5. At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.

Part III

WOUNDED, SICK AND SHIPWRECKED

Article 7 — Protection and care

1. All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.

2. In all circumstances they shall be treated humanely and shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

Article 8 — Search

Whenever circumstances permit and particularly after an engagement, all possible measures shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them.

Article 9 — Protection of medical and religious personnel

1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.

2. In the performance of their duties medical personnel may not be required to give priority to any person except on medical grounds.

Article 10 — General protection of medical duties

1. Under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.

2. Persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick, or this Protocol.

3. The professional obligations of persons engaged in medical activities regarding information which they may acquire concerning the wounded and sick under their care shall, subject to national law, be respected.

4. Subject to national law, no person engaged in medical activities may be penalized in any way for refusing or failing to give information concerning the wounded and sick who are, or who have been, under his care.

Article 11 — Protection of medical units and transports

1. Medical units and transports shall be respected and protected at all times and shall not be the object of attack.

2. The protection to which medical units and transports are entitled shall not cease unless they are used to commit hostile acts, outside their humanitarian function. Protection may, however, cease only after a warning has been given, setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

Article 12 — The distinctive emblem

Under the direction of the competent authority concerned, the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all circumstances. It shall not be used improperly.

Part IV

CIVILIAN POPULATION

Article 13 — Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this part, unless and for such time as they take a direct part in hostilities.

Article 14 — Protection of objects indispensable to the survival of the civilian population

Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, or remove or render useless, for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works.

Article 15 — Protection of works and installations containing dangerous forces

Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.

Article 16 — Protection of cultural objects and of places of worship

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directly against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.

Article 17 — Prohibition of forced movement of civilians

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

Article 18 — Relief societies and relief actions

1. Relief societies located in the territory of the High Contracting Party, such as Red Cross (Red Crescent, Red Lion and Sun) organizations, may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict. The civilian population may, even on its own initiative, offer to collect and care for the wounded, sick and shipwrecked.

2. If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as food-stuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.

Part V

FINAL PROVISIONS

Article 19 — Dissemination

This Protocol shall be disseminated as widely as possible.

Article 20 — Signature

This Protocol shall be open for signature by the Parties to the Conventions six months after the signing of the Final Act and will remain open for a period of twelve months.

Article 21 — Ratification

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Federal Council, depositary of the Conventions.

Article 22 — Accession

This Protocol shall be open for accession by any Party to the Conventions which has not signed it. The instruments of accession shall be deposited with the depositary.

Article 23 — Entry into force

1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.

2. For each Party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession.

Article 24 — Amendment

1. Any High Contracting Party may propose amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary which shall decide, after consultation with all the High Contracting Parties and the International Committee of the Red Cross, whether a conference should be convened to consider the proposed amendment.

2. The depositary shall invite to that conference all the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol.

Article 25 — Denunciation

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect six months after receipt of the instrument of denunciation. If,

however, on the expiry of six months, the denouncing Party is engaged in the situation referred to in Article 1, the denunciation shall not take effect before the end of the armed conflict. Persons who have been deprived of liberty, or whose liberty has been restricted, for reasons related to the conflict shall nevertheless continue to benefit from the provisions of this Protocol until their final release.

2. The denunciation shall be notified in writing to the depositary, which shall transmit it to all the High Contracting Parties.

Article 26 — Notifications

The depositary shall inform the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol of:

(*a*) signatures affixed to this Protocol and the deposit of instruments of ratification and accession under Articles 21 and 22;

(*b*) the date of entry into force of this Protocol under Article 23; and

(*c*) communications and declarations received under Article 24.

Article 27 — Registration

1. After its entry into force, this Protocol shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

2. The depositary shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to this Protocol.

Article 28 — Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Conventions.

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]

1. JUDGEMENT NO. 216 (14 APRIL 1977)[2]: OGLEY *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application seeking revision of a judgement of the Tribunal on the ground that the applicant's counsel failed to exercise adequate diligence owing to his impending retirement

The applicant sought revision under article 12 of the Statute of the Tribunal of Judgement No. 215[3] on the plea that he had not known at the time of the consideration of his case that his counsel's contract with the United Nations was about to expire, a circumstance which he contended had impaired the handling of his case before the Tribunal.

The Tribunal observed that the alleged discovery of that circumstance was not, in the words of article 12 of its Statute, "some fact of such a nature as to be a decisive factor" affecting its decision in Judgement No. 215. The applicant's contention that a member of the panel of counsel of the United Nations would not take adequate interest in a case at the end of his contract was only an inference drawn by the applicant, and on the basis of such an inference a judgement could not be revised under article 12 of the Statute.

The Tribunal accordingly rejected the application.

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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 1977, 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] Mr. R. Venkataraman, President; Mme. Paul Bastid, Vice-President; Sir Roger Stevens, Member; Mr. Francisco A. Forteza, Alternate Member.

[3] See *Juridical Yearbook*, 1976, p. 138.

2. JUDGEMENT NO. 217 (15 APRIL 1977)[4]: VANDERSYPEN *v.* SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

Application seeking compensation for non-enjoyment of home leave entitlement and of the entitlement to education travel to the duty station for a dependent child attending school away from the duty station

The applicant, who was stationed in Cairo, had requested on 11 February 1975 that his two children residing in Belgium should be authorized to travel from Brussels to Tunis and back during the Easter vacation, at which time he himself was to be sent to Tunis on mission. His request had been denied on the ground that any such travel at the Organization's expense was permissible only between Brussels and the staff member's duty station, which in his case was Cairo. In a memorandum of 22 December 1975, the applicant had explained that he had not exercised his right to bring his children to Cairo because of the heat there during the summer and would have no opportunity to exercise that right before the termination of his appointment, and had asked whether the Organization would be prepared to compensate him. In another memorandum, he had explained that he had been unable to benefit from his home leave entitlement because of the fact that he had been sent on a mission, and had asked whether the Organization would be prepared to compensate him for that also.

With respect to travel for the children resident in Brussels, the Tribunal, to which the case was submitted, noted that the Administration's suggestion that the applicant should have his children come to Cairo during the summer had elicited no reply from the applicant until much later. In the Tribunal's opinion, that was not the kind of conduct to be expected of a staff member concerned with asserting his right. The Tribunal also rejected the applicant's allegation of discriminatory treatment; it noted in that connexion that, since the applicant had not been an itinerant technical assistance expert, he could not avail himself of the interpretation given to the expression "duty station" in the case of an itinerant expert. Lastly, the Tribunal noted that the applicant had not established that any practice or rule authorized the payment of such compensation as he had claimed. It recalled that in its Judgement No. 144[5] it had ruled in comparable circumstances that in principle there was no right to payment of the cost of travel not performed.

With respect to home leave, the Tribunal was of the opinion that concern for proper administration required that the Organization should take into consideration all pertinent facts before it arranged its mission and leave schedule. It noted that the applicant had not availed himself of the procedure which would have enabled him to inform the Organization of any facts that might deprive him of his leave entitlement or interfere with his enjoyment of it. The Tribunal therefore held that it had not been established that the loss of home leave benefit was attributable to the Organization.

The Tribunal accordingly rejected the application.

3. JUDGEMENT NO. 218 (19 APRIL 1977)[6]: TRENCZAK *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting two successive decisions declining to reopen a case relating to the award of compensation for illness attributable to the performance of official duties — Rescission of the two decisions on the ground that they were based on an "unreasonable and arbitrary" refusal by the Advisory Board on Compensation Claims to

[4] Mme. Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza, Member; Mr. T. Mutuale, Member; Sir Roger Stevens, Alternate Member.

[5] See *Juridical Yearbook*, 1971, p. 155.

[6] Mr. R. Venkataraman, President; Mme. Paul Bastid, Vice-President; Sir Roger Stevens, Member.

accept evidence which could have led to a reconsideration of its assessment of the applicant's disability

After suffering a heart attack in 1959, the applicant had been awarded compensation in 1961 for illness attributable to the performance of official duties on behalf of the United Nations and resulting in 25 per cent permanent partial incapacity. He had subsequently suffered further illnesses.

After two unsuccessful requests, in May 1969 and June 1972, for reconsideration of his case under article 17 of Appendix D to the Staff Rules, the applicant had asked the Secretary-General on 18 August 1972, again without success, to reopen his case under article 9 of Appendix D to the Staff Rules. His final request for a reconsideration of his case, submitted on 1 July 1975, had been denied in 1976.

The Tribunal first addressed itself to the unusual lapse of time between the onset of the heart condition and the submission of the application. It noted that that lapse of time had been due in large measure to the applicant's reluctance to appeal promptly against decisions taken by the respondent, a reluctance which appeared to the Tribunal to stem in part from advice received from the respondent.

The Tribunal then proceeded to review the questions at issue. On the question whether the applicant had, as a result of his service-incurred heart condition, been totally or partially incapacitated, the Tribunal found that the applicant's claim that he had been totally disabled had not been established. In any case, the plea against the respondent's decision was barred by the applicant's failure to appeal within the prescribed time-limits; the same applied to the assessment of 25 per cent incapacity.

With regard to subsequent illnesses, the Tribunal felt that it was not clear from the medical reports submitted how far the new symptoms had been regarded as the direct result of the service-incurred heart condition. The Tribunal concluded from the record that that particular point had never been clearly established.

The Tribunal noted that in 1972 when the applicant had requested a reconsideration of his case, the Advisory Board on Compensation Claims, on whose recommendation the Secretary-General had taken a negative decision, had been aware that the applicant had suffered a deterioration in his condition in 1970 but had failed to ascertain how far that deterioration had been the result of the service-incurred heart condition of 1961. The Board had also been aware that the applicant as a result of his health condition had failed to obtain any employment in his profession and that he had failed to obtain employment with the United Nations. In those circumstances the Tribunal found that the Board's refusal in 1972 to accept evidence which, had the case been reopened, could have led to a reconsideration of its earlier assessment of the applicant's disability had been unreasonable and arbitrary. It also found that the negative decision taken by the Secretary-General in 1976 on the recommendation of the Board suffered from the same infirmity as the decision of 1972.

The Tribunal accordingly rescinded the two decisions in question. In view of the fact that the applicant's claim had been pending for a long period of time and the difficulty of resurrecting the necessary evidence, the Tribunal, instead of remanding the case for fresh consideration by the Advisory Board, ordered the payment of a lump sum compensation in the amount of $10,000.

4. JUDGEMENT NO. 219 (19 APRIL 1977)[7]: POCHONET *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting a decision to terminate a permanent appointment for unsatisfactory services — A complete, fair and reasonable procedure must be carried out prior to such decision

[7] Mme. Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza, Member; Mr. Endre Ustor, Member.

The applicant had been terminated for unsatisfactory services at the time of the five-year review of his permanent appointment under staff rule 104.13 (*a*)(ii). The Tribunal recalled that it had stated in several cases (Judgements Nos. 98,[8] 131,[9] 157,[10] 184[11] and 204[12]) that in view of "the very substantial rights given by the General Assembly to those individuals who hold permanent appointments in the United Nations Secretariat . . . such permanent appointments can be terminated only upon a decision which has been reached by means of a complete, fair and reasonable procedure which must be carried out prior to such decision".

The Tribunal considered itself entitled to seek to determine whether the decision of the department concerned that the permanent appointment of the applicant should be terminated had been taken in normal circumstances or in circumstances such that the decision constituted an abusive exercise of the Secretary-General's power of appraisal. After considering the material before it, the Tribunal determined that the various complaints of the applicant were unfounded and accordingly rejected the application.

5. Judgement No. 220 (20 April 1977)[13]: Hilaire *v.* Secretary-General of the United Nations

Application contesting a decision to terminate an appointment for abandonment of post

The applicant had been on sick leave from 23 August to 15 November 1971. On 13 November 1971 his physician had sent to the Medical Director a report stating that it was very difficult to determine when he would be able to return to work. Towards the end of 1971, the Administration had learned that since 12 December the applicant had been working for, and was being paid by, a private company in New York; that information had been confirmed by the company. A telegram was then sent to the applicant asking him to report to the United Nations not later than 6 January 1972, failing which he would be separated from the service. Having failed to comply with those instructions, he was informed that he had been separated from the service with the United Nations with effect from his absence on 16 November 1971. In his application to the Tribunal, he requested, *inter alia,* that he should be reinstated as from 16 November 1971.

The Tribunal observed that the unauthorized acceptance of alternative employment by the applicant was inconsistent with an intention to continue employment at the United Nations and constituted abandonment of his post. The intention to abandon employment at the United Nations was further demonstrated by the applicant's failure adequately to explain his continued absence. As far as the period from 16 November to 11 December 1971 was concerned, the applicant could perhaps argue that he had regarded himself as being on sick leave, but he must have been aware that a further report from his physician was required before his leave could be extended. Had this been a disciplinary proceeding, the argument that the Medical Service had not formally notified the applicant that his sick leave had been disallowed might have had merit. But in fact the applicant had not been disciplined but had been separated from the service for abandonment of his post.

The Tribunal accordingly rejected the application.

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[8] See *Juridical Yearbook,* 1966, p. 213.
[9] *Ibid.,* 1969, p. 193.
[10] *Ibid.,* 1972, p. 126.
[11] *Ibid.,* 1974, p. 109.
[12] *Ibid.,* 1975, p. 131.
[13] Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Endre Ustor, Member; Mr. Francisco A. Forteza, Alternate Member.

6. JUDGEMENT NO. 221 (21 APRIL 1977)[14]: BERUBE *v.* SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

Application by a staff member who accepted the replacement of her appointment with an appointment at a lower grade — Question whether the offer of the new appointment is an administrative decision and whether the resulting contract of acceptance is subject to appeal to the internal appeals body — Reasons for which a contract of employment is voidable

The applicant had held a permanent appointment at the G-7 level since 1965. Because of a serious deterioration in her performance, she had been offered a new permanent appointment at a lower grade. The applicant had accepted the offer but had subsequently requested a review of her case on the ground that she had been placed in a position where she had "had to say 'yes' or 'no', that is to sign the above contract within 24 hours or to be revoked".

The Advisory Joint Appeals Board, to which the case had been submitted, had found that the offer of a new appointment was not a contract or an administrative decision and was not appealable. The acceptance of the offer and the resulting contract would be appealable only if the acceptance had been the result of duress; since the Board did not consider that there had been any duress in the case in question, it declared that the appeal was not properly receivable.

The Tribunal, to which the case was then submitted, recognized that an offer of employment made to a person not already in the service of the Organization could not be called an administrative decision or a contract. But the Tribunal noted that the applicant had been a staff member holding a permanent appointment at the G-7 level on the date when the offer of a new post at a lower grade had been made. The very offer of such a post to the applicant had implied either that the applicant was demoted as a disciplinary measure or that her appointment was terminated and a fresh one offered to her by the respondent. Before the respondent could appoint the applicant to a post at a lower level, it had been necessary that the earlier appointment should be cancelled and superseded. The Tribunal accordingly found that the decision to cancel and supersede the earlier letter of appointment had been an administrative decision. Moreover, it did not appear from the record that the relevant staff regulations and rules, "including the staff pension regulations", had been fully discussed with the applicant before her acceptance of an appointment at a lower level.

The Tribunal also noted that the Advisory Joint Appeals Board had held that the applicant's allegations of unfairness in the terms of the contract would have been receivable only if duress had been established. The Tribunal observed that, apart from duress, a contract was voidable for other reasons, namely, mistake arising from non-disclosure of relevant information, misrepresentation, fraud or undue influence. It considered that before any change in a staff member's conditions of service could be made to his prejudice, all implications of the change should be fully explained to the staff member.

Lastly, the Tribunal observed that the Board's finding that duress had not been established had constituted a ruling on the validity of the contract, a matter on which it could not have pronounced if the appeal had not been receivable.

The Tribunal ordered that the decision taken on the basis of the opinion of the Advisory Joint Appeals Board should be rescinded and that the case should be remanded for a decision on merits.

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[14] Mr. R. Venkataraman, President; Mme. Paul Bastid, Vice-President; Mr. Francisco A. Forteza, Member; Mr. T. Mutuale, Alternate Member.

7. JUDGEMENT NO. 222 (25 APRIL 1977)[15]: ARCHIBALD *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting summary dismissal for serious misconduct — Discretionary power of the Secretary-General in the matter

The applicant sought the rescission of a decision that he should be summarily dismissed for serious misconduct.

The Tribunal noted that the facts were not in dispute and that the guilt of the applicant was admitted. Staff regulation 10.2 provided that the Secretary-General "may summarily dismiss a member of the staff for serious misconduct". Here the misconduct had certainly been serious; in the absence of any contention of improper motivation (and there had been none) the Secretary-General's exercise of the discretion conferred upon him by the regulation was not reviewable.

The Tribunal in prior judgements had stated that the summary dismissal procedure was intended to deal with "acts obviously incompatible with continued membership of the staff" and that the normal disciplinary procedures should be dispensed with, as was authorized under staff rule 110.3(a), only in cases "where the misconduct is patent and where the interest of the service requires immediate and final dismissal" (Judgement No. 104[16]). In the present case, the Tribunal held that the Secretary-General's decision which implied that the applicant's conduct was incompatible with continued membership of the staff could not be said to be arbitrary or unreasonable. The decision on what was in the interest of the service was within the discretion of the Secretary-General and the Tribunal could not substitute its judgement for that of the Secretary-General provided that the decision was not arbitrary or based on a mistake or improperly motivated. The decision had not been challenged on any of those grounds and only circumstances in mitigation of the penalty imposed had been pleaded in the present case. The Tribunal therefore held that its authority did not extend to a review of the decision of summary dismissal imposed on the applicant by the Secretary-General in the exercise in his discretionary power.

8. JUDGEMENT NO. 223 (26 APRIL 1977)[17]: IBAÑEZ *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting a decision to make no change in a periodic report — Rescission of the decision as being based on an appraisal which was contrary to the assessment contained in the periodic report

The applicant contested a decision whereby the Secretary-General had refused to make any change in a periodic report describing him as "a staff member who maintains only a minimum standard".

The Tribunal was of the view that the contested periodic report did not present an accurate picture of the applicant's performance during the relevant period, did not faithfully reflect the over-all job performance of the applicant as found by the reporting officers themselves, and was therefore misleading.

The Tribunal also noted that the review of the applicant's rebuttal of his periodic report has resulted in a finding that the technical part of the applicant's duties had been "performed satisfactorily". The Tribunal held that such a finding was inconsistent with the rating contained in the contested periodic report. That being so, the Tribunal con-

[15] Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Endre Ustor, Member; Mr. Francisco A. Forteza, Alternate Member.

[16] See *Juridical Yearbook*, 1967, p. 294.

[17] Mr. R. Venkataraman, President; Mme. Paul Bastid, Vice-President; Mr. Francis T. P. Plimpton, Member; Mr. Endre Ustor, Alternate Member.

sidered that the Secretary-General's decision to make no change in the periodic report in question was unsustainable.

Rather than remanding the case for further proceedings, the court ordered that its judgement should be incorporated in the applicant's dossier and service record and be attached to, and regarded as supplementary to and corrective of, the contested periodic report.

9. JUDGEMENT NO. 224 (28 APRIL 1977)[18]: AOUAD *v.* UNITED NATIONS JOINT STAFF PENSION BOARD

Application seeking the award of a disability benefit — Decision by the Tribunal to defer its judgement pending a ruling by the ILO Administrative Tribunal on the applicant's request for reinstatement in the service of WHO

After resigning his post with WHO, the applicant had claimed a disability benefit under article 34 of the Regulations of the United Nations Joint Staff Pension Fund. The WHO Staff Pension Committee had decided in January 1976 that his request should be accepted, and that decision had been communicated to the Secretary of the Joint Staff Pension Board in New York, whose approval had to be obtained before the award of a benefit could be finally confirmed. The Secretary of the Pension Board had declined to certify the benefit as being properly payable on the ground that the medical evidence showed that on the date of separation the applicant had not been incapacitated for further service with WHO. As the WHO Staff Pension Committee had not been scheduled to meet again until January 1977, the claim had been referred to the Standing Committee of the Pension Board at its July 1976 session. On 24 September 1976, the applicant had been informed of the Standing Committee's decision that, since he was not incapacitated for further service within the meaning of article 34 of the Pension Fund Regulations, he was not entitled to a disability benefit.

The Tribunal, to which the case was submitted, pointed out first of all that, under the special agreement signed between the United Nations and WHO on 27 March and 8 April 1961, its jurisdiction in the case was limited to the allegations of non-observance of the Pension Fund Regulations and did not extend to the interpretation of the applicant's contract or of the staff regulations and rules applicable to him, for which it would appear that the ILO Administrative Tribunal would be the competent jurisdiction.

The Tribunal noted that article 34 (*a*) of the Pension Fund Regulations read as follows:

> "A disability benefit shall, subject to article 42, be payable to a participant who is found by the Board to be *incapacitated for further service* in a member organization reasonably compatible with his abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration." (Emphasis added by the Tribunal)

It was clear from that article that the applicant's eligibility for a disability benefit depended on a finding as to whether he was incapacitated for further service reasonably compatible with his abilities, due to injury or illness. In that connexion, the Tribunal noted that the applicant had sought reinstatement in the service of WHO, implying thereby that he was not incapacitated for further service, and that his application was pending before the ILO Administrative Tribunal for consideration. The Tribunal observed that the claim for a disability benefit had come before it for decision while the claim for reinstatement was still pending before the ILO Administrative Tribunal[19] and that the contingency of its finding the claim for a disability benefit in the applicant's

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[18] Mr. R. Venkataraman, President; Mme. Paul Bastid, Vice-President; Mr. Francisco A. Forteza, Member.

[19] For a summary of the judgement rendered on 6 June 1977 by the ILO Administrative Tribunal (Judgement No. 309), see page 171 below.

favour and of the ILO Administrative Tribunal's finding the claim for reinstatement in the applicant's favour would lead to contradictory decisions. It therefore decided to defer its consideration of the case.

10. Judgement No. 225 (6 October 1977)[20]: Sandys *v.* Secretary-General of the United Nations

Application contesting a decision to terminate an appointment under staff regulation 9.1(a) *— Power of the Tribunal to review the regularity of the procedure prior to the decision in question*

The applicant contested a decision terminating her permanent appointment under staff regulation 9.1 (*a*), on the ground that she had failed to maintain the standards of efficiency, competence and integrity established in the Charter.

The Tribunal recalled that it had repeatedly held that it could not substitute its judgement for that of the Secretary-General concerning the standard of performance or efficiency of a staff member. At the same time, it had also held in its Judgement No. 138[21] that where the Secretary-General relied for his decision on a recommendation by the Appointment and Promotion Board, and the Board itself had reached its conclusions in the light of inadequate or erroneous information, the fact that there had been a review by the Board did not secure that the Secretary-General's decision was valid. In that connexion, the Tribunal noted that the applicant's supervisor had made completely contradictory evaluations of her, thus displaying a measure of insincerity which, if tolerated by the Administration, would undermine the very purpose of the institution of the periodic reports.

The Tribunal observed, however, that the contested decision had not been taken solely on the basis of those evaluations. The examination of the case by the appointment and promotion bodies had been detailed and adequate, and the recommendation on the basis of which the applicant's appointment had been terminated had been properly reached. The Tribunal accordingly held that the decision had not been vitiated by lack of due process.

11. Judgement No. 226 (12 October 1977)[22]: Aouad *v.* United Nations Joint Staff Pension Board

Award of a disability benefit by the WHO Staff Pension Committee — Refusal of the Secretary of the Pension Board to certify the benefit on the ground that, at the time of separation from service, the applicant had not exhausted his leave entitlement — Requirements of due process before the Standing Committee of the Pension Board — Rescission of the contested decision — Obligation of WHO to make, jointly with the Pension Fund, the necessary arrangements for implementation of the judgement

By its Judgement No. 224[23], the Tribunal had decided to defer its consideration of the case before it pending a judgement by the ILO Administrative Tribunal on a complaint by the applicant claiming reinstatement in the service of WHO. By its Judgement No. 309[24], the ILO Administrative Tribunal had dismissed the complaint.

The Tribunal accordingly resumed its consideration of the application before it, which essentially sought the rescission of the decision by which the Standing Committee of the Joint Staff Pension Board had refused to award a disability benefit to the applicant.

The Tribunal observed that one of the questions to be examined was the question of the exhaustion of leave entitlement prior to the award of a disability benefit. The Tribunal

[20] Mr. R. Venkataraman, President; Sir Roger Stevens, Member; Mr. Endre Ustor, Member.
[21] See *Juridical Yearbook*, 1970, p. 141.
[22] Mr. R. Venkataraman, President; Mme. Paul Bastid, Vice-President; Mr. Francisco A. Forteza, Member.
[23] See page 149 above.
[24] See page 171 below.

noted in that connexion that the applicant, on the date of his separation, had had an unused accrual of 140.5 days of sick leave and 60 days of annual leave during which he would have been paid by WHO, the disability benefit being payable only after that period had expired. It further noted that the Deputy Secretary of the Pension Board had mentioned the possibility of "resolving the difficulty" by postponing acceptance of the resignation to a date coinciding with the exhaustion of the applicant's leave, but that that suggestion had not been accepted by WHO. It was in those circumstances that the Secretary of the Board had concluded that the disability award was not, after all, warranted by the applicant's medical condition at the date of resignation. Thus, the question of the prior exhaustion of leave entitlement, which had been envisaged differently by WHO and by the Secretary of the Board, had finally led the Secretary of the WHO Staff Pension Committee apparently to contradict the position of that Committee.

The Tribunal was of the view that the differences of opinion in that regard should in no way be prejudicial to the applicant, who had not been warned, at the time when his resignation was accepted and after he had submitted his request for a disability benefit, of the problem of the prior exhaustion of his leave entitlement.

The Tribunal also noted that the request for a disability benefit, which had originally been approved by the WHO Staff Pension Committee, had been referred to the Standing Committee because of the refusal of the Secretary of the Pension Board to certify the benefit and that in such cases, according to the applicable rules, reports by the medical officer of the organization and by the Medical Consultant should be submitted to the Standing Committee. On the basis of the material before it, the Tribunal concluded that the Standing Committee, when taking its decision, had not had at its disposal all the documents necessary for a complete and equitable examination of the applicant's situation and that consequently the requirements of due process had not been observed.

With regard to the respondent's contention that it had not been shown that on the date of separation the applicant had been incapacitated for further service in WHO reasonably compatible with his abilities, the Tribunal noted that the circumstances of the case did not make it possible to conclude that the applicant had not been incapacitated at the time of his resignation; it observed that a whole series of steps taken by the applicant had shown that he was in a state of health whose origin, clearly identified, had antedated the separation from service and which was bound to deteriorate.

The Tribunal reached the conclusion that the applicant's health had been such that, on the basis of the medical reports produced, the determination by the WHO Staff Pension Committee had been well founded in law. The Secretary of the Pension Board had therefore erred in stating that the applicant had not been incapacitated within the meaning of article 34 of the Regulations at the time of his separation from service. The Tribunal therefore rescinded the contested decision.

In so far as the judgement of the Tribunal entailed administrative and financial obligations for WHO, the Tribunal noted that according to article II of the special agreement between the United Nations and WHO:

> "The judgements of the Tribunal shall be final and without appeal and the World Health Organization agrees, in so far as it is affected by any such judgement, to give full effect to its terms."

It was for the Joint Staff Pension Fund and WHO to make within three months the necessary arrangements for the implementation of the judgement.

12. JUDGEMENT NO. 227 (12 OCTOBER 1977)[25]: HILL *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Award of compensation to the applicant for injury caused by a decision terminating his employment before the expiry of the probationary period agreed upon by the parties —

[25] Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Sir Roger Stevens, Member.

Question whether, for the purpose of calculating the compensation, the applicant should have been accorded the same treatment as a staff member terminated immediately upon extension of his contract — Question of the applicability in the case in question of the provisions of the Staff Rules relating to salary increments

After an initial two-year period of service which the respondent had not found entirely satisfactory, the applicant had been offered a further one-year contract covering the period from 23 August 1974 to 22 August 1975, it being agreed that at the end of that time a report would be made on that "trial period". More than five months before the date of expiry of the contract, the applicant had been informed that his employment would not be extended beyond that date.

The Joint Appeals Board, to which the case had been submitted, had found that the respondent had not carried out his commitment when he had decided prematurely, without observing the condition he had established, not to renew the appellant's appointment. The Board recommended that the appellant should be offered an appointment for a fixed term of one year or, failing that, should be paid compensation of an amount of $10,000.

The respondent having decided to grant the applicant an amount of compensation equivalent to the termination indemnity to which he would have been entitled under the Staff Regulations and Rules had his fixed-term appointment been extended for one year and immediately terminated upon extension, and the applicant having found that amount of compensation unacceptable, the case was submitted to the Tribunal.

The Tribunal observed that the termination indemnity provisions of the Staff Regulations and Rules were intended to deal with the case of an employee who had been "terminated" as that term was defined in staff rule 109.1 (*b*), and not with the case of an employee who had only been deprived of the *chance* to prove himself worthy of further employment. In the latter case, the magnitude of the injury was uncertain, because the value of the chance was uncertain. However, the Tribunal was of the view that such an employee should be given the benefit of the doubt, as the uncertainty was not of his making, and that compensation should be awarded on the same basis as it would have been awarded had the employee succeeded in gaining the appointment he sought. In other words, the employee should be treated as if he had received the appointment he sought and had then been "terminated". Thus the termination indemnity provisions provided the measure of appropriate compensation in that case.

The Tribunal sought first of all to determine the duration of the appointment that the applicant would have been awarded had his services proved satisfactory during his initial period of employment. It recalled that in its Judgement No. 132[26] it had indicated that that was a factual question and had decided that, under the circumstances, a one-year appointment should be the measure. That being so, the application of the relevant provisions of the Staff Regulations to the applicant resulted in the $5,469 already paid to him by the respondent.

The applicant contended that, if he had received a further one-year appointment as from the date of expiry of his last contract, he would have completed on that date three years of service and would have been entitled to the salary increment then accruing. The Tribunal noted, however, that under the applicable regulations the termination indemnity was to be calculated on the basis of the base salary *at the time of termination,* and on the date of termination of the applicant the salary increment had not accrued. According to the Staff Rules, the salary increment to which the applicant would have been entitled if he had obtained a one-year contract would have taken effect as from 1 August 1975, but the rule in question went on to provide: "No increment shall be paid in the case of staff members whose services will cease during the month in which the increment would otherwise have been due". The Tribunal therefore considered that the respondent had been correct in not taking into account a salary increment which might have taken effect in August 1975 if the applicant's appointment had been renewed.

[26] See *Juridical Yearbook,* 1969, p. 189.

13. JUDGEMENT NO. 228 (13 OCTOBER 1977)[27]: RIVET *v.* UNITED NATIONS JOINT STAFF PENSION BOARD

Decision of the General Assembly establishing a new system of adjustment of pensions under which benefits which commenced before 1 January 1975 are subject to a ceiling, namely, the amount which would have been payable if the benefit had commenced on 1 January 1975 — Such ceiling to be calculated on the basis of the pensionable remuneration rates during the period from 1 January 1972 to 31 December 1974 of a position at the same level as that of the recipient of the benefit — Special case of the former holder of an ungraded post the salary for which was increased after the retirement of the person concerned — Question whether the pensionable remuneration in question should be that received by the person concerned before his retirement or that of the holder of the post during the period from 1 January 1972 to 31 December 1974

The applicant, a former Deputy Secretary-General of WMO, had retired on 1 February 1971. On 18 December 1974, the General Assembly, by its resolution 3354 (XXIX), section I, had decided to revise the system of adjustment of benefits in payment, with effect from 1 January 1975, provided that no beneficiary who opted for the new system and whose benefit had commenced before 1 January 1975 should receive more as a result than if the benefit had commenced on 1 January 1975.

The applicant having opted for the new system, it had been explained to him that the current pensionable remuneration rates of the position which the applicant had held before retirement could not be used for the purpose of calculating the General Assembly ceiling on benefits payable under the new system, since the level of that position might have been reclassified or declassified in the interim. The applicant disagreed with that interpretation, and the case was submitted to the Tribunal.

The Tribunal noted that the disagreement between the parties bore on the method of calculating the General Assembly "ceiling". According to the respondent, that ceiling must be calculated on the basis of the pensionable remuneration of a staff member at the D-2, step IV, level during the period from 1 January 1972 to 31 December 1974. According to the applicant, the ceiling should be calculated on the basis of the pensionable remuneration paid to his successor during the period from 1 January 1972 to 31 December 1974. The two methods of calculation produced different results because of the fact that from 1 January 1972 onwards the salary of the Deputy Secretary-General of WMO, which had previously been the same as that of a staff member at the D-2, step IV, level, had been increased to bring it into line with the salaries of the Deputy Secretaries-General of UPU and ITU.

The Tribunal observed that the applicant's case was a very special one. There was no doubt that if the applicant had held a graded post at the time of his retirement, the ceiling set in General Assembly resolution 3354 (XXIX) could only have been calculated on the basis of the pensionable remuneration of a staff member having occupied a post of the same grade during the period from 1 January 1972 to 31 December 1974. But according to information submitted by the applicant and uncontested by the respondent, the applicant's post had been ungraded throughout the relevant period and remained ungraded. That post had always been "unclassified" and the salary for the post had been fixed at various times by the WMO Congress. The fact that during a certain period (1964–1971) the salary of the Deputy Secretary-General had been the same as that of a staff member at the D-2 level did not change that situation. That being so, if the applicant's benefit had commenced in 1975, it would have been established on the basis of the salary paid from 1 January 1972 to 31 December 1974 to his successor as Deputy Secretary-General.

The General Assembly had wished to prevent the new system from creating inequalities between earlier pensioners and newly retired staff members with the same administrative status. The respondent's interpretation of the Assembly resolution would have made

[27] Mme. Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza, Member; Mr. Endre Ustor, Member.

the ceiling on the applicant's pension lower than the pension he would have received if he had retired as Deputy Secretary-General of WMO on 1 January 1975. That seemed to the Tribunal to be manifestly contrary to the text of the General Assembly resolution, and it accordingly rescinded the contested decision.[28]

14. JUDGEMENT NO. 229 (14 OCTOBER 1977)[29]: SQUADRILLI *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Decision of the General Assembly permitting the recognition as pensionable of periods of service prior to their membership in the United Nations Joint Staff Pension Fund of staff members of UNRWA still in service on 31 December 1975 — Decision of UNRWA extending coverage under that decision to a former staff member who retired in 1967 — Question whether the increased retirement benefits are payable as from 1 January 1976 or as from the date of retirement

The applicant had joined the staff of UNRWA in 1955 and, like all staff members of the Agency, had become an associate participant in the United Nations Joint Staff Pension Fund on 1 January 1961 and a full participant on 1 January 1967. On 11 July 1967 he had retired, and from 19 July 1971 to 30 June 1976 he had held a series of fixed-term appointments with UNICEF, the last two of which had covered the periods from 1 July 1975 to 31 December 1975 and from 1 January 1976 to 30 June 1976 respectively.

On 12 November 1975, the Secretary-General had proposed in a report to the General Assembly (A/C.5/1709) that certain staff members of UNRWA should be covered by the Pension Fund for service during the period 1950–1960, with the proviso that only staff members "still on the rolls as of 31 December 1975" would be eligible for such coverage. That proposal had been accepted by the Assembly. The representative of Canada had suggested that the Secretariat should examine the implications of the Secretary-General's proposal with regard to former staff members of UNRWA who had retired prior to 31 December 1975, and it had been understood that the Secretary-General would report to the Assembly on that point at a later session.

After an exchange of correspondence between various senior United Nations and UNRWA officials and the applicant — in the course of which one question raised was whether he had still been on the rolls as of 31 December 1975 — the applicant had declared his intention of submitting the case to the Tribunal, which he had proceeded to do on 1 June 1977. On 27 May 1977, he had been informed by the Director of Personnel of UNRWA that it had been determined that he was eligible to elect Pension Fund coverage for the period from his entry on duty date with UNRWA to 31 December 1960. The applicant had expressed his intention to apply for the coverage in question but had requested elucidation of certain points; in reply, he had been informed that if he accepted the offer made to him the effective date of his increased periodic benefit, under the 1975 General Assembly decision, was 1 January 1976. The applicant had taken the view that his retirement benefits should be recalculated as from the date of his retirement, 11 July 1967, and had therefore pursued the application he had filed with the Tribunal.

The Tribunal noted that there had been shifts in the basis and the nature of the applicant's claim since the dispute had begun and that the request for rescission of what the applicant had regarded as a "decision" of the Secretary-General to limit the benefit of retroactive coverage for periods of service with UNRWA between 1950 and 1960 to certain staff members had become redundant.

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[28] One member of the Tribunal, Mr. Francisco A. Forteza, appended to the judgement a dissenting opinion, the text of which appears on pages 14 and 15 of document AT/DEC/228.

[29] Mr. R. Venkataraman, President; Mme. Paul Bastid, Vice-President; Mr. Endre Ustor, Member.

The only outstanding issue was the effective date of accrual of the increased pension benefits. The respondent contended that the dispute relating to that issue had arisen almost a month after the application had been filed and that it was not an issue as to which the agreement for direct submission of the application extended. The Tribunal nevertheless considered that the question arose as a consequence of the acceptance by the respondent of the applicant's original claim and that the matter was therefore properly before the Tribunal for its decision. The respondent further contended that any plea relating to the contract of employment or terms of appointment of a staff member of UNRWA should be addressed to that Agency and that UNRWA was therefore the proper respondent to the dispute. The Tribunal noted that it was UNRWA which had decided that the effective date for the recalculation of the applicant's periodic benefits was 1 January 1976. In the circumstances, the Tribunal considered, on the basis of its Judgement No. 63 in which it had held that pleas relating to service conditions should be addressed to the employing agency, that UNRWA was a necessary party to the dispute. It noted, however, that UNRWA had arranged for its answer to the applicant's claim to be filed through the Secretary-General of the United Nations and that the Secretary-General was acting not only on his own but also on behalf of UNRWA before the Tribunal. The Tribunal therefore held that UNRWA was represented in the proceedings before it through the Secretary-General of the United Nations and that the decision of the Tribunal was equally binding on UNRWA.

In reply to the respondent's contention that the applicant had rejected UNRWA's "offer" and had allowed the time for acceptance to expire, the Tribunal stated that UNRWA's decision determining the applicant's eligibility for retroactive coverage of his pre-1961 service had not been an offer subject to withdrawal, that the applicant had in fact conveyed his intention to apply for the coverage in question and that his attitude in seeking elucidation could not be regarded as rejection.

On the issue of the effective date from which the enhanced pension benefits should be calculated, the Tribunal observed that the provisions of the Pension Fund Regulations relied on by the applicant dealt with the calculation of a retirement benefit payable to a participant and that the applicant, being a former participant, could not be treated as a participant. The Tribunal also noted that article 50 (b) of the Pension Fund Regulations provided that an amended regulation should enter into force as from the date specified by the General Assembly but without prejudice to rights to benefits acquired through contributory service prior to that date. On the analogy of that principle, the Tribunal considered that the benefits accruing from the General Assembly resolution should be subject to the provisions of that resolution. The Tribunal therefore held that the enhanced pension benefits should be recalculated and paid as from 1 January 1976. Acceptance of the applicant's contention would have led to discrimination against staff members of UNRWA who had retired or would retire after 1 January 1976. Lastly, should the Assembly decide, as a result of the study suggested by the representative of Canada, to extend to UNRWA staff members who had retired prior to 1 January 1976 any benefit of retroactive coverage larger than that afforded to the applicant, the eligibility of the applicant for such benefit remained open.

15. JUDGEMENT NO. 230 (14 OCTOBER 1977)[30]: TEIXEIRA *v.* SECRETARY-GENERAL OF THE UNITED NATIONS

Competence of the Tribunal to hear, by consent of the parties, a dispute between the Organization and a person employed under a special service agreement and not having,

[30] Mme. Paul Bastid, Vice-President, presiding; Mr. Francis T. P. Plimpton, Vice-President; Mr. Francisco A. Forteza, Member.

under the terms of the agreement, the status of a United Nations staff member — Obligation of the Organization, as set forth in the Convention on the Privileges and Immunities of the United Nations and recognized in judgements of the United Nations and ILO Administrative Tribunals, to provide the safeguard of an appeals procedure to persons with whom it enters into contracts — Award of compensation to the applicant for damage suffered by reason of delay on the part of the Organization in providing him with an appeals procedure

The applicant had worked for the Economic Commission for Latin America (ECLA) for nearly 10 years under a number of successive special service agreements. On 25 July 1974, he had asked either to be informed of ECLA's intentions towards him or to be granted the compensation due to him for his 10 years of work. His claim had been rejected on the ground that he did not have the status of a United Nations staff member, whereupon he had taken his case to the Joint Appeals Board, which had decided not to entertain the appeal on the ground that the special service agreements signed by the applicant had specified that the subscriber would not be "considered in any respect as being a staff member of the United Nations".

The Tribunal noted that in this dispute the applicant claimed certain rights under the Staff Regulations and Rules. It was therefore a dispute which the Tribunal might hear on the basis of an agreement between the parties. The respondent had stated that he found the Tribunal "an appropriate forum to be seized with the application", and the applicant had agreed with that view.

The Tribunal noted, moreover, that, in accordance with the approach it had taken in earlier cases (Judgements Nos. 96[31], 106[32], and 150[33]), it might properly hear an appeal concerning the application of the Staff Regulations and Rules without its affirmation of its competence leading to the conclusion that the applicant was a staff member or former staff member of the United Nations. Consequently, the Tribunal declared itself competent to pass judgement on the application.

As to whether or not the applicant had had the status of a member of ECLA, the Tribunal held that that issue was closely interwoven with the merits of the case and that, since the applicant has asked to plead subsequently on the merits, the Tribunal was not required to take a decision at the present stage.

The applicant also requested the Tribunal to rule that his appeal should be receivable by the Joint Appeals Board. There again, the Tribunal held that it would be able to examine the question of the competence of the Joint Appeals Board only if it was decided that the applicant was entitled to invoke the Staff Regulations and Rules.

Lastly, the applicant requested payment of compensation for the damage suffered by reason of delay attributable to the respondent's refusal to recognize the competence of the Joint Appeals Board or to establish arbitration machinery. The Tribunal noted that none of the successive agreements binding the two parties had contained any provision for the settlement of disputes. It shared the regret of the Joint Appeals Board "that the special service agreements signed by the appellant contain no provision for the settlement of disputes arising out of the contract".

The Tribunal noted that the applicant invoked in that connexion section 29 in article VIII of the Convention on the Privileges and Immunities of the United Nations,[34] which provided that:

> "The United Nations shall make provisions for appropriate modes of settlement of:
>
> "(*a*) Disputes arising out of contracts . . .".

[31] See *Juridical Yearbook*, 1965, p. 207.
[32] *Ibid.*, 1967, p. 295.
[33] *Ibid.*, 1971, p. 162.
[34] United Nations, *Treaty Series*, vol. 1, p. 15.

The Tribunal also referred to its Judgement No. 150[35], in which it had cited the statement of the ILO Administrative Tribunal, in its Judgement No. 122[36], to the effect that:

> "While the Staff Regulations of any organisation are, as a whole, applicable only to those categories of persons expressly specified therein, some of their provisions are merely the translation into written form of general principles of international civil service law; these principles correspond at the present time to such evident needs and are recognized so generally that they must be considered applicable to any employees having any link other than a purely casual one with a given organisation, and consequently *may not lawfully be ignored in individual contracts. This applies in particular to the principle that any employee is entitled in the event of a dispute with his employer to the safeguard of some appeals procedure.*" (Emphasis added by the Tribunal.)

The Tribunal noted that it was only in 1977, nearly three years after the applicant had expressed his desire to submit an appeal, that the respondent had accepted "the establishment of an arbitral procedure to hear the applicant's claim". It considered that the prolongation of the dispute was attributable to the respondent by reason, firstly, of the absence of a guarantee of appeal in the various agreements concluded with the applicant over a period of nearly 10 years, and, secondly, of the respondent's subsequent refusal to make some means of appeal available to the applicant. The Tribunal fixed at $1,000 the amount of compensation to be paid by the respondent for the injury resulting from the respondent's conduct.

B. Decisions of the Administrative Tribunal of the International Labour Organisation[37, 38]

1. JUDGEMENT NO. 286 (6 JUNE 1977): LEMERCIER *v.* INTERNATIONAL PATENT INSTITUTE

The Tribunal recorded the withdrawal of suit by the complainant.

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[35] See *Juridical Yearbook*, 1971, p. 162.

[36] *Ibid.*, 1968, p. 176.

[37] 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 1977, 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.

[38] Mr. M. Letourneur, President; Mr. A. Grisel, Vice-President; Lord Devlin, Judge.

2. JUDGEMENT NO. 287 (6 JUNE 1977): NATUS *v.* INTERNATIONAL PATENT INSTITUTE

The Tribunal recorded the withdrawal of suit by the complainant.

3. JUDGEMENT NO. 288 (6 JUNE 1977): CALLEWAERT *v.* INTERNATIONAL PATENT INSTITUTE

The Tribunal recorded the withdrawal of suit by the complainant.

4. JUDGEMENT NO. 289 (6 JUNE 1977): DEGRAEVE *v.* INTERNATIONAL PATENT INSTITUTE

The Tribunal recorded the withdrawal of suit by the complainant.

5. JUDGEMENT NO. 290 (6 JUNE 1977): REEKMANS *v.* INTERNATIONAL PATENT INSTITUTE

The Tribunal recorded the withdrawal of suit by the complainant.

6. JUDGEMENT NO. 291 (6 JUNE 1977): FINKELSTEIN *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 decisions

The complainant objected to the decision of the Director-General refusing to extend beyond the date of its expiry the fixed-term appointment which the complainant had held since 1962 and which since then had been renewed several times.

The Tribunal recalled that such a decision fell within the Director-General's discretionary authority and that the Tribunal could interfere with it only if it had been taken without authority, or violated a rule of form or of procedure, or was based on an error of fact or of law, or if essential facts had not been taken into consideration, or if the decision was tainted with abuse of authority, or if a clearly mistaken conclusion had been drawn from the facts. The Tribunal considered that the impugned decision was not tainted with any of those flaws.

The Tribunal added that, supposing that the decision in question had indeed been based on the sending by the complainant of a letter couched in language which could not be tolerated from any subordinate, the Tribunal would not be entitled to quash a decision to remove from the staff of the Organization one whose attitude had on several occasions been plainly at odds with the basic duties of any international official.

The Tribunal therefore dismissed the complaint.

7. JUDGEMENT NO. 292 (6 JUNE 1977): MOLLOY *v.* EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

Conditions for the payment of a special rate of educational allowance to officials of a nationality other than that of the country of their duty station — Amendment by "Office Notices" of the system established by the Rules of Application of the Staff Regulations of the Agency — Failure of the Agency to reply to a request for an interpretation of those Rules — Receivability of a complaint submitted in such circumstances — Substantive and formal conditions that must be met in order that Rules may be validly amended by an "Office Notice"

The complainant, an official of British nationality and the father of several children of school age, had enquired of the Organization, at the time of his recruitment, about accommodation and schools at his duty station, situated in France. In accordance with article 3 of rule No. 7 of the Rules of Application of the Staff Regulations of the Agency, officials of British or Irish nationality received for each of their children an educational allowance at a special rate "provided always that they are able to show that it is impossible for their dependent children to receive" within the agglomeration of their residence "primary or secondary education in accordance with the standards obtaining in the educational institutions of their country of origin". The complainant had been told that some of the British staff sent their children to English schools while others sent them to French schools and had been informed that he would be "entitled to an educational allowance of 1,550 Belgian francs per month" (that being the amount then fixed as the special rate). It had been explained "This is a flat rate irrespective of the arrangements you make for the children". The complainant had received the special rate during his first two years of employment.

On 18 September 1970 an "Office Notice" had been circulated making the payment of the special rate conditional upon the official furnishing annually proof of payment of excessively high school fees. According to the Administration, the complainant failed to provide that proof and ceased to receive the special rate as from 1 December 1970. On 4 August 1971 another Office Notice was issued, accompanied by an Instruction prescribing further conditions, i.e. that there should be no suitable school within a radius of 50 kilometres and that fees proved to be paid should exceed the special rate. On 7 March 1972 the complainant complained about the stoppage of the special rate. The Director of Personnel and Administration replied on 25 May 1971 that "When an official is assigned to an area in which his children may within a radius or 50 kilometres receive schooling up to English standards of education the special flat rate is payable provided the official proves that school fees . . . come to twelve times (the special flat rate) . . . a year". The Director of Personnel added in his letter that the problem of educational allowances was being studied. On 30 January 1973 the complainant asked that his application should be reconsidered, but without success. On 20 January 1975, he applied for restoration of the special rate, pointing out, among other things, that the most accessible English school was 77 kilometres away from the nearest station to his home. His application was refused on the grounds that the 50 kilometres specified in the relevant Office Notice was a radius and not a distance and should be measured from the duty station and not the official's home, and furthermore that he had not proved that the school fees he paid exceeded the amount of the allowance. The complainant appealed that decision on 27 May 1975 and, having received no reply, filed a complaint with the Tribunal on 28 November 1975 in which he asked, first, for a correct and reasonable interpretation of rule No. 7, and secondly, for compensation for the loss suffered.

With regard to the receivability of the complaint, the Tribunal recalled that article 92, paragraph 1, of the Staff Regulations provides that a staff member may submit to the Director-General a request that he take a decision relating to him, and that if after four months no reply is received the request is deemed to have been rejected and a complaint may be lodged. The Tribunal considered that the first head of the complaint fell within the scope of the provision, for a request for an interpretation of article 3 of rule No. 7 was a request for a decision relating to the complainant. It could be made at any time and was not subject to any time-limit. The substantial question in the case was whether a document which had as its object *"fixer les modalités d'application"* of the provisions of article 3 could impose conditions not contained in the article, i.e. in this case, change the character of the payment from an allowance to a fixed sum and interpret the words *"dans l'agglomération"* in the article in question as meaning within a radius of 50 kilometres. The Organization had never answered that question. The Tribunal therefore declared the complaint receivable on that point.

Concerning the second head of the complaint, the Tribunal noted that the educational allowance was payable to the complainant on the first day of every month. If the complaint was well founded, the complainant had been underpaid on the first day of every month since 1970 and the Organization had acted adversely towards him on each of those occasions. However, because of the three-month time-limit on the lodging of a complaint under article 92, paragraph 2, of the Staff Regulations, and since the complainant had not lodged his complaint until 20 January 1975, the period prior to 1 October 1974 was time-barred.

As to the merits, the Organization contended that the Instructions of 18 September 1970 and 4 August 1971 constituted valid amendments to article 3 of rule No. 7, as was crystallized in the following sentence in its reply:

> "Since Eurocontrol staff are subject to service regulations, it is obviously at the discretion of the competent authority to alter unilaterally the provisions of the regulations."

The Tribunal considered that that defence failed, in particular because the Organization did not state who the competent authority was or whence he derived his power to amend the Rules of Application. Under the Staff Regulations, the Director-General was empowered to settle the conditions of remuneration of the staff and he had established rule No. 7 for that purpose. If it was granted that the power to make a rule must embrace a power to amend it, then the Director-General could unilaterally amend rule No. 7, but only by the exercise of his rule-making power, which he did not seem to have used in this case.

The applicable texts did not indicate clearly whether the Rules of Application were to be put on a par with Office Notices nor which was to prevail if the two categories of text were contradictory. The Tribunal did not seek to answer those questions. It assumed that a Rule of Application could be amended by an Office Notice, provided that the document containing the amendment was made by the Director-General himself, that it was presented expressly as an amendment, that the amendment was clear in its effect and that it was not deemed effective to deprive an official of essential acquired rights.

The Tribunal noted that the relevant Office Notices had been signed indiscriminately by the Director-General and the Director of Personnel and Administration. Their wording did not show that their object was to amend the provisions of article 3, since their stated object was to fill in the details of its application.

The Tribunal concluded from the foregoing that the new conditions imposed must be within the scope of that article. In that connexion, the Tribunal considered that requiring the official to furnish proof of payment of excessively high school fees was tantamount to changing the character of the payments made in connexion with school fees from an allowance, i.e. a sum paid without any conditions as to its utilization, into a reimbursement. It also noted that according to article 3, British officials, in order to obtain the special rate, must be able to show that their children could not obtain what might be broadly described as a "British" education at a school in *"l'agglomération de leur résidence"*, "reasonably near their places of residence". The Tribunal assumed that it was within the power of the Director-General to lay down by means of an Instruction what was "reasonably near". In so doing, he must be guided by accessibility for school children, which must vary according to the conditions in each locality and depended upon distance and means of transport. To lay down that for every official whatever the situation of his residence, every school within a radius of 50 kilometres (whether from the duty station or from the residence) was to be deemed accessible was not a proper exercise of the power of decision.

The Tribunal therefore decided that article 3 of rule No. 7 had not been amended by the aforementioned Office Notices and that the complainant was entitled to recover from

the Organization the sums underpaid to him as educational allowance on and after 1 October 1974.

8. JUDGEMENT NO. 293 (9 JUNE 1977): CONNOLLY-BATTISTI *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint impugning a decision changing the description of a type of appointment

The FAO Council having decided that "permanent" appointment should henceforth be described as "continuing", the complainant, fearing that the change might entail negative consequences for her, requested the Tribunal to order the Organization to confirm her status as the holder of a permanent appointment and to stop using the term "continuing" in all documents referring to her employment status in FAO, and to guarantee her the security of employment given by permanent status according to the relevant sections of the FAO Manual.

The complainant contended first that the Director-General had exceeded his authority in that the relevant resolution of the Council applied only to employment created after the date of its adoption. The Tribunal rejected that contention, noting in particular that the Council was unlikely to have intended that a type of employment should be described in two different ways according to the date on which it had begun.

The complainant contended, secondly, that the change in description could not apply to her because she had an acquired right to have her employment described as permanent. The Tribunal likewise rejected that contention, observing that the expression "acquired right" in that context related to rights of substance, whose impairment would result in injury, financial or otherwise, to the staff member, and did not embrace matters of nomenclature.

Lastly, the complainant contended that the terminological change could in certain circumstances have a negative impact on her security of tenure. The Tribunal noted that the Organization had given the staff in general the clearest and most explicit assurances that the amendment did not alter the conditions of employment or security of employment. It added that staff regulation 301.121, which had remained unaltered, provided that any amendment was without prejudice to the acquired rights of staff members. The Tribunal concluded that to the extent to which any staff member had had a right to security of tenure or to any other benefit, such right was protected by the aforementioned provisions, and it therefore dismissed the complaint.

9. JUDGEMENT NO. 294 (6 JUNE 1977): CONNOLLY-BATTISTI *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Reform of the step system of one of the grades of the General Service category having the effect of adding three additional steps to that grade — Situation of staff members who, at the time of the reform, had been at the highest step of that grade for several years — Decision of the Administration to grant those staff members, in implementation of the reform, the step immediately above the last step of the former system — Purpose of step increases — Principle of equal treatment of staff members

The complainant, who had been at the highest step of grade G-6 since 1968, had been granted, following a reform introduced by the FAO Council resulting in the addition of three additional steps to her grade, the step immediately above that she had held at the time of the reform. Noting that the step increment was granted every two years and considering that she had served for over six years at the highest step of her grade, she contended that she ought to have been granted three additional steps.

The Tribunal first noted that according to Manual Section 308.411 and in the light of well-established practice, the step increment was granted at the end of a fixed period and a staff member whose increment was withheld otherwise than on the grounds of unsatisfactory service would be recognized as having cause for complaint. It added that while grades were distinguishable one from another by a difference in the nature of the duties performed and in the degree of responsibility undertaken, steps within grades were not similarly distinguishable and that in fact the increment was simply a way of rewarding seniority and experience.

The Tribunal observed that the Director-General had treated the Council's decision as substituting the new salary scale with three additional steps in grade G-6 for the old scale; Manual Section 308.411 would then, in the Director-General's view, be applied to the new scale in the same way as to the old, with the result that advancement from one step to the next must necessarily be preceded by a qualifying period. The Organization added that if the Council had intended that the new scale should be applied retroactively to G-6 staff members having attained the highest step of their grade, it would have said so specifically.

The Tribunal considered it unnecessary to determine whether the Council's decision automatically amended the rule to which the old salary schedule was attached or whether it should more correctly be regarded as an instruction to the Director-General to take the necessary formal steps to effect the introduction of the new schedule. It confined itself to noting that it was not to be expected that the Council would itself provide in detail for all the implications of the change and that the Director-General had therefore been in error in supposing that he had no power to do otherwise than apply Manual Section 308.411 literally to the new situation. Furthermore, the Tribunal added that the Director-General was under an obligation "to use his powers so as to ensure that an amendment authorized by the Council does not in its application result in inequality of treatment which the Council cannot be supposed to have intended". On this point the Tribunal expressed the following view:

> "It is of course inevitable that, if a salary scale has a maximum figure, there can be no further reward for length of service after the maximum has been reached. Whether this is fair or not (and clearly one of the objects of the new salary scale was to fix a span that would as far as possible eliminate it), it is the same for all. But when a halt has been made and thereafter progress has been resumed, it will not be the same for all. Staff members will be differently affected according to the length of the halt and from this point of view the length of the halt is bound to be arbitrary. There were doubtless good administrative reasons in 1971 for not extending the scale in grade G-6 as in the other grades, but the consequence is that, when it was extended, the complainant was less well treated than others who had been moving forward while she was stationary. It is not at all a question of retroactivity. The complainant has lost forever the increments which she would have got between 1 September 1970 and 1 February 1975 if the change had been made retroactive to the former date. The point relates in the period of her service after 1 February 1975. The change that came into force on that date confers an advantage on all staff members in grade G-6, but it is an advantage that is substantially less for the complainant and interveners than it is for the others.
>
> "Manual Section 308.411 is not framed to cover a situation arising from the sudden creation of three additional steps. The Director-General was right in thinking that the Rule could not be interpreted in a way that would equalise the effect of the change. Where he was wrong was in thinking that he had neither the power nor the duty to equalise the effect of the change by some other means consistent with the principle that the object of the salary scale is to reward length of service and experience. In short the change, as changes frequently do, required some transitional pro-

vision to cover exceptional cases and it was the duty of the Director-General to make such provision."

The Tribunal therefore ordered the Director-General to take such steps as were necessary to ensure that the complainant was treated as if on the date on which the new system had entered into force she had been at the highest of the new steps of grade G-6 for five months.

10. JUDGEMENT NO. 295 (6 JUNE 1977): GRENET *v.* INTERNATIONAL LABOUR ORGANISATION

Complaint by a staff member seconded from a national administration referring to delay in his recruitment by the defendant organization and requesting various refunds

The complainant claimed: (1) compensation for the injury he had allegedly sustained as a result of negligence on the part of ILO, deriving from the fact that his appointment by the Organisation had taken effect several weeks after his secondment from the civil service of his own country; (2) refund of the "excessive rents" paid to landlords in his duty station; (3) refund of hotel expenses incurred by him on his arrival in his duty station and (4) recognition of his right to promotion by reason of his promotion in the civil service of his country some months prior to his appointment by ILO.

With regard to the first point, the Tribunal noted that the date of the complainant's secondment had been fixed by the authorities of his country of origin in accordance with rules for which of course ILO bore no responsibility. ILO had been willing to sign the contract only two weeks after the date of secondment. The signing had taken place later because the complainant himself had delayed coming to Geneva for personal reasons. The Tribunal therefore concluded that ILO was not to blame for any delay and was not at fault.

As to the "excessive rents", the Tribunal noted that the complainant, who had no such entitlement under his conditions or contract of appointment, had been paid a "special housing allowance" on the terms applicable, according to international rules, to all technical co-operation experts posted to Cameroon.

As to hotel expenses, the Tribunal noted that the installation allowance paid to all staff members upon arrival in their duty station precluded any refund of hotel expenses. The complainant had received the usual statutory allowances.

Lastly, as to the complainant's promotion in the civil service of his country of origin, the Tribunal considered that that fact had no bearing on the terms of his contract with ILO. The Tribunal therefore dismissed the complaint.

11. JUDGEMENT NO. 296 (6 JUNE 1977): HAGLUND *v.* INTERNATIONAL LABOUR ORGANISATION

Complaint seeking compensation from an organization other than the defendant organization — Irreceivability of the complaint owing to expiry of the time-limit.

The complainant considered that he had not received sufficient compensation for the injury he had sustained as a result of the fact that some of his baggage, which had been shipped by the local UNDP office, had been lost or damaged in the course of official travel. He requested the Tribunal to order UNDP to pay him $US 5,407 as compensation. The Organization objected that the complaint was irreceivable.

The Tribunal observed that when considering a complaint directed against one organization it could not make an order requiring payment by some other body. It acknowledged, however, that in the light of the facts of the case the complainant could allege that UNDP, in arranging the removal of the effects, had been acting as agent for the Organization which might thus be made responsible. The Tribunal refrained from deciding on that point.

It concluded, however, that the complaint was time-barred, in that the Organization having failed to take a decision on the initial claim within 60 days, the complainant should have filed his complaint within 90 days after the expiry of that 60-day period, but had not done so.

12. JUDGEMENT NO. 297 (6 JUNE 1977): LOROCH *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Decision not to renew a fixed-term appointment — Limits of the Tribunal's power of review with regard to such a decision — Advisory function of internal appeals bodies

The complainant, having been unable to obtain the renewal of his fixed-term contract, had appealed to the FAO Appeals Committee, which had unanimously recommended to the Director-General that every endeavour be made to redeploy the complainant within the Organization in duties with less operational implications, yet in his own sphere of competence. The Director-General had accepted that recommendation "in principle", explaining that his application for any suitable vacancy would receive the fullest consideration. The complainant had taken the view that that statement was not in accordance with the Appeals Committee's recommendation and had so informed the Director-General, who had maintained his position.

The Tribunal first observed that the decision not to renew a fixed-term contract fell within the Director-General's discretionary authority and could not be quashed unless it was tainted with very specific flaws. It noted in that connexion that the complainant considered that the impugned decision was tainted by an error of law in that the Director-General had failed to act on the recommendation of the Appeals Committee. The Tribunal observed, however, that according to staff regulation 301.111, the Appeals Committee was to advise the Director-General and its function was thus purely advisory. The Tribunal could not treat the aforementioned regulation as an exception and, passing over the law in force, regard the Appeals Committee's recommendations as mandatory. It might go so far as to impute an error of law to the Director-General if the impugned decision were tainted with inconsistency. But it was not, for the Director-General had not overlooked the recommendation since he had stated he was prepared to take account of it.

The complainant contended, moreover, that the Director-General had failed to take account of such essential facts as the complainant's age, his family commitments, his high professional qualifications and so on. However, the Tribunal considered that argument irrelevant, since the Director-General had known of the report of the Appeals Committee, which set out the parties' allegations, and there was nothing to suggest that he had disregarded the facts in question.

Lastly, the complainant contended that the Director-General had drawn mistaken conclusions from the dossier. In that connexion, the Tribunal reviewed the various solutions which might have been considered on the basis of the facts in the dossier. It concluded that in adopting the solution consisting in the nonrenewal of the complainant's appointment, the Director-General had not drawn clearly mistaken conclusions from the dossier.

The Tribunal therefore dismissed the complaint.

13. JUDGEMENT NO. 298 (6 JUNE 1977): GORNER *v.* EUROPEAN SOUTHERN OBSERVATORY

Complaint falling outside the competence of the Tribunal in that it impugns a decision by a national court, and irreceivable by reason of expiry of the time-limit in that it is directed against a decision of the defendant organization

On 5 June 1974 the complainant had submitted to the Organization a claim which had been dismissed. She had then brought suit before the Labour Court of Hamburg

which, by a decision of 21 October 1975, had declared itself not competent. She had then filed her original claim with the Tribunal, giving 31 October 1975 as the date of the decision impugned.

However, the dossier showed that the decision of 31 October 1975 had been taken by the Labour Court of Hamburg and not by the Organization. The Administrative Tribunal of the ILO, as an international tribunal, was not competent to hear an appeal against a decision by a national court.

Moreover, even if recourse to a national court which did not have jurisdiction might be regarded as postponing the time-limit for appeal to the Administrative Tribunal, it would have been necessary — and such was not the case, that the complaint be lodged with the latter within 90 days after notification of the decision of the national court.

The Tribunal therefore declared the complaint irreceivable.

14. Judgement No. 299 (6 June 1977): Mollard *v.* International Labour Organisation

Complaint impugning a decision determining the level of a post — Limits of the Tribunal's power of review with regard to such a decision — Every post description covers not only purely material considerations but also subjective ones taking account of the responsibilities of the incumbent

The complainant, a documents clerk, had applied for review of the grading of her post at G-5. She had pointed out, among other things, that her job description, the sole basis for her grading, was identical to that of the G-7 post of a documents clerk in another branch.

The Organization replied that in grading posts account should be taken not only of the material description of the duties pertaining to each post, but also of the nature and importance of the incumbent's actual responsibilities.

The Tribunal held that, although in the case in question the job description for a post was the sole basis which should be taken into account, it should cover not only purely descriptive material considerations but also subjective ones: account must be taken of, for example, staff members' actual responsibilities. It was true that the complainant's duties might be regarded as identical, according to their material description, with those of another official whose post was graded at G-7. But the Tribunal concluded from the documents in the dossier that the two posts were not comparable from the standpoint of the responsibilities involved and the technical knowledge they required. That being so, the impugned decision was in no way unlawful and was not based on any material errors of fact.

The Tribunal therefore dismissed the complaint.

15. Judgement No. 300 (6 June 1977): Ledrut and Biggio *v.* International Patent Institute

Decisions refusing promotion to the complainants — Limits of the Tribunal's power of review with regard to such decisions — Differences in career patterns which are justified by administrative reasons do not breach the principle of equal treatment

The complainants impugned decisions of the Director-General refusing to promote them from grade A-7 to grade A-6. The Tribunal first observed that such decisions fell within the Director-General's discretionary authority and it could interfere with them only if they were tainted by very specific flaws.

The complainants argued first that it was unlawful not to put on a par with staff members having the four years' actual service required for promotion from grade A-7 to

grade A-6 staff members who, like themselves, had three years' actual service plus one or more years' seniority benefit granted for experience acquired prior to recruitment. The Tribunal considered, however, that the principle of equality among staff members belonging to the same category mentioned in the Staff Regulations did not mean that seniority benefit was to be equated to actual service for the purpose of determining entitlement to promotion. To take account of actual service was to reward staff members for loyalty and induce them to stay on. It was true that according to the Staff Regulations the Director-General might, "so as to take account of the training and special occupational experience of a new staff member, grant him a seniority benefit and so ensure his appointment to the next higher grade." But that did not mean that the grant of a seniority benefit should have any effect on regradings subsequent to appointment.

It was immaterial that the complainants would have been promoted in 1975 had the same criteria been applied as in 1973 and 1974. It was for the Careers Committees and for the Director-General to adapt the conditions of promotion to the Institute's requirements and the resulting differences in treatment did not breach the principle of equality where they were justified by administrative reasons. However, it had not been shown that in this case the Director-General had acted for any purpose but to serve the Institute's interests.

The Tribunal likewise considered that the complainants had provided no evidence to support their allegations that the Director-General had ignored essential facts or drawn mistaken conclusions from the dossier.

It therefore dismissed the complaints.

16. JUDGEMENT NO. 301 (6 JUNE 1977): SCHMITTER *v.* INTERNATIONAL PATENT INSTITUTE

Complaint impugning a refusal of promotion — Limits of the Tribunal's power of review with regard to such a decision

The complainant impugned a decision of the Director-General refusing to promote him in 1975 from grade A-6 to grade A-5. The Tribunal noted first that it could interfere with such a decision only if it was tainted by very specific flaws.

The "general principles governing promotion" approved by the Administrative Council normally required for promotion from grade A-6 to grade A-5 from nine to 10 years' actual service with the Institute, including five at A-6. However, in 1975 the complainant had actually served for only six years, including four at grade A-6. It was true that by 1975 the complainant could not have served for more than four years at grade A-6, since that grade had been created in 1971, but in any event he did not meet the requirement of nine to 10 years' actual total service.

According to the Tribunal, there was no force in the complainant's criticisms of the criteria applied by the competent Careers Committee: the function of such committees was purely advisory, the criteria they adopted had no binding force, and even though those criteria were not beyond reproach, the Director-General's decisions were not tainted on that account.

It was immaterial that the criteria applied in 1975 were not the same as had been applied in earlier years. It was for the Careers Committees and for the Director-General to adapt the promotion criteria to the Institute's requirements and the resulting differences in treatment did not breach the principle of equality where they were justified by administrative reasons. However, it had not been shown that in this case the Director-General had acted for any purpose but to serve the Institute's interests.

With regard to the allegation that essential facts had been ignored, the Tribunal considered that there was nothing to suggest that the Director-General had discounted facts in favour of promoting the complainant.

17. JUDGEMENT NO. 302 (6 JUNE 1977): SMITH *v.* EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

Complaint deemed irreceivable owing to expiry of the time-limit

The complainant claimed that the Agency had erroneously paid him a school fees allowance to which he stated he was not entitled. He had sent a cheque for the amount in question to the Agency which, considering that the allowances were indeed due, had returned it to him on 3 October 1975.

The Tribunal declared the complaint irreceivable because it had been filed after the expiry of the statutory time-limit of 90 days after the notification of the impugned decision.

18. JUDGEMENT NO. 303 (6 JUNE 1977): BRISSON, DEMETER, VAN DE VLOET AND VERDELMAN *v.* INTERNATIONAL PATENT INSTITUTE

Decisions refusing promotion to the complainants — Limits of the Tribunal's power of review with regard to such decisions — Rejection of arguments based on the composition of the body responsible for recommending staff members for promotion — Lack of binding force of documents containing mere guidelines — Power of the Director-General to adapt the conditions of promotion to administrative requirements

The complainants impugned decisions refusing to promote them from grade C-3 to grade C-2. The Tribunal first noted that it could interfere with such decisions only if they were tainted by very specific flaws.

One of the complainants contended that the committee which recommended staff members in his category for promotion included the Chief of the Personnel Service, the official who had determined his performance mark, and that the committee's composition was therefore irregular. The Tribunal considered that the fact that the Chief of the Personnel Service should sit on such a committee was only normal, that there was no incompatibility between his function as marker and his position as a member of the committee, and that there was nothing to suggest that he had shown any prejudice against the complainant.

The complainants also contended that the Director-General, in studying their cases, had failed to take account of the "normal career pattern" described in a declaration of 22 December 1971 by the Administrative Council. The Tribunal noted in that connexion that it was doubtful whether the declaration in question, which related to those on the staff at the end of 1971, could properly be relied upon by the complainants, who had joined the Institute later. It added that the declaration merely afforded guidance and was not a binding rule.

The complainants also invoked in support of their complaint the "general principles governing promotion" approved by the Administrative Council. The Tribunal observed that those principles did not have absolute force in this case and that the Administrative Council could not have meant to depart from article 25 of the Staff Regulations, which made both seniority and performance the criteria for promotion.

It was immaterial that the criteria applied in 1975 were different from those used in preceding years. It was for the Careers Committees and for the Director-General to adapt the conditions of promotion to the Institute's requirements and the resulting differences in treatment did not breach the principle of equality where they were justified by administrative reasons, and it had not been shown that in this case the Director-General had acted for any purpose but to serve the Institute's interests.

Lastly, the Tribunal rejected the allegation that the Director-General had drawn mistaken conclusions from the dossier: even if it had been shown that the complainants met the conditions for promotion, the Director-General would not necessarily have abused his discretionary authority, since financial reasons and a desire to keep a hierarchy of staff

members within a category could lead him to grant promotion to fewer staff members than deserved it.

19. JUDGEMENT NO. 304 (6 JUNE 1977): KARSKENS *v.* INTERNATIONAL PATENT INSTITUTE

This case is similar to that dealt with in Judgement No. 303.

20. JUDGEMENT NO. 305 (6 JUNE 1977): GUYON AND NICOLAS *v.* INTERNATIONAL PATENT INSTITUTE

Complaints impugning final decisions not appealable to the internal appeals body but which nevertheless formed the subject of a recommendation by the internal appeals body — The time-limit for impugning such decisions before the Tribunal runs from the final decision and not from the purely confirmatory decision taken following the recommendation of the internal appeals body

The complainants, relying on Judgement No. 262, delivered by the Tribunal *in re Labadie* v. *International Patent Institute*[39], asked that the effective date of their promotion, of which they had been notified on 13 November 1974, be changed. Having received a negative reply from the Director-General in a letter dated 5 December 1975, they had appealed to the internal Appeals Committee and had obtained a favourable recommendation. However, that recommendation had not been followed by the Director-General, who had held to his original decision in a notification dated 29 April 1976.

The Tribunal recalled that under article 82 of the Institute's Staff Regulations a decision concerning a promotion taken after consulting one of the joint bodies mentioned in article 10 of the Regulations could not be appealed to the Appeals Committee; since it was a final decision, any complaint inpugning it before the Tribunal ought to have been lodged within 90 days after the date of its notification. The impugned decisions had been notified on 13 November 1974. The complaints, lodged on 7 May 1976, were therefore clearly time-barred. They would still be time-barred if 5 December 1974, the date on which the Director-General had dismissed the complainants' appeals, was taken as point of departure.

The Tribunal added that it was true that the complaints had been lodged within 90 days of the date on which the Director-General had held to his original decision. However, a decision which was a mere confirmation could not give rise to a new period when the first has been allowed to lapse. It was immaterial that the Appeals Committee had erroneously declared itself competent: it was for the Tribunal to see whether article VII of its own Statute was applicable, which meant that, in particular, it must determine the date on which the internal body of last instance had taken its decision and from which the 90-day period therefore began to run.

The Tribunal added that, even if they had been receivable, the complaints would have had to be dismissed. It recalled that a judgement by the Tribunal on a dispute between an organization and a staff member affected only the parties to that dispute. It could not alter a decision affecting third parties which was already in force. The stability of legal relationships would be impaired if staff members were entitled to rely upon new case law to cast doubt on the validity of earlier and final decisions. The complainants were thus mistaken in relying upon Judgement No. 262 in seeking review of the decision of 11 November 1974 relating to them; they must bear the consequences of their failure to impugn in time the decision fixing the date of their promotion.

[39] See *Juridical Yearbook*, 1975, p. 149.

21. JUDGEMENT NO. 306 (6 JUNE 1977): ALMINI *v.* INTERNATIONAL CENTRE FOR ADVANCED TECHNICAL AND VOCATIONAL TRAINING (INTERNATIONAL LABOUR ORGANISATION)

Complaint impugning a decision not to renew a fixed-term contract — Quashing of the decision as based on conclusions not borne out by the dossier

The complainant impugned a decision dated 9 February 1976 refusing to renew his fixed-term contract. The Centre argued that the complaint, filed on 10 May 1976, was time-barred. The Tribunal observed that according to article VII of its Statute, a complaint was not receivable unless it had been filed within 90 days after the decision impugned had been notified. It noted that in this case the aforementioned time-limit had expired on 9 May 1976, but considered that since that date was a Sunday the complaint, having been registered by the Registrar on 10 May, was receivable.

As to the merits, the Tribunal noted that the complainant, who in August 1974 had received a highly commendatory assessment from the Director of the Centre, had 10 months later been informed by the person who had succeeded that Director that his contract would not be renewed. It was all the harder to account for such a difference in assessment because there was not a single document in the dossier which revealed the true reason.

The Tribunal concluded that, although the impugned decision could not be said to have been taken for reasons contrary to the interests of the Centre, it was clear at least that the decision drew clearly mistaken conclusions from the facts and should therefore be quashed.

The Tribunal ordered that the complainant be reinstated in his post or, should that prove impossible, that he be paid a sum equivalent to one year's salary.

22. JUDGEMENT NO. 307 (6 June 1977): LABARTHE *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Question of the receivability of the complaint — Review by the Tribunal of the possible ways in which the complainant could bring his case before it — Conclusion of the Tribunal considering the complaint as filed by a person alleging non-observance of a binding promise of employment — Interpretation of the words "terms of appointment" as used in paragraph 5 of the Statute of the Tribunal — Indissociability of the question of receivability and the question of the merits — Decision of the Tribunal that a binding contract was made between the parties and granting compensation to the complainant

The complainant sought payment of compensation for breach of the contract alleged by the complainant to have been made on or about 18 June 1973 to appoint him to the position of FAO representative in Trinidad and Tobago.

The Tribunal noted that prior to the cessation of his employment with FAO on 31 October 1972 the complainant had been offered the aforementioned post and had been informed on 22 August 1972, when notified that his employment would cease, that that notice would be retracted if the new appointment became effective. Under staff rule 302.403, if a former staff member is re-employed within 12 months of being separated from service, he may at the option of the Organization be reinstated and on re-instatement his services are considered as having been continuous. In those circumstances and given the divergence of view between the Organization and the complainant as to whether any contract had been made in June 1973, the Tribunal had to consider various hypotheses concerning ways in which the complainant could bring his case before it, namely (1) as an official on the date of his complaint, (2) as a former official on that date, and (3) as a victim of non-observance of terms of appointment.

With regard to the first hypothesis, the case for saying that the complainant was actually an official at the date of his complaint rested upon the effect of the letter of 22 August 1972. The Tribunal considered it doubtful whether the Organization had by that letter exercised conditionally and in advance its option under staff rule 302.403 and considered it more reasonable to interpret the letter broadly as indicating that the notice of termination was not necessarily final. The Tribunal did not, however, decide the question of jurisdiction on that ground.

As to the second hypothesis, it was not disputed that the complainant had the status of a former official, but the Organization contended that to be receivable the complaint must then be founded on events which had taken place during his period of employment. There again, the Tribunal refrained from deciding the question of jurisdiction on that ground.

The complainant contended that the Organization had agreed to appoint him and had then broken its agreement. In relation to the receivability of such a claim, it was a mere accident that the complainant had formerly been an officer of the Organization. With regard to its receivability the complaint ought therefore to be treated as a complaint lodged by a person alleging non-observance of a binding contract by the Organization to appoint him to a post who had not received any formal letter of appointment. The English text of the Statute referred to non-observance of "the terms of appointment", but in that context the word "appointment" should be treated as embracing a contract to make an appointment. Accordingly, the question of whether the Tribunal had jurisdiction depended on whether the complainant could establish the existence of a contract of appointment in the sense defined above; that was a question which the Tribunal, by virtue of its Statute, was competent to decide.

It was not disputed that if the existence of such a contract could be established, the claim must succeed. The Tribunal therefore concluded that the issue between the parties on jurisdiction was also the issue between them on the merits and it was convenient to deal with it under the latter head.

As to the merits, the Tribunal observed that there could be a binding contract prior to the issue of a letter of appointment if there was manifest on both sides an intention to contract, if all the essential terms had been settled, and if that all that remained to be done was a formality which required no further agreement.

In the light of the circumstances and having examined the dossier, the Tribunal concluded that the conditions set forth in the preceding paragraph had been met and that a binding contract had been made between the parties in June 1973. It ordered payment to the complainant of compensation equivalent to the amount of salary and related emoluments which he would have received had he been reinstated on 1 July 1973 and continued in the Organization's employment until 30 June 1975.

23. Judgement No. 308 (6 June 1977): Phillips, De Laet, Van Maren, Bake, Bracke, Duren and Vuillemin *v.* International Patent Institute

Coexistence within the Organization of two pension schemes — Complaint seeking the quashing of a measure considered by the participants in one of the two schemes as breaching the principle of equal treatment — Interpretation of that principle by the Tribunal — Lack of competence of the Tribunal to order the adoption of new rules eliminating in future the differences in treatment mentioned in the complaint

The complainants belonged to a pension scheme known as the "old scheme", which coexisted in the Institute with another scheme known as the "new scheme", which had come into force on 1 January 1965. When offered a choice between the two schemes, they had preferred to remain with the old scheme. In January 1976 the complainants, having heard of a decision taken by the Administrative Council providing that the Institute should

pay extra contributions solely for the benefit of members of the new scheme and considering that that was unfair, had appealed against the Council's decision, but their appeal had been dismissed by a decision of 5 February 1976.

Before the Tribunal the complainants requested it (1) to quash the decision of 5 February 1976 and (2) to order the Institute to put members of the old and new schemes on a par.

The first claim was deemed receivable by the Tribunal. To support that claim, the complainants alleged a breach of the principle of equality. While acknowledging that that principle, embodied in article 5 of the Staff Regulations, could be relied upon by the complainants in, for example, claiming pension rights, the Tribunal stressed that the general principle of equality did not mean that all Institute staff members should be subject to identical rules but was rather reflected in the rule that like circumstances called for like treatment and different ones for different treatment. However, the impugned decision applied solely to staff members belonging to the new scheme. The complainants, who all belonged to the old scheme, could not properly ask to have applied to them a decision which affected staff members in a different position. They did not show that the remedial measures applied by the Council to the new scheme were suited to the old scheme. They were therefore mistaken in alleging discriminatory treatment and their first claim failed.

As to the second claim, in so far as the complainants sought to put an end to the discrimination which they alleged to have suffered by individual or specific measures, it was irreceivable because it had not previously been referred to the Administrative Council. In so far as the complainants wanted general and non-specific measures in the form of new rules, the second claim was likewise irreceivable, since the Tribunal was competent to correct breaches of terms of appointment or provisions of the Staff Regulations, but not to order the adoption of new rules.

24. Judgement No. 309 (6 June 1977): Aouad *v.* World Health Organization

Complaint impugning a decision refusing to reinstate a staff member who had resigned

The complainant had resigned on the grounds that, despite repeated requests, he had been unable to have one of his secretaries, who according to him was utterly insubordinate, transferred. He asked the Tribunal, among other things, to order his immediate reinstatement in his former post.

The Tribunal considered that although it was true that the aforementioned secretary, because of her attitude, ought long before to have been compulsorily transferred at least and that the complainant had always behaved with great propriety, it could not be said that the effect of the secretary's regrettable behaviour and of the Regional Director's equally regrettable inaction had been either to put the complainant in a position which in practice precluded his continuing as Chief of Unit or to damage seriously his state of health or to impair his free will. Hence the complainant's resignation, which he had given of his own free will and without duress, was fully valid in law; it might have been given somewhat lightly, but the complainant was alone responsible and that fact did not vitiate its legal validity.

25. Judgement No. 310 (6 June 1977): Steele *v.* International Labour Organisation

Complaint seeking to have the Tribunal reprimand those responsible for a decision and quash a decision not to renew a fixed-term appointment — Lack of competence of the Tribunal with regard to the first request — Limits of the Tribunal's power of review with regard to the second request

The complainant contended that the decision not to renew his fixed-term contract

was based on a mistaken and biased assessment of his work performance and asked the Tribunal to reprimand those responsible for the substance and cause of the complaint and to "restore the *status quo ante*".

With regard to the first request, the Tribunal stated that it had no power to superintend the work of an organization or to administer reprimands. With regard to the second request, the Tribunal took it as seeking the quashing of a decision not to renew a contract. The Tribunal observed that that was a decision which fell within the discretion of the Director-General, with which the Tribunal could interfere only if it was tainted by very specific flaws, only one of which, that of improper motivation, could be relevant to the case. The complainant's superiors considered that he was not the type of person who could work within a team; they might have been right or wrong about that, but a careful study of the dossier did not indicate the existence of any improper motive or of any other ground which could justify the intervention of the Tribunal.

26. JUDGEMENT NO. 311 (6 JUNE 1977): PINTO DE MAGALHAES *v.* INTERNATIONAL LABOUR ORGANISATION

Sudden transfer of a staff member, prompted by the desire of the Organisation to separate him from one of his colleagues — Quashing of the transfer decision because it drew clearly mistaken conclusions from the facts and award of damages for the moral prejudice suffered by the complainant

The complainant had asked the Chief of the Payment Authorisation Section in which he worked whether one staff member could have his salary paid to another — in other words, whether he could open jointly with his immediate superior a joint bank account into which both their salaries would be paid and from which withdrawals could be made only if the signatures of both account-holders were obtained. Having been informed of the matter, the Chief of the Financial and Central Administrative Services Department decided to transfer the complainant forthwith to another section on the grounds that it was improper that a staff member should be unable to draw his own salary "but should have to ask a subordinate to pay out money to him" and that it was therefore in the Organisation's interest to separate the two officials who "had shown such close links of interdependence". The complainant asked the Tribunal to quash the transfer decision and order the payment of compensation.

The Tribunal observed that at the date when the impugned decision had been taken the complainant had merely asked whether he could open a joint bank account with his immediate superior and that the decision to transfer him had been made upon a hypothesis which had never matured, for the proposal had been dropped since the necessary approval had not been forthcoming. The decision thus drew clearly mistaken conclusions from the facts and should be quashed. The Tribunal ordered the payment of damages in the amount of 10,000 Swiss francs as compensation for the moral prejudice suffered by the complainant.

27. JUDGEMENT NO. 312 (6 JUNE 1977): CORREDOIRA-FILIPPINI *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

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 not to renew her fixed-term contract. The Tribunal recalled that such a decision fell within the Director-General's discretionary authority and that the Tribunal could not interfere with it unless it was tainted by very specific flaws. It noted that the impugned decision had been taken for budgetary reasons cogently explained by the Organization and that in the circumstances the complainant's

qualities constituted no reason for the Director-General, who bore sole responsibility for the smooth running of the Organization, not to exercise his authority and either refuse the complainant a new appointment or conclude a new contract with her or with someone who had different skills.

Finding that the impugned decision was not tainted with any irregularity, the Tribunal dismissed the complaint.

28. JUDGEMENT NO. 313 (21 NOVEMBER 1977): BEERTEN *v.* INTERNATIONAL PATENT INSTITUTE

Complaint impugning a decision which had not come into effect at the time when the complaint was filed — Failure to respect the principle of exhaustion of internal means of redress imputable to the chairman of the internal appeals body — Receivability of the complaint — Interpretation of the rule by which, in case of promotion, a staff member's seniority in his new grade is determined

On 1 May 1973 the complainant had been appointed deputy administrative assistant at grade B-5, step 3, with 10 months' seniority; on 6 February 1976, he had been promoted to grade B-4, step 2, with effect from 1 November 1975 and had been given four months' seniority at that step.

On 12 February 1976 the complainant lodged an internal appeal objecting to the period of seniority he had been granted; in the absence of the Staff Committee's nominees, the internal proceedings had been suspended, and on 29 April 1976 the complainant had appealed to the Tribunal. On 30 August 1976, the Appeals Committee, having resumed the proceedings, made its recommendations to the Director-General, who endorsed them and dismissed the appeal.

In his complaint, the complainant asked the Tribunal (*a*) to quash the decision to promote him to grade B-5, step 3, and to order instead a promotion to grade B-4, step 1; (*b*) Subsidiarily, to order the grant of promotion to grade B-4, step 2, with 18 months' seniority on 1 November 1975.

The Tribunal first considered the question of the receivability of the complaint: it noted that if the complainant had lodged his complaint before the Appeals Committee had formulated its recommendation and the Director-General had taken his decision in the light of that recommendation, he had done so because the Chairman of the Appeals Committee had told him that should the Director-General fail to take a decision within 60 days of the lodging of the appeal, the time-limit for filing a complaint with the Tribunal would start to run no matter when the Appeals Committee eventually met and reported. The Tribunal considered that a party should not suffer prejudice from acting on even the mistaken suggestion of an appeals body, and that the complainant, who had followed the advice of the Chairman of the Appeals Committee, could not be taken to task for acting too soon and failing to file his complaint again after the Director-General had taken his decision in the light of the recommendation of the Appeals Committee.

It added, however, that although the complaint was receivable in principle, it was time-barred in so far as it sought the quashing of the decision to promote the complainant to grade B-5 which, not having been appealed in time, had come into effect.

With regard to the merits, the Tribunal noted that the complainant claimed that at the time of his promotion, in order to determine his seniority in his new grade, the period during which he had remained at the highest step in his former grade should be taken into consideration. In so doing he relied on article 30 of the Staff Regulations, paragraph 1 of which provides

> "... An official appointed to a higher grade shall be granted in his new grade seniority corresponding to the equivalent notional step or the next highest step which

he reached in his former grade, plus the amount of the biennial step increment in his new grade",

while the first sentence of paragraph 2 states:

"... For the purposes of applying this provision each grade comprises a series of notional steps corresponding to a series of notional monthly periods of seniority and salary rates which rise from the first to the last of the actual steps at the rate of one twenty-fourth of the biennial step increase in the grade in question".

The Tribunal first noted that the first sentence of paragraph 2 referred to a series of notional steps corresponding to a series of periods of seniority and salary rates which progressed from the first to the last of the *actual steps*. The Tribunal observed that those last words alone suggested that on reaching the last actual step the complainant had lost his right to claim further notional steps.

The Tribunal also noted that the complainant's contention did not square with the provisions of article 30 quoted above. On that point, it stated the following:

"Taking account of notional steps is not an end in itself. The purpose is to give effect to the second sentence of article 30(2), which reads: 'In no case shall an official be paid a lower basic salary in his new grade than he would have been paid in his former grade,' and to article 30(3), which reads: 'An official appointed to a higher grade shall be granted at least the first step in that grade'. For these provisions to be respected account must be taken of the notional steps provided for within an actual step. On the other hand, there are no grounds for adding notional steps to the last actual step in the lower grade: that would confer on the official a benefit which plainly does not meet the intention underlying article 30."

Lastly, the Tribunal noted:

"... if the complainant's interpretation were right, the distinction drawn in the Staff Regulations between advancement by grade and advancement by step would be blurred. A staff member promoted to a higher grade would be granted fictitious seniority: he would be taken to have reached a step which in fact he had not. This method of calculation would affect the position of the promoted official. It would therefore detract from the Director-General's discretionary authority not only to promote someone from one grade to another but also to say what place he shall hold in his new grade."

The complaint was therefore dismissed.

29. JUDGEMENT No. 314 (21 NOVEMBER 1977): REMPP *v.* INTERNATIONAL PATENT INSTITUTE

Complaint seeking the quashing of a salary deduction following a strike — Principle of international public service that salary is payable only for services rendered

In July and September 1975 the complainant had taken part in collective work stoppages at the Institute. On 23 October 1975 a decision of the Administrative Council of the Institute entitled "Salary deductions due to the collective work stoppages in July and September 1975" had been posted for the information of the staff. It read as follows:

"As to the strike days, the Council takes the view that as a rule deductions should be made from salaries for any day on which staff members are on strike. It has decided, however, to waive that rule until the end of the year in the belief that there would be no grounds for deductions if by then progress on the programme prescribed in the budget had been made up ..."

On 29, 30 and 31 October 1975 there was another strike in which the complainant took part. On 13 November 1975 the Director-General announced that a deduction would

be made from the salaries of staff members who had taken part in the strikes in July, September and October 1975. The complainant submitted an internal appeal against that decision. By a circular of 21 January 1976 the Director-General informed the staff that following the review of the progress of work in 1975 undertaken by the Administrative Council at its December 1975 session, no reductions would be made for the strikes in July and September 1975. The complainant, considering that his claim had been only partly met by that decision, pressed it in so far as it challenged the decision to make salary deductions for the strike in October 1975, but to no avail.

The Tribunal recalled that according to a principle of international public service, salary was generally payable only for services rendered, so that the Institute had been right to refuse to pay a staff member who had gone on strike for the period during which he had not worked. The Administrative Council had made the concession described above only for the strikes in July and September and had made no special provision for the strike in October, which in any case had been subsequent to the Council's decision. The Tribunal therefore dismissed the complaint.

30. JUDGEMENT NO. 315 (21 NOVEMBER 1977): FANO *v.* INTERNATIONAL LABOUR ORGANISATION

Complaint seeking payment of a separation allowance not provided for in the contract of appointment

The complaint sought, among other things, payment of a separation allowance by the Organisation. The Tribunal noted that the letter appointing the complainant formally established that the salary stated in the contract was exclusive of any allowance, indemnity or additional sum of any kind. It concluded that the complainant could not claim a "separation allowance" since none was provided for in his contract and no such allowance had existed at the time of the conclusion of the contract.

31. JUDGEMENT NO. 316 (21 NOVEMBER 1977): REITAN *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 complaint impugned a decision not to renew a fixed-term contract. The Tribunal recalled that such a decision fell within the discretion of the Director-General and that the Tribunal could not interfere with it unless it was tainted by very specific flaws. The dossier failed to show that any of those flaws existed in this case and the Tribunal therefore dismissed the complaint.

32. JUDGEMENT NO. 317 (21 NOVEMBER 1977): RHYNER-CUEREL *v.* UNIVERSAL POSTAL UNION

Dispute concerning a "contract for the settlement of termination entitlements" concluded between the complainant, the defendant Organization and its Provident Scheme — Lack of competence of the Tribunal with regard to such a contract — A complaint contesting a decision of the Scheme defining the scope of the contract on important points would be receivable if directed against the Scheme, an independent legal entity, and if the rule of the exhaustion of internal means of redress were observed

The complainant, who wished to take early retirement, had concluded on 23 January 1976 a "contract for the settlement of termination entitlements" with the UPU Provident Scheme and UPU itself. In performance of the contract, and as she had been informed by a letter of 28 January 1976, the complainant's appointment had been terminated for

reasons of health on 30 April 1976. Moreover, by a letter of 25 March 1976 the Provident Scheme had explained to her in detail how her entitlements would be paid and had also asked her in a letter of 29 April 1976 to sign a statement of release, which she had done, thus forgoing, in the terms of that statement, "any claim in this regard on the International Bureau".

On 29 April 1976 the complainant filed with the Tribunal a complaint relating among other things to the number of years of service to be taken into account in calculating her deferred benefits.

The Tribunal first noted that the complaint impugned a decision taken "end of January 1976, taking effect on 1 May 1976". It observed that there had been only one act in which the Union had taken part at that time and which concerned the complainant, namely the conclusion of the contract for the settlement of termination entitlements. According to its Statute, however, the Tribunal was competent to hear complaints which challenged decisions and decisions alone, and that excluded contracts, for example. Unless the complainant was impugning a decision, her complaint was irreceivable. If she wished to avoid or vary the contract of 28 January 1976, she ought first to have asked the other parties and called for decisions from them on the matter, which were the only kind of decisions she might have impugned before the Tribunal.

The Tribunal acknowledged that it was true that the letter of 25 March 1976, which interpreted the rules and gave figures which were open to discussion, could not be considered as a normal consequence of performance of the contract of 23 January 1976. It furthered the performance of that contract, was a fairly important supplement thereto and constituted a true decision. But even if the complaint had impugned that decision it would nevertheless have been irreceivable for two reasons. First, the decision in question had been taken by the Secretary of the Provident Scheme and related to the obligations of that body, which was a fund within the meaning of the Swiss Civil Code and therefore an independent legal entity distinct from the Organization itself. Since the complaint had been brought against the Organization and not the Scheme it would have been irreceivable on the first ground. It would also have been irreceivable because the complainant had not exhausted the internal means of redress provided by the Regulations of the Provident Scheme.

33. JUDGEMENT NO. 318 (21 NOVEMBER 1977): JOYET *v.* WORLD HEALTH ORGANIZATION

Dismissal of the holder of a probationary contract at the end of the probationary period — Special nature of the situation of a probationer compared with that of an established official or the holder of a fixed-term appointment or of one without limit of time — Discretionary authority of the Director-General regarding a probationer and limits of the Tribunal's power of review in that regard

The complainant, who had been dismissed at the end of a one-year probationary period, asked for the quashing of the decision to dismiss him.

The Tribunal observed that according to staff rule 960 and the general principles of international public service, the provisional nature of his position denied a probationer the safeguards enjoyed by an established official or by the holder of a fixed-term appointment or one without limit of time; since the purpose of probation was to find out whether the probationer was suited for service and should have his appointment confirmed, the Director-General could dismiss him if satisfied that he did not have the right qualifications.

The Tribunal was competent to review the lawfulness of any decision by the Director-

General to terminate a staff member's probation but could not replace with its own the executive head's opinion of a staff member's performance, conduct or fitness for international service.

Noting that in the case in question the impugned decision was not tainted with any of the flaws which would entitle it to interfere, the Tribunal dismissed the complaint.

34. JUDGEMENT NO. 319 (21 NOVEMBER 1977): SMARGIASSI-STEINMAN *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint by a staff member given local status at the time of her recruitment as a citizen of the country of the duty station relying on a subsequent change of nationality to obtain non-local status

At the time of her recruitment at the Headquarters of the Organization, in Rome, the complainant had been an Italian citizen and had been given the status of a "local" staff member. Some 12 years later she had become a United States citizen by naturalization, and having thereby lost her Italian nationality she had applied unsuccessfully for a change in her status from "local" to "non-local".

The Tribunal, when the case came before it, observed that at the time of her recruitment the complainant had been classed as a "local staff member" under staff rule 302.40611, being "on the effective day of appointment a national of the country of the duty station".

The complainant relied in the first place on the rule which said that the Organization should not recognize more than one nationality for each staff member. The Tribunal considered that that rule meant that a staff member should be treated as having one nationality only at any given time. The fact that the complainant had to be recognized as a United States citizen in 1974 did not mean that she must be deemed to have been one in 1962.

The complainant cited in the second place Manual Section 311.112, which said that a staff member's status, as established at the time of appointment, could be subsequently changed. The Tribunal considered, however, that the paragraph formed part of an "introduction" and was informative and not normative. It neither itself required anything to be done nor conferred a power of command on any person: it merely pointed out by way of introduction to the subject that a change of status might be caused by a number of factors which it specified and of which a change of nationality was one.

The complainant cited lastly a staff rule which provided that the status of a staff member in the General Service category would not be changed from non-local to local "except if he voluntarily acquires the nationality of the duty station". According to the complainant, it would be inconsistent if change of nationality were made effective to bring a staff member into the local status but was ineffective to take a staff member out of it. The Tribunal observed, however, that non-local status carried with it certain benefits appropriate to the fact that the staff member had left his own country to live, presumably temporarily, in another. The two rules which the complainant deemed inconsistent had the same object: to exclude from the benefits in question two separate categories of staff members, namely: (1) non-local staff members who adopted the nationality of the duty station, the exclusion in that case being based on the fact that the staff members concerned, having broken their links with their country of former nationality and changed their way of living, could be regarded as being no longer in need of the special benefits, and (2) local staff members who gave up the nationality of the country of the duty station, the exclusion being justified in their case by the fact that they did not thereby change their way of living and so were not thought to qualify for benefits framed to offset the consequences of expatriation.

35. JUDGEMENT NO. 320 (21 NOVEMBER 1977): GHAFFAR *v.* WORLD HEALTH ORGANIZATION

Complaint impugning a decision terminating the appointment of a probationer — Judgement of the Tribunal quashing the decision because false conclusions had been drawn from the dossier and essential facts had not been taken into consideration and ordering the reinstatement of the complainant

The complainant impugned a decision terminating his employment at the end of his probationary period.

The Tribunal first noted that prior to his appointment for a probationary period, the complainant had served under five WHO representatives for nine years, at the end of which he had received a testimonial describing him as "conscientious, hard-working and devoted". The Tribunal then recalled that the decision not to confirm a probationary appointment fell within the discretionary authority of the Director-General, and that the Tribunal could interfere with it only on strictly limited grounds.

It observed in that connexion that in reaching the decision that the complainant's performance was unsatisfactory, the Director-General and/or the officials whose conclusions he had accepted had relied exclusively on the opinion of the complainant's immediate superior, disregarding the factors that made that opinion unreliable. Moreover, they had drawn erroneous conclusions from the appraisal report prepared by that superior and had disregarded the conditions under which the complainant had worked, which had not been in accordance with his post description.

The Tribunal therefore quashed the impugned decision. It recalled in that connexion that when quashing a decision of that character, it did not invariably order the reinstatement of the officer concerned, since that might present practical difficulties. In the case in question, however, it considered that the complainant's long and excellent record of service to WHO, enhanced by his conduct in the trying circumstances of his probationary period, and by the clarity and moderation of his complaint, showed him to be an officer whom the Organization should be sorry to lose. It therefore ordered the reinstatement of the complainant and in addition awarded him one thousand dollars as costs.

36. JUDGEMENT NO. 321 (21 NOVEMBER 1977): RAJAN *v.* UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Complaint impugning the non-renewal of a fixed-term contract — Decision of the Tribunal concluding that the impugned decision was lawful and that there was no fault incurring the liability of the Organization

The complainant had held a series of fixed-term contracts during the period June 1963–April 1972. By a letter of 22 September 1971, he had received explicit and formal confirmation of the expiry of his appointment on 30 April 1972. However, his appointment was subsequently extended on numerous occasions for short periods until 15 April 1972.

Before the Tribunal, the complainant impugned the decision by which the Director-General had refused, notwithstanding a contrary recommendation by the UNESCO Appeals Board, to renew his appointment.

The Tribunal observed that although the Director-General had stated in his letter that he was trying and would continue to try to find the complainant another suitable post, he had made no firm promise which might be deemed to carry legal force by, for example, amounting to a promise of an appointment.

The very fact that the Director-General had given the complainant several short extensions of appointment showed that the Organization had indeed tried to keep him on the staff. Considering, moreover, that it did not appear from the dossier that in rejecting the complainant's candidature for the many vacancies for which he had applied the

Director-General had been prompted by motives extraneous to the Organization's interest, the Tribunal found the impugned decision lawful and stated that in taking it, the Director-General had not committed any fault which incurred the Organization's liability.

37. JUDGEMENT NO. 322 (21 NOVEMBER 1977): BREUCKMANN *v.* EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)

Complaint concerning a request for a dependent child allowance submitted six years after the birth of the child — Refusal of the Organization to pay the allowance for the period prior to the application — Competence of the Tribunal to consider the complaint despite a provision of the basic treaty of Eurocontrol affirming the jurisdiction of national courts in respect of disputes between the Organization and its personnel — The Tribunal takes no account of municipal law unless it embodies general principles of law — Entitlement to family allowances, although not subject to a time-limit, must be exercised within a reasonable period in view of the purpose of that allowance and administrative requirements

On 26 September 1975 the complainant had told the Organization that by an act registered on 13 October 1969 he had recognized paternity of a daughter born out of wedlock on 1 August 1969 and asked that he be paid the dependent child allowance from the date of the child's birth and the educational allowance from 1 August 1975. However, the Director-General had decided that he should receive the two allowances only from 1 September 1975.

The Tribunal, when the case came before it, first noted that the complainant had challenged its competence by reference to the provisions of the Protocol of Signature of the "Eurocontrol" International Convention relating to Co-operation for the Safety of Air Navigation stating that "Nothing in the Convention or Statute annexed thereto shall be deemed to restrict the jurisdiction of national courts in respect of disputes between the Organisation and the personnel of the Agency". The Tribunal noted, however, that after the signature of the Protocol the Agency had, with approval of all the representatives of Member States, conferred on the ILO Administrative Tribunal competence to hear disputes relating to non-observance of the Staff Regulations and that that competence had been duly accepted by the Tribunal. Hence the Tribunal's competence derived from an international agreement which took precedence over rules unilaterally adopted by one of the parties.

The Tribunal recalled that it took no account of municipal law except in so far as it embodied general principles of law. As to the matters in dispute, the provisions of municipal laws differed and the municipal laws cited by the parties were therefore immaterial.

The Tribunal then observed that since the Agency could not itself keep track of the private lives of its staff members, an official could not claim the family allowances provided for unless he reported the birth of any child or children for whom he was entitled. No time-limit was set for such notification and entitlement was not subject to a rule of limitation. But according to a service ruling, the Organisation reserved the right to take any suitable action where staff members failed to supply information on changes in their family situation or were late in doing so.

The Tribunal considered that that ruling was not at odds with the Staff Regulations but set a useful limit on their scope since it enabled the Organisation to refuse to pay family allowances to a staff member who failed to act within a reasonable period. The Tribunal considered that that interpretation of the rules was warranted on grounds of principle — since family allowances would meet their purpose only if paid regularly — and on practical grounds, relating to (1) the checking of the validity of applications for family allowances; (2) the requirements of sound budget management and (3) the difficulties involved, in the case of retroactive payments, in determining the exact amount of the

financial entitlement of the staff members concerned during the period prior to the submission of the application.

The Tribunal considered that in the case in question the complainant had provided no valid justification for the six years' delay in revealing the existence of his child born out of wedlock and had therefore failed to act within a reasonable period.

The Tribunal therefore dismissed the complaint.

38. JUDGEMENT NO. 323 (21 NOVEMBER 1977): CONNOLLY-BATTISTI *v.* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint contesting the method of calculating a salary adjustment rate — Question of the receivability of the complaint — Contention of the defendant Organization denying the existence of non-observance of the terms of appointment — Opinion of the Tribunal that a decision which, as a result of the application of an incorrect method of calculation, deprived a staff member of part of the adjustment to which he was entitled constitutes non-observance of the provisions of the terms of appointment — The freedom of choice which the regulations often leave the Organization regarding the methods of discharging its obligations undoubtedly allow the Administration to change its methods but until the change is made, an official is entitled to have the obligations in question discharged in the manner selected by the Administration itself — Argument of the defendant Organization contending the complaint is time-barred — Rejection of the theory that a decision of a governing body having an effect on the rights of staff members ipso facto *alters those rights from the moment it is made — A complaint may be made at any time if the Organization is in continuing breach of one of its obligations — Argument of the Organization contesting the competence of the Tribunal to consider a decision taken by a governing body in the exercise of its constitutional powers — Rejection by the Tribunal of a theory which would lead to the conclusion that a staff member's contract gives him no rights that a governing body cannot nullify — Quashing of the impugned decision in so far as it was based on an arbitrary method of calculation*

In order to take a decision on this case, concerning a question of salary adjustment rate, the Tribunal first took into consideration the following facts.

The salary scale for FAO General Service staff is fixed by the Director-General in accordance with staff regulation 301.134, which states:

> "The Director-General shall fix the salary scale for staff members in the General Service Category, normally on the basis of the best prevailing conditions of employment in the locality of the FAO Office concerned."

It is thus the duty of the Director-General to keep in touch with wage rates in different localities and to make such revisions as are necessary to keep pace with them. In fixing or revising the scale, the Director-General applies the Guiding Principles contained in annex F to the Staff Regulations. All revisions of the scale are preceded by a survey of the conditions of service in comparable jobs outside the Organization. Since surveys are made only once in every four years, interim adjustments should be made on the basis of the local wage index. The following paragraphs in the aforementioned Guiding Principles are pertinent:

> "49. In any event, whether adjustments are made on the basis of new surveys or of movement of indices, they should normally be made only when there is a case for a significant increase, normally 5 per cent or more . . .
>
> "50. In making interim adjustments, as distinct from changes based on new full-scale comprehensive surveys of outside conditions, it should not be necessary to re-examine fringe benefits."

Although the regulations place upon the Director-General the duty of fixing salary scales, it has been the practice in FAO for the appropriate decisions to be taken by the Council on the basis of recommendations by the Finance Committee, themselves based on proposals by the Director-General. The question therefore arises whether, in discharging his duty of fixing salary scales under staff regulation 301.134, the Director-General is required to act independently as he thinks right or is acting as Executive Officer and carrying out the decisions of the Council.

The Tribunal considered that the latter was the correct view, but added that that did not mean that the Council was substituted for the Director-General: staff regulation 301.134 required a decision by the Director-General but was as satisfied with a decision which he took on the instructions of the Council as with one which he took on his own responsibility.

In studying the factual background, the Tribunal found that a scheme of the sort envisaged by the Guiding Principles had been adopted by FAO in 1964 and that in relation to the interim adjustment the Council had approved a report of the Finance Committee specifying the wage index that was to be used. The base figure had been taken as the index figure on 1 January 1964 and it had been provided that salaries should be increased by 5 per cent at the beginning of the month following the month in which the index showed an increase of 5 per cent.

In October 1973, the FAO Council, having decided that the time had come for a new survey into Rome salary conditions, had appointed a panel of three persons to conduct a survey "within the framework of the Guiding Principles". In March 1974 the Panel had reported with their proposal for a revised salary schedule and with regard to the interim adjustment had recommended that in determining its amount account should be taken of certain factors, including the savings resulting to staff from the use of the FAO commissary, and that consequently the adjustment rate of 5 per cent which had been applied to General Service staff since 1964 should be reduced to 3 per cent for the next three increases.

The recommendation of the Panel had been adopted and implemented. The General Service staff went on strike and obtained certain concessions from the Director-General. The question subsequently came before the FAO Council once again and was referred to the Finance Committee. The Director-General informed that Committee that he had changed his opinion and would henceforth consider that commissary savings should be treated as a fringe benefit and left out of the interim adjustments. The Finance Committee did not agree with the Director-General's position and recommended that commissary savings should be reintroduced through adjustment to the salary index. That recommendation was accepted by the Council and the Director-General announced to the staff on 11 December 1974 that the rates of adjustment would be 3 per cent for grades G-1 to G-4 and 1 per cent for grades G-5 to G-7. An administrative circular applying those rates was issued on 27 May 1975. On 10 June 1975 the complainant appealed to the Director-General against the decision mentioned in the circular. In his reply, the Director-General noted that while the decision appealed against had been formally announced to the staff on 27 May 1975, it had been previously conveyed to the complainant in November 1974 and that the internal appeal, having been submitted after the expiry of the statutory two-week time-limit, was barred.

Before the Tribunal, the Organization contended that the complaint was irreceivable, arguing (1) that it was time-barred; (2) that the impugned decision, having been taken by one of the governing bodies of FAO in the exercise of its constitutional powers, represented a legislative enactment and was outside the jurisdiction of the Tribunal; and (3) that the decision was not a non-observance of the complainant's terms of appointment.

I. Considering the last argument first, the Tribunal noted that the complainant complained that the sum paid in accordance with the circular of 27 May 1975 was in-

sufficient. Either the sum payable was a portion of the salary to which the complainant was entitled or else it was an *ex gratia* payment. If the first of those alternatives was the correct one (as will be seen below, the Tribunal considered the second alternative in connexion with the second argument of the Organization set forth in the previous paragraph), the third argument failed, for a complaint that an installment of salary was less than it should be because incorrectly calculated was of the same nature as a complaint that salary had not been paid when due and hence that there had been a breach of the terms of appointment. The Tribunal noted that, in the case of incorrect calculation of the amount, it would be staff regulation 301.134 which was breached: the obligation incumbent on the Director-General under that article to fix salary scales on the basis of the best prevailing rates was of a very general character. The Director-General therefore had very wide discretion as to how he would carry it out, but he must have regard to the Guiding Principles. With regard to the principle that interim adjustments must be ascertained by reference to a wage index, it might be argued that that was not a command and that provided that the Organization acted in accordance with the principle it was not bound to adopt the exact method specified. The Organization contended that the wage index system had been introduced by the Council in 1964 and that the Council "by the same authority may vary, modify, substitute or extend the system at any time".

The Tribunal observed that that statement raised a large question which it did not intend to decide completely. However, even assuming that the argument that the Organization was not bound to adopt the method prescribed by the Guiding Principles was correct, it did not follow that it might thereafter vary the system at any time. The regulations often left the Organization free to choose its own method of discharging its obligations, but once settled, the method chosen became, until it was altered, part of the obligations of the Organization. By giving reasonable notice, the Organization could change the method, provided of course that the new method complied with the general terms of the obligation. But until the change was made, an official was entitled to have the obligation discharged in the manner selected by the Organization itself, and to complain if it was not. However, the method proposed in the Guiding Principles and adopted by the Organization had never been changed. On the contrary, it had been followed for a decade and the terms of reference of the Panel had been to keep within that framework.

II. The Tribunal next considered the Organization's argument that the appeal had been time-barred: according to the Tribunal, that argument was based on two misconceptions. The first was that a decision of the Council which would inevitably have an effect upon an official's rights *ipso facto* altered those rights from the moment it was made and before it was executed. The Tribunal set against that argument the specific provisions of staff regulation 301.134 mentioned above. It also observed that the Council in general, in its dealings with the staff, acted through the Director-General to whom, under the Constitution, the staff was responsible, and who, under the General Rules, carried out the Council's decisions. Council decisions on staff members were to be read as an instruction to the Director-General, whose duty it was to put them into a form intelligible to the official. It was the Director-General's decision which the official was entitled to have and which constituted the decision for the purposes of the time-bar imposed by staff rule 303.131.

The Organization's contention that the complaint was time-barred was based on a second misconception: first, an Organization which repeatedly breached one of its obligations took a new decision to that effect on each occasion and each breach, whatever its nature, was cause for complaint. And when an Organization was in continuing breach of one of its obligations, a complaint based on that breach could be made at any time, it being understood that relief would not be given against any past consequences of the breach. Of course, a decision that was no more than a reiteration of a previous decision did not give rise to a new cause for complaint, but a decision which added a new breach to a series of breaches could not be considered a mere reiteration. Still less could it be considered — as argued by the Organization in this case — that if a breach was com-

mitted in pursuance of a policy previously announced, however long the period between the date of the announcement and the decision giving cause for complaint, any official who had not complained within two weeks of the announcement had lost his or her right forever. In the opinion of the Tribunal, the complainant had complied with staff rule 303.131 by dispatching her internal appeal within two weeks of the decision impugned.

III. With regard to the second argument, alleging that the impugned decision was outside the jurisdiction of the Tribunal because it had been taken by one of the governing bodies of FAO in the exercise of its constitutional powers, the Tribunal observed (1) that there was no definition of what was meant by the term "governing body"; (2) that article V.3 of the Constitution gave the FAO Council such powers as the Conference, the supreme body of FAO, might delegate to it, and (3) that there was no assertion in the Organization's reply of the delegation of any power that would justify the Council in depriving any official of any part of the salary to which he or she was entitled under the regulations. The Tribunal also observed:

> ". . . . the relations between the Organization and an official are governed by a contract made by the Director-General under the authority conferred upon him by General Rule XXXIX.1 and in which there are incorporated the Staff Regulations. The conception of a legislative enactment, in so far as it applies to matters within the jurisdiction of the Tribunal, means the power to alter unilaterally by a general enactment the relationship created by the contract. The Tribunal has recognised this power to the extent that it may affect those terms of the contract which appertain to the structure and functioning of the international civil service and to benefits of an impersonal nature and subject to variation, but not to the extent to which it purports to affect the individual terms and conditions of an official in consideration of which he accepted appointment. For reasons which appear below it is unnecessary to apply this distinction to the facts of this case."

Thirdly, the Tribunal observed that in the case in question there was no evidence that the Council had been prepared to use a legislative power to override the Guiding Principles. In fact, there was every reason to believe that the Council's concern and that of the Finance Committee had been that their decisions should be in accordance with the Guiding Principles. If one argued — as did the Organization, in a bald statement undeveloped by any argument — that the decision was outside the jurisdiction of the Tribunal because it was a legislative act, that meant that there was no control whatsoever over the dealings of an executive body such as the Council with the staff of the Organization and there was no point in inquiring whether they were in accordance with the regulations, which the Council had no need to observe. Since the Director-General, in his dealings with the staff, was subject to the control of the Council, the logical conclusion was that an official's contract gave him no rights which the Council could not nullify and in particular that he was paid his salary *ex gratia* and not as a matter of contract. In the opinion of the Tribunal that was not the law.

As to the merits, the Tribunal considered that the only conclusion it could draw from the dossier was that the calculation upon which the decision impugned had been founded had been made arbitrarily and in disregard of the Guiding Principles and of the system which the Council had itself laid down.

It therefore quashed the decision in question.

39. JUDGEMENT NO. 324 (21 NOVEMBER 1977): MAGASSOUBA *v.* INTERNATIONAL COMPUTING CENTRE (WORLD HEALTH 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 — Failure of the complainant in his basic duties which alone warranted the refusal to renew his contract

The complainant impugned a decision of the Director-General refusing to renew his fixed-term contract. The Organization accused him of having carried out a programming exercise and thus putting at risk the accuracy of data stored by the computer of the International Computing Centre.

The Tribunal noted that the impugned decision was of a discretionary nature and could be quashed only if it was tainted by very specific flaws.

The complainant first argued that the Organization had committed errors of fact. The Tribunal noted, however, that the complainant himself had admitted that in presuming to put through a test run he had not followed the instructions of his supervisors, who had expressly refused him permission to do so. Since the use of a computer by an unqualified or unscrupulous person might lead to errors or breaches of confidence, it was important to require every single employee of a body such as the Centre to show strict respect for the limits of his duties; the complainant had been employed as an operator and in exceeding his functions as such had failed in a basic duty and whatever the actual consequences of his conduct might have been, it warranted the decision not to renew his appointment.

The complainant contended that the limited scope of the transfer to which he had been subjected following the misconduct with which he had been charged showed that he had not committed misconduct serious enough to warrant not renewing his appointment. The Tribunal observed, however, that the Organization, having transferred the complainant to a post in which he was closely watched, had had no reason to impose on him a more severe penalty such as dismissal, and that it shown consideration rather than inconsistency. The Tribunal also found groundless the charges of discrimination, disregard of essential facts and abuse of authority made by the complainant and therefore dismissed the complaint.

40. Judgement No. 325 (21 November 1977): Verdrager *v.* World Health Organization

Complaint by a staff member dismissed for having successively refused two transfers — Review of the applicable texts and the general principles of international public service affirming the priority of the general interest over individual interests — Right of the Director-General to terminate the appointment of a staff member having committed a grave breach of duty

The complainant impugned a decision by the Organization terminating his appointment in accordance with staff rule 970 for having successively refused two transfers.

The Tribunal recalled that under staff regulation 1.2 "All staff members are subject to the authority of the Director-General and to assignment by him to any of the activities or offices" of WHO. It also referred to staff rule 410.1, according to which "All staff members are subject to assignment by the Director-General to any activity or office of the Organization" and to staff rule 465.2, which states that "A staff member may be reassigned whenever it is in the interest of the Organization to do so". The Tribunal stressed that those texts were in keeping with the general principles of international public service, which affirmed the priority of the general interest, represented in each organization by the Director-General, over individual interests.

If the posts refused by the complainant had had to be filled urgently — and it did not appear from the dossier that such had not been the case — the complainant had been bound to take up the new assignment, save in exceptional circumstances such as had not existed in this case. The Director-General had therefore been entitled, by virtue of the text quoted above, to terminate the appointment of the complainant, whose refusal on strictly personal grounds to take up posts to which he had been assigned constituted a grave breach of duty.

Lastly, noting that the Organization had duly completed the essential adequate formality of prior consultation, and that the abuse of authority alleged by the complainant had not been established, the Tribunal dismissed the complaint.

41. JUDGEMENT NO. 326 (21 NOVEMBER 1977): PRICE *v.* PAN AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

Complaint impugning a decision rejecting the application of a staff member for a post with the Organization — Charges based on the composition of the selection committee and the alleged failure of the committee to have regard to a provision concerning the appointment to vacancies of persons already in the service of the Organization

The complainant, who held a career service appointment, impugned a decision rejecting his application for a post with the Organization which had become vacant. He contended that the proceedings of the regional selection committee on whose recommendation his application had been rejected were defective in three respects.

He contended that the committee had not been properly constituted in accordance with the rules applicable to senior staff selection committees. The Tribunal considered, however, that the applicable texts left it to the Regional Director to decide whether in any particular case the selection should be made by a senior staff selection committee or by such other committee as might be deemed appropriate.

The complainant also cited a provision which stated "Vacancies shall be filled by promotion of persons already in the service of the Organization in preference to persons from outside". The Tribunal considered it impossible to give any precise meaning to that requirement. It was for the members of the selection committee to pay due regard to the various factors to be taken into consideration and only if it could be shown that a factor had been willfully disregarded — a condition which had not been met in the case in question — could the Tribunal begin to entertain any complaints.

Lastly, the complainant contended that since no appraisal reports relating to him had been filed between 1970 and 1975, the material before the selection committee had been incomplete. The Tribunal observed, however, that the members of the committee had all confirmed that the absence of the report had not entered into their deliberations.

Since the impugned decision was not tainted by any of the alleged flaws, the Tribunal dismissed the complaint.

42. JUDGEMENT NO. 327 (21 NOVEMBER 1977): ZIMMER v. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Complaint following an internal appeal considered by the defendant Organization to have been erroneously declared receivable by the internal appeals body — Decision of the Tribunal concluding that the internal appeal was proper — That decision does not settle the question of the receivability of the complaint itself but settles a preliminary point on which receivability of the complaint depends — Limits of the Tribunal's power of review with regard to a decision described by the complainant as a decision to dismiss her which was in fact a decision not to renew a fixed-term contract

The complainant impugned a decision by the Organization relating to her employment. She had previously submitted an appeal to the Appeals Board, which had declared the appeal receivable — contrary to the view of the Organization — but had nevertheless recommended that it be dismissed.

As to the question of receivability, the Tribunal recalled that under article VII, paragraph 1, of its Statute, a complaint was receivable only if the internal means of redress had been exhausted. The Tribunal accordingly had to consider whether the com-

plainant had correctly followed the internal procedure open to her. Thus the Tribunal stated:

> "A complainant may properly contend that the internal appeals bodies wrongly refused to hear an appeal submitted to them and that the complaint lodged with the Tribunal is therefore receivable; or an organization may correctly argue that those bodies acted improperly in ruling on the merits of an appeal and that the complaint is therefore irreceivable.
>
> "In ruling on such contentions the Tribunal does not, as the Organization appears to believe, admit the receivability of the complaint itself but merely settles a preliminary point on which the receivability of the complaint depends."

In the case in question, the Tribunal considered that the complainant had properly submitted her appeal to the Appeals Board and had therefore met the requirement that the internal means of redress should have been exhausted. Noting that the other conditions of receivability had been met, the Tribunal ruled on the merits.

It observed that the complainant had held a fixed-term contract and not, as she contended, a contract of indeterminate duration, so that the question at issue involved the renewal of her contract and not dismissal.

Being of a discretionary nature, the decision not to renew a fixed-term contract could be quashed only if tainted by specific flaws. Since the complainant had not alleged the existence of any flaw which entitled the Tribunal to interfere in exercise of its limited power of review, the complaint was dismissed.

43. Judgement No. 328 (21 November 1977): Conrad, Argote-Vizcarra, Ordoñez, Carrillo-Fuller, Rodriguez, Gandolfo, Alcade-Beckner and Blaise *v.* Pan-American Health Organization (PAHO) (World Health Organization)

Decision replacing the local status given the complainants at the time of their recruitment by international status — Date to be taken into consideration in calculating the sums due to the complainants in respect of benefits linked to international recruitment

By its Judgement No. 272[40], concerning staff members who, although recruited outside the United Nations, had been given local status by PAHO in Washington, the Tribunal had decided, in the case of the complainant herself, that, for the purpose of establishing entitlements under the Staff Regulations and Rules, the place of residence of the complainant should be determined as having been at Lima. In the case of the interveners, the Tribunal had decided to remit their cases to the Director-General so that he might amend the recruitment form so as to show in each case the correct and agreed residence immediately prior to appointment.

No agreement having been reached between the complainants and the Administration, in particular on the date from which their international recruitment should be deemed to have taken effect, the case was referred to the Tribunal.

The Organization pointed out that the complainants' first claim for entitlement and benefits linked to "international recruitment" had been made on 1 July 1974. Relying on staff rule 280.7, which bars any claim for payment of benefits alleged to be due over 12 months before the date on which payment ought originally to have been made, the Organization refused to take the measures it had taken in connexion with the recognition of the "international recruitment" of the complainants retroactive beyond 1 July 1973. The dispute thus concerned the benefits relating to the period prior to 1 July 1973.

The Tribunal considered that if it could be established that the Organization had acted in such a way as to mislead the complainants in bad faith concerning their rights, the aforementioned provision could not be applied. Thus the crucial question was whether

[40] See *Juridical Yearbook*, 1976, p. 148.

or not the complainants had been deceived. In that connexion, it was not impossible that they had known what they were doing and had accepted local status because they believed, probably correctly, that unless they did so they would not get the appointments they wanted. The dossier contained no allegation of concealment or bad faith and there was therefore nothing to prevent the application of staff rule 280.7.

The Tribunal therefore dismissed the complaints.

44. JUDGEMENT NO. 329 (21 NOVEMBER 1977): QUANSAH *v.* INTERNATIONAL LABOUR ORGANISATION

Complaint considered irreceivable because of expiry of the time-limit

On 20 October 1975 the complainant had been informed that his contract would not be extended beyond its expiry date, i.e. 31 December 1975. On 6 April 1976 he contested that decision, which according to him had been prompted by adverse reports on him by his supervisor. On 26 May 1976 the Deputy Director-General of ILO in charge of administration informed him that that had not been the case.

The Tribunal, to which the case was referred by a complaint of 5 October 1976, stated that even on the hypothesis that the decision of 26 May 1976 had not merely confirmed that of 29 October 1975 and could be regarded as a new decision dismissing an informal appeal of 6 April 1976, any appeal against it ought to have been lodged with the Tribunal within 90 days after the date of its notification, which could not be later than 17 June 1976, the date when the complainant had acknowledged receipt of it. Since the complaint had not been lodged until 26 September 1976 it had been submitted after the 90-day time-limit had lapsed and was thus irreceivable.

45. JUDGEMENT NO. 330 (21 NOVEMBER 1977): PELTRE *v.* INTERNATIONAL PATENT INSTITUTE

Complaint impugning a decision refusing promotion — Limits of the Tribunal's power of review with regard to such a decision

The complainant impugned a decision refusing him promotion. The Tribunal recalled that decisions on promotion were generally discretionary and could thus be quashed only if they were tainted by very specific flaws. Moreover, in the case in question the applicable texts showed an intention not to put any close restraint on the Director-General.

The Tribunal concluded from the dossier (1) that the complainant's case had been given careful consideration, (2) that his report showed him to be a staff member of somewhat average quality, and (3) that he had not suffered any unfair treatment. The Tribunal therefore dismissed the complaint.

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. Legal obstacles to the installation of a non-United Nations radio transceiver and antenna within United Nations premises

Memorandum to the Chief, Regional Commission Section
Department of Economic and Social Affairs

As I indicated to you in our conversation of yesterday, the installation and operation of a radio transceiver and antenna within United Nations premises by a non-United Nations entity for non-United Nations purposes is not permissible. I promised to convey this opinion to you in writing.

It is a principle of fundamental importance to United Nations premises that on such premises only United Nations and United Nations connected activities are allowable. It is on this principle that United Nations premises are accorded a special status by Member States under the Charter, the Convention on the Privileges and Immunities of the United Nations[1] and the agreements between the United Nations and States in which United Nations offices are located. A departure from this principle would not be supportable from a legal point of view nor from the point of view of general United Nations policy.

The installation, operation and maintenance of the radio transceiver and antenna within ESCAP premises would also, in our view, require that persons not on ESCAP business be permitted to enter the premises to a degree not anticipated in the very limited special entry provision contained in article III, section 4(*a*) of the Agreement between the United Nations and Thailand concerning the headquarters of ESCAP in Thailand[2].

The United Nations, given its special status and world-wide operations, is not in a position to permit installation and operation of Government radio transceivers and antennas on its buildings. The Organization would have no control over the use of such facilities, which could lead to confusion as to the source of the material transmitted which, in turn, could cause serious difficulties for the Organization...

16 June 1977

2. Question whether the use of pictures of United Nations buildings for commercial purposes is lawful under existing General Assembly resolutions concerning the protection of the United Nations emblem, name and flag, the law of the host State on copyright and the Agreement between the United Nations and the host State concerning the site where the buildings concerned are located

[1] United Nations, *Treaty Series*, vol. 33, p. 261.
[2] *Ibid.*, vol. 260, p. 35.

Letter to the Legal Liaison Officer, United Nations Office in Geneva

I refer to your letter concerning the question of postcards representing the Palais des Nations and/or monuments located on the grounds of the Palais, produced and distributed by a commercial firm for profit.

We agree with your second paragraph that the United Nations building as such is not directly covered under General Assembly resolutions 92(I) and 167(II) concerning the United Nations emblem and name, and flag, respectively; and hence photographs of the building are not *prima facie* subject to the same restrictions as are applicable to the use of the United Nations emblem, name or flag.

It should be mentioned, however, that we have had occasion to question and object to the use of pictures of the United Nations building in connexion with a commercial purpose, where such use involved directly or indirectly unauthorized use of the United Nation's name (i.e. when even where the building was not identified by name, the suggestion of United Nations endorsement of a commercial product was implied); and in our communications with the commercial firms concerned we have, generally speaking, applied the same reasoning and principles as underlie General Assembly resolutions 92(I) and 167(II).

Instances which we found objectionable also involved, for example, the use of the name "United Nations [Headquarters] [Building]", with or without a picture of the building, in advertisements claiming rightly or not that certain commercial products, particularly fixtures or construction materials, were being used at the United Nations Headquarters; or the use of a picture of the United Nations building, without any claim of being a supplier of United Nations Headquarters, but simply to draw attention to a commercial product being offered for sale, e.g. stamps, coins, commemorative medals (such picture appearing in an advertisement for the product or on the product itself — or on its wrappings, with the implied suggestion that the United Nations endorsed the product or other commercial activity).

It may also be noted, in this connexion, that one of the conditions printed on the order form used by the company which manages the Souvenir Shop at Headquarters under a contract with the United Nations in placing orders for the manufacture of articles for sale in the United Nations Souvenir Shop reads as follows:

> "(*a*) Except for the articles to be manufactured with United Nations authorization for [name of the company concerned], the manufacturer expressly undertakes not to manufacture or sell, or assist any other person in the manufacture or sale of, any article bearing representations of the United Nations emblem, or the United Nations flag, *or the United Nations Headquarters Building,* or the words "United Nations" or any abbreviation thereof.
>
> "(*b*) The manufacturer expressly undertakes that, if it becomes aware of the manufacture or sale of any such article by any other person, it shall immediately bring the matter to the attention of the United Nations." (emphasis added).

Thus, a manufacturer accepting an order from the company concerned is under a contractual obligation not to manufacture any articles bearing, *inter alia,* a representation of the United Nations Headquarters Building, except for sale at the Souvenir Shop, and to bring any instances of unauthorized manufacture or sale of such articles of which he may be aware immediately to the attention of the United Nations.

To sum up, it may be said that while there is nothing in the text of the relevant General Assembly resolutions giving us the right to refuse permission to photograph the United Nations building, on the other hand, the use of a picture of the United Nations building for commercial purposes would be in violation of the provisions of those resolutions if the name or emblem of the Organization were used without authorization to

identify the building, or — even if this were not the case — if such use in any other manner deceptively suggested United Nations endorsement of a commercial product.

It would therefore be of interest (1) to see an actual specimen of the postcards in question, to ascertain whether the United Nations name or emblem is being used to identify the building or grounds, and (2) to know whether the host State, being a non-member State, has adopted legislation pursuant to General Assembly resolution 92(I) (which is addressed to Member States), i.e. special legislation for the protection of the United Nations emblem and name; or, in the alternative, whether the existing domestic legislation on trademarks provides adequate protection of the United Nations emblem and name.

We have examined the [domestic] Law of 7 December 1922, with particular reference to article 30 thereof. While it is true that architectural works seem to be covered by this copyright law, the protection is extended for a limited period of time — for 50 years following the death of the "author" or, if the author's identity is unknown or in doubt, for 50 years following the year in which the work was made public. After that, the work enters the public domain. The Palais des Nations, being less than 50 years old, would still be protected by the Law in question and it would be of interest to know whether the other buildings or monuments in question are equally protected.

Assuming that they are, it also seems to us that the controlling issue is whether the "Parc de l'Ariana" can be considered a "voie ou place publique" within the meaning of article 30. The law contains no definition of this term.

In this connexion the following provisions of the Agreement between the United Nations and the host State on the Ariana Site[3] appear to be relevant:

Article 2(a) provides that the Palais des Nations and other buildings on that site shall be the property of the United Nations and that the land on which they are erected and the soil surrounding them over a width of 100 metres shall be subject to a transferable and *exclusive* real right of user of the surface by the United Nations. This right shall continue as long as the buildings themselves.

Article 3, concerning access roads, provides that the United Nations shall likewise have a transferable and *exclusive* real right of use over the parts of those roads lying within the limits of Plot 2070 (basically, the Parc de l'Ariana; see map attached to Agreement). Outside Plot 2070, these roads are part of the public domain.

Article 4(a) gives the United Nations a *servitude personnelle* of non-transferable and *exclusive* use of all the parts of Plot 2070 not covered by the real right conferred on the United Nations under article 2(*a*).

Article 5 provides for the public to be admitted to the grounds of Plot 2070 covered by the servitude referred to in article 4(*a*), unless it should be necessary to restrict or prohibit public access to these grounds in order to safeguard peaceful working conditions and security.

In summary, it would appear from article 2(*a*) that the Palais des Nations, other buildings on the site, and the land on which they are situated belong to the United Nations or are subject to its exclusive right of use and are, therefore, not public places. Their private nature is further indicated by article 3 which draws a distinction between those parts of the roads within the Parc de l'Ariana and those without. The fact that the latter are deemed to be part of the public domain implies that the former are not. Article 5 provides for public admittance to the grounds, but the fact that this may be restricted under certain circumstances when required by the United Nations indicates that the Organization is the dominant authority.

Thus, it might be argued that the Palais is excluded from the field of article 30 and that, therefore, the unauthorized taking of pictures by a commercial firm for profit is

[3] United Nations, *Treaty Series*, vol. 1, p. 153.

illegal under the domestic law. Even if the copyright law is not applicable, it might be assumed that because of the private character of the grounds in question, the United Nations are entitled under the domestic law to protection against unwanted intruders. If the sums involved would make it worth while and you believe that a sufficiently strong case can be made using the above arguments, consideration might be given to consulting a local lawyer to ascertain what, if any, steps could be taken to obtain discontinuance of the objectionable commercial practice involved.

6 January 1977

3. REPRESENTATION OF MEMBER STATES IN ORGANS OF THE UNITED NATIONS — REQUIREMENT OF FULL POWERS UNDER THE RULES OF PROCEDURE OF THE PRINCIPAL ORGANS OF THE UNITED NATIONS — DESIGNATION IN THE CREDENTIALS OF PERMANENT REPRESENTATIVES OF THE ORGANS BEFORE WHICH THEY ARE AUTHORIZED TO ACT

Internal note

1. Permanent missions of Member States are established to ensure the proper representation of States to the Organization with a view to keeping the necessary liaison with the Secretariat in periods between sessions of the different organs of the United Nations [General Assembly resolution 257 (III)].

2. Since the creation of the United Nations, a practice has developed that the head of a permanent mission, designated by his Government, present to the Secretary-General, who is the chief administrative officer of the Organization, his letter of accreditation or appointment — so-called credentials — issued either by the Head of State or Government or by the Minister for Foreign Affairs.

3. The practice in the United Nations has always been that, unless the credentials provide otherwise, the permanent representative is authorized to act before all organs of the Organization for which there are no special requirements as regards representation. Since, however, the rules of procedure of the principal organs of the United Nations (General Assembly, Security Council, Economic and Social Council, Trusteeship Council) require full powers to be communicated to the Secretary-General, the General Assembly in resolution 257 A (III) has recommended that Member States desiring their permanent representative to represent them on one or more of the organs of the United Nations should specify the organs in the credentials.

4. In the report "Permanent Missions to the United Nations" submitted by the Secretary-General at each regular session of the General Assembly, Member States which have authorized their permanent representative to represent them in all organs of the United Nations are marked with an asterisk and when the authorization relates to certain organs, with two asterisks.

Full powers before all organs sometimes use the phrase: *"any organs, commissions or other bodies of the United Nations other than specialized agencies"*, or *"all principal and subsidiary organs"*, or *"all matters brought before the United Nations"*.

As to full powers for certain organs, it will be noted that the organ generally specified in the credentials is the Security Council. However, States which are members of the Security Council generally submit full powers to this effect in a separate instrument. No mention to that effect appears in the report of the Secretary-General referred to above.

5. Finally it will be noted that a certain number of credentials (11 out of 147 as of 27 April 1977) contain full powers of signature for treaties concluded under the auspices of the United Nations.

29 April 1977

4. APPROPRIATE FORM FOR A NOTIFICATION TO THE SECRETARY-GENERAL OF THE APPOINTMENT OF A CHARGÉ D'AFFAIRES AD INTERIM

Memorandum to the Assistant Chief of Protocol

1. I refer to our conversations on the question of the appropriate form for a notification to the Secretary-General of the appointment of a *Chargé d'affaires a.i.* More particularly, the question has arisen whether a third person note from a Permanent Mission is sufficient for this purpose.

2. It is my understanding that, whatever the practice in the past may have been, all Permanent Missions have recently been informed by the Protocol and Liaison Section that the designation of a *Chargé d'affaires a.i.* by a Permanent Representative should be in the form of a letter to the Secretary-General, signed by the Permanent Representative and not in the form of a third person note from the Permanent Representative. In the light of this arrangement, a third person note from a Mission would clearly not be sufficient (except as advance notification of the decision to be conveyed in due course in proper form).

3. In our view, it is correct in principle that the Secretary-General should receive notification of the appointment of a *Chargé d'affaires a.i.* either directly from the sending State, or from a Permanent Representative in the form indicated at the outset of the previous paragraph. Where there is no Permanent Representative, it follows that the notification (in cabled form if necessary) must come directly from the sending State. As a *Chargé d'affaires a.i.* is a head of mission, even if for a limited time, it is only natural that his designation should be notified in a more formal manner than certain other changes in Mission staff. It is to be recalled, in this respect, that a Permanent Representative (to whom a *Chargé d'Affaires a.i.* is equated if for a limited period) requires credentials issued by the Head of State or Government, or Minister for Foreign Affairs.

4. The procedures just outlined accord with established diplomatic practice as reflected in the Vienna Convention on Diplomatic Relations,[4] article 19, paragraph 1, of the Convention providing that:

> "If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions a chargé d'affaires ad interim shall act provisionally as head of the mission. The name of the chargé d'affaires ad interim shall be notified, either by the head of the mission or in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed."

Essentially the same text appears in the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character,[5] article 16 thereof stating that:

> "If the post of head of mission is vacant, or if the head of mission is unable to perform his functions, the sending State may appoint an acting head of mission whose name shall be notified to the Organization and by it to the host State." [Underlining added.]

7 July 1977

5. QUESTION OF THE ADMISSION BY A NON-MEMBER STATE INTO ITS TERRITORY OF HOLDERS OF SOUTHERN RHODESIAN PASSPORTS IN THE LIGHT OF THE UNILATERAL DECLARATION, BY THE NON-MEMBER STATE CONCERNED, THAT IT WOULD TAKE CARE

[4] United Nations, *Treaty Series*, vol. 500, p. 95.

[5] *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, Documents of the Conference (A/CONF.67/18/Add.1 – Sales No. E.75.V.12), p. 207.

TO PREVENT ITS TERRITORY FROM BEING USED FOR THE PURPOSE OF CIRCUMVENTING THE SECURITY COUNCIL SANCTIONS — PARAGRAPH 5 OF SECURITY COUNCIL RESOLUTION 253 (1968)

Memorandum to the Director, Security and Political Committees Division, Department of Political and Security Council Affairs

1. I have received your memorandum of 7 July 1977, informing us that the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia decided at its 292nd meeting on 9 June 1977 to request an opinion of the Legal Counsel regarding the position taken by [a non-member State] in a note of 17 February 1977 with respect to the admission of holders of Southern Rhodesian passports into its territory and, in particular, the potential implications for Member States of the acceptance of that State's position that the practice of admitting holders of Southern Rhodesian passports "implies no recognition of nationality, since passports are considered simply as travel papers".

2. The statement in question was made in connexion with the Committee's examination of Case No. 227 dealing with the admission by certain States into their territories of persons holding Southern Rhodesian passports contrary to the mandatory sanctions imposed by the Security Council and, in particular, paragraph 5 of Security Council resolution 253 (1968).

3. As was pointed out in an earlier opinion dealing with the import of fertilizers into Southern Rhodesia through a company of the same non-member State known as Nitrex A.G., there is no need to discuss whether or to what extent the Security Council in resolution 253 (1968) intended to impose a legal obligation upon non-members of the United Nations, or the extent to which such an obligation would be binding upon non-members without their consent. The Government in question in a note of 4 September 1968 replied as follows to the Secretary-General (S/8786/Add.1):

> "In its statement of 10 February 1967 concerning the Security Council resolution of 17 December 1966, the Federal Council explained that, for reasons of principle [the State concerned], as a neutral State, cannot submit to the mandatory sanctions of the United Nations. However, independently and without recognizing any legal obligations to do so, it has taken steps to ensure that any possibility of increasing Rhodesian trade is excluded and that the United Nations sanctions policy cannot be contravened. The Federal Council will maintain this position. With reference to the latest [253] resolution of the Security Council, it will attempt independently and always in the context of the legal order [of the State concerned], to see that Rhodesian trade cannot avoid the Security Council sanctions through its territory."

This unilateral declaration by the Government concerned that it would ensure that United Nations sanctions policy cannot be contravened, albeit without recognizing any legal obligation to do so, has been reaffirmed and strengthened in the note of 17 February 1977:

> "The . . . Government, would however, independently and without recognizing any legal obligation in the matter, take care to prevent [its] territory from being used for the purpose of circumventing the Security Council sanctions".

4. It seems clear on the basis of the foregoing, that with respect to the denial of entry to Rhodesian passport holders the Government concerned has unilaterally and unreservedly accepted the obligation. To cite the note of 17 February 1977: "The . . . . Government would . . . . take care to prevent [its] territory from being used for the purpose of circumventing the Security Council sanctions." This statement would seem to be unequivocal and subject to no reservations unlike, for example, the earlier position with respect to trade sanctions where the Government had only undertaken to ensure that any possibility of *increasing* Rhodesian trade is excluded.

5. The State concerned having unilaterally undertaken to comply with paragraph 5 of Security Council resolution 253 (1968), it is necessary to examine the language of that paragraph in order to determine whether it is clear in intent. The paragraph in question provides as follows:

> "[The Security Council]
>
> "*Decides* that all States Members of the United Nations shall:
>
> "(*a*) Prevent the entry into their territories, save on exceptional humanitarian grounds, of any person travelling on a Southern Rhodesian passport, regardless of its date of issue, or on a purported passport issued by or on behalf of the illegal regime in Southern Rhodesia;
>
> ". . ."

The meaning and intent of this paragraph is clear, namely, that save on exceptional humanitarian grounds (which do not appear to be the case here) States should prevent all entry into their territories of holders of Southern Rhodesian passports. The fact that a passport may be considered by a particular Government merely as a "travel paper" and implying no recognition of the issuing authority or of nationality would appear to be irrelevant. The admission of persons holding Southern Rhodesian passports manifestly violates the spirit and the intent of the resolution, paragraph 5 in particular, and would seem to be contrary to the Government's own statement that it will prevent its territory from being used for the purpose of circumventing Security Council sanctions.

. . .

8 December 1977

6. Comments on some procedural questions in connexion with the proposal that the thirty-third session of the General Assembly be held away from United Nations Headquarters

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. This memorandum responds to several procedural questions that have been raised in connexion with the proposal that the thirty-third session of the General Assembly meet in [name of the capital of a Member State].

I. *Majority required for a decision by the General Assembly to meet away from Headquarters*

2. It has been suggested that a decision by the General Assembly to hold a session away from Headquarters requires an absolute majority, i.e. the affirmative vote of a majority (75)[6] of all the Members of the United Nations, as provided in the final clause of rule 3 and in rule 4 of the Assembly's rules of procedure. These rules state:

> "*Place of meeting*
>
> "RULE 3
>
> "The General Assembly shall meet at the Headquarters of the United Nations unless convened elsewhere in pursuance of a decision taken at a previous session or at the request of a majority of the Members of the United Nations.
>
> "RULE 4
>
> "Any Member of the United Nations may, at least one hundred and twenty days before the date fixed for the opening of a regular session, request that the session be held elsewhere than at the Headquarters of the United Nations. The Secretary-

[6] At the date of drafting of the above opinion, the membership of the United Nations stood at 150.

General shall immediately communicate the request, together with his recommendations, to the other Members of the United Nations. If within thirty days of the date of this communication a majority of the Members concur in the request, the session shall be held accordingly."

5. These rules clearly distinguish between a decision to hold a session away from Headquarters made by the Assembly during a session and a determination to hold a session away from Headquarters made outside the Assembly in accordance with the procedure specified in rule 4. The latter, for which an absolute majority is required, is not a decision of the General Assembly but a determination made by the membership of the United Nations.

4. The majority required for decisions of the General Assembly is specified in paragraphs 2 and 3 of Article 18 of the Charter (which are reflected in rules 83–86 of the rules of procedure): a two-thirds majority of the members present and voting for decisions on important questions and on those additional categories decided by the Assembly, and a simple majority of the members present and voting for other questions.[7] As these are Charter provisions, the Assembly itself cannot vary them, either by adopting particular rules of procedure or on an *ad hoc* basis, so as to provide that certain decisions be taken by majorities different from those specified in the Charter.

5. Under the Charter and the rules of procedure, absolute majorities of the membership are only required for decisions when these are not taken in and by the Assembly itself: the convening of special sessions pursuant to Article 20 of the Charter, in accordance with rules 8 and 9 of the rules of procedure, and the determination of the place of meeting in accordance with rules 3 and 4. Absolute majorities are required in those cases because, in the absence of a meeting at which a quorum can be determined, the only standard by which approval can be measured is that of the total membership of the Organization. On the other hand, when these same decisions are taken by the Assembly itself, as is possible under rule 7 for the convening of a special session or under the first part of rule 3 for establishing a different place of meeting, the majorities indicated in paragraph 4 above must be used.

6. Finally, it should be noted that a decision on the place of meeting does not appear to be an "important question" within the meaning of paragraph 2 of Article 18 of the Charter. This is so whether or not there are any financial implications to the proposed choice of the place of meeting, since it has been held several times that the mere existence of financial implications does not make a decision a "budgetary question" within the meaning of that paragraph. Consequently, the decision on the place of meeting can be taken by a simple majority under paragraph 3 of Article 18 of the Charter and rule 85 of the rules of procedure, unless the Assembly should decide, by a simple majority under the same provisions, that this question be decided by a two-thirds majority.

II. *May a secret ballot be taken in connexion with this question*

7. The question has been raised whether the General Assembly or its General Committee can take a decision by secret ballot with regard to issues relating to the holding of a regular Assembly session away from Headquarters. In the General Committee this would apply to the decision whether to recommend the inclusion of the additional item in the agenda of the Assembly. In the plenary of the Assembly the question could be raised with regard to the decision on the adoption of the recommendation of the General Committee (i.e. inclusion or not in the agenda) and/or eventually with regard to a vote on the actual proposal to hold a session of the Assembly away from Headquarters.

[7] The only case where an absolute majority of votes is required in the General Assembly is for elections of the members of the International Court of Justice. This majority is specified in Article 10 of the Statute of the Court, which is an integral part of the Charter, and is restated in rule 151 of the rules of procedure of the Assembly.

8. Rules 87 and 127 of the rules of procedure specify the methods of voting, respectively in the plenary and in committees; they have identical contents and provide that the Assembly or a committee shall normally vote by show of hands or by standing, but that any representative may request a roll-call. The only references to secret ballot are contained in rules 92 and 103, which govern elections. The rules of procedure of the Assembly thus do not provide for a secret ballot other than for elections.

9. The absence of a provision for secret ballots for other matters does not, however, absolutely prevent the General Assembly from resorting to such a procedure.[8] In fact, there are precedents for doing so, in the practice of the Assembly as well as of subsidiary organs and conferences with rules of procedure similar to those of the Assembly. For example, at the twenty-first session of the Assembly, the Second Committee decided without objection that the site of the future headquarters of UNIDO should be decided by secret ballot.[9] At its second session in October 1965, the Trade and Development Board voted by secret ballot on the location of the site for the Secretariat of UNCTAD.[10] During the sixth session of the Third United Nations Conference on the Law of the Sea in July 1977, the venue of the seventh session of the Conference was decided upon by secret ballot.[11] It may be relevant to note that in all these cases the choice of a site or venue was involved.

10. On all these occasions the secret ballot procedure was resorted to by general agreement of all members of the body concerned. This accords with the principle that the strict observance of rules of procedure can be avoided by virtue of a general agreement among the members of the body concerned, since the essential purposes of rules of procedure — orderly proceedings and protection of the interests of the minority — are thus not endangered. It is on the basis of the same principle that in the practice of the General Assembly the application of certain rules of procedure has frequently been suspended by common accord: for example, many elections have not taken place by secret ballot as provided in rule 92.

11. The question arises, however, whether in the absence of a common agreement among the membership, the General Assembly may decide by a majority vote to resort to a secret ballot. When this question was put to the Legal Counsel by the Second Committee during the debate on the choice of the UNIDO Headquarters site referred to above, he advised that the Committee could not decide, on the basis of a vote, to suspend the application of any rule of procedure, or to take a secret ballot.[12] While this opinion of the Legal Counsel applies to the proceedings of any sessional organ, including the General Committee, it does not exclude the authority of the General Assembly itself to decide by a majority vote to resort to secret ballot, since even if this is considered as amounting to a suspension or amendment of the rules of procedure, such power is vested in the Assembly by Article 21 of the Charter.

12. While it would therefore not be possible for the General Committee to decide, except in the absence of any objection, to resort to a secret ballot on its recommendation concerning the inclusion of an additional item in the agenda of the General Assembly, the latter could decide by a majority vote to take a secret ballot on deciding on the recommendation of the General Committee or on the substance of a proposal to hold a session away from Headquarters. If the question is referred to a committee (see Part IV below),

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[8] In this connexion, see the statement made by the Legal Counsel at the 103rd meeting of the thirty-second session of the General Assembly, on 15 December 1977 (A/PV.103, p. 17–20).

[9] *Official Records of the General Assembly, Twenty-first Session, Second Committee,* 1102nd to 1104th meetings.

[10] *Official Records of the Trade and Development Board, Second Session,* 56th meeting, para. 25.

[11] *Official Records of the Third United Nations Conference on the Law of the Sea,* Vol. VII (Sales No. E.78.V.2), summary record of the 81st plenary meeting, paras. 4 and 5.

[12] *Official Records of the General Assembly, Twenty-first Session, Second Committee,* 1102nd meeting, paras. 23–28.

then that body would be under the same constraints as the General Committee, unless the plenary decided, by a majority vote, to authorize the committee to decide on its substantive recommendation to the plenary by secret ballot.

III. *Procedure for placing an additional item on the agenda of the Assembly in spite of a negative recommendation of the General Committee*

13. The procedure for placing "additional items" on the agenda of a regular session of the Assembly is governed by rules 15 and 40 (second sentence) of the rules of procedure.

14. If the General Committee should decide to recommend against placing an additional item on the agenda, that recommendation would be communicated to the Assembly in the report of the Committee.

15. The normal course for the General Assembly would be to vote on the recommendation of the General Committee contained in its report. Several alternative procedural situations may be foreseen:

(a) *Rejection of the Committee's recommendation*

If the plenary should reject a negative recommendation of the Committee on the inclusion of the item on the agenda, this would not by itself result in that item being so included. This is so because the rejection of a proposal, which could occur by two successive tie votes under rule 95 or by the failure to obtain a two-thirds majority where that is required, can therefore not be interpreted as a positive decision in the opposite sense. However, it would then be in order to take action on and to adopt a separate proposal for the inclusion of the item on the agenda.

(b) *Proposed amendment of the Committee's recommendation*

A proposal to amend a negative recommendation of the Committee so as to reverse its sense, i.e., to include the agenda item in question, would be out of order since rule 90 provides that "A motion is considered an amendment if it *merely* adds to, deletes from or revises part of the proposal" (emphasis added). It has repeatedly been held that a motion that would completely change the sense of a previous proposal cannot be considered as an amendment to it, but has to be treated as a separate proposal.[13]

(c) *Submission of a separate proposal to include the item on the agenda*

A proposal to include an additional item on the agenda in spite of a negative recommendation of the General Committee would be in order, as there is no requirement that the Assembly act only on a favourable recommendation of the Committee. Such a proposal would, however, under rule 91, be voted on only after a decision is taken on the recommendation of the Committee — unless, under the same rule, the Assembly decides to vote first on the separate proposed to include.

(i) If the motion to vote first on the separate proposal prevails, then a vote would be taken on that proposal. If it is accepted, the item is thereby placed on the agenda, and no vote would be taken on the Committee's negative recommendation; if the separate proposal fails, then the item is not placed on the agenda and there would be no need to vote on the Committee's recommendation, though that could be done.

(ii) If the motion to vote first on the separate proposal fails, then a vote would first

[13] The Legal Counsel so advised the plenary at the twenty-seventh session of the General Assembly, when a proposal was made that a recommendation of the General Committee to include an item be "amended" so that the item would instead have been included in the provisional agenda of the next session (*Official Records of the General Assembly, Twenty-seventh Session, Plenary Meetings,* 2037th meeting, paras. 221–223).

be taken on the Committee's recommendation. If that recommendation is not adopted, then the situation is as described in subparagraph (*a*) above. If the recommendation of the Committee is approved, then a vote on a separate proposal to include the item on the agenda would constitute a reconsideration which, under rule 81, would require a prior decision taken by a two-thirds vote — which, if successful, would be followed by a vote on the proposal to include the item; however, more likely, after the Committee's negative recommendation has been approved, the separate proposal would be withdrawn by its sponsor(s) under rule 80, or a decision not to vote on it would be taken under the second sentence of rule 91.

IV. *Further proceedings if an additional item is placed on the agenda*

17. If it is decided to place on the agenda of the current session an additional item relating to the place of the thirty-third session, then the second sentence of rule 15 requires that:

(*a*) Consideration of the item in the plenary be postponed:

(i) for 7 days, *and*

(ii) until a committee has reported thereon; *unless*

(*b*) The plenary decides otherwise by a two-thirds majority.

18. The requirement of a committee report could be satisfied by submission of the item to and a report from a Main Committee (in particular the Fifth), the General Committee (though the latter probably has no substantive competence under rules 41-42), or an *ad hoc* body. In this connexion, the history of previous considerations of the question of relocating sessions of the General Assembly may be of interest:

(*a*) At the first session of the Assembly a proposal to relocate the second session was considered only in plenary, and defeated. (The requirement of consideration by a committee did not arise because the item was not an "additional" one.)[14]

(*b*) At the second session of the Assembly a proposal for relocating the third session was first considered in the plenary from the point of view of principle, and thereafter its administrative and budgetary implications were submitted to the Fifth Committee. After the plenary had thereupon decided on a session in Europe, the choice of site was left to an *ad hoc* committee of 9 members, designated by the President.[15]

(*c*) At the fifth session of the Assembly the proposed relocation of the sixth session was first considered by the Fifth Committee (though objection was raised against its competence to consider[16] the substance of the item), and then was adopted by the plenary.

19. These precedents indicate that submission of the question to the Fifth Committee would be the most normal course to follow, though the establishment of an *ad hoc* committee is not to be excluded. The report of the Committee could:

(*a*) restrict itself entirely to a discussion of financial, administrative and other implications;

(*b*) also include some procedural suggestions for the method whereby the plenary would conduct its own consideration (e.g., that a secret ballot be taken);

(*c*) include, as is customary, a substantive recommendation on the proposal.

2 December 1977

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[14] *Official Records of the Second Part of the First Session, Plenary Meetings,* 67th meeting, p. 1465.

[15] *Official Records of the Second Session of the General Assembly, Plenary Meetings,* 108th and 113th meetings.

[16] *Official Records of the General Assembly, Fifth Session, Plenary Meetings,* 316th meeting, paras. 181–182 and 324th meeting, paras. 101–140.

7. STATUTE OF THE JOINT INSPECTION UNIT APPROVED BY GENERAL ASSEMBLY RESOLUTION 31/192 — QUESTION WHETHER A SPECIALIZED AGENCY MAY RESERVE ITS POSITION WITH RESPECT TO ANY OF THE ARTICLES OF THE STATUTE — PROCEDURE WHICH MIGHT BE FOLLOWED IN THIS RESPECT

Memorandum to the Under-Secretary-General, Department of Administration and Management

1. I refer to your memorandum of 25 August 1977 seeking my advice on the question of whether or not any agency may reserve its position with respect to any of the articles of the new Statute of the Joint Inspection Unit. The question has arisen in connexion with the letter addressed to the Secretary-General of the United Nations dated 19 July 1977 by the Secretary-General of the International Telecommunications Union with respect to Article 1, paragraph 2 of the Statute.[17]

2. The Statute of the JIU was approved by the General Assembly in resolution 31/192 of 22 December 1976. Operative paragraph 2 of this resolution invites the organizations within the United Nations system to notify the Secretary-General of the acceptance of the Statute as soon as possible. The Statute itself specifies that the functioning of the JIU with respect to any particular agency is dependent upon an act of acceptance by that agency (article 1, paragraph 2) to be notified in writing by its executive head to the Secretary-General of the United Nations. The Statute provides for amendment (article 21) and withdrawal (article 22) but contains no express provision either permitting or barring reservations.

3. It is a generally accepted rule of international law, now embodied in the Vienna Convention on the Law of Treaties of 1969 (article 19),[18] that in the absence of an express provision regarding reservations, a party to an agreement may formulate a reservation provided that the reservation is not incompatible with the object and purpose of the agreement. The question therefore arises as to the procedure to be followed in formulating reservations and in determining whether a particular reservation is or is not incompatible with the object and purpose of the Statute.

4. The Statute provides that the Secretary-General of the United Nations shall exercise the depositary function, a function which the Secretary-General also fulfils with respect to a large number of multilateral agreements under Article 102 of the Charter. A depositary practice of the Secretary-General in relation to these agreements has developed which may be applied *mutatis mutandis* to the Statute of the JIU. Particularly apposite in this connexion would be the practice with respect to the Convention on the Privileges and Immunities of the Specialized Agencies since under its final articles the specialized agencies are called upon to take various actions.

5. Under this practice, the Secretary-General notifies the executive heads of the specialized agencies of the terms of any reservation and simultaneously places the question of any such reservation on the agenda of the Administrative Committee on Coordination (ACC). In practice, however, there has always been a specific request from one or more agencies to discuss any proposed reservation in the Preparatory Committee of the ACC. In every instance of a reservation to the Convention, the ACC has requested the Secretary-General to communicate with the reserving party indicating the extent to which the

[17] Reading *in toto* as follows:

"2. The Unit shall perform its functions in respect of and shall be responsible to the General Assembly and similarly to the competent legislative organs of those specialized agencies and other international organizations within the United Nations system which accept the present statute (all of which shall hereinafter be referred to as the organizations). The Unit shall be a subsidiary organ of the legislative bodies of the organizations".

[18] *Official Records of the United Nations Conference on the Law of Treaties* Documents of the Conference (A/CONF.39/11/Add.2-Sales No. E.70.V.5), p. 287.

agencies considered the reservation to be incompatible with the object and purpose of the Convention and with a view to seeking an understanding acceptable to all concerned.

6. It is suggested, therefore, that the foregoing procedure might be adopted with respect to reservations formulated by individual agencies to the Statute of the JIU.

11 November 1977

8. RESOLUTION OF THE GENERAL ASSEMBLY CONTAINING A REQUEST TO THE SECRETARY-GENERAL CONCERNING THE INVESTMENT OF THE ASSETS OF THE UNITED NATIONS JOINT STAFF PENSION FUND — UNDER THE REGULATIONS OF THE PENSION FUND, THE SECRETARY-GENERAL HAS THE ULTIMATE AUTHORITY OVER THE INVESTMENTS OF THE FUND BUT IS NOT PRECLUDED FROM RECEIVING ADVICE IN THIS CONNEXION FROM THE GENERAL ASSEMBLY

Memorandum to the Under-Secretary-General for Administration and Management

1. The present memorandum has been prepared in response to your request for a legal opinion concerning the effect of General Assembly resolution 31/197 of 22 December 1976 on the investment of the assets of the United Nations Joint Staff Pension Fund for which the Secretary-General is responsible and questions which have been raised with respect to that resolution. We further understand that among these is the question whether the General Assembly has the power to advise the Secretary-General with respect to the investment of the assets of the United Nations Joint Staff Pension Fund, for example, by adopting the above-mentioned resolution.[19]

2. Article 19(*a*) of the Regulations of the Pension Fund provides that the investment of its assets is to be decided upon by the Secretary-General, after consultation with an Investments Committee (provided for in article 20) and in the light of observations and suggestions made from time to time by the United Nations Joint Staff Pension Board (provided for in article 5) on investments policy. Although it is not specifically foreseen that the Secretary-General might also consult or receive advice from others, he is not precluded from doing so, nor is the United Nations General Assembly precluded from tendering advice. In other words, the Regulations do not contain prohibitions analogous to those in Article 100 of the Charter of the United Nations.

3. It is not therefore to be concluded that in resolution 31/197 the General Assembly failed to respect the ultimate authority of the Secretary-General over the investments of the Pension Fund nor that the Secretary-General would interpret the resolution as so doing. Only if the Assembly should attempt to direct the Secretary-General to undertake particular investment policies or decisions, as it has never done, would an issue arise. In other words, as matters now stand the Secretary-General would not be bound by any resolution of the General Assembly in this field. This, however, does not preclude him from following suggestions made, if, in his judgement, in carrying out his responsibilities as trustee, he were to decide that it was in the best interest of the Pension Fund. Such decisions must of course be consistent with the Scope and Purpose of the Fund and with the limitations on the use of the assets of the Fund as set forth in the Regulations of the Fund.

6 May 1977

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[19] Paragraph 1 of that resolution

"*Requests* the Secretary-General... to ensure that the resources which the United Nations Joint Staff Pension Fund holds invested in shares of transnational corporations are invested on safe and profitable terms and, to the greatest extent practicable, in sound investments in developing countries."

9. RECOMMENDATION OF THE INTERNATIONAL CIVIL SERVICE COMMISSION ESTABLISHED BY GENERAL ASSEMBLY RESOLUTION 3357 (XXIX) FOR THE APPLICATION, WITHIN THE ORGANIZATIONS PARTICIPATING IN THE UNITED NATIONS COMMON SYSTEM, OF NEW SALARY SCALES APPLICABLE TO THEIR GENERAL SERVICE STAFF BASED IN GENEVA — QUESTION WHETHER THERE WOULD BE LEGAL OBSTACLES TO THE IMPLEMENTATION OF THAT RECOMMENDATION BY THE SECRETARY-GENERAL — CONCEPTS OF "ACQUIRED RIGHTS" AND "CONTRACTUAL RIGHTS"

Memorandum to the Assistant Secretary-General, Controller, Office of Financial Services

I. INTRODUCTION

1. This is in response to your memorandum of 16 September on this subject, requesting a legal opinion on possible legal obstacles to implementing a recommendation of the International Civil Service Commission, for the establishment, as of 1 January 1978, of new General Service salary scales in Geneva that would be lower than the existing ones by 15.7% to 19.5% as to net salaries and from 17.3% to 21.8% as to gross salaries, i.e., pensionable remuneration. We also understand that consideration is being given to mitigating the implementation of the proposed new scales by the use of transitional personal allowances that would ensure that the payments made to a staff member are not actually reduced, but which would be phased out to the extent of each future salary increase awarded to him (whether as a result of step-in-grade increments, promotions or general salary increases) so that such increases would not result in any additional payments to him until the increases exceed the amount of the personal allowance as of 1 January 1978.

2. There are thus several questions to be explored:

(*a*) may net salaries be reduced;

(*b*) assuming that net salaries may not be reduced, is it permissible to maintain them unchanged for a time by eliminating or postponing entitlements to regularly scheduled increments;

(*c*) whether or not net salaries may be reduced, is it permissible to reduce pensionable remuneration.

II. HISTORICAL BACKGROUND

3. In 1932, in view of the prevailing economic conditions, the League of Nations considered reducing staff salaries as an economy measure. After discussion by the Fourth Committee of the Assembly and by the Supervisory Commission, a Committee of Jurists was established to report whether the Assembly, by unilateral action, could legally reduce staff salaries. The jurists were unanimously of the opinion that the Assembly did not have the right, even in exercise of its budgetary authority, to reduce staff salaries, unless such a right had been explicitly recognized in the contracts of appointment.[20] The Fourth Committee accepted this view. However, as a result of this consideration new procedures of appointment were adopted by the League, in particular by promulgating a new Article 30 *bis* of the Staff Regulations providing that all appointments made after 15 October 1932 "are subject to such modifications of their terms as may be necessary to bring them into conformity with any decision of the Assembly, relating to the conditions of employment of officials . . . which the Assembly may decide to apply to officials already in service and that as to all promotions made after that date "it is implied that the promoted official shall

[20] *League of Nations, Official Journal, Special Suppl. No. 107,* Minutes of 4th Committee, pp. 206–208.

thenceforward be subject to decisions of the Assembly fixing the rates of salary."[21] Article 80 of the Regulations provided that "The present Regulations and their Annexes may be amended by the Secretary-General, without prejudice always to the acquired rights of officials."

4. The Preparatory Commission of the United Nations, evidently drawing on the League experience, included in the Draft Provisional Staff Regulations it submitted to the General Assembly Regulation 26, which permitted the General Assembly to supplement or amend the Regulations "without prejudice to the acquired rights of members of the staff." Similarly, in the Draft Provisional Staff Rules prepared by the Commission, Rule 2 provided that letters of appointment be issued to and countersigned by each new staff member, which would *inter alia* "cover . . . the initial salary and other basis of remuneration" and should "state that the appointment is subject to the Staff Regulations and Staff Rules . . . and to all supplements and amendments which may be made thereto."[22] As indicated in paragraph 11 below, substantially the same provisions now appear in respectively Staff Regulations 12.1[23] and Annex II to the Staff Regulations.[24]

5. When the General Assembly was considering, at its fourth session in 1949, the establishment of the United Nations Administrative Tribunal, the United States proposed an addition to article 2 of the draft Statute whereby "Nothing in this Statute shall be construed in any way as a limitation on the authority of the General Assembly or of the Secretary-General acting on instructions of the General Assembly to alter at any time the rules and regulations of the Organization including, but not limited to, the authority to reduce salaries, allowances and other benefits to which staff members may have been entitled".[25] This amendment was eventually withdrawn, on the ground that on the basis of the debate it appeared that Article 2(*1*) of the draft Statute was "broad enough to give sufficient scope to the General Assembly, and to the Secretary-General acting on its behalf, to carry out the necessary functions of the United Nations, in spite of the fact that such action

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[21] This account is condensed from the ILO Memorandum reproduced in *ICJ Pleadings, Effect of Awards of compensation made by the United Nations Administrative Tribunal*, pp. 56–59.

[22] *Report of the Preparatory Commission of the United Nations, Chapter VIII*, Sections 3 and 4, pp. 97–98.

[23] Reading as follows:

"These Regulations may be supplemented or amended by the General Assembly, without prejudice to the acquired rights of staff members."

[24] Reading as follows:

"Annex II

"LETTERS OF APPOINTMENT

"(*a*) The letter of appointment shall state:

(i) That the appointment is subject to the provisions of the Staff Regulations and the Staff Rules applicable to the category of appointment in question and to changes which may be duly made in such regulations and rules from time to time;

(ii) The nature of the appointment;

(iii) The date at which the staff member is required to enter upon his duties;

(iv) The period of appointment, the notice required to terminate it and period of probation, if any;

(v) The category, level, commencing rate of salary and, if increments are allowable, the scale of increments and the maximum attainable;

(vi) Any special conditions which may be applicable.

"(*b*) A copy of the Staff Regulations and the Staff Rules shall be transmitted to the staff member with the letter of appointment. In accepting appointment, the staff member shall state that he has been made acquainted with and accepts the conditions laid down in the Staff Regulations and the Staff Rules."

[25] *Official Records of the General Assembly, Fourth Session, Fifth Committee*, Annex, agenda item 44, document A/C.5/L.4/Rev.2, p. 165.

[26] *Ibid.*, A/C.5/SR.214, para. 40; see also paras. 25, 37 and 41.

might require changes and reductions in the existing benefits granted to the staff".[26] This interpretation was reflected in the Fifth Committee's report to the plenary as follows:

> "(*b*) ... the tribunal would have to respect the authority of the General Assembly to make such alterations and adjustments in the staff regulations as circumstances might require. It was understood that the tribunal would bear in mind the General Assembly's intent not to allow the creation of any such acquired rights as would frustrate measures which the Assembly considered necessary. It was understood also that the Secretary-General would retain freedom to adjust per diem rates as a result, for example, of currency devaluations or for other valid reasons.
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> "No objection was voiced in the Committee to those interpretations, subject to the representative of Belgium expressing the view that the text of the statute would be authoritative and that it would be for the tribunal to make its own interpretation."[27]

6. At its fifth session in 1950, the General Assembly considered and adopted proposals for a thorough restructuring of the salary, allowance and leave system of the United Nations, which reflected, *inter alia,* extensive consultations with specialized agencies and the recommendations of a Committee of Experts and of the Advisory Committee on Administrative and Budgetary Questions (ACABQ). The new system required the reduction of the salaries and allowances of a great number of officials, and consequently one of the principal issues in adopting it was the extent to which the Assembly was obliged, taking into account also some special assurances that had been given to the staff by the Secretary-General[28] to maintain, by the use of pensionable personal allowances, both the actual level of emoluments of each staff member and his expectation of future increases. After an extensive debate,[29] in which a few representatives maintained the view that staff members had acquired contractual rights from which the Organization could not derogate and others took a different view, while all concurred in the importance of maintaining staff morale by meeting justified expectations, the Fifth Committee rejected a proposal by the Secretary-General for an essentially complete maintenance of existing levels of emoluments and of expectations of future increases, for an alternative that maintained these levels and expectations substantially but not completely[30] (See General Assembly resolution 470(V), para. 3).

7. This brief historical survey suggests that after the League of Nations had first recognized that it could not unilaterally reduce staff salaries unless the right to make such amendments was specified in the contracts of staff members, appropriate provisions to that effect were introduced into the Staff Regulations of the League, and that subsequently similar provisions were adopted by the United Nations in its Staff Regulations and in the Letters of Appointment it issues pursuant to the Regulations. Furthermore, the debate in connexion with the establishment of the United Nations Administrative Tribunal showed not only that the General Assembly was conscious of the possible need on occasion to reduce salaries and other benefits, but suggests that it considered that the then existing (and now still effective) legal provisions sufficiently authorized it to do so — hence the caution in drafting the Tribunal Statute so as not to interfere with that authority. Similarly the results of the 1959 debate show that the General Assembly, while conscious of the undesirability of disappointing staff expectations arising out of a prevailing system, did not consider itself legally bound to preserve all existing emoluments and formulae when it considers that it has adequate reasons to depart therefrom.

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[27] *Ibid., Plenary Meetings,* Annex, agenda item 44, document A/1127, p. 168, para. 9.

[28] ST/AFS/SER.A/12 (18 February 1950), reproduced in *Official Records of the General Assembly, Fifth Session, Annexes,* agenda item 39(*b*), document A/C.5/L.83, pp. 112–113.

[29] *Official Records of the General Assembly, Fifth Session, Fifth Committee,* A/C.5/SR.265, paras. 9–10, 30–31, 53, 77—78, 81 and 82; A/C.5/SR.266, paras. 33, 42–49, 58 and 71; A/C.5/SR.267, paras. 14, 16–17, 20–21, 32 and 51; A/C.5/SR.269, paras. 35–46.

[30] *Ibid., Annexes,* agenda item 39(*b*), documents A/C.5/408 and 410; see also A/C.5/400, part I, paras. (*j*)–(*l*) and part II, paras. 12–18; and A/1732, paras. 24–25.

III. LEGAL FRAMEWORK

8. Paragraph 7 of Annex I to the Staff Regulations[31] provides that the Secretary-General shall fix General Service salary scales "normally on the basis of the best prevailing conditions of employment in the locality of the United Nations office concerned". Staff Rule 103.2 provides that these salary scales and the conditions of salary increments be published in Appendix B to the Rules, which in turn sets out, for each major post (including Geneva), gross and net salary figures for each General Service level at that post (G.1-7 in Geneva) and for each step available in each level (11 for each level in Geneva), with a note that "Salary increments within the levels shall be awarded annually on the basis of satisfactory service."

9. In approving the Statute of the International Civil Service Commission (resolution 3357(XXIX), Annex), the General Assembly has relatively recently circumscribed the discretion of the Secretary-General in establishing local General Service salary scales, by requiring the Commission to establish "the methods by which the principles for determining conditions of service should be applied" and to "establish the relevant facts for, and make recommendations as to, the salary scales of staff in the General Service . . ." (Statute, Arts. 11(*a*) and 12(*l*)). Moreover, at its thirty-first session, the General Assembly specifically urged the Commission to assume forthwith these statutory functions, in particular in respect of the General Service salaries in Geneva, which, as the Assembly recognized, had recently been substantially increased following a strike (para. 1 of resolution 31/141 A and paras. 1-3 of Section I of resolution 31/193 B.

10. Pursuant to Staff Regulation 3.1,[32] the Secretary-General sets the salaries of individual staff members in accordance with Annex I to the Staff Regulations. For General Service staff this is done by determining their level (and step) and their duty station, from which the amount of salary automatically follows according to the scales referred to in paragraph 8 above. The duty station, level and consequent gross commencing salary, as well as the maximum gross salary for the level, are set out in the Letter of Appointment of each General Service staff member, which Letter is required by Staff Regulation 4.1 and is required by Annex II to the Staff Regulations to set out such level and salary rates (see footnote 24 above).

11. The General Assembly has reserved to itself the right to supplement and amend the Staff Regulations, but "without prejudice to the acquired rights of staff members" (Staff Regulation 12.1 — see footnote 23 above). Similarly, the Staff Rules (which include the Appendix setting out the General Service salary scales) may be amended by the Secretary-General "in a manner consistent with the Staff Regulations" (Staff Rule 112.2(*a*)) — which presumably means not only that the Staff Rules must always be consistent with the Staff Regulations, but also that the process of amending the rules must respect the acquired rights of staff members. Each Letter of Appointment provides, in accordance with Annex II to the Staff Regulations, that the appointment is subject to the Staff Regulations and Rules, together with such amendments as may be made from time to time in such Regulations and Rules (see footnote 24 above).

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[31] Reading *in toto* as follows:

"7. The Secretary-General shall fix the salary scales for staff members in the General Service category and the salary or wage rates for manual workers, normally on the basis of the best prevailing conditions of employment in the locality of the United Nations office concerned, provided that the Secretary-General may, where he deems it appropriate, establish rules and salary limits for payment of a non-resident's allowance to General Service staff members recruited from outside the local area."

[32] Reading as follows:

"Salaries of staff members shall be fixed by the Secretary-General in accordance with the provisions of annex I to the present Regulations."

IV. ACQUIRED RIGHTS

12. In reserving to itself the right to change the Staff Regulations and to the Secretary-General to change the Staff Rules, and providing that all Letters of Appointment be explicitly subject to such changes, the General Assembly (as the League had before it) nevertheless restricted itself from prejudicing "the acquired rights" of staff members. Although the General Assembly does not seem to have had occasion to define or even to debate that term (except as noted in para. 6 above), it should be noted that neither the League nor the United Nations Assembly appeared to consider that it had thereby barred any prospective reduction in emoluments, as long as staff contracts provided that they were subject to Regulations and Rules that could be amended by the Organization.

13. The most substantive body of interpretative language about the term "acquired rights" thus appears in decisions of Administrative Tribunals of the League of Nations, the ILO and the United Nations, the relevant judgements of which are summarized and briefly analyzed in the remainder of this section. It should, however, be noted that none of these opinions is directly on point, i.e., none deals with legality of a general salary reduction; furthermore, in the light of the discussions in the Assembly on the establishment of the United Nations Tribunal, it may be doubted whether that organ has jurisdiction to consider and therefore to express an authoritative opinion on such a decision.

14. In a series of 14 judgements in 1946 (e.g., Judgement No. 24, *Mayras* v. *Secretariat of the League of Nations;* also Nos. 25–37) the Administrative Tribunal of the League, citing the opinion of the Committee of Jurists (see para. 3 above), held that the League had wrongfully deprived a number of League and ILO officials of their acquired rights by reducing their termination indemnity by an amendment of the Staff Regulations adopted by the Assembly immediately after the start of the Second World War. However, each of these officials had been appointed before the 1932 amendment to the Staff Regulations (see para. 3 above), so that the Tribunal's holdings in effect merely held illegal a unilateral change in contract when the right to make such change had not been reserved.[33] These decisions are thus among those that identify "acquired rights" with "contractual rights" — as to which, see section V below.

15. In 1960, the ILO Tribunal considered a complaint brought by 69 non-local General Service staff members of FAO (in re *Poulain d'Andecy,* Judgement No. 51) who asserted that their acquired rights to a non-resident's allowance had been violated when the Director-General, on direction of the FAO Council, introduced on 26 June 1959 a new emoluments scheme as of 1 January 1959 whereby General Service salaries were increased but the non-resident's allowance was decreased. The Tribunal, noting the amendment provisions of the FAO Staff Regulations (substantially similar to those of the United Nations), held that there was no acquired right to the amount of the allowance, which was determined by taking into account differences in living standards between various countries and thus depended on factors external to the Organization and its staff and was not set individually for any staff member. However, as to the amount of the allowance payable from 1 January 1959 to the promulgation of the amendment, it held that there was an acquired right which could not be modified even by the simultaneous increase in salaries, since the allowance served a different purpose. This decision thus stands for the

[33] It should be noted that the League Assembly refused to comply with those judgements on the ground that the Tribunal had exceeded its jurisdiction in considering the propriety of a decision of the Assembly; see ILO Memorandum, op. cit., *supra,* note 2, pp. 59–70. Under the current Statutes of the United Nations and ILO Tribunals, such a question of jurisdiction (see paras. 5 and 13 above) could and presumably would be referred to the International Court of Justice for a binding advisory opinion.

proposition that, while the principle of acquired rights bars any reduction in an emolument already earned, it does not necessarily bar a reduction in the level of future entitlements to an entire class of staff members, especially if based on objective considerations.

16. In 1961 the United Nations Administrative Tribunal considered an application from an ICAO professional staff member who complained that as a result of the Organization amending its Staff Regulations and Rules, including the definition of "dependency", to conform more closely to the common system, he was deprived of his right to a dependency allowance on behalf of his spouse and of the right to receive post adjustment at the dependency rate; although his total emoluments were not reduced as a result of a simultaneous reclassification of his duty station into a higher post adjustment category and the grant of a personal allowance to him, that personal allowance would be offset against future increases of salary, from which he would thus not benefit until they exceeded the amount of his personal allowance. In its Judgement (*Purez* v. *ICAO,* Judgement No. 82) the Tribunal held that ICAO's Staff Regulations, which permitted amendments that did not "adversely affect entitlement to . . . any benefits actually earned through service prior to the effective date of the amendments" (the less authoritative French and Spanish translations of which referred respectively to *"droits acquis"* and *"derechos adquiridos"*) merely prevented amendments that had "an adverse retroactive effect in relation to a staff member" but nothing prohibited "an amendment of the regulations where the effects of such amendment apply only to benefits and advantages accruing through service after the adoption of such amendment". Furthermore, the Tribunal explicitly accepted the scheme of transitional personal allowances designed to prevent any actual decrease in emoluments but delaying future increases.

17. In 1967, the same Tribunal decided a claim involving the question whether an amendment favourable to a participant in the United Nations Joint Staff Pension Fund (UNJSPF) applied to him or only to future participants (*Khamis* v. *UNJSPF,* Judgement No. 108). In affirming such applicability in the light of Article XXXVII of the Regulations of the Pension Fund (now Article 50—see para. 39 below), which precluded amendments prejudicial to "rights to benefits acquired through contributory service accumulated prior to that date", the Tribunal, essentially in the nature of dicta, quoted *Maxwell on the Interpretation of Statutes* (11th ed. p. 206), concerning the retroactive construction of statutes, to the effect that: "It is chiefly where the enactment would prejudicially affect vested rights, or the legality of past transactions, or impair contracts, that the rule in question [the presumption against retroactive operation] prevails"; from this the Tribunal concluded "that the principle of law against 'retroactive' construction relates mainly to cases where certain acquired rights are disturbed or denied" — incidentally disregarding the stricture against impairment of contracts.

18. In 1975 an IMCO staff member complained about an amendment to the Staff Rule relating to education grants, whereby the amount of reimbursement would depend on the expenditures incurred by the staff member in educating his child, asserting that the amendment impaired his acquired rights in violation of IMCO Staff Regulation 12.1 (essentially the same as that of the United Nations — see footnote 23 above). The Tribunal, in rejecting the claim (*Queguiner* (Education grant) v. *IMCO,* Judgement No. 202)[34], analyzed the limitation on the right of amendment set out in the cited provision, stating that it "obviously concerns the rights of the staff member expressly stipulated in the contract" (citing the *Kaplan* case discussed in para. 21 below) and that "Respect for acquired rights also means that the benefits and advantages accruing to staff members for services rendered before the entry into force of an amendment cannot be prejudiced".

19. Thus, the above-cited judgements interpreting the term "acquired rights" for the most part relate these to rights deriving from past service, and consequently the pro-

[34] See *Juridical Yearbook,* 1975, p. 129.

tection of such rights merely prohibits retroactive derogations. A few decisions, however, also relate acquired rights to contractual ones, and these are analyzed in the section below.

V. CONTRACTUAL RIGHTS

20. Most of the judicial analysis relevant to the questions posed in paragraph 2 above has not been directly in terms of "acquired" rights, but in terms of "contractual" ones. As mentioned in connexion with some of the cases analyzed in the previous section (see paras. 14, 17 and 18), the Administrative Tribunals have sometimes indicated that contractual rights to prospective benefits are among the "acquired" rights protected from amendment by the limitation that the Assembly has itself imposed on its right to amend the Regulations; in some other cases discussed below, the Tribunals appear to have considered the sanctity of contractual rights as existing independently. In any event, both the United Nations and ILO Tribunals have recognized that the rights of staff members are in part contractual, which may not be varied unilaterally by the Organizations and in part statutory, which may be varied with prospective effect; the question is therefore whether particular rights are considered contractual or statutory.

21. In a series of judgements in 1953 (e.g. *Kaplan* v. *UN*, Judgement No. 19; see also Nos. 20-25, 27) the Tribunal considered the claims of a number of former staff members of the United Nations whose temporary-indefinite contracts had been terminated under Staff Regulation 9.1(*c*), which had been added to the Regulations after the applicants had commenced their United Nations employment and in alleged violation of their acquired rights protected by former Regulation 28 (now Regulation 12). In dismissing this aspect of the claim the Tribunal held:

> "In determining the legal position of staff members a distinction should be made between contractual elements and statutory elements:
>
> "All matters being contractual which affect the personal status of each member — e.g., nature of his contract, salary, grade;
>
> "All matters being statutory which affect in general the organization of the international civil service, and the need for its proper functioning — e.g., general rules that have no personal reference.
>
> "While the contractual elements cannot be changed without the agreement of the two parties, the statutory elements on the other hand may always be changed at any time through regulations established by the General Assembly, and these changes are binding on staff members.
>
> "The Tribunal interprets the provisions of regulation 28 of the Provisional Staff Regulations and article XII of the new Staff Regulations in this manner.
>
> "With regard to the case under consideration the Tribunal decides that a statutory element is involved and that in fact the question of the termination of temporary appointment is one of a general rule subject to amendment by the General Assembly and against which acquired rights cannot be invoked."

It should therefore be noted that the examples of contractual elements given by the Tribunal are mere dicta, not relevant to the disposition of these cases and thus not thoroughly analyzed.

22. In 1962 the ILO Tribunal considered an application by an ITU staff member (and several intervenors) relating to changes made in the ITU Staff Regulations in conforming to the "common system" and to his transfer from the ITU Staff Superannuation and Benevolent Fund to the UNJSPF (*In re Lindsey*, Judgement No. 61). The ILO Tribunal relied on a distinction between contractual and statutory elements similar to that previously established by the United Nations Tribunal in the *Kaplan* case; it stated that "provisions which appertain to the individual terms and conditions of an official, in consideration of which he accepted appointment . . . should to a large extent be assimilated

to contractual stipulations. Hence, if the efficient functioning of the organization in the general interest of the international community requires that the latter type of provisions should not be frozen at the date of appointment and continue so for its entire duration, such provisions may be modified in respect of a serving official and without his consent but only in so far as modification does not adversely affect the balance of contractual obligations or infringe the essential terms in consideration of which the official accepted appointment". After discussing the changes in the provisions relating to the applicant, the Tribunal concluded that, on balance, the changes in the pension arrangements "seriously impaired a right that could have induced complainant to enter the service of the Union" and thus "infringed the terms of his appoinment"; similarly it found a serious infringement in the provisions regarding termination in the event of abolition of post; on the other hand it considered that the changes in regard to family allowances could not be challenged because they merely altered the conditions for the grant of the allowance, and were generally favourable to the interests of those concerned. This case would thus appear to stand for the proposition that any substantial diminution of the rights of an official, at least as compared to the terms that might have induced him to accept his appointment, are prohibited; however, the ILO Tribunal does not discuss the effect of any provision permitting the amendment of contracts of appointment or of staff regulations incorporated therein, and thus it is likely that there were no such provisions in the ITU contracts in question.

23. In 1967 the United Nations Administrative Tribunal rejected the contention of an ICAO official that the "dependency" definition formed part of his "contractual rights" and could therefore not be amended without unlawfully interfering with those rights (*Manckiewicz* v. *ICAO,* Judgement No. 110). The Tribunal pointed out that the Applicant's employment contract "specifically stated that it was subject to the provisions of the Service Code in force and 'as amended from time to time'."

24. The above-cited Tribunal decisions are not particularly helpful in distinguishing between the contractual (and thus unilaterally unamendable) and the statutory (and thus amendable) elements of the employment relationship of international organizations with members of their staffs. The *Lindsey* case (para. 22 above), which discusses the distinction extensively in an essentially theoretical dissertation thereafter reaches its decision not by defining particular contractual elements but by deciding whether certain amendments were such as to make the material conditions less attractive than when the appointment was accepted; the *Queguiner* case (para. 18 above) also explores this question; the *Kaplan* case (para. 21 above), which is the only one that explicitly lists salary as a contractual right, does so only as dicta in a case in which that issue did not arise at all.

25. One superficially plausible distinction between contractual and statutory elements requires explicit refutation: it cannot be said that those items that are explicitly set out in Letters of Appointment (whether or not required by Annex II to the Staff Regulations) are the contractual elements and those merely set out in the Staff Regulations and Rules are the statutory ones. Those explicitly set out in the Letter mostly relate to the "initial assignment", and include items such as "Function", "Department or Office" and "Official Duty Station", which can be changed through reassignment by the Secretary-General at any time pursuant to Staff Regulation 1.2. On the other hand, rights that Tribunals have considered contractual, such as pension rights or termination allowances, are never explicitly set out in the Letters or contracts.

VI. AGREEMENTS WITH STAFF ASSOCIATIONS

26. One final question requires examination before reaching conclusions on the questions presented: do the "agreements" entered into between the excutive heads of the Geneva-based associations and the representatives of their respective staffs constitute any

obstacle to a change in salary levels from those established on the basis of those instruments? The instruments in question are the "Declaration of the Executive Heads of the United Nations Office in Geneva, ILO, WHO, ITU, WMO, WIPO, ICITO/GATT" of 3 March 1976, the "Appendix II: General Service salaries and dependency allowances in Geneva" recording an agreement reached and signed on 23 April 1976 and the "Method for interim adjustments of the Geneva General Service salaries" of 1 September 1976.

27. In the first place, it should be noted that none of these instruments specify how long the regime they establish is to be in effect — their concern is with the past and with the immediate time at which they were concluded, though obviously it is foreseen that these regimes would continue for at least some time. However, the 1 September 1976 paper explicitly specifies, in paragraph 4 that:

> "The present arrangement is without prejudice to the outcome of the examination by the International Civil Service Commission of the question of General Service salaries with full participation of Administrations and Staff in accordance with the concept expressed by the International Civil Service Commission in paragraph 19 of its first report to the General Assembly of the United Nations (A/10030, Supplement No. 30)."

28. More importantly, it must be recognized that relations between the international organizations following the common system and their staffs do not depend on negotiated "collective bargaining agreements". Rather, the staff associations or unions that are established and recognized pursuant to the Staff Regulations of the respective organizations are authorized to intervene with the Executive Heads of the organizations and with specialized organs such as the ICSC, and perhaps to a limited extent with the political organs, to assist them in formulating the decisions that these organs take in respect of Staff Regulations and Rules, including salary scales and other emoluments. Neither the executive heads nor the staff associations are authorized to enter into binding contractual commitments in respect of any of these matters.

VII. CONCLUSIONS

A. *Reduction of net salaries*

29. When the relevant provisions of the Staff Regulations and Rules discussed in Section III above are considered in the light of the historical background recalled in Section II, it appears that the General Assembly took every necessary precaution to reserve to itself, or as appropriate to the Secretary-General, the right to reduce salary scales and emolument levels in appropriate circumstances. A conclusion that such scales or levels cannot now be reduced could therefore only be based on the premise that civil service salaries can never, under any circumstances, be reduced legally — a premise that would differ from that of the 1932 Commission of Jurists (see para. 3 above) and be unsupportable on the basis of either international administrative or general legal principles.

30. Can it, however, be said that the intention of the General Assembly is nullified because of the inclusion of the "assessable salary"[35] on "initial assignment" in the Letters of Appointment of staff members? First of all, it should be noted that such inclusion is required by the Staff Regulations themselves (Regulation 4.1 and Annex I) and it cannot be supposed that the Assembly, which adopted these Regulations while conscious of the importance of maintaining the right to reduce salary scales, would have desired to frus-

[35] As indicated, the salary figures in Letters of Appointment are "assessable" (i.e., gross, or pensionable) rather than net. This, however, does not affect the argument in this paragraph or this subsection, as it is not being suggested that net salaries be reduced by an increase in staff assessments while leaving the gross unchanged. In effect, the ICSC investigation has determined what the proper net rates should be, and the gross rates are derived from these by reverse application of the existing assessment rates.

trate its own intention. Second, as discussed in paragraph 25 above, the fact of such inclusion does not make "salary" or initial salary an unamendable contractual as opposed to a statutory element. Finally, if the initial salary set out in the Letter of Appointment were considered sacrosanct for each staff member, this would lead to the absurd result that the extent to which any staff member's salary could be reduced would depend on how long ago he received his appointment, and on whether or not he had since been promoted. Incidentally, the application of the principle suggested by the ILO Tribunal in the *Lindsey* case (see para. 22 above) would lead to a similar result: any staff member's salary could be reduced to a level no lower than that which induced him to accept his initial, or perhaps his most recent appointment — an interpretation which, aside from being administratively difficult to implement, would protect best those most recently employed.

31. Does the *Kaplan* case (see para. 21 above) and those that follow it require any different conclusion? As already pointed out, the statement of the United Nations Administrative Tribunal that salary is a contractual matter because it affects the personal status of each staff member, was entirely dicta — the case did not relate to salary, nor did the decision of the Tribunal depend on the distinction between contractual and statutory elements it had established. However, in the context in which the reference to salary appears, it would at most seem to be an assertion of the principle that an individual staff member's salary cannot be reduced, either by departing from the salary scale applicable to him or by changing his grade (another of the listed "contractual" elements).

32. It should, incidentally, be noted that emoluments can certainly be reduced on various unassailable bases, which reaffirms the proposition that neither salaries in general nor the initial salaries stated in Letters of Appointment are protected against otherwise proper amendments of the scales:

(*a*) For a professional officer, an initial net salary stated in his Letter of Appointment can be reduced if assigned to a duty station with a negative post adjustment (see Annex I to the Staff Regulations, para. 9 and the third table);

(*b*) For professional officers, the net emoluments he actually receives can be and frequently are reduced either if the post adjustment level of his duty station is reduced, or if he personally is transferred (whether or not at his initiative) to a duty station with a lower post adjustment;

(*c*) General Service salaries can be reduced if there is an actual reduction in the "best prevailing conditions of employment in the locality of the United Nations office concerned".

33. The situation here under consideration differs from that referred to in subparagraph 32(*c*) above merely in that there has been no actual reduction in the best prevailing salary conditions in Geneva, but rather that the Organization's perception of what those conditions are has changed. This change is not arbitrarily based on any alteration of the principle established by the General Assembly in paragraph 7 of Annex I to the Staff Regulations (see footnote 31 above), but on the basis of a thorough study by the competent and specially qualified organ established by the General Assembly and accepted by most of the organizations of the common system, responding to a specific request addressed to it by the General Assembly (see para. 9 above); in performing its task it invited the participation of all the interested staff associations. Thus the revised scales presumably represent the most precise possible calculation of what the proper international salary levels in Geneva should be pursuant to the applicable provisions of the Staff Regulations relating to the establishment of General Service salaries.

B. *Implementation of transitional personal allowances*

34. As it was concluded in subsection A above that there is no legal obstacle to the implementation of the recommended reduced salary scales, *a fortiori* there should be

no obstacle to mitigating such reduction by use of personal allowances that would ensure that the salary of no General Service staff member is actually reduced, or that would impose only a modified reduction (e.g., the limited and thus partial mitigation authorized by para. 3 of General Assembly resolution 470(V) in respect of certain changes in professional salaries — see para. 6 above), even if future increases, including annual increments, are thereby delayed until such time as their total exceeds the amount of the personal allowance for the staff member in question.

35. Moreover, even if the dicta in the *Kaplan* case (see paras. 21 and 31 above) were accepted as properly stating as a legal principle that the amount of each staff member's emoluments is contractual and thus irreducible, this does not necessarily mean that the elements that make up the total emoluments are also contractual and that even a formula for the increase of emoluments is also contractual. By its very nature such a formula would appear to be statutory. In other words, even should an "acquired right" to an existing salary (i.e., amount of emoluments) be recognized, this would not imply a legal basis for "acquired expectations" derived from a particular dynamic scheme. Therefore, whatever legal or other objections might be raised against a reduction in current emoluments, there would be no contractual impediment to mitigating the effects of a general reduction of salary scales by use of transitional personal allowances that delay or reduce future increases in emoluments.

36. It should also be noted that the United Nations Administrative Tribunal has several times upheld schemes that involved the use of transitional personal allowances; such a scheme is extensively discussed in the *Purez* case (see para. 16 above) and to a lesser extent in the *Manckiewicz* case (see para. 23 above). But in the *Lindsey* case (see para. 22 above), the ILO Tribunal found other types of transitional provisions (relating to the pension fund) inadequate.

C. *Reduction in pensionable remuneration*

37. Pensionable remuneration is defined by Staff Rule 103.16(*a*).[36] It should be noted that the remuneration specified in Letters of Appointment is, by reason of that definition, the principal (and for many General Service staff the only) element in determining pensionable remuneration. This does not imply, for the reasons stated above (in particular para. 25), that such remuneration is entitled to greater protection than net salaries. Nor can any argument be derived from the Staff Regulations and Rules for according any higher protection to pensionable than to actual remuneration. Although Staff Rule 103.16(*c*)[37] does prohibit any reduction in pensionable remuneration on the promotion of any General Service staff member to the Professional level, this rule is not designed to prevent any general erosion of pensionable remuneration but merely ensures (as does Staff Rule 103.9) that there should be no pecuniary disadvantages to a promotion.

38. A reduction in pensionable remuneration is of course objectionable, from the point of view of the staff member concerned, for two reasons: not only may it result in a lower pension (if retirement takes place at a time when such reduced pensionable re-

[36] Reading as follows:

"(*a*) For the purpose of the Regulations of the United Nations Joint Staff Pension Fund, pensionable remuneration shall, subject to paragraphs (*b*) and (*c*) below, consist of the sum of:

"(i) The amount of the gross salary of the staff member established in accordance with staff regulation 3–1;

"(ii) The amount of any non-resident's allowance and/or language allowance payable under staff rules 103.5 and 103.6, respectively."

[37] Reading as follows:

"(*c*) Where a promotion from the General Service category to the Professional category would result in a reduction of the staff member's pensionable remuneration, the level of pensionable remuneration reached prior to the promotion shall be maintained until it is surpassed by the level based on the staff member's salary in the Professional category."

muneration still affects the "final average remuneration" (see para. 39 below), but it may therefore lead him to feel that he "wasted" his temporarily higher contribution which ultimately may not increase his pension (unless he retires soon after the reduction). Nevertheless, the normal pattern of steadily increasing pensionable remuneration is not guaranteed in the Staff Regulations, and thus such an expectation is not protected as a matter of law. It is true that the *Lindsey* case (see para. 22 above) may suggest the contrary, but the principal issue therein was an amendment of the ITU pension provisions (in the course of joining the UNJSPF) of a type that would probably be improper under the UNJSPF Regulations (see para. 39 below); the proposition that there is a legally protected expectation of a steadily increasing pensionable remuneration was stated only in the context of whether a particular transitional provision was an adequate corrective for an otherwise improper amendment.

39. Article 50(*b*) of the UNJSPF Regulations provides that they may be amended by the General Assembly "but without prejudice to rights to benefits acquired through contributory service prior to that date". This provision, however, does not mean that pensionable remuneration cannot be reduced by mechanisms other than through an amendment of the Pension Fund Regulations. Such a conclusion would be contrary to the definition of "Final average remuneration" in Article 1(*h*) of the UNJSPF Regulations, which define FAR to mean the average annual pensionable remuneration during the 36 completed calendar months of highest pensionable remuneration within the last five years of contributory service; if pensionable remuneration could never be reduced, then this formula could be replaced by one merely averaging the remuneration of the last three years of contributory service. Actually, of course, there are several mechanisms by which pensionable remuneration, for an individual or for a whole class of officials, may be reduced:

(*a*) Since the pensionable remuneration of professional staff members is by Staff Rule 103.16(*b*) related directly to WAPA, that rule explicitly provides that any sufficiently large increases or decreases in WAPA are to be appropriately reflected in pensionable remuneration.

(*b*) If General Service salary scales at a duty station should be reduced under the conditions specified in subparagraph 32(*c*) above, this would automatically result in a corresponding reduction in pensionable remuneration.

(*c*) If a General Service staff member is transferred to a duty station whose salary scales are lower, or if a staff member is changed to a lower salary level in accordance with Staff Rule 103.8(*b*), then his pensionable remuneration will be reduced correspondingly.

Consequently, there appears to be no legal obstacle to reduction in pensionable remuneration consequent on a reduction in general salary scales.

40. It should be noted that if a system of transitional personal allowances, such as discussed in subsection B above, is adopted, then such allowances can be made pensionable (as provided by the General Assembly in resolution 470 (V), para. 3) or non-pensionable — though the former appears more logical as the allowance would be granted in respect of pensionable income.

41. On the other hand, any attempt to maintain pensionable remuneration while reducing actual remuneration would be considered objectionable as violating at least the spirit of the mutual arrangements on which the Pension Fund is based, which include the expectation, maintained by the common system, that pensionable remuneration should not be substantially divorced from the actual payments that an organization makes to its staff. Any different approach would permit a participating organization to undermine the actuarial soundness of the Fund by assuring its staff of high pensions at the cost of merely 14% of an artificially inflated pensionable remuneration figure.

3 October 1977

10. Question whether the United Nations has the obligation to pay emoluments to the members of the Human Rights Committee established by the International Covenant on Civil and Political Rights and its Optional Protocol — Question of how the resulting expenditures connected with the first (1977) session of the Committee are to be met

Memorandum to the Chief, Economic, Social and Human Rights Section, Budget Division, Office of Financial Services

1. With regard to the questions posed in your memorandum of 7 February 1977, on the above-mentioned subject, our views are given below.

2. By its resolution 2200(XXI) of 16 December 1966, the General Assembly adopted the Covenant on Civil and Political Rights and opened it for signature, ratification and accession. Article 28 of the Covenant provides for the establishment of a Human Rights Committee consisting of eighteen members, which are to be elected, under article 30 by the State Parties to the Covenant, the initial election being held no later than six months after the date of entry into force of the Covenant.[38]

3. Article 35 of the Covenant reads as follows:

> "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".

When the Third Committee recommended the adoption of resolution 2200 (XXI) to the General Assembly, it had before it a note of the Secretary-General on the financial implications of the above quoted article (A/C.3/L.1382) and before the General Assembly adopted resolution 2200 (XXI) it had before it three documents submitted respectively by the Secretary-General (A/C.5/1102), the Advisory Committee on Administrative and Budgetary Questions (A/6585) and the Fifth Committee (A/6591), concerning the financial implications of the draft Covenant.[39]

4. Rule 154 of the Assembly's rules of procedure at that time read as follows:

> "No resolution involving expenditures shall be recommended by a committee for approval by the General Assembly unless it is accompanied by an estimate of expenditures prepared by the Secretary-General. 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 has had an opportunity of stating the effect of the proposal upon the budget estimates of the United Nations."[40]

5. From the listing of the documents in paragraph 3 above — the last three of which will be analyzed later in this memorandum insofar as they relate to article 35 of the Covenant — it is clear that the requirement of rule 154 had been met. Consequently, the adoption of the Covenant including article 35 thereof imposes on the United Nations an obligation to pay emoluments to the members of the Human Rights Committee.

6. Article 35 of the Covenant provides that the members of the Committee shall receive emoluments "on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities". In his note on the

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[38] The Covenant came into force on 23 March 1976 and the first election was held on 20 September 1976 at United Nations Headquarters (see *Official Records of the General Assembly, Thirty-second Session, Supplement No. 44* (A/32/44).

[39] The three documents in question are reproduced in *Official Records of the General Assembly, Twenty-first Session*, agenda item 62.

[40] A/520/Rev.8.

financial implications of the draft Covenant, the Secretary-General, expressing the concern that article 35 if approved would constitute an exception to the decision taken by the General Assembly at its sixteenth session,[41] nevertheless stated that

> "should the General Assembly decide that emoluments are in fact to be paid to the members of the human rights committee under article 35, provision will have to be made in the budget, beginning with 1968, to meet the resulting expenditure, the magnitude of which would depend on the terms and conditions to be established by the Assembly" (underlining added).[42]

The Secretary-General then proceeded to recommend that

> "To discharge its responsibilities under rule 154 of the General Assembly's rules of procedure, the Fifth Committee might wish to advise the Assembly that:
>
> "(*a*) Adoption of part IV of the draft Covenant on Civil and Political Rights recommended by the Third Committee in document A/6546 would have the following financial implications:
>
> (i) As regards the human rights committee:
>
> a. Provisions would need to be made in the annual budget, beginning with 1968, to cover the costs of the emoluments which the General Assembly might decide to grant to the members of the committee: the amount of that provision would depend on the terms and conditions established by the Assembly" (underlining added).[43]

These statements show that the phrase "on such terms and conditions as the General Assembly may decide" in article 35 refers to the amount to be paid and not to any terms or conditions under which no payment can be made.

7. The ACABQ in its report on financial implications of the draft Covenant,[44] after summarizing the actions which resulted in the earlier decision by the Assembly reaffirming the basic principles governing the emoluments of persons who serve on organs and subsidiary organs of the United Nations, according to which neither fee nor remuneration should normally be paid, expressed the opinion that the General Assembly should maintain its decision of principle and that any payment of honoraria should be limited to those members of organs and subsidiary organs to whom the General Assembly had already authorized payments on an exceptional basis.[45] However, in view of the importance of the Covenant and Optional Protocol recommended by the Third Committee for adoption by the General Assembly, the Advisory Committee suggested that the Fifth Committee might wish to recommend to the General Assembly that, should any such expenditure become necessary during 1967, it should be authorized under the terms of the General Assembly resolution relating to unforeseen and extraordinary expenses for 1967 with the prior concurrence of the Advisory Committee.[46]

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[41] By that decision the Assembly reaffirmed "the basic principle governing the emoluments of persons who serve in organs and subsidiary organs of the United Nations, according to which neither fee nor other remuneration shall normally be paid to: .... members serving on organs or subsidiary organs of the United Nations in an individual personal capacity. Where appropriate, a subsistance allowance at the standard rate, together with travel expenses, shall be payable, but the allowance shall not be deemed to contain any element of fee or remuneration; ... [These] decisions shall not be deemed to embrace any honoraries which the General Assembly has already authorized for payment on an exceptional basis (*Official Records of the General Assembly, Sixteenth Session, Annexes,* agenda item 54, document A/5005, para. 10).

[42] *Official Records of the General Assembly, Twenty-first Session, Annexes,* agenda item 62, document A/C.5/1102, para. 5.

[43] *Ibid.,* para. 16.

[44] *Ibid.,* document A/6585.

[45] *Ibid.,* para. 27.

[46] *Ibid.,* para. 16.

8. The report of the Fifth Committee to the Assembly on the financial implications of the draft Covenant contained the following statements:

> "Concurring with the recommendation of the Advisory Committee on this matter, the Committee decided to inform the General Assembly that, at this time, no financial implications were foreseen in so far as the budget estimates for 1967 were concerned. The Committee decided, however, to recommend that the General Assembly should authorize the Secretary-General, with the prior concurrence of the Advisory Committee, to meet any necessary expenditures which might occur in 1967 under the terms of the General Assembly resolution relating to unforeseen and extraordinary expenses for the financial year 1967. The Committee decided to inform the Assembly that requirements for 1968 would be taken into account in the initial budget estimates for that year.
>
> "The Committee further recommended that the General Assembly should take note of the observations expressed by the Secretary-General and the Advisory Committee relating to the payment of emoluments to members of the proposed human rights committee referred to in article 35 of the draft Covenant."[47]

9. Although the statements on financial implications mentioned in the preceding paragraphs related to the financial year following the adoption of the Covenant, the views expressed therein on the principles and procedures are relevant to the question dealt with in the present memorandum. In particular the question of payment of emoluments to the members of the Human Rights Committee was one which was considered in depth by the ACABQ and on which the Secretary-General and the Fifth Committee also expressed concern. Secondly, both the ACABQ and the Fifth Committee recommended that the General Assembly should authorize the Secretary-General with the prior concurrence of the Advisory Committee to meet any necessary expenditures under the terms of the General Assembly resolution relating to unforeseen and extraordinary expenses.

10. Having regard to the background of the adoption of article 35 of the Covenant as reviewed above, we have reached the following conclusions:

(1) that the United Nations has the obligation to pay emoluments to the members of the Human Rights Committee;

(2) that in view of the postponement by the General Assembly of its consideration of the question of honoraria to its next session and of the fact that the Committee is scheduled to hold its first session from 21 March to 1 April 1977, the Secretary-General should deal with the matter under General Assembly resolution 3540 (XXX) on unforeseen and extraordinary expenses for the biennium 1976-1977 and try to obtain the concurrence of the ACABQ, if possible before the opening of the first session of the Human Rights Committee.

25 February 1977

11. Advice regarding the manner in which a relationship agreement between the United Nations and the World Tourism Organization should be negotiated

Memorandum to the Director and Secretary of the Economic and Social Council

1. Reference is made to your memorandum dated 21 December 1976, in which you requested our guidance regarding the manner in which the Economic and Social Council should be advised in connexion with the negotiation of an agreement between the United Nations and the World Tourism Organization (formerly the International Union of Official Travel Organizations). You will recall that, by its resolution 2529 (XXIV), of 5 December 1969, the General Assembly *inter alia* decided that:

[47] *Ibid.*, document A/6591, paras. 2 and 3.

"(*a*) An agreement between the United Nations and the Union should be concluded which would establish close co-operation and relationships between the United Nations and the transformed Union, define the modalities of such co-operation and relationships and recognize the decisive and central role that the Union is to play in the field of world tourism in co-operation with the existing machinery within the United Nations;

"(*b*) The Union should function as an executive agency of the United Nations Development Programme and participate in the activities of the Programme in order to assist in the preparation and implementation of technical assistance and pre-investment projects in the field of tourism, financed by the Programme, and consideration should be given to enabling the Union to function as a participating and executing agency of the Programme;

"(*c*) Necessary procedures should be elaborated to enable the Union to submit, for the consideration of the Economic and Social Council, recommendations and proposals relating to international agreements to be drawn up in the field of tourism;"

2. It is clear from the record that the agreement envisaged in resolution 2529 (XXIV), and other relevant General Assembly and Economic and Social Council resolutions, was never intended to bring the latter organization into relationship with the United Nations as a specialized agency in accordance with Articles 57 and 63 of the Charter. All those resolutions, for instance, while recognizing the need for a formal agreement, avoid any mention of WTO as a specialized agency of the United Nations.

3. It is true that the agreement, when finally approved by the competent organs, will in effect establish a new kind of relationship between the United Nations and an intergovernmental organization exercising functions of an economic and social nature giving the latter a status vis-à-vis the Council broader than that which derives from rule 79 of the rules of procedure of the Council. In any case, this rule governs only the participation of intergovernmental organizations in the proceedings of the Council, and the agreement between the United Nations and the World Tourism Organization is clearly intended by the Assembly (see paragraph 1 above) to be much broader in scope than this.

4. As to the way in which the Council should proceed when the agreement comes before it for consideration, the following alternatives are suggested:

(*a*) Since the agreement has been carefully negotiated, the Council may wish to approve the draft text and recommend it to the Assembly for approval without considering it in detail;

(*b*) Should the Council wish to consider the text of the agreement in more depth, it might consider it advisable to refer the agreement for study and report to a working group established for the purpose, composed of States that are particularly interested in the field of tourism, or, possibly, to its Committee on Negotiations with Intergovernmental Agencies.

Of course, the Council should be expressly reminded when the matter comes before it for consideration that the agreement between the United Nations and the World Tourism Organization is not a specialized agency agreement in accordance with Articles 57 and 63 of the Charter.[48]

6 January 1977

[48] By its decision 254 (XLIII) of 3 August 1977, the Economic and Social Council decided to approve and transmit to the General Assembly at its thirty-second session the text of a draft agreement on cooperation and relationships between the United Nations and the World Tourism Organization. The General Assembly, by its resolution 32/156 of 19 December 1977, approved the agreement as set forth on the annex to the resolution.

12. COMMENTS ON THE ADMISSION OF THE PALESTINE LIBERATION ORGANIZATION (PLO) AND OF EGYPT IN THE ECONOMIC COMMISSION FOR WESTERN ASIA (ECWA)

Memorandum to the Under-Secretary-General, Department of Economic and Social Affairs

1. This is in response to the memorandum addressed to me, on your behalf, on 25 May, concerning the proposed admission of the Palestine Liberation Organization and of Egypt to the Economic Commission for Western Asia.

I. MEMBERSHIP OF PLO

2. On 26 April 1977, ECWA adopted resolution 36(IV) on the "Application by the Palestine Liberation Organization for full membership of the Economic Commission for Western Asia" in which (consistent with our view that this application could not be considered under the existing terms of reference of the Commission) it called upon the Economic and Social Council to amend article 2 of its resolution 1818(LV) (the terms of reference of ECWA) so as to make the PLO a member of ECWA.[49] At present that paragraph only provides for membership in the Commission by Member States of the United Nations situated in Western Asia, which used to call on the services of the Economic and Social Office in Beirut or those whose applications are decided on by the Council upon the recommendation of ECWA.[50]

3. It should be noted that the regional commissions of the United Nations have been established by the Economic and Social Council pursuant to Article 68 of the Charter, which provides that: "The Economic and Social Council shall set up commissions in economic and social fields . . . .". That article does not explicitly specify that the membership of commissions established pursuant to it should be restricted to Members of the United Nations, or to States, or even to entities having international personality. As a matter of fact, research in the history of the Charter shows that in the original draft prepared at Dumbarton Oaks it had been foreseen that commissions established by the Economic and Social Council would consist of individual experts.[51] Although this requirement was deleted at the San Francisco Conference, this was only done so as not to limit the Council's discretion in determining the composition of its commissions.[52] The Preparatory Commission for the United Nations consequently recommended that these Commissions "should contain a majority of responsible, highly-qualified governmental representatives".[53] When these recommendations were considered at the first session of the General Assembly, a joint sub-committee of the Second and Third Committees indicated that some members doubted whether the recommendation that most commissions should contain a majority of governmental representatives was desirable and whether it allowed the Council sufficient freedom; this recommendation of the Preparatory Commission was therefore approved on the understanding that no limitation should be put on the Council in choosing the members of commissions (A/17).[54] Except for this liminal consideration by the General Assembly, that organ has not otherwise intervened in the Council's authority to establish or to determine the composition of regional commissions.

[49] *Official Records of the Economic and Social Council, Sixty-third Session, Supplement No. 10* (E/5969), p. 22.

[50] See Economic and Social Council resolution 1818 (LV).

[51] *Documents of the United Nations Conference on International Organization, San Francisco, 1945*, London and New York, United Nations Information Organization, 1945, Vol. 3, Doc. I G/1, p. 21.

[52] *Ibid.*, Vol. 8, Doc. 924, II/12, p. 88.

[53] *Report of the Preparatory Commission of the United Nations*, 1945 (PC/20), p. 39 para. 37.

[54] *Official Records of the First Part of the First Session of the General Assembly, Plenary Meetings*, Annex 3, p. 573.

4. In the past, the composition of the four earlier regional commissions was extensively considered by the Economic and Social Council on several occasions, generally in the context of proposals to make non-member States of the United Nations or non-self-governing territories full members of certain commissions. In connexion with these considerations, several legal opinions were expressed by the Secretariat:

(*a*) At a meeting of the Committee of the Whole of ECAFE held in New York on 10 July 1947, the Assistant Secretary-General in charge of the Legal Department concluded that while there was no explicit provision in the Charter on the question of whether non-member States of the United Nations could become full members of ECAFE, the Charter envisaged a clear difference between Members and non-members and "that this difference rested upon the fundamental principle that rights of membership should not be granted unless the obligations of membership were also assumed." On the other hand, the grant of full commission membership to non-self-governing territories "would be contrary to the special regime prescribed for such territories in Chapters XI, XII and XIII of the Charter" (E/491).[55]

(*b*) During the thirteenth session of the Council in September 1951, an opinion of the Legal Department of the United Nations was read to the Council which emphasized that neither Article 68 nor any other provision of the Charter imposed any conditions on the composition of regional commissions. Recalling the history of that provision (as cited in para. 3 above), the opinion concluded that the Council "having wide discretion in determining the composition of its commissions, may accord to non-member States the right to vote in ECE".[56]

(*c*) In response to a request made at the fifteenth session of the Economic and Social Council for a legal study on the question whether full membership with voting rights in commissions could be granted to non-member States, the Secretary-General prepared a memorandum (E/2458)[57] in which he examined in detail the history of Article 68 of the Charter, the practice of the Economic and Social Council, the possible implications of Article 69 (relating to the procedures of the Council itself) and of Article 4 (relating to membership in the Organization) and concluded that the Council "has authority by virtue of Article 68 of the Charter to grant full membership in the regional commissions to States which are not Members of the United Nations".

5. Although these previous opinions only addressed the possibility of membership in regional commissions by non-member States or by non-self-governing territories, the history and reasoning on which they were based could support the proposition that in view of the silence of the Charter and of the General Assembly on this subject, the Economic and Social Council has authority to grant membership in these commissions to entities that are not even States or territories. However, although the Council did establish functional commissions composed of individuals, as to the regional commissions it has been the invariable practice of the Council to grant full membership only to States — in general Members of the Organization, though there have been some exceptions (e.g., the membership of Switzerland in ECE). This practice rests on the principle that the membership of certain organs, as of the Organization itself, must be restricted to States; the unprecedented creation of mixed organs, consisting of both States and other entities, would imply a departure from this well-established practice. Before doing so, the Council might wish to consult the General Assembly, which is the organ that under Article 60 of the Charter is vested with primary responsibility for the discharge of the functions of the Organization in relation to international economic and social co-operation, and under whose authority the Council functions.

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[55] See *Official Records of the Economic and Social Council, Fifth Session, Supplement No. 6,* Part II, p. 19.

[56] *Ibid., Thirteenth Session,* 555th meeting, para. 8.

[57] *Ibid., Seventeenth Session, Annexes,* agenda item 8.

6. In respect of the PLO, the General Assembly has in its resolution 3237 (XXIX) provided that that entity should enjoy observer status in various organs and conferences of the United Nations. The Economic and Social Council has granted such status to the PLO under rule 73 of the rules of procedure, and ECWA has granted the PLO permanent observer status by resolution 12(II).[58] If the Council were, on its own authority, to grant full membership to the PLO in ECWA, it might be considered as going beyond the letter and possibly the spirit of the resolution of the Assembly, which is the organ preeminently qualified to make political decisions in the Organization (see, e.g., General Assembly resolution 396(V)).

7. However, the Council has in the past created the category of associate members in respect of three of the regional commissions (ECA, ECLA, ESCAP) in order to provide for the participation of non-self-governing territories (and in ECA, also of the administering authorities thereof), evidently considering that, not being States, they lacked the capacity to become full members of these commissions; such a category, which has not yet been, but could also be created for ECWA, would seem more appropriate for an entity such as the PLO. In addition, it might be noted that the Council has, in respect of each regional commission, also provided that various States and other entities (e.g., the former Free Territory of Trieste, in respect of ECE) not members of a commission, might enjoy a "consultative capacity" therein.[59]

8. Consequently, our specific responses to the three queries in the above mentioned memorandum are as follows:

(i) As the composition of each of the five existing regional commissions is formulated uniquely, a change in the composition of one commission would not directly affect or imply a change in the composition of the others — except as the establishment or the disregard of certain principles in respect of one commission might be considered as precedents relevant to the others (see subparagraph (iii) below).

(ii) In view of the silence of the Charter on the subject of the composition of regional commissions, no decision of either the General Assembly or the Council on this subject would imply a change in that instrument, though the creation of a mixed-type (i.e., both States and other entities) full membership in a regional commission would constitute an important change in the constitutional practice of the past thirty years.

(iii) Although, as indicated in subparagraph (ii) above, no amendment of the Charter would be required to change the nature of the composition of regional commissions, the creation of a mixed full membership in one of them would be a precedent relevant to both the other such commissions and to other intergovernmental organs at present consisting solely of representatives of States.

9. Summing up, there is no legal impediment to the Council granting membership to the PLO in ECWA. However, for the above-stated reasons, it would appear more consistent with constitutional practice for the Council to create a special category of membership in ECWA to accommodate the PLO.[60]

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[58] *Ibid., Fifty-ninth Session, Supplement No. 11* (E/5658), p. 13.

[59] See Economic and Social Council resolution 36 (IV) of 28 March 1947, para. 9.

[60] Further to resolution 36(IV) of the Economic Commission for Western Asia, the Economic and Social Council adopted resolution 2089 (LXIII) of 22 July 1977 whereby it decided to amend paragraph 2 of the terms of reference of ECWA to read:

"2. The members of the Commission shall consist of the States Members of the United Nations situated in Western Asia which used to call on the services of the United Nations Economic and Social Office in Beirut and of the Palestine Liberation Organization. Future applications for membership by Member States shall be decided on by the Council on the recommendation of the Commission."

II. MEMBERSHIP OF EGYPT

10. On 28 April 1977, ECWA adopted resolution 37(IV) on the "Application by the Arab Republic of Egypt for membership of the Economic Commission for Western Asia, in which it recommended that the Economic and Social Council approve the admission of Egypt as a member of ECWA.[61] Although this recommendation would appear consistent with the existing text governing the composition of ECWA (see para. 2 above), there are several legal questions that require comment.

11. Unlike the ECA, ECLA and ESCAP, but not ECE, ECWA's geographical scope is not defined explicitly in its terms of reference, though a certain restriction is implied by its name. The question might therefore be raised whether the admission of Egypt would:

(*a*) expand the geographical scope of the Commission, certainly beyond its existing scope (that previously serviced by UNESOB) by including the Sinai, and possibly even beyond the scope implied by its name, if the principal part of the country's territory (i.e., that in Africa) is also considered to be included. Either expansion might also raise once more the issue of whether the Economic and Social Council would not be improperly excluding a Member of the Organization that is clearly within the region serviced by the Commission, certainly as thus expanded.

(*b*) merely be that of a non-regional member (such as, e.g., the United Kingdom and the United States in ESCAP and Canada and the United States in ECE)?

12. Egypt is already a member of ECA, being explicitly mentioned as such in the latter's terms of reference:[62] admission to ECWA would thus give that country dual membership. While this would not be unprecedented (e.g., the United States is a member of ECE, ECLA and ESCAP; Canada is a member of ECE and ECLA; the United Kingdom is a member of ECE and of ESCAP, and originally was also of ECA), it should be noted that this would be the first instance in which a potential recipient of assistance from regional commissions would be enabled to receive assistance from more than one. If it wishes to grant Egypt membership in ECWA as a regional member (see para. 11 above), the Council might at the same time specify either that it is to be eligible to receive assistance from only ECA or ECWA, or that assistance in respect of the principal territory would have to come from ECA and in respect of the Sinai from ECWA.

13. There would thus seem to be no legal obstacle to the admission of Egypt as a full member of ECWA, in particular if it is understood that such admission is in the capacity of a non-regional member not entitled to assistance from the Commission (except, perhaps, in respect of the Sinai), or alternatively if the extent of the extension of the geographical scope of the Commission is adequately defined and appropriate provisions are made to prevent the possible duplication of eligibility for assistance.[63]

16 June 1977

13. COMMENTS ON THE QUESTION OF THE DESIGNATION BY A MEMBER OR ASSOCIATE MEMBER OF ESCAP OF ITS REPRESENTATIVE ON THE COMMISSION AS OBSERVER

Memorandum to the Chief, Regional Commission Section, Department of Economic and Social Affairs

1. I refer to the letter from the Special Assistant to the Executive Secretary of ESCAP of which a copy is attached to your memorandum to me of 24 March 1977.

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[61] See *Official Records of the Economic and Social Council, Sixty-third Session, Supplement No. 10* (E/5969), p. 22.

[62] *Ibid., Sixty-first Session, Supplement No. 11* (E/5783), Annex III. para. 5.

[63] By its resolution 2088 (LXIII) of 22 July 1977, the Economic and Social Council decided to admit the Arab Republic of Egypt as a member of the Economic Commission for Western Asia.

2. My observations on that letter will be based on the assumption that the phrase "an intergovernmental ESCAP meeting" in the second paragraph refers to a meeting of the Commission itself or of a subsidiary organ of the Commission composed of States.

3. I shall address myself first to the question of the designation by the Government of a State member of ESCAP of its representative on the Commission as observer.

4. To our knowledge it has never occurred in the practice of the United Nations that a State member of any principal or subsidiary organ of the Organization has designated an observer to represent it on that organ.

5. The function of an observer, as is clear from his title, is essentially to "observe". His role is, in fact, even more limited than that of certain participants which, without enjoying the rights attendant upon full membership, are nevertheless entitled to unrestricted participation in the discussions and, in some instances where the relevant rules so provide, are allowed to make proposals (which, however, are usually put to the vote only at the request of a full participant).[64]

6. It is, therefore, hardly necessary to emphasize the anomaly of a request by a State member of a United Nations organ to participate in meetings of that organ through an observer. (It may be noted that the reference here is to organs, as distinct from conferences, for there is no legal objection to States invited to conferences attending officially as observers rather than as participants.)

7. To this it may be added that the granting of such a request would give rise to considerable difficulties. It appears doubtful whether the Rules of Procedure of ESCAP,[65] rule 9 of which provides that each member is to be represented by "an accredited representative", permit representation of a member by an observer. Further difficulties would arise from the uncertainty as to the intention of the member of ESCAP wishing to participate through an observer and as to the related question of the precise legal effects to be attributed to the fact that a member of the Commission has been allowed to participate in this fashion.

8. It may be noted further that the participation of States members of United Nations organs in the work of those organs through observers would not, it appears, serve any useful purpose. For a State member of such an organ can, without in any way departing from established practice, limit its participation in the work of the organ as much as it wishes. (It may, in fact, if the organ in question is a subsidiary one, request the parent organ to allow it to withdraw from the subsidiary organ.) It may, if it so wishes, refrain altogether from appointing a representative on the organ. Nor is it obliged, if it does choose to appoint one, to participate actively in the work of the organ. (Thus, its representative may refrain from speaking and abstain from voting or, in accordance with practice, declare that he does not participate in the voting.)

...

11. I turn now to the question of associate members of the Commission being represented by observers. In this respect I would first note that paragraphs 6 and 7 of the Commission's terms of reference speak of "representatives of associate members", for which reason it would seem that "representative" is a more proper term for designating the person appointed to represent an associate member than "observer". Given the limited character of the rights of participation enjoyed by associate members of the Commission and the fact that an associate member can limit his participation as much as he wishes to, it seems very unlikely that any associate member wishing to participate through an

[64] See the memorandum on the facilities accorded to observers at United Nations conferences and meetings held away from Headquarters, reproduced in the *Juridical Yearbook*, 1972, p. 159.

[65] *Official Records of the Economic and Social Council, 1978, Supplement No. 8* (E/1978/48), p. 93.

observer rather than a representative would intend thereby to restrict or modify in any way its rights under the terms of reference and rules of procedure of the Commission. Accordingly, it seems to us that if any associate member requests observer status for its representative on the Commission, the Secretariat of ESCAP should advise against such action by pointing out that this use of the term observer, in addition to being devoid of practical utility, would be of doubtful propriety and give rise to confusion.

1 April 1977

14. Confidential procedures established by successive resolutions of the Economic and Social Council for the handling, within the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities, of communications relating to human rights and fundamental freedoms — Specific case of communications from non-governmental organizations in consultative status with the Economic and Social Council — Practice followed in the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities — Question of the suspension or withdrawal of consultative status of non-governmental organizations

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. This refers to the issues that the Permanent Representative of [a Member State] raised in his letter of 30 March addressed to you.

2. The main issue raised in the above-mentioned letter is whether a communication received from the International University Exchange Fund, a non-governmental organization in category II consultative status with the Economic and Social Council, and distributed as document E/CN.4/NGO.202 at the thirty-third session of the Commission on Human Rights, was not in fact subject to the confidential procedure approved by the Economic and Social Council in its relevant resolutions, particularly resolutions 1503 (XLVIII) and 1919 (LVIII). The other issue raised in the letter concerns the suspension or withdrawal of consultative status of NGOs under Economic and Social Council resolution 1296(XLIV).

3. In order to examine the legal aspects of the main issue involved, the pertinent provisions contained in the most relevant resolutions of the Economic and Social Council are first set out below, followed by an analysis of the manner in which such provisions have been implemented by the competent organs of the Council and by the Secretariat. This analysis is the result of a cursory review of the resolutions referred to in this memorandum. The short time available does not permit a thorough examination of all the pertinent resolutions, some of which are interrelated, nor of the relevant reports of the organs concerned and the proceedings leading to the adoption of such resolutions. Finally a short section is included on the question of withdrawal of consultative status of NGOs.

A. Basic provisions (in chronological order)

4. Under Economic and Social Council resolution 728 F (XXVIII) of 30 July 1959, communications dealing with principles involved in the promotion of universal respect for, and observance of, human rights should first be compiled by the Secretariat in a non-confidential list and other communications concerning human rights, in a confidential list. While both lists containing a brief indication of the substance of each communication are distributed to members of the Commission on Human Rights the latter list could only be furnished to members of the Commission in private meeting. The Council further suggested to the Commission on Human Rights that it should at each session appoint an

ad hoc committee to meet shortly before its next session for the purpose of reviewing the former list and of recommending which of these communications, in original, should be made available to members of the Commission on request.

5. At its twenty-third session on 16 March 1967, the Commission on Human Rights adopted its resolution 8 (XXIII), the operative part of which read:

"[*The Commission on Human Rights*]

"1. *Decides* to give annual consideration to the item entitled 'Question of violations of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of *apartheid,* in all countries, with particular reference to colonial and other dependent countries and territories', without prejudice to the functions and powers of organs already in existence or which may be established within the framework of measures of implementation included in international conventions on the protection of human rights and fundamental freedoms;

"2. *Requests* the Sub-Commission on the Prevention of Discrimination and Protection of Minorities to prepare, for the use of the Commission in its examination of this question, a report containing information on violations of human rights and fundamental freedoms from all available sources;

"3. *Requests* the Secretary-General to provide assistance and facilities to the Sub-Commission in accomplishing its task;

"4. *Requests* the Economic and Social Council to authorize the Commission and the Sub-Commission in conformity with the provisions of operative paragraph 1 above, to examine information relevant to gross violations of human rights and fundamental freedoms, such as *apartheid* in all its forms and manifestations, contained in the communications listed by the Secretary-General pursuant to Economic and Social Council resolution 728 F (XXVIII);

"5. *Further requests* authority, in appropriate cases, and after careful consideration of the information thus made available to it, in conformity with the provisions of operative paragraph 1 above, to make a thorough study and investigation of situations which reveal a consistent pattern of violations of human rights, and to report with recommendations thereon to the Economic and Social Council;

"6. *Invites* the Sub-Commission to bring to the attention of the Commission any situation which it has reasonable cause to believe reveals a consistent pattern of violations of human rights and fundamental freedoms, in any country, including policies of racial discrimination, segregation and *apartheid,* with particular reference to colonial and other dependent territories."

The foregoing resolution was endorsed by the Economic and Social Council in its resolution 1235 (XLII) of 6 June 1967.

6. Subsequent to resolution 728 F (XXVIII), the Economic and Social Council adopted resolution 1503 (XLVIII) of 27 May 1970 which further expands on the procedure for dealing with communications relating to violations of human rights and fundamental freedoms. The relevant provisions of this resolution are reproduced below:

"[*The Economic and Social Council,*]

". . .

"1. *Authorizes* the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint a working group* consisting of not more than five of its members, with due regard to geographical distribution, to meet once a year in private meetings for a period not exceeding ten days immediately before the sessions of the Sub-Commission to consider all communications, including replies

* In pursuance of this provision the Sub-Commission established its Working Group on Communications by its resolution 2 (XXIV) of 16 August 1971.

of Governments thereon, received by the Secretary-General under Council resolution 728 F (XXVIII) of 30 July 1959 with a view to bringing to the attention of the Sub-Commission those communications together with replies of Governments, if any, which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms within the terms of reference of the Sub-Commission;

". . .

"4. *Further requests* the Secretary-General:

"(*a*) To furnish to the members of the Sub-Commission every month a list of communications prepared by him in accordance with Council resolution 728 F (XXVIII) and a brief description of them, together with the text of any replies received from Governments;

"(*b*) To make available to the members of the working group at their meetings the originals of such communications listed as they may request, having due regard to the provisions of paragraph 2 (*b*) of Council resolution 728 F (XXVIII) concerning the divulging of the identity of the authors of communications;

"(*c*) To circulate to the members of the Sub-Commission, in the working languages, the originals of such communications as are referred to the Sub-Commission by the working group;

"5. *Requests* the Sub-Commission on Prevention of Discrimination and Protection of Minorities to consider in private meetings, in accordance with paragraph 1 above, the communications brought before it in accordance with the decision of a majority of the members of the working group and any replies of Governments relating thereto and other relevant information, with a view to determining whether to refer to the Commission on Human Rights particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission;

"6. *Requests* the Commission on Human Rights after it has examined any situation referred to it by the Sub-Commission to determine:

"(*a*) Whether it requires a thorough study by the Commission and a report and recommendations thereon to the Council in accordance with paragraph 3 of Council resolution 1235 (XLII);

". . .

"8. *Decides* that all actions envisaged in the implementation of the present resolution by the Sub-Commission on Prevention of Discrimination and Protection of Minorities or the Commission on Human Rights shall remain confidential until such time as the Commission may decide to make recommendations to the Economic and Social Council".

7. In its resolution 1919 (LVIII) of 5 May 1975, paragraph 2, the Economic and Social Council,

"*Confirms* that communications from non-governmental organizations containing complaints of alleged violations of human rights shall be handled according to the provisions of Council resolutions 454 (XIV)* and 728 F (XXVIII), paragraph 2(*b*);"

* In the first preambular paragraph of resolution 1919 (LVIII) the Council refers to resolution 454 (XIV) as follows:

"*Considering* that in its resolution 454 (XIV) of 28 July 1952 it decided that all communications emanating from non-governmental organizations in consultative status containing complaints of alleged violations of human rights should be dealt with not under the rules of consultative relationship but under the decisions for the inclusion of such material in confidential lists of communications prepared for the Commission on Human Rights, as further set out in paragraph 2 (*b*) of Council resolution 728 F (XXVIII) of 30 July 1959".

and

"*Decides* that in future non-governmental organizations in consultative status:

"...

"(*b*) Must also observe strictly the provisions of paragraph 8 of Council resolution 1503 (XLVIII)".

B. THE QUESTION OF THE APPLICATION OF CONFIDENTIAL PROCEDURES TO COMMUNICATIONS CONCERNING HUMAN RIGHTS: AN ANALYSIS

(a) *Practice relating to the implementation of resolution 8 (XXIII) of the Commission on Human Rights*

8. From the reports of the Sub-Commission on Prevention of Discrimination and Protection of Minorities from 1971 to 1976, it would appear that the Sub-Commission dealt with the implementation of its mandate under paragraph 2 of Commission resolution 8 (XXIII) [i.e., preparation, for the use of the Commission in its examination of the "Question of violations of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of *apartheid*, in all countries, with particular reference to colonial and other dependent countries and territories," of a report containing information on violations of human rights and fundamental freedoms from all available sources] by means of a general debate, but resorted to confidential procedures prescribed in Economic and Social Council resolution 1503 (XLVIII) in dealing with its mandate under paragraph 6 of the same resolution [i.e., to bring to the attention of the Commission any situation which it has reasonable cause to believe reveals a consistent pattern of violations of human rights and fundamental freedoms in any country].[66]

9. Thus, in 1971, in connexion with consideration of its report under Commission on Human Rights resolution 8 (XXIII), the Sub-Commission had before it document E/CN.4/Sub.2/NGO.46 which contained a statement on behalf of twenty-two international non-governmental organizations in consultative status with the Economic and Social Council on events in East Pakistan. The Sub-Commission also agreed to hear the representative of a non-governmental organization.[67] In 1974, under agenda item 11 entitled "Question of violations of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of *apartheid*, in all countries, with particular reference to colonial and other dependent countries and territories: Report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII)," the Sub-Commission heard the representatives of three non-governmental organizations.[68]

10. In 1976, under agenda item 8 (which had the same title as agenda item 11 referred to in the preceding paragraph), the Sub-Commission following a general debate adopted resolution 2 (XXIX) on "Question of violations of human rights and fundamental freedoms" which consists of four resolutions relating respectively to Southern Rhodesia, Uganda, Argentina,[69] and Western Sahara. These resolutions were included in the report of the Sub-Commission to the Commission on Human Rights at its thirty-third session.[70]

11. It was apparently this background which led to the issuance of document E/CN.4/NGO.202 at the thirty-third session of the Commission. It may also be noted that this document was listed in the report of the Commission on that session as one of

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[66] The discussion in the Sub-Commission on the meaning and scope of Commission resolution 8 (XXIII) and on the Sub-Commission's role in its implementation was summarized in the report of the Sub-Commission on its twenty-seventh (1974) session (E/CN.4/1160).

[67] E/CN.4/1070-E/CN.4/Sub.2/323, para. 107.

[68] See document E/CN.4/1160, paras. 119–121.

[69] It may be noted that before adoption of the resolution on Argentina, the representative of Argentina made a statement which was subsequently issued as document A/CN.4/Sub.2/L.664.

[70] E/CN.4/1218-E/CN.4/Sub.2/378, Chapters V and XVII.

five documents submitted by non-governmental organizations that were before the Commission.[71]

12. It may further be noted that of the five NGO documents before the Commission mentioned in the preceding paragraph, two documents dealt with Uganda (E/CN.4/NGO/193 and 203) which was the subject of Sub-Commission resolution 2B (XXIX).

(b) *Practice relating to agenda items concerning the question of violation of human rights in specific countries*

13. In 1974 when dealing with "the question of the human rights of persons subject to any form of detention or imprisonment," the Sub-Commission adopted two resolutions (7 (XXVII) and 8 (XXVII)). In the first resolution, the Sub-Commission, noting that torture and other forms of cruel, inhuman or degrading treatment and punishment were flagrant violations of human rights, decided to review annually developments in this field and, in such review, to take into account any reliably attested information from, *inter alia,* NGOs in consultative status with the Economic and Social Council, provided that such NGOs "act in good faith and that their information is not politically motivated, contrary to the principles of the Charter of the United Nations". In the second resolution, under the same title but dealing specifically with Chile, the Sub-Commission recommended to the Commission to study the reported violations of human rights in Chile and requested, among others, concerned NGOs in consultative status "to submit to the Secretary-General for reference to the Commission on Human Rights recent and reliable information on torture and other cruel, inhuman or degrading treatment or punishment in Chile."[72]

14. At its thirty-first session in 1975, the Commission, in accordance with the recommendation in the Sub-Commission's resolution 8 (XXVII), included item 7 in its agenda entitled "Study of reported violations of human rights in Chile, with particular reference to torture and other cruel, inhuman or degrading treatment or punishment." Under this item, the Commission had before it a number of documents including those containing information submitted respectively by thirteen non-governmental organizations.[73] At the following session of the Commission in 1976, under the same agenda item, a written statement submitted by a non-governmental organization in Category I was issued as document E/CN.4/NGO.190.[74]

15. Under other agenda items relating to the question of violation of human rights in specific countries, the following documents containing written statements from non-governmental organizations were issued: those relating to countries of southern Africa — E/CN.4/NGO.194, 197, 198, 200, 204 and those relating to occupied Arab territories — E/CN.4/NGO.196.

(c) *Conclusions*

16. Although Economic and Social Council resolutions 728 F (XXVIII) and 1503 (XLVIII) referred to all communications concerning human rights in the application of confidential procedure and did not provide for any exceptions, the foregoing survey shows that both the Commission and its Sub-Commission had made exceptions in the issuance and circulation of documents containing communications from NGOs in consultative status. The circulation of NGO documents either under agenda items pertaining to particular countries or under general items in situations referred to in paragraphs 9-12 above

[71] See *Official Records of the Economic and Social Council, Sixty-second Session, Supplement No. 6* (E/5927-E/CN.4/1257), para. 73.

[72] For the texts of these resolutions, see E/CN.4/1160–E/CN.4/Sub.2/354, pp. 52–54.

[73] These documents were issued in the general series. See *Official Records of the Economic and Social Council, Fifty-eighth Session, Supplement No. 4* (E/5635–E/CN.4/1179), para. 93.

[74] *Official Records of the Economic and Social Council, Sixtieth Session, Supplement No. 3* (E/5768–E/CN.4/1213), para. 66.

has not been objected to by any organ of the United Nations. The issuance of such documents would therefore appear to come within the established practice.

C. THE QUESTION OF WITHDRAWAL OF CONSULTATIVE STATUS OF NON-GOVERNMENTAL ORGANIZATIONS

17. Under Part VIII of Economic and Social Council resolution 1296 (XLIV), the Council Committee on Non-Governmental Organizations, in periodically reviewing the activities of NGOs on the basis of their reports and other relevant information, should determine the extent to which the organizations have complied with the principles governing consultative status and have contributed to the work of the Council, and may recommend to the Council suspension or exclusion from consultative status of organizations which have not met the requirements for consultative status. While the Secretariat will transmit such reports and information it has received to the NGO Committee, any "arrangements . . . for withdrawing the consultative status of non-governmental organizations" can only be made by the Committee itself for recommendation to the Economic and Social Council.[75]

28 April 1977

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[75] The following letters relating to the subject matter of the memorandum reproduced above were exchanged between the Chargé d'affaires a.i. of the Permanent Mission of Argentina to the United Nations and the Under-Secretary-General for Political and General Assembly Affairs:

I

Letter dated 11 July 1977 from the Chargé d'affaires a.i. of the Permanent Mission of Argentina to the United Nations addressed to the Under-Secretary-General for Political and General Assembly Affairs.

I have the honour to address you for the purpose of expressing the concern of the Argentine authorities about some of the practices applied by the Division of Human Rights with regard to the confidential procedures established by the Economic and Social Council.

As you state in your note dated 11 May 1977, the Council and the Committee have had a very active discussion on the abuse of consultative status and the violation of the consultative procedures which "benefits none and should be discouraged". I will, therefore, not repeat the views expressed by representatives in those bodies, which coincide with that statement and indicate increasing concern, which we share. This concern is not in concordance with the apparent insouciance with which the Division of Human Rights refers to the circulation of document E/CN.4/NGO.202 in paragraphs 6 and 7 of its opinion, which the Office of Legal Affairs follows in recognizing that it has become usual practice. This is in spite of the objections of the various intergovernmental organs of the United Nations, as can be seen from a perusal from a report of the most recent meeting of the Committee on Non-Governmental Organizations or the report of the thirty-first session of the Commission on Human Rights and the discussion in the Economic and Social Council which gave rise to the adoption of resolution 1919 (LVIII), which leaves no doubt concerning the requirement of confidentiality, the validity of which is reaffirmed "without exception".

Nevertheless, the Division of Human Rights apparently infers that the adoption of resolution 2 C (XXIX) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities means that Economic and Social Council resolution 1503 (XLVIII) no longer applies to Argentina. Such elasticity of interpretation disregards the intention expressed by the sponsors of that resolution when introducing it "not to criticize the Argentine Government. . .", etc. It likewise disregards the fact that the "reports" referred to in the first preambular paragraph of that resolution and in the public debate which arose concerning it, are not the "communications" to which the circulation of the above-mentioned document purported to give publicity, thereby bypassing the decision of the Working Group on Communications, which did not submit to the Sub-Commission any allegations concerning Argentina.

The rule of confidentiality remains in force, even after its breach by some non-governmental organizations which have attacked the Argentine Government on the pretext of referring to Sub-Commission resolution 2 C (XXIX) and after the Member States which were attacked in this way found themselves obliged to respond. It would, moreover, be inadmissible to deduce the contrary, because that would mean recognizing that one breach of confidentiality justified the others. The Commission on Human Rights itself endorsed that view by suspending its public meetings and deciding in the end to take note of the report of the Sub-Commission without adopting any text.

The exercise of the responsibility for deciding upon the withdrawal of consultative status, which, under paragraph 36 of resolution 1296 (XLIV), lies with the Economic and Social Council, has been made extremely difficult by the dilatoriness of the Committee on Non-Governmental

15. 1961 Convention on Narcotic Drugs[76] — Question of international shipments of small quantities of drugs seized in the illicit drug traffic for the purpose of examination in foreign laboratories or of evidence to be provided in the course of court proceedings

Opinion given at the request of the International Narcotics Control Board[77]

It is understood that the International Narcotics Control Board has requested a legal opinion of the United Nations Office of Legal Affairs regarding the movement between countries of small quantities of drugs for the purposes of laboratory examination to determine the exact nature of such substances or for the purposes of evidence in judicial proceedings. After a thorough analysis of this question the Office of Legal Affairs has concluded that the international movement of small quantities of drugs for such purposes

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Organizations in carrying out the review which was envisaged in 1968 and which has so far not been effected. Such a review would be facilitated if the Secretariat authorities could lend the Committee their active collaboration.

It is necessary to draw attention also to the fact that the members of the Committee do not necessarily have information concerning the activities of the NGOs in the different forums of the United Nations, although that information is accessible to the Secretariat officials in view of the coordination which is presumed to exist between the various United Nations offices. Thus, the NGOs' violations of resolutions 1296 (XLIV) and 1919 (LVIII) can be transmitted to the members of the Committee for consideration, without that prejudging the measures which the Committee may recommend to the Council. In that connexion, the Office of Legal Affairs recognizes in paragraph 17 of its opinion that "The Secretariat will transmit such reports and information it has received to the NGO Committee...".

It cannot escape your notice that only an alarming indifference to the principles of the Charter allows such procedures, which usually serve inadmissible political motives. Accordingly, I will conclude by reaffirming the confidence of the Argentine Government, as expressed in my note dated 30 March 1977, in the effective fulfilment by the Secretariat of the principles of the Charter and the resolutions adopted for their implementation and my Government's intention to collaborate with you in the common effort to promote international justice and co-operation.

I take this opportunity to express the desire that this exchange of notes be reproduced in the *United Nations Juridical Yearbook,* on the understanding that it may help to improve the practices of the Organization.

Angel María Olivieri Lopez
Chargé d'Affaires

II

Letter dated 9 January 1978 from the Under-Secretary-General for Political and General Assembly Affairs addressed to the Permanent Representative of Argentina to the United Nations

I have the honour to refer to the letter dated 11 July 1977 addressed to me by Mr. Olivieri López in his capacity as Chargé d'Affaires, concerning the Argentine Government's position regarding the circulation of the statements by certain non-governmental organizations. As in the case of our previous correspondence on this matter, I have held lengthy consultations with the Office of Legal Affairs and the Division of Human Rights. The Secretariat is always guided by the Charter of the United Nations and the relevant resolutions and practices of United Nations organs. After examining this case, I am convinced that the Secretariat acted in good faith in interpreting the various relevant texts and practices. It is also clear to me that there are various possible interpretations, in view of the large number of resolutions and guidelines approved by the members of the competent United Nations organs.

As you are perhaps aware, the Commission on Human Rights, at its thirty-third session, considered the question of the coexistence of public and confidential procedures for examining allegations of violations of human rights and fundamental freedoms, with a view to determining how the procedural difficulties that might arise in the simultaneous application of both procedures could be avoided (report of the Commission on its thirty-third session, document E/5927, para. 77).

The Secretary-General was requested to submit to the Commission at its thirty-fourth session a report including, *inter-alia,* an analysis of the views expressed on this question at the thirty-third session of the Commission. Accordingly, we firmly hope that some clarification may be obtained when the Commission reconsiders this question at its thirty-fourth session. That would give us guidance and interpretations of the various resolutions, which would avoid a recurrence of the difficult problem to which attention has been drawn. Meanwhile, the Secretariat will continue to apply the customary practice in those cases where the intention of the legislative organs has not yet been made clear.

should be exempt from the provisions of article 31 of the Single Convention on Narcotic Drugs.

We believe this conclusion is the only one which can logically be arrived at after a careful examination of the Convention as well as a review of the *Commentary* thereon prepared by the Secretary-General in accordance with paragraph 1 of Economic and Social Council resolution 914D (XXXIV) of 3 August 1962.[78] Article 31 outlines "special provisions relating to international trade". The term "international trade" however is not defined in the text of the Convention nor does the *Commentary* contain a definition. However, within its contexts it is clear that the term is meant to refer to commercial activity or "enterprise", as referred to in article 31 (3) (*a*) and (*b*). While article 31 does refer to "import" and "export", which are defined in article 1 (1) (*m*), a reasonable interpretation of the article would restrict the application of the control mechanism to instances of im-

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With regard to the statement in the third paragraph of the letter that "the Division of Human Rights apparently infers that the adoption of Sub-Commission resolution 2 C (XXIX) means that Economic and Social Council resolution 1503 (XLVIII) no longer applies to Argentina", I would refer to the memorandum of the Division of Human Rights dated 20 April 1977, which was transmitted to you on 11 May of the same year. As stated in paragraph 8 of the Division's memorandum "the Secretariat has adhered strictly to the concept of confidentiality provided for, *inter alia,* in Council resolution 1503 (XLVIII) with regard to allegations of violations of human rights and fundamental freedoms which are not the subject of public debate and have not been the subject of public decisions or resolutions of the various United Nations organs concerned with human rights".

With regard to the question of the review of the consultative status of non-governmental organizations, I would refer to paragraph 17 of the opinion of the Office of Legal Affairs dated 28 April 1977, which was transmitted to you on 11 May of the same year.

Since the task of determining whether a governmental organization has or has not observed the provisions of Economic and Social Council resolution 1296 (XLIV) lies with the Council Committee on Non-Governmental Organizations, the Secretariat is not competent to make such a decision or to refer to the Committee "violations by non-governmental organizations of resolutions 1296 (XLIV) and 1919 (LVIII), as suggested in the letter. The Secretariat should transmit to the Council Committee such reports and information as they are submitted, for consideration by the Committee under the pertinent provisions of resolution 1296 (XLIV).

As you know, the Economic and Social Council recently adopted a resolution sponsored by Argentina, in which, *inter alia,* Member States were requested to "provide any relevant information concerning compliance by non-governmental organizations with the principles governing their consultative status". Accordingly, if a Member State, such as yours, considers that a non-governmental organization has abused its consultative status, its Government may submit the particulars relating to the question to the Economic and Social Council Committee on Non-Governmental Organizations.

I have taken note and informed the Office of Legal Affairs of the request that the exchange of notes on this question be reproduced in the *United Nations Juridical Yearbook*. We welcome any opportunity to clarify and improve the practices of the United Nations.

William B. BUFFUM
Under-Secretary-General for Political and General Assembly Affairs

[76] United Nations, *Treaty Series,* vol. 520, p. 151, vol. 557, p. 280, vol. 570, p. 346 and vol. 590, p. 325.

[77] The attention of the Commission on Narcotic Drugs at its fifth special session was drawn to the report of the International Narcotics Control Board from which it appeared that governments and the International Criminal Police Organization (ICPO/Interpol) had approached the Board with regard to simplifying and accelerating the procedures relating to the control of international shipments of small quantities of drugs seized in the illicit drug traffic for the purpose of their examination in foreign laboratories or of evidence to be provided in the course of court proceedings.

The main difficulties which were pointed out in that respect consist of delays constantly encountered in such international shipments of samples seized in the illicit drug traffic for the purposes mentoned above due to the application of the system of import certificates and export authorizations as provided for in article 31 of the 1961 Single Convention dealing with "special provisions relating to international trade". For its consideration of the matter, the INCB had requested an opinion of the Office of Legal Affairs at the United Nations Headquarters. (See document E/CN.7/609, paras. 15–22.)

[78] United Nations publication, Sales No. E.73.XI.1.

port and export for commercial purposes or where such control would be consistent with the general and specific obligations of the Convention.

The movement of small quantities of drugs for the purposes stated above would not appear to be inconsistent with such obligations. On the contrary, these movements appear to be specifically aimed at carrying out the provisions of articles 35 and 36 of the Convention, by implementing and ensuring international co-operation in the campaign against illicit traffic in narcotic drugs.

The imposition of article 31 controls on such movements might impede the speedy implementation of these provisions and in the event would not be considered consistent with the general obligations of the Convention, as expressed in article 4 thereof. Verifications by ICPO/Interpol of the nature of drugs seized in illicit traffic must be seen as a fulfilment by States parties of the general obligations of article 4 (1) (*a*), i.e. taking such administrative measures as to give effect to the Convention in their own territories. In the same spirit, the movement of drugs from one State to another for purposes of evidence in judicial proceedings of a criminal nature must be seen as a logical measure aimed at fulfilment of the obligations of States parties to co-operate in the execution of the provisions of the Convention, as set out in article 4 (1) (*b*) thereof.[79]

16. 1971 CONVENTION ON PSYCHOTROPIC SUBSTANCES[80] — QUESTION WHETHER, IN VIEW OF THE AMENDING PROCEDURE PROVIDED FOR IN ARTICLES 2 AND 17, PARAGRAPH 2 OF THE CONVENTION, THE COMMISSION ON NARCOTIC DRUGS COULD TAKE A DECISION TO INCLUDE IN SCHEDULES I-IV OF THE CONVENTION THE SALTS OF THE SUBSTANCES LISTED IN THOSE SCHEDULES BEFORE HAVING RECEIVED A CORRESPONDING RECOMMENDATION FROM THE WORLD HEALTH ORGANIZATION, ON THE UNDERSTANDING THAT SUCH A DECISION WOULD BECOME EFFECTIVE ONLY AFTER RECEIPT OF THE RECOMMENDATION IN QUESTION — QUESTION WHETHER, ALTERNATIVELY, THE COMMISSION COULD TAKE A VOTE BY CORRESPONDENCE ON AN APPROPRIATE RECOMMENDATION FROM WHO

Opinion given further to a request from a representative in the Commission on Narcotic Drugs[81]

After having reviewed the questions referred to it, the Office of Legal Affairs stated that it was of the following opinion: Article 2 of the 1971 Convention provided that the Commission could determine to place substances under the control régime provided for

[79] For the action taken by the Commission on Narcotic Drugs at its fifth special session on the basis of the above opinion, see *Official Records of the Economic and Social Council, 1978, Supplement No. 5* (E/1978/35), paras. 177–183 and chapter XIII, A, resolution 4 (S-V).

[80] E/CONF.58/6.

[81] At the twenty-seventh session of the Commission on Narcotic Drugs, it was observed with regret that WHO was not yet in a position to make an appropriate recommendation to the Commission in respect of the salts, esters, isomers and ethers of substances listed in Schedules I-IV annexed to the Convention on Psychotropic Substances, adopted in 1971 with the active co-operation of WHO. The Commission agreed that the amending of those Schedules with regard to the esters, isomers and ethers of the substances listed therein should be studied and decided upon by the Commission at its next session, at which time it was hoped that the relevant recommendations would have been made by WHO, in accordance with article 2 of the 1971 Convention. With regard to the salts of those substances, however, the Commission decided, by 24 votes to none, with 2 abstentions, that the inclusion of the salts in question in the four Schedules was of the greatest importance and of the utmost urgency for the meaningful and effective implementation of the aims of the 1971 Convention and that the promptest possible measures should be taken to that effect. In line with this decision of the Commission, the representative of France asked the Secretariat for a legal opinion, to be obtained from the Office of Legal Affairs at United Nations Headquarters, on the above-mentioned questions (see *Official Records of the Economic and Social Council, Sixty-second Session, Supplement No. 7* (E/5933) (paras. 442–445)).

in that Convention only after WHO had previously made and communicated its findings and recommendations to the Commission, as those findings and recommendations were determinative with regard to medical and scientific matters. Therefore, a decision by the Commission at its present [twenty-seventh] session to include salts in Schedules I to IV of the 1971 Convention, on the understanding that such a decision would become effective only after receipt by the Commission of the relevant findings and recommendations of WHO, would be a reversal of the normal procedure for placing substances under international control, as provided for by article 2 of the 1971 Convention. Consequently, such a procedure would not be appropriate within the terms of that Convention. With regard to vote by correspondence, the Office of Legal Affairs pointed out that the Commission, by virtue of articles 2 and 17 of the 1971 Convention, could change Schedules by postal or telegraphic vote, once the members of the Commission had received the assessment by WHO pursuant to article 2, paragraph 4, of that Convention. The Secretary-General could then conduct a postal or telegraphic vote if authorized by the Commission at its present session and under conditions determined by the Commission. While explicit opposition by any member at the present session would disqualify this procedure and require postponement of the consideration of that issue to the next session of the Commission, it appeared to the Office of Legal Affairs that no serious opposition existed within the Commission at its present session to placing salts of psychotropic substances in Schedules I to IV of the 1971 Convention. Consequently, the Office of Legal Affairs concluded that the Commission could vote on the issue by correspondence, once the necessary recommendation by WHO had been duly communicated, and that the decision to include the salts in Schedules I to IV of the 1971 Convention had to be adopted by a two-thirds majority of the members of the Commission. The Office of Legal Affairs added that the Commission would be within its authority in requesting WHO to communicate an appropriate recommendation immediately after it had been determined by WHO.[82]

23 February 1977

17. COMMENTS ON WHETHER, UNDER THE INTERNATIONAL COCOA AGREEMENT, 1975, THE INTERNATIONAL COCOA COUNCIL COULD LEGALLY RAISE THE MINIMUM AND MAXIMUM PRICES IN ARTICLE 29 (1) SEPARATELY SO AS TO INCREASE THE RANGE OF 16 UNITED STATES CENTS PER POUND AND, IF SO, WHETHER, HAVING REGARD TO ARTICLE 29 (5), THE COUNCIL COULD ADJUST OTHER ARTICLES IN THE AGREEMENT WHICH WOULD BE AFFECTED BY THE INCREASE IN THE RANGE WITHOUT RESORTING TO THE AMENDMENT PROCEDURES IN ARTICLE 76

Letter to the Executive Director, International Cocoa Agreement Organization

You have requested the opinion of the Office of Legal Affairs of the United Nations in respect of the following matters arising under the International Cocoa Agreement, 1975:

> "... whether the [International Cocoa Council] could legally raise the minimum and maximum prices in Article 29(1) separately so as to increase the range of 16 US cents per pound and if so, whether, having regard to Article 29(5), the Council could adjust other Articles in the Agreement which would be affected by the increase in the range without resorting to the amendment procedures in Article 76."

We understand that this request was noted by the Executive Committee at its eighteenth series of meetings (9-14 June 1977), and that you have asked for our advice to reach you in time for the next series of meetings of the Committee which begins on 18 July 1977.

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[82] For the action taken by the Commission on Narcotic Drugs at its twenty-seventh session on the basis on the above opinion, see *ibid.*, paras. 447 and 448, as well as chapter XVI, A, resolution 4 (XXVII) and chapter XVI, B, decision 6 (XXVII).

Article 29 of the International Cocoa Agreement, 1975, provides, in part as follows:

"1. For the purpose of this Agreement, a minimum price of cocoa beans shall be established at 39 United States cents per pound and a maximum price at 55 United States cents per pound.

"2. Before the end of the first quota year, and again, if it is decided to extend this Agreement for a further period of two years under Article 75, before the end of the third quota year, the Council shall review the minimum price and the maximum price and may, by special vote, revise them.

"3. In exceptional circumstances resulting from upheavals in the international economic or monetary situation, the Council shall review the minimum price and the maximum price and may, by special vote, revise them.

". . .

"5. The provisions of Article 76 shall not be applicable to the revision of prices under this Article."

This article represents a very considerable revision in a number of respects[83] of the corresponding Article 29 of the International Cocoa Agreement, 1972, this latter article providing in its paragraph 2 that:

"(2) Before the end of the second quota year the Council shall review these prices and may, by special vote, revise them, except that the range between the minimum and the maximum prices shall remain the same. The provisions of Article 75 shall not be applicable to the revision of prices under the present paragraph."

The fact that the 1972 Agreement expressly prohibits any change of the range between minimum and maximum prices when the Council acts to alter those prices under Article 29, while no such express prohibition appears in the 1975 Agreement, might *prima facie* give rise to the assumption that, acting under Article 29 of the latter Agreement, the Council could not only alter the minimum and maximum prices, but also the range between these prices. However, before confirming such an interpretation it is necessary to ascertain that it is compatible with the clear intentions of the Parties and the provisions of the Agreement as a whole.

We are informed that there is nothing in the *travaux preparatoires* leading up to the conclusion of the 1975 Agreement which establishes one way or the other whether it was the intention of the Parties, in omitting the phrase in question appearing in the 1972 Agreement, that the Council could or could not alter the range between the minimum and maximum prices. Consequently, on the basis of the information at our disposal, any interpretation has to proceed on the basis of the text of the Agreement alone and as a whole.

Since the operation of the export quota system and the buffer stock arrangements are calculated on the basis of and within the fixed range, it would follow that a revision of the minimum and maximum prices, while maintaining the existing range, affects only Article 29 of the Agreement. However, if that revision were to alter the range, certain other essential Articles of the Agreement, such as Article 34 on the operation and adjustment of annual export quotas and other articles on buffer stocks, would become impossible to implement unless they are amended to reflect the change in range. Given the importance of these other Articles to the regime established under the Agreement as a whole, any changes of the character here concerned in them would amount to more than mere "consequential adjustments", and it cannot therefore be presumed that the Parties would have considered that such changes could be made under the Article 29 procedures, without express authorization to this effect.

[83] For example, it considerably widens the range between the minimum and maximum price, it contains new provisions for review in exceptional circumstances and it lists factors to be considered by the Council in reviewing prices.

The general provisions of the 1975 Agreement for amendments are to be found in Article 76. Article 29, paragraph 5, only exempts from those general provisions "the revision of prices under this Article". The Article 29 procedure cannot be used to circumvent the clear stipulations of its paragraph 5, which are to be strictly interpreted as they bear upon modifications of the Agreement originally arrived at by the Parties. It would follow that a "revision of prices" under Article 29, should be a revision within the limits of that Article only — which, as already pointed out, is perfectly possible while the existing range is maintained — and should not be a revision of such a nature that it would fundamentally affect other basic provisions of the Agreement. A revision of the latter character would require recourse to Article 76 procedures for amending the other provisions concerned.

We would therefore conclude, in the absence of any clear indication of an intention of the Parties to the contrary, that the reasonable interpretation of Article 29 of the 1975 Agreement is to the effect that a revision of prices thereunder should not alter the existing range between minimum and maximum prices, such an alteration requiring recourse to the amendment procedures under Article 76.

8 July 1977

18. Practice followed within the United Nations system regarding the choice of the depositary of a treaty establishing an international organization — Specific case of the Charter of the United Nations — Choice of New York as the Headquarters of the United Nations

Letter to a private individual

Your letter of 30 January 1977, concerning the Charter of the United Nations and the Headquarters of the Organization, has been referred to us. Please excuse the delay in replying, which is due to pressure of work.

With respect to your first question, I wish to confirm that the original of the Charter is deposited with the Government of the United States of America, as provided for by Article 111 of the Charter itself. You will note that it is standard procedure for the original of the constituent instrument of an international organization to remain deposited with the Government of the country where the constitutional conference took place, or with the international organization under whose auspices that constituent instrument was adopted: thus, the UNESCO Constitution,[84] adopted by a Conference that met in London is deposited with the Government of the United Kingdom of Great Britain and Northern Ireland, while the Secretary-General of the United Nations serves as the depositary in respect of the Convention on the Inter-Governmental Maritime Consultative Organization,[85] which was adopted by an international conference held in Geneva within the framework of the United Nations. You will appreciate of course that, when such a constituent instrument is adopted, the organization which it purports to create is not yet in existence and could not, consequently, be entrusted the functions of depositary in respect of its own Constitution: still, a depositary has to be designated and it seems normal that the relevant functions should be assigned to that Government or organization which played a special role in the holding of the constitutional conference. It should also be pointed out that, under a rule of general international law that has been codified by article 76, paragraph 2 of the Vienna Convention on the Law of Treaties,[86] done at Vienna on 23 May 1969, the functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance: this

[84] United Nations, *Treaty Series,* vol. 4, p. 275.

[85] *Ibid.,* vol. 289, p. 3.

[86] *Official Records of the United Nations Conference on the Law of Treaties,* Documents of the Conference (A/CONF.39/11/Add.2-Sales No. E.70.V.5), p. 287.

guarantees that no inconvenience should result from an international organization not being the depositary for its constituent instrument, and in fact I am not aware of any such inconvenience in the case of the Charter of the United Nations.

Concerning your second question, namely, who has the power to decide where the headquarters of the United Nations may be located, you correctly mention that there is no provision on the subject in the Charter. The selection of New York as the headquarters of the Organization results from the acceptance on 14 February 1946 by the General Assembly of the United Nations (which is the competent organ in such matters) of the resolution of the United States Congress adopted on 10 December 1945 by which the Congress unanimously invited the United Nations to establish its permanent home in the United States of America. Subsequently, on 14 December 1946, the General Assembly accepted an offer by John D. Rockefeller for the purchase of the present site between 42nd and 48th Streets, on Manhattan's East Side, and a Headquarters Agreement regarding the privileges and immunities and other arrangements relating to that site was concluded on 26 June 1947 between the Organization and the United States of America.[87]

24 March 1977

19. PRACTICE OF THE SECRETARY-GENERAL AS THE DEPOSITARY OF AMENDMENTS TO TREATIES ESTABLISHING INTERGOVERNMENTAL ORGANIZATIONS — CASE WHERE SUCH AMENDMENTS GIVE RISE TO THE DEPOSIT OF INSTRUMENTS OF RATIFICATION OR ACCEPTANCE AFTER THE ENTRY INTO FORCE OF SUCH AMENDMENTS FOR ALL THE MEMBERS OF THE ORGANIZATION ESTABLISHED BY THE TREATY — OBLIGATION OF THE DEPOSITARY TO RECEIVE AND TO BRING TO THE ATTENTION OF THE PARTIES ANY INSTRUMENT IN GOOD AND DUE FORM PROVIDED FOR BY THE FINAL CLAUSES

Letter addressed to the Permanent Mission of a Member State

I am replying to your letter of 29 March 1977 concerning the practice of the Secretary-General as the depositary of treaties establishing international organizations, in which you envisage, in particular, the case where an instrument of ratification or acceptance of an amendment to such a treaty is deposited after the amendment has entered into force for all the members of the international organization established by the treaty under consideration.

1. The Secretary-General is the depositary of amendments to the Charter, and the case to which you refer is not unique. Many instruments of ratification of amendments to the Charter have been received for deposit after the entry into force of such amendments.

. . .

The same is true with regard to amendments to the Constitution of the World Health Organization,[88] which, under article 73 thereof, come into force for all members of the Organization when accepted by two-thirds of the member States.

2. The practice followed by the Secretary-General is based primarily on the obligations of the depositary as described in article 77 of the Vienna Convention on the Law of Treaties. The depositary of a multilateral treaty has an obligation to receive for deposit any instrument in good and due form provided for by the final clauses of the treaty in question; he must also inform promptly the parties to the treaty and all other States entitled to become parties to the treaty of all acts or instruments, notifications, communications, etc. relating to the treaty, wihout restricting himself to communications creating rights and obligations. At all events, and without prejudice to the express provisions of the final clauses of a treaty, determination of the legal effects of instruments, statements, reservations or other communications does not come within the competence of the de-

[87] United Nations, *Treaty Series*, vol. 11, p. 11; vol. 554, p. 308; vol. 581, p. 362 and vol. 687, p. 408.

[88] United Nations, *Treaty Series*, vol. 14, p. 185.

positary. In the case of an instrument of ratification or acceptance of an amendment to the constitution of an international organization, the depositary receives it for deposit and, when bringing it to the attention of all the States concerned, confines himself to indicating that the amendment in question is already in force for all the members of the Organization. It is self-evident that, in such a case, the instrument of ratification or acceptance received cannot give rise to any legal effect. It will be noted, however, that there are instances where the constituent instruments of international organizations, in the case of amendments of particular importance, provide for a time-limit for acceptance which runs from the entry into force of the amendment and upon the expiry of which exclusion is automatic.

3. Lastly, since the practice of certain international organizations (ILO, IAEA) which are the depositaries of their own constituent instruments is to transmit to the Secretariat for registration certified statements relating to ratification or acceptance deposited after the entry into force of amendments and thus devoid of effect because the amendments are in force for all the members of the organization in question, it would have been illogical not to accord the same treatment to ratifications or acceptances relating to amendments to multilateral treaties establishing international organizations and deposited with the Secretary-General. Moreover, this practice meets a need for information, because it makes it possible to publish the instruments in question in the United Nations *Treaty Series*.

5 April 1977

20. PRACTICE OF THE SECRETARY-GENERAL AS THE DEPOSITARY OF MULTILATERAL TREATIES REGARDING ANY COMMUNICATION FROM A NEWLY INDEPENDENT STATE ANNOUNCING IN GENERAL TERMS ITS INTENTION TO SUCCEED TO TREATIES RENDERED APPLICABLE TO ITS TERRITORY PRIOR TO ITS ATTAINMENT OF INDEPENDENCE BY THE STATE THEN RESPONSIBLE FOR ITS INTERNATIONAL RELATIONS

Letter addressed to the Permanent Observer of a non-member State

I have the honour to refer to your letter of 13 September 1976 concerning the succession of a newly independent State to treaties rendered applicable to its territory prior to its attainment of independence by the State which had until then assumed responsibility for its international relations.

You will recall that the Secretariat brought to the attention of interested States two communications from the Governments [of the two States concerned] dated 26 August and 18 September 1974, respectively, and that in the above-mentioned communication of 26 August 1974 the Government [of the newly independent State] expressed the wish for recognition that it had legally succeeded to each of those treaties. Having noted that the Secretariat's annual publication entitled *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions* (ST/LEG/SER.D/9) does not include the State in question among the States parties to the treaties concerned, you ask how the Secretary-General interprets the above-mentioned communication of 26 August 1974.

In this connexion, I wish to inform you that, in accordance with the international practice to which the Secretary-General feels he should conform, general statements of intent are regarded as essentially provisional in nature and as establishing a mere presumption of succession, which is unilaterally reversible, on the part of the State concerned. Consequently, the Secretary-General does not mention such a State as a party to a given treaty unless the participation of that State has been formally established by the deposit of a notification of succession; such notification of succession, issued on the same terms as an instrument of ratification, accession, etc. (i.e. emanating from a Head of State, Head of Government or Minister for Foreign Affairs) should specify the treaties to which it applies.

In the case under consideration, the statement to which you refer does not specify the treaties to which it applies, and it is clear from the very wording of paragraph 2 thereof

that it is reversible at any moment. That is why the Secretary-General did not feel it possible, on that basis alone, to add the State in question to the list of States parties to the multilateral treaties concerned.

19 January 1977

21. PRACTICE OF THE SECRETARY-GENERAL AS THE DEPOSITARY OF MULTILATERAL TREATIES ESTABLISHING INTERGOVERNMENTAL ORGANIZATIONS — STATUS IN REGARD TO SUCH A TREATY OF A NEWLY INDEPENDENT STATE TO WHOSE TERRITORY THE TREATY WAS RENDERED APPLICABLE, PRIOR TO INDEPENDENCE, BY THE STATE THEN RESPONSIBLE FOR ITS INTERNATIONAL RELATIONS — ACCORDING TO THE PRACTICE OF THE SECRETARY-GENERAL, SUCH A STATE IS AUTOMATICALLY INVITED TO GIVE NOTIFICATION, IF IT SO WISHES, OF ITS SUCCESSION TO THE TREATY IN QUESTION, WITHOUT THERE BEING ANY NEED FOR PRIOR CONSULTATION OF THE INTERNATIONAL ORGANIZATION CONCERNED, WITHOUT PREJUDICE TO THE EXPRESS PROVISIONS OF THE TREATY AND THE ADMISSION PROCEDURES IN FORCE IN RESPECT OF SUCH ORGANIZATION

Letter addressed to the Legal Counsel of the United Nations Food and Agriculture Organization

1. I have the honour to refer to your letter of 1 July 1977 concerning the practice of the Secretary-General as the depositary of multilateral agreements in the context of succession of States. I regret that the abundance of the files has prevented us from replying to you earlier.

2. We have noted with interest that your organization this year instituted the practice of including in its standard letters to newly independent States which become members of FAO a paragraph requesting the Government concerned to state whether it considers itself a party to the agreements rendered applicable to its territory prior to independence by the Power then responsible for its international relations. We have noted also that similar communications were sent in 1977 to the Governments of newly independent States which have become members of FAO over the past 10 years.

3. You recall in your letter that FAO performs depositary functions in respect of a number of agreements, including two which have established for the purpose of their implementation independent intergovernmental organizations having their own secretariats and linked with FAO only by an agreement on co-operation or by informal working relations. You ask in this connexion whether, in the case of agreements of the same kind of which he is the depositary, the Secretary-General takes the initiative of establishing contact with newly independent States with a view to possible succession without prior consultation of the intergovernmental organizations established by the agreements in question.

4. As you know, the Secretary-General performs depositary functions in respect of a considerable number of agreements which have established intergovernmental organizations similar to those to which you refer. The most noteworthy examples of this are the commodity agreements, which have established the International Coffee Organization, the International Sugar Organization, etc. You will find in our annual publication entitled *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions* (ST/LEG/SER.D/11) and the annex thereto entitled *Final clauses* (ST/LEG/SER.D/1, Annex and Supplements 1 to 8) all the pertinent information concerning, *inter alia*, the agreements in question.

5. In this regard, it should be noted that the Secretary-General, as the depositary of multilateral agreements, does not consider himself — without prejudice to what is stated below in paragraphs 7 and 8 — obliged to consult the intergovernmental organization established by a multilateral agreement before making inquiries concerning the intentions of a newly independent State regarding possible succession. A first reason is that

the formality of succession, when not explicitly provided for by an agreement, arises out of a well-established international custom, which is, moreover, in the process of being codified by the United Nations Conference on Succession of States in respect of Treaties, on the basis of a set of draft articles prepared by the International Law Commission. (The draft articles and the Commission's commentary are reproduced in the *Yearbook of the International Law Commission, 1974*, vol. II, Part One, pp. 162 to 269).[89]

A second reason is that, in accordance with another well-established international custom, codified since 1969 in article 76, paragraph 2, of the Vienna Convention on the Law of Treaties, the functions of the depositary are international in character — whence it results that the depositary is responsible primarily to the contracting parties and the signatories.

6. Accordingly, the practice of the Secretary-General, without prejudice to the cases referred to in paragraph 7 below, consists of automatically inviting newly independent States to notify him, if they so wish, of their succession in respect of multilateral agreements rendered applicable to their territory prior to independence. Upon receipt of a notification of succession (which, in accordance with the rules of customary succession, may be effected by the Government concerned without any time-limit), the successor State is included as a party in its own right to the agreement in question, it being understood that normally succession takes effect retroactively as from the date of the attainment of independence.

7. Since the specific provisions of an agreement must take precedence over conflicting rules which might be deducible from international customary law, it may be that a State is not able to establish its status as a party by a mere notification of succession. In this regard, cases of inapplicability of the customary succession procedure may be divided into three categories. Firstly, there are agreements which make the exercise of the right of succession subject to restrictive conditions. Thus, the International Cocoa Agreement 1975 provides, in substance, in article 71, paragraph 4, that notification of succession must be effected within 90 days after the attainment of independence and that it shall take effect as from the date of the Secretary-General's receipt thereof. Secondly, some agreements which have established an intergovernmental organization contain express rules concerning admission to that organization, and these rules often have the effect of restricting, or even excluding, the possibility of succession (such is the case with regard to the IMCO Convention[90] and the WHO Constitution).[91] Thirdly, the explicit provisions of an agreement or the very circumstances of its adoption may rule out succession or make it possible only with the consent of all the parties (see the International Law Commission's commentary on articles 4 and 16, in particular, of the above-mentioned set of draft articles).

8. In the case of agreements falling within the first and second categories, the situation of the depositary is clear, because he must confine himself to executing the express provisions of the agreement. In the case of agreements falling within the third category, namely those where — in the absence of express provisions — it is necessary to evaluate the purpose for which and the circumstances in which they were adopted, it is probably advisable for the depositary to consult the intergovernmental organization concerned before raising the question of possible succession with the newly independent State; this procedure will, of course, be particularly appropriate in cases where all the parties to the agreement are represented in the intergovernmental organization in question. However, no difficulties of any significance seem ever to have arisen for the Secretary-General in that regard.

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[89] This Conference, which was held at Vienna from 4 April to 6 May 1977 and from 31 July to 23 August 1978, adopted on 22 August 1978 the Vienna Convention on Succession of States in respect of Treaties (A/CONF.80/31 and Corr.1 (French only) and Corr.2 (English only)).

[90] United Nations, *Treaty Series*, vol. 289, p. 3.

[91] *Ibid.*, vol. 14, p. 185.

9. We have considered the two agreements which prompted your letter, and we have arrived at the following conclusions:

I. *International Convention of 14 May 1966 for the Conservation of Atlantic Tunas* (registration No. 9587; United Nations, *Treaty Series*, vol. 673, p. 63)

This Convention does not fall within any of the three categories of agreements mentioned in paragraph 7 of the present letter. Because none of its provisions and no external consideration appear to restrict the possibility of customary succession, our opinion is that FAO, in its capacity as depositary, may ascertain directly the intention of a newly independent State on this point without prior consultation of the International Commission for the Conservation of Atlantic Tunas — a solution which you envisage under head (i) in the third paragraph of your letter of 1 July 1977.

II. *Convention of 23 October 1969 on the conservation of the living resources of the South-east Atlantic* (registration No. 11408; United Nations, *Treaty Series*, vol. 801, p. 101)

The situation here is different. Article XVII, paragraph 3, of the Convention provides that, once the Convention has entered into force, "any State referred to in paragraph 1 of this Article which has not signed the Convention *or any other State unanimously invited by the Commission to become a party to the Convention may adhere to it*" (our italics). This provision makes adherence by a State not represented at the Conference which adopted the Convention and not a Member of the United Nations or a member of one of the specialized agencies subject to the unanimous approval of the International Commission for the South-east Atlantic Fisheries; consequently, the Convention may be classified in the third category of agreements referred to in paragraph 7 of the present letter in the case of possible successor States which are not yet Members of the United Nations or members of a specialized agency.

In the case of this Convention, therefore, we think that, in accordance with solution (ii) mentioned in the third paragraph of your letter, it might be advisable to consult the International Commission for the South-east Atlantic Fisheries before approaching the newly independent State regarding possible succession. However, it seems that the question should hardly ever arise in practice, because, firstly, the interval between the attainment of independence and admission to the United Nations or a specialized agency is generally very short and, secondly, and more important, we understand that your current procedure is not to take any steps until after the admission to FAO of the States concerned.

9 September 1977

22. QUESTION OF RECOGNITION OF THE COMPETENT AUTHORITIES OF THE HOST COUNTRY OF THE EXEMPTION OF THE UNITED NATIONS FROM THE STOCK TRANSFER TAX LEVIED IN ONE OF THE STATES OF THE HOST COUNTRY IN RELEVANT TRANSFERS EXECUTED ON BEHALF OF ALL UNITED NATIONS ASSETS, IN PARTICULAR THE UNITED NATIONS JOINT STAFF PENSION FUND

Letter to the Permanent Representative of a Member State

I wish to call to your attention a matter of very serious concern both to the Secretary-General of the United Nations and to the United Nations Joint Staff Pension Fund and its participants. These participants are in the employ of nearly all of the intergovernmental organizations which make up the United Nations family of organizations. This matter relates to the recognition by the competent authorities of your country of the exemption of the United Nations under, *inter alia*, the Convention on the Privileges and Immunities of the United Nations, from the Stock Transfer Tax levied in one of the States of your country in relevant transfers executed on behalf of all United Nations assets, in particular the United Nations Joint Staff Pension Fund.

It is our position that the exemption from taxation of the United Nations extends to all Funds of the Organization whatever their form or purpose. This position derives from Article 105 of the Charter of the United Nations and is supported by and is a logical interpretation of Section 7(*a*) of the Convention on the Privileges and Immunities of the United Nations, to which your country is a party. It is further supported by practice in other Member States where similar taxes are levied on non-United Nations institutions or individuals. While in 1967 the State legislature amended the Stock Transfer Tax law to exempt international organizations from the provisions of that law, we have, unfortunately, not been able to obtain from the State authorities effective recognition of this exemption as applied to stock transfers executed by or on behalf of the United Nations Joint Staff Pension Fund. A considerable portion of the assets of the Fund have been and are being invested through the Stock Exchange, and the imposition of the Stock Transfer Tax in regard to such transactions imposes an unwarranted and very heavy burden on the Fund, and thus on the contributors to the Fund, including States Members of the United Nations.

Consequently, the Organization attaches the greatest importance to the recognition of its rights in the present matter, rights which derive from international law and the treaty obligations of your country. It is the position of the United Nations that the practice of the State concerned must be conformed to the international obligations of your country and that the Stock Transfer Tax law must be interpreted in this light.

Before considering recourse to the other remedies available to us under international law, we are seeking your assistance and that of the Department of State in intervening with the appropriate State tax authorities in an effort to seek an effective and full recognition of the exemption granted to the Organization under Section 7(*a*) of the Convention and under the law of the State concerned.

We enclose herewith an Aide-Mémoire [reproduced in Annex to this opinion] setting out in detail information which we believe to be fully adequate in establishing our position as set out above. This Aide-Mémoire is for use by the Department of State and the State tax authorities in reviewing the matter. We shall be happy at any time, to provide any such additional information as may be required. Furthermore, we stand ready to meet with you or any of the competent authorities in an effort to work out the details for giving full effect to the exemption of the assets of the United Nations from the State Stock Transfer Tax.

11 July 1977

Annex

AIDE-MEMOIRE CONCERNING THE EXEMPTION OF THE ASSETS OF THE UNITED NATIONS FROM TAXATION: QUESTION CONCERNING THE INVESTMENTS OF THE UNITED NATIONS JOINT STAFF PENSION FUND AND THE STOCK TRANSFER TAX [LEVIED IN ONE OF THE STATES OF THE HOST STATE]

INTRODUCTION

Position of the State authorities concerned

The State authorities have recognized that the transfers of stock held by the United Nations are exempt from the payment of the State Stock Transfer Tax. In order to ensure the effectiveness of this exemption, the State legislature, at the request of the Governor, amended the law in 1967 to provide for such an exemption. The purpose of that amendment was to prevent the burden of such tax from being imposed in stock transactions either upon the United Nations as seller or upon the purchaser of the stock. However, the State authorities reserved their position on the question of the applicability of the exemption to transfers entered into by the United Nations Joint Staff Pension Fund, (hereinafter the "United Nations Pension Fund" or the "Pension Fund"), arguing that the Pension Fund was in some respects a separate entity from the United Nations. Thus Pension Fund assets have not to date benefited from the exemption.

Apparently, the Tax Commission has been reluctant to recognize an exemption in the case of the United Nations Pension Fund, anticipating that any such recognition could give

rise to claims for similar exemptions by other pension funds. It has been suggested that the recognition of such an exemption might be construed as a legal precedent in requests by charitable organizations for an exemption of similar pension funds maintained by them. It has further been suggested that pension funds such as the State Employees' Retirement System and the State Teacher's Retirement System are made subject to the provisions of the State Stock Transfer law, although the State itself is exempt from the provisions of the law.

In addition to taking the position that the United Nations Pension Fund is a separate and distinct entity from that of the Organization itself, the Tax Commission apparently felt that the purposes of the Pension Fund were not such as to be construed as among the basic purposes of the Organization. As such, it has argued, the Pension Fund would not be entitled to an exemption similar to that otherwise granted to the assets of the United Nations.

Position of the United Nations

The United Nations cannot accept the reasoning of the State authorities in this matter and considers the concerns expressed by the Tax Commission regarding other pension funds to be baseless and essentially unrelated to the case of the United Nations Pension Fund, which is in a special category to be treated in compliance with the international obligations of the country concerned. The Organization questions the assertion of an unqualified right by the State authorities to characterize the various Funds of the United Nations, or their compatibility with the basic purposes of the Organization.

It is the position of the United Nations that no distinction can be made in the context of the exemption here concerned between the other assets of the United Nations and those of the Pension Fund. Neither the argument distinguishing the United Nations Pension Fund as a separate entity of the Organzation nor that denying its basic purpose within the United Nations is sustainable. The facts set out below conclusively establish that an exemption from the tax for the benefit of the Pension Fund must be recognized and that any failure to extend equal treatment to the Pension Fund constitutes a violation of the provisions of Sections 7(*a*) and 8 of the Convention on Privileges and Immunities of the United Nations (hereinafter the "Convention") as well as of the terms of the State Stock Transfer Act, as amended.

THE BASIC PRINCIPLE: ALL ASSETS OF THE UNITED NATIONS ARE EXEMPT FROM TAXATION UNDER THE CHARTER AND UNDER THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Article 105 of the Charter

Under Article 105 of the Charter of the United Nations, the Organization enjoys "in the territory of each of its members such privileges and immunities as are necessary for the fulfilment of its purposes". Among these privileges and immunities is one from taxation of the assets, income and property of the Organization. All other considerations apart, it clearly would not be equitable to permit one Member State to levy taxes on assets, income and property to which all Member States contribute.

It may be noted in this connexion that Committee IV/2 of the San Francisco Conference, which prepared Article 105 of the Charter, after noting that this article set forth "a rule obligatory for all Members as soon as the Charter becomes effective", stated:

> "The draft article proposed by the Committee does not specify the privileges and immunities respect for which it imposes on the member states. This has been thought superfluous. The terms *privileges* and *immunities* indicate in a general way all that could be considered necessary to the realization of the purposes of the Organization, to the free functioning of its organs and to the independent exercise of the functions and duties of their officials: *exemption from tax,* immunity from jurisdiction, facilities for communication, inviolability of buildings, properties, and archives, etc. It would moreover have been impossible to establish a list valid for all the member states and taking account of the special situation in which some of them might find themselves by reason of the activities of the Organization or of its organs in their territory. *But if there is one certain principle it is that no member state may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens, financial or other.*" (Emphasis added. United Nations Conference on International Organization, Documents, Vol. 13, page 705.)

The Convention on the Privileges and Immunities of the United Nations

Article 105 of the Charter is given detailed effect in the Convention on the Privileges and Immunities of the United Nations, to which the country concerned is a party. The Convention's provisions include the following:

> "SECTION 7. The United Nations, its assets, income and other property shall be:
>
> "(*a*) exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services; . . . ."

The assets of the United Nations, under decisions of the General Assembly of the United Nations, include the assets of the United Nations Pension Fund. The Stock Transfer Tax being a direct tax, the Organization is clearly exempt from it under the above provision.[92]

State Practice

A recognition of the necessary extension of privileges and immunities of the Organization to the United Nations Pension Fund has occurred with respect to a number of Member States in matters relating to questions of taxation. The Governments of Canada, the United Kingdom, Switzerland and others have recognized the exemption from taxation of Pension Fund transactions on an equal basis with those of other transactions of the United Nations in fulfilment of their obligation both under the Charter of the United Nations and the Convention.

In 1955, the Ministry of National Revenue of Canada agreed that, as the assets of the United Nations Pension Fund were held in the name of the United Nations, the income of the Pension Fund would not be subject to Canadian income tax. Similarly, in 1961 the Government of the United Kingdom agreed that dividends derived from investments of the United Nations Pension Fund should not be subject to taxes otherwise imposed by that Government's Inland Revenue Department.

The fact that the nature of the tax with which this Aide-Mémoire is concerned in some way differs from those for which other Member States have recognized an exemption should be of no material importance in the present case. It must be clear that the form of taxation can have no bearing on the construction of an applicable exemption of a general character. Whatever the form of the actual tax imposed, the underlying purpose of the exemption established by Section 7(*a*) of the Convention must be recognized as binding upon all Member States equally. Imposition of the tax in question wrongfully imposes a heavy financial burden on the Organization and diverts funds contributed by Member States from the express purposes for which they were given.

THE UNITED NATIONS JOINT STAFF PENSION FUND WAS CREATED BY THE GENERAL ASSEMBLY IN PURSUANCE OF THE BASIC PURPOSES OF THE ORGANIZATION AS SET OUT IN ITS CHARTER

Character of the Secretariat of the United Nations

The importance of the staff to the effective operation of the United Nations Secretariat and the Organization as a whole must necessarily be considered in the light of its unique nature

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[92] *Arguendo* that the imposition of the tax on the purchaser of securities transferred in a Pension Fund transaction could be construed as an incident of indirect taxation, then Section 8 of the Convention would apply. That provision of the Convention states:

> "SECTION 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax."

Should Section 8 of the Convention be determined to be a more appropriate basis for dealing with any aspect of the question, the United Nations is sure that the Host Country authorities would agree that a reasonable interpretation of that Section of the Convention would provide a fully adequate basis for an exemption from any such tax burden, whether it be in the nature of purchase or sale of such property. Also it must be noted that the invocation of Section 8 of the Convention would in no way detract from a claim for exemption under Section 7(*a*) thereof.

as an international Secretariat. This fact is reflected in the care with which the Charter itself provides for the Secretariat as a Principal Organ of the United Nations,[93] based on requirements of the highest standards of integrity, competence and impartiality, as well as the principle of broad geographic distribution.

Establishment of the Pension Fund

The entire question of a pension scheme for the staff was considered by the General Assembly in 1946. During the course of consultations on that subject, the premise that a retirement system was a necessary and integral part of the implementation of the provisions of the Charter was generally accepted. In particular, attention was called to paragraph 1 of Article 100 and paragraph 3 of Article 101 of the Charter.[94] It was considered that in implementing these provisions of the Charter that a pension scheme for the staff of the Organization would be considered an essential element in the establishment of a Secretariat meeting the standards and requirements of those provisions. It should be noted here that it is within the exclusive power and authority of the General Assembly to make such a determination in the implementation of the mandate of the Charter.[95]

The General Assembly made a careful review on the basis of the Report of an Advisory Group of Experts which conducted an exhaustive study of the working arrangements to be established in connexion with the formation of the Secretariat and the provision of retirement and related benefits of its staff. The Report of the Working Group reflected its conviction that a retirement and benefit system for the United Nations Secretariat must necessarily take into account that service as a staff member of the United Nations Secretariat would generally imply exclusion from the provisions of social security protection otherwise available to staff members in their own countries. Furthermore, it considered that the implementation of such a system would necessarily be required in order to give effect to Article 100 of the Charter and to immunize staff members to the extent possible from the influence of outside pecuniary interest in relation to their service in the United Nations Secretariat.

After careful scrutiny, the General Assembly interpreted the relevant provisions of the Charter as requiring an adequate retirement system. In its resolution 82(I) of 15 December 1946, it set out a provisional pension scheme and noted that the purpose of such scheme was to provide "conditions of employment which will attract qualified candidates from any part of the world . . .".

As already noted, it is within the power of the General Assembly to make such determinations and to construe the Charter as it affects the Organization and work of the Secretariat. This function of the General Assembly has consistently been carried out by it and recognized by Member States as binding upon the Organization as a whole. Actions by the General Assembly, in establishing Staff and Pension Fund Regulations relating to conditions of service of the staff of the Secretariat, exemplifies its consistent performance of this mandate.

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[93] Article 7 of the Charter provides in relevant part:

"1. There are established as the principal organs of the United Nations: . . . a Secretariat."

Article 97 of the Charter provides in relevant part:

"The Secretariat shall comprise a Secretary-General and such staff as the Organization may require . . ."

[94] These provide in relevant part as follows:

Paragraph 1 of Article 100:

"1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization."

Paragraph 3 of Article 101:

"3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible."

[95] In this respect, Article 101 of the Charter provides in relevant part:

"1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly."

THE UNITED NATIONS JOINT STAFF PENSION FUND IS AN ENTITY CONSTITUTED WITHIN THE UNITED NATIONS AND ITS ASSETS ARE AN INTEGRAL PART OF THE ASSETS OF THE ORGANIZATION AND CAN IN NO WAY BE CONSIDERED AS SEPARATE AND DISTINCT THEREFROM

Establishment of United Nations Funds: Role of the General Assembly

Under Article 17 of the Charter, the General Assembly is entrusted with the responsibilities related to the consideration and approval of the budget of the United Nations. In this function, it decides upon both the form and the substance of the budget. On several occasions, it has set up separate funds and accounts which are nevertheless integral parts of the United Nations in all respects. Whether or not a separate fund or account is established for any particular programme or project is a matter of administrative and management convenience, sometimes reflecting the particular sources of funding or destinations of expenditures. Nonetheless, such separate accounting procedures, or administration and management of a Fund (such as the United Nations Pension Fund) separate from the General Account of the United Nations, are matters internal to the Organization and in no way imply or can imply any juridical distinction between such separate account or fund and the general assets of the United Nations. Examples of such separate funds or accounts are too numerous to mention exhaustively. However, these include the United Nations Children's Fund (UNICEF), United Nations Development Programme (UNDP), United Nations Emergency Force (UNEF), United Nations Environment Programme (UNEP), United Nations Institute for Training and Research (UNITAR), and United Nations Fund for Population Activities (UNFPA), as well as the United Nations Pension Fund.

The fact is that these Funds must be seen as integral parts of the United Nations and their assets as integral parts of the global assets of the Organization. United Nations Pension Fund assets are subject to the scrutiny and control of the General Assembly in a manner dictated by the Charter, through a process similar in all respects to the scrutiny and control required of all other Funds of the Organization, whether forming a part of the General Accounts or an account more specific in nature.

Control of United Nations Funds: Role of the Secretary-General

A further indication of the integrity of the United Nations Pension Fund within the general assets of the Organization is manifested by the nature and extent of control which the Secretary-General exercises over the Fund. Under Article 97 of the Charter, the Secretary-General is designated as Chief Administrative Officer of the Organization. In that capacity the Secretary-General exercises all of the administrative functions delegated to him by the General Assembly. This authority is regularly exercised by the Secretary-General in both the investment, budgeting and expenditure of all assets of the Organization. The assets of the United Nations Pension Fund are subject to the same administration and control of the Secretary-General in all respects.

The authority of the Secretary-General over investments of the assets of the United Nations Pension Fund is reflected in Article 19 of the Regulations of the Fund.[96] That Article provides that the Secretary-General shall have control over all decisions relating to investments of the United Nations Pension Fund.[97] The authority thus exercised by the Secretary-General to de-

[96] "Article 19—*Investment of the assets*

"(*a*) The investment of the assets of the Fund shall be decided upon by the Secretary-General after consultation with an Investment Committee and in the light of observations and suggestions made from time to time by the Board on the investments policy.

"(*b*) The Secretary-General shall arrange for the maintenance of detailed accounts of all investments and other transactions relating to the Fund, which shall be open to examination by the Board."

[97] While these decisions by the Secretary-General may be taken only after consultation with the Investments Committee of the United Nations Pension Fund, under Article 20 of the Regulations of the United Nations Pension Fund, the Secretary-General is not required to follow the Committee's advice. Moreover, that Committee is in fact appointed by the Secretary-General, subject to the confirmation by the General Assembly. The provisions of Article 20 for the creation of the Investments Committee is an example of the joint sharing, in certain respects, of the responsibilities of the United Nations Pension Fund by the General Assembly and by the Secretary-General. That procedure in no way derogates from the authority of the Secretary-General in such matters but is a procedure similar to that employed in the naming and confirmation of executive bodies of other specialized projects and programmes within the United Nations.

termine the investment and use of assets of the United Nations Pension Fund is a clear indication of the essentially administrative nature of the separation of the United Nations Pension Fund's assets from the United Nations General Account.

Details regarding the United Nations Pension Fund

The fact that the purpose of the United Nations Pension Fund is to provide certain benefits to participants and beneficiaries thereof and that its assets consist of contributions both by the Organization and by the participants does not derogate from its essential juridical quality as a United Nations Fund within the context of the Charter provisions. The Pension Fund, like any other programme or project of the Organization administered on a separate basis by appropriate General Assembly resolutions, must necessarily have its own unique characteristics both in terms of funding and expenditure as well as in terms of its essential purpose.

Article 18 of the Regulations of the United Nations Pension Fund specifically provides that all assets of the Fund be held in the name of the United Nations.[98] Those assets must indeed be held separately from the general assets of the United Nations and on behalf of the participants and beneficiaries of the Pension Fund, in order to insure that they will be available when needed to pay the authorized pensions. The prudence of this mechanism is, of course, clear from the very nature and purpose of the Pension Fund itself. That purpose is to carry out a basic and universally accepted social principle that participants and beneficiaries thereof be protected to the highest degree possible, *inter alia*, in matters relating to investments and administration of assets. Since these funds are essentially held in trust for such participants and beneficiaries, the standard of care to be exercised in all respects must necessarily exceed reasonable standards otherwise appropriate to United Nations assets and requires administration of a higher degree of care and prudence. The General Assembly has seen fit to provide for this higher standard and, thereby, has provided for the segregation and separate administration of these assets. This action cannot be interpreted as allowing Member States to penalize such separate and prudent administration and *per se* requires the full extension of privileges and immunities which have been granted to the Organization. It would, in fact, be unconscionable for the United Nations to be penalized for providing a scheme of special protection for the Pension Fund of its Secretariat staff through the denial of the equal protection of such specially designated assets by a Member State or any political subdivision thereof.

As has been set out above, the Pension Fund was established in fulfilment of a specific purpose related to the establishment and basic functioning of the Secretariat under the Charter. Once this premise of essential purpose is accepted, the precise configuration and nature of transactions conducted in fulfilment of its purpose can in no way be argued as providing a valid distinction in terms of the exemption recognized under either the Charter or the Convention. No construction of either the unique purposes of the Pension Fund or the intended breadth of the exemption can in any way derogate from the conclusion that assets of the Pension Fund must be recognized as exempt from taxation in a manner co-extensive with those of all other assets of the Organization.

THE RECOGNITION OF THE EXEMPTION OF UNITED NATIONS JOINT STAFF PENSION FUND TRANSACTIONS SHOULD BE CONSTRUED IN SUCH A WAY AS TO GIVE THAT EXEMPTION FULL EFFECT

The United Nations considers that a full exemption from the State Stock Transfer Tax on all transactions of the Organization, in whatever form, entails, *inter alia*, an unequivocal recognition that such exemption must extend to the assets of the Pension Fund.

A suitable framework must be provided in which the exemption from the tax in question may be effectively recognized. This would entail lifting the burden of the tax upon the United Nations whether such tax be imposed directly upon it as seller or indirectly upon it through taxation of the purchaser of the stock. Either incident of taxation causes a diminution in the revenue from the stock transaction and must be provided against. Where the burden of the tax falls upon the purchaser, it must be construed to be as fully an incident of direct taxation as if the tax were collected directly from the United Nations Pension Fund in the transaction. There-

[98] "Article 18—*Property in the assets*

"The assets shall be the property of the Fund and shall be acquired, deposited and held in the name of the United Nations, separately from the assets of the United Nations, on behalf of the participants and beneficiaries of the Fund."

fore, whatever the mechanism of collection of the tax, the provision of Section 7(*a*) of the Convention must likewise be recognized as applicable.

The exact procedure to be carried out in providing for an effective exemption from the levying of taxes on transactions entered into by the United Nations Pension Fund will, of course, necessarily require an accommodation between the United Nations and the appropriate authorities. For example, an adequate formula could be arrived at in order to provide for appropriate certification of exemption. Such certification might be provided in anticipation of the envisioned stock transactions. The most appropriate mechanism for normalizing the situation is a matter on which the United Nations stands ready to negotiate.

In the assertion of the right of the Pension Fund to an exemption from the State Stock Transfer Tax, the question of refunding the taxes already paid by the Organization in respect of Pension Fund stock transfers must be considered. Accordingly, the United Nations reserves its position and right to claim with retroactive effect taxes already paid which should not have been required to be paid because of the exemption of the United Nations from taxes.

23. Notices issued by the tax authorities in a Member State to the United Nations Children's Fund (UNICEF) for payment of a value-added tax on sums collected by UNICEF

Letter to the Permanent Representative of a Member State to the United Nations

I would very much appreciate your assistance in a matter involving two notices for "value-added tax" which have been issued by the Revenue Office for Corporations in [name of a city in the Member State concerned] to the United Nations Children's Fund (UNICEF).

The first of these notices is for tax said to be due from UNICEF as the result of UNICEF issuing a license for a certain amount to a radio station in your country for the broadcast of five episodes of the UNICEF film series "Children of the World". The second of these assessments is for tax said to be due from UNICEF as the result of UNICEF receiving payments from another radio station for reimbursement of the expenses of artists participating in a fund-raising "Spectaculum".

The Revenue Office, while disputing UNICEF's exemption from these taxes, did not question the applicability of the Convention on the Privileges and Immunities of the United Nations[99] to UNICEF, a subsidiary organ of the General Assembly, within your country; for although not party to that Convention, your country is party to the Convention on the Privileges and Immunities of the Specialized Agencies[100] and the provisions of the latter Convention, which are substantially the same as those of the former, have been extended by statutory order to the United Nations.

Rather, the Revenue Office has concluded that UNICEF is liable to the Government for the tax notwithstanding its exemption from direct taxes under the Convention, because the value-added tax is by nature an indirect charge on the ultimate purchaser and therefore UNICEF, as seller, should have collected the amount from the two radio stations concerned and should pay the tax to the Government.

This position has no basis in the two above-mentioned conventions which provide for immunity from legal process of every kind (Sections 2 and 4, respectively), for exemption from all direct taxes except those which are no more than charges for public utility services (Sections 7 and 9, respectively) and for reimbursement by governments of taxes paid by the United Nations as part of the purchase price (and not separately stated or directly charged) (Sections 8 and 10, respectively). Whatever may be the obligations of governments to reimburse value-added tax paid by the United Nations as purchaser, it is clear that the United Nations' exemption and immunity preclude any charge on UNICEF directly by the tax authorities.

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

[100] *Ibid.*, vol. 33, p. 261.

It may further be observed that such an obligation on UNICEF's part as is asserted by the Revenue Office could equally well be asserted in many countries having sales or value-added taxes where UNICEF might be conducting public information or fund raising activities. Such worldwide liability to account to governments for taxes would constitute a substantial burden of the type which the relevant provisions of the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies were intended to avoid. The United Nations' exemption from the obligation to account for taxes on its sales has been unexceptionally recognized.

It is my hope that, through your good offices, the Revenue Office will understand that in declining to pay the value-added tax, UNICEF is properly relying on United Nations privileges and immunities which the General Assembly has deemed necessary to the proper functioning of the Organization and which your country has undertaken to apply.

27 April 1977

24. EXEMPTION OF UNITED NATIONS PUBLICATIONS FROM CUSTOMS DUTIES AND OTHER CHARGES — INTERPRETATION OF THE TERM "PUBLICATION" — REVIEW OF RELEVANT TREATY PROVISIONS

Letter to the Executive Secretary, Economic Commission for Latin America

This is in reply to your letter of 19 July 1977 concerning the sale of United Nations publications through local book stores in the ECLA region.

Under Section 7(*c*) of the Convention on the Privileges and Immunities of the United Nations, the United Nations is "Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications". A similarly worded provision is to be found in section 10(*c*) of the ECLA Headquarters Agreement.[101] The term "publication" as used in these agreements has been interpreted in a broad sense to include films and recordings as well as printed materials.

As regards the importation for re-sale of United Nations publications, the Legal Counsel gave an opinion in an internal memorandum in 1959 in a case involving the sale of the printed records of a United Nations Conference in which it was stated *inter alia* that "the question of re-sale in the case of publications has no legal significance. It was assumed from the beginning that the normal channels of distribution of the printed publications of the United Nations would be through re-sale by sales agents". After referring to Section 7, paragraphs (*a*) and (*b*) of the Convention, the opinion continued "I do not consider that the mere fact that the sales agent may sell at a mark-up, or that our sales price may in some way take into account the agent's commission or profit in any way affects the assumption on which the exemption was based". The 1959 opinion also referred to the fact that in addition to the United Nations Convention on the Privileges and Immunities, United Nations publications are also protected from customs duties or other charges by the UNESCO Agreement of 22 November 1950 on the importation of educational, scientific and cultural materials in those States Parties to the Agreement.[102]

2 August 1977

25. IMMUNITY FROM LEGAL PROCESS OF UNITED NATIONS OFFICIALS IN CONNEXION WITH TRAFFIC VIOLATIONS OR TRAFFIC ACCIDENTS — DISTINCTION BETWEEN ACTS TO BE CONSIDERED AS SERVICE-RELATED FOR THE PURPOSE OF STAFF REGULATIONS AND RULES AND ACTS PERFORMED BY OFFICIALS "IN THEIR OFFICIAL CAPACITY"

[101] United Nations, *Treaty Series*, vol. 314, p. 49;
[102] *Ibid.*, vol. 131, p. 25.

WITHIN THE MEANING OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Letter to the Legal Liaison Officer, United Nations Industrial Development Organization

This is in reply to your letter of 25 November 1977 on the question of the status of staff members when travelling directly from their home to the Organization and vice versa. Your inquiry and this reply relate solely to the question of immunity from legal process in connexion with traffic violations or traffic accidents involving staff members travelling directly between their homes and the Organization. This reply also assumes that the staff member does not have diplomatic immunities by virtue either of his rank or under the particular host country agreement.

As indicated in my letter of 29 September, travel between home and office is not in itself considered to be an official act within the meaning of Section 18(*a*) of the Convention on the Privileges and Immunities of the United Nations which provides for immunity from legal process in respect of acts performed by officials "in their official capacity".

To avoid confusion stemming from the phrase "on-duty", I would emphasize the difference between the basis for the immunity for official acts under the Convention and the basis for various entitlements under the Staff Regulations and Rules.

The immunity of an official from legal process in respect of acts performed in his official capacity (i.e. on behalf of the United Nations) must be distinguished from service-related benefits under the Staff Regulations and Rules such as compensation for injuries attributable to United Nations service or travel entitlements for service-related trips including home leave travel. An injury may be compensable as service-related under Appendix D to the Staff Rules without having been incurred by the staff member acting in his official capacity; the fact that a staff member's travel expenses are paid by the United Nations does not render his journey or his actions on the journey "official actions". Driving is, of course, official action by United Nations chauffeurs and such staff members may engage the United Nations' liability as well as their own, and hence they are covered by the United Nations automobile liability insurance. Their (and the United Nations') immunity is frequently waived for the purpose of litigating damages, but the practice with respect to their immunity from charges of traffic violation is highly flexible.

As far as the General Assembly is concerned, one of its very first actions in the field of privileges and immunities was directed towards the prevention of abuse of privileges and immunities in connection with traffic accidents. Resolution 22 (I) E instructed the Secretary-General to ensure that staff members be properly insured against third-party risks, an instruction which finds its implementation in Staff Rule 112.4.

The functional and non-personal nature of the privileges and immunities of United Nations officials is made clear by the language of the Convention on the Privileges and Immunities of the United Nations and Staff Regulation 1.8[103]. The Secretary-General's position with respect to suggestions of immunity has always been that he and he alone may decide what constitutes an official act, when to invoke immunity and when to waive immunity.

There is no precise definition of the expressions "official capacity", "official duties", or "official business". These are functional expressions and must be related to a particular context. Indeed, it is doubtful whether a definition would be desirable since it would not

[103] Reading as follows:

"The immunities and privileges attached to the United Nations by virtue of Article 105 of the Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to the staff members who enjoy them for non-performance of their private obligations or failure to observe laws and police regulations. In any case, where these privileges and immunities arise, the staff member shall immediately report to the Secretary-General, with whom alone it rests to decide whether they shall be waived."

be in the interest of the Organization to be bound by a definition which may fail to take into account the many and varied activities of United Nations officials.

Finally, there are certain pragmatic considerations which must be taken into account. While Headquarters practice does not exclude invoking immunity in certain traffic cases, a reverse practice in which immunity is automatically raised would give rise to considerable difficulties with the police and in the courts, not to mention the political consequences at a time when the general public and legislative bodies are opposed to privileges and immunities.

The practical handling of this question at Headquarters has not given rise to any difficulties, probably because of the firm position taken by the Secretary-General from the very beginning. Staff members are expected to obey local laws and regulations and as the Secretary-General stated in a 1949 press release: "If there is any infringement of any laws, traffic violations for example, a Secretariat member is in the same group — unless on official business — as the average citizen who may pass a red light.... He just pays his fine, and many already have".

12 December 1977

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

1. INTERNATIONAL LABOUR ORGANISATION

(*a*) MEMORANDA DEALING WITH THE INTERPRETATION OF INTERNATIONAL LABOUR CONVENTIONS

The following memoranda, dealing with the interpretation of international labour Conventions, were drawn up by the International Labour Office at the request of Governments:

(*a*) Memorandum on the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), drawn up at the request of the Government of Sweden, 28 October 1977. Document GB.206/13/3; 206th Session of the Governing Body, May-June 1978.

(*b*) Memorandum on the Human Resources Development Convention, 1975 (No. 142), drawn up at the request of the Government of the Federal Republic of Germany, 31 March 1978. Document GB.206/13/3; 206th Session of the Governing Body, May-June 1978.

(*b*) NOTICE OF WITHDRAWAL REQUIRED UNDER ARTICLE 1, PARAGRAPH 5 OF THE CONSTITUTION OF THE INTERNATIONAL LABOUR ORGANISATION FROM ANY STATE MEMBER INTENDING TO WITHDRAW FROM THE ORGANISATION — QUESTION WHETHER AN EXTENSION OF THE NOTICE IS LEGALLY PERMISSIBLE

Opinion of the Legal Adviser of the International Labour Office

1. Article 1, paragraph 5 of the Constitution of the ILO provides as follows:

"5. No Member of the International Labour Organisation may withdraw from the Organisation without giving notice of its intention so to do to the Director-General of the International Labour Office. Such notice shall take effect two years after the date of its reception by the Director-General, subject to the Member having at that time fulfilled all financial obligations arising out of its membership. When a Member has ratified any international labour Convention, such withdrawal shall not

affect the continued validity for the period provided for in the Convention of all obligations arising thereunder or relating thereto."[104]

2. That provision was adopted by the International Labour Conference in 1945. There was no discussion of it at the Conference, but the Office report which proposed it[105] indicated that it represented, generally speaking, the carry-over of the (pre-war) system which had previously been indirectly applicable to the Organisation by virtue of the corresponding provision of the Covenant of the League of Nations. That provision read as follows:

> "Any member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal." (Article 1, third paragraph.)

3. Both the Covenant of the League and the Constitution of the ILO are international treaties subject to the general rules of international law concerning the interpretation of treaties. As stated in article 31 of the Vienna Convention on the Law of Treaties,[106] the general rule of interpretation is that "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." That article further indicates that there shall be taken into account, *inter alia,* "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation." And Article 32 provides that recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty, in order to confirm the meaning resulting from the application of article 31 or to determine the meaning when the interpretation according to article 31 leaves the meaning ambiguous or leads to a manifestly unreasonable result.

4. Moreover article 37 of the Constitution of the ILO provides that any question or dispute relating to the interpretation of the Constitution shall be referred for decision to the International Court of Justice. This means that, where there is found to be possible ambiguity in the terms of the Constitution, and the States Members of the Organisation do not agree on the interpretation, only the Court can give an authoritative answer. It is, of course, possible that there is no "question or dispute" between States Members of the Organization on the interpretation. The role of the Legal Adviser in the process is to tender advice, on request, to the Member States in that connection.

5. As indicated above, Article 1, paragraph 5 of the Constitution provides that a notice of intention to withdraw "shall take effect two years after the date of its reception by the Director-General . . . . ("portera effet deux ans après . . ."). The question which arises is whether the "ordinary meaning" of that provision is that it is a constitutional requirement that membership cease at precisely that date — neither before nor after.

6. Textually the language of the Constitution lends itself both to the meaning that, as from the date on which the notice "takes effect", the State concerned ceases to be a Member, and to the meaning that, as from that date, the State concerned is entitled to cease to be a Member (but may, if it so wishes, prolong its membership). That being so, recourse to other relevant elements is necessary.

7. There is no "subsequent practice" which can be said to "establish the agreement of the parties" regarding the interpretation of the relevant terms of the Constitution. Admittedly, in the case of all States which have given notice of withdrawal and have not withdrawn that notice before the expiry of two years, membership was considered to have ceased on the date on which the notice "took effect". However, in all these cases, it was

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[104] Constitution of the International Labour Organization and Standing Orders of the International Labour Conference, International Labour Office, Geneva, 1969.

[105] International Labour Conference, Twenty-seventh Session, Paris, 1945, Report IV (1), pp. 86–89.

[106] *Official Records of the United Nations Conference on the Law of Treaties,* Documents of the Conference (Sales No. E.70.V.5), p. 287.

the decision of the State concerned (normally expressly stated in the notice) to withdraw by that date. The question of a possible extension of notice not having arisen, an *opinio juris* of the other Member States could not have come into being.

8. Such preparatory work as there is (as indicated, there is only an Office report to the 1945 session of the Conference) contains two elements suggesting that an extension of notice is possible. First, the two-year period is described as a "minimum" period of notice (p. 87 of the English text). Second, as recalled above, it is made clear that paragraph 5 of Article 1 is based on the relevant provision of the Covenant of the League; that provision was differently drafted, to read that "any member . . . may, after two years' notice of its intention so to do, withdraw . . ."; the drafting change made in the ILO Constitution is not indicated as being a change of substance.

9. It is, however, the context of the phrase at issue, in the light of the object and purpose of the Constitution, which is most illuminating:

(*a*) The essence of paragraph 5 of Article 1 of the Constitution is that no State may withdraw without having given two years' notice of its intention so to do. The purpose of the notice period is to give the Organisation time to adjust to the consequences of withdrawal, particularly the financial consequences. This is adequately confirmed in the "preparatory work" (which expressly rejects a possible one year notice period). The considerations which make impossible withdrawal after less than two years do not apply to a longer notice period. A State which, say, gave three years' notice from the beginning, would give the Organisation greater time to adjust, while an extension of notice would permit relaxation of any conservatory measures already taken or planned to the extent consistent with the extension.

(*b*) The aim of the membership provisions of the Constitution in their entirety is to achieve universality; this is made amply clear by the records of the 1945 session of the Conference, as well as various provisions in the Preamble to the Constitution and the Declaration of Philadelphia annexed thereto. In that light, it would not make sense to require that membership cease at a time when the State concerned is prepared to continue membership at least for a specified further period.

10. An extension of notice of withdrawal would thus seem to be legally permissible.

11. It would appear, at the same time, that the Organisation as a whole and the other parties to its constituent instrument are entitled to be clear as to the terms of such extension as from the moment that it begins to run; in particular they have an interest in certainty as to the period of time on which the extension bears.

12. Finally, it is clear that, during any extension of notice, the State concerned has all the rights and obligations (including the financial obligations) pertaining to membership.

17 August 1977

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2. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

PROCEDURES OPEN TO STATES FOR ESTABLISHING ON THE INTERNATIONAL PLANE THEIR CONSENT TO BE BOUND BY A TREATY — PRACTICE USUALLY FOLLOWED IN UNESCO WITH REGARD TO CONVENTIONS ADOPTED BY THE GENERAL CONFERENCE OR BY INTERNATIONAL CONFERENCES CONVENED UNDER THE AUSPICES OF UNESCO

Letter, prepared by the Office of International Standards and Legal Affairs, to the Permanent Delegation of a Member State to UNESCO

I have the honour to acknowledge receipt of your letter of 11 August 1977 by which you asked for information with regard to the differences in meaning of the concepts of

ratification, acceptance ("acceptation" in French) and accession. You also asked about what makes one Member State "choose between ratification, acceptance and accession to be bound by stipulations of treaties".

In reply to your request, I wish to inform you that in accordance with the terms of paragraph 1 (*b*) of article 2 of the 1969 Vienna Convention on the Law of Treaties, "ratification", "acceptance" and "accession" 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".

This Convention has, as far as I am aware, not yet entered into force.[107] However, the provision referred to in the preceding paragraph is generally seen as reflecting the view recognized under customary rules of international law and to that extent it may be considered to be currently applicable.

As regards the conventions adopted by the General Conference in particular, they are usually open to ratification or acceptance by Member States, and to accession by non-Member States with or without prior invitation by the Executive Board of the General Conference, as the case may be.

Thus, while non-Member States may be limited to the procedure of accession as the only means open to them under the provisions of these conventions for expressing on the international plane their consent to be bound by the conventions concerned, such Member State may, in accordance with its own constitutional system and practice, choose between "ratification" and "acceptance" of these conventions but cannot opt for accession.

It may be recalled in this connection that at the 10th session of the General Conference (1958) when the Legal Committee first made the proposal relating to the offer of the "ratification" and "acceptance" alternatives to Member States, it stated in its second report that in "making such a proposal, the Committee kept in mind that the deposit of an instrument of acceptance would have the *same effect* (emphasis added) as the deposit of an instrument of ratification, the deposit of either type of instruments having a final binding effect on States and no further step being required".

With respect to conventions adopted not by the General Conference but by international conferences of States convened under the auspices of UNESCO, one may say in a very general way that the practice has been to leave the procedure of ratification or acceptance open to States on whose behalf the conventions are signed and the procedure of accession to non-signatory States.

In addition to the foregoing general indications, I should perhaps add that in the case of each specific convention, whether adopted by the General Conference or by an international conference of States convened under the auspices of the Organization, the question of which States may become parties to it and by what procedure (ratification, acceptance, accession, etc.) and under what conditions they may do so, is governed by the provisions of the particular convention concerned. The Secretariat, on behalf of the Director-General as depositary of such conventions, is always available to provide information in that respect.

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[107] The Convention shall enter into force, in accordance with article 84, on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession. As of 3 November 1978, it had been ratified or acceded to by 52 States. For the list of those States see *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions* (ST/LEG/SER.D/11—Sales No. E.78.V.6), p. 553.

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 1977.]

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. Austria

SUPREME COURT FOR CIVIL AND CRIMINAL MATTERS

In re KARL KATARY: DECISION OF 3 MARCH 1977

Initiation by a staff member of the IAEA enjoying diplomatic immunity of proceedings under Austrian law concerning the custody of his minor child — Submission of a counter-application by the child's mother — Appointment by the Court of first instance of a curator as a result of failure of its attempt to serve notice of its decision to the child's father — Article 32 of the Vienna Convention on Diplomatic Relations[1]

The case concerned a minor child who, after the dissolution of his parents' marriage on 7 December 1970 had remained with his mother with the initial consent of his father.

The father, a senior staff member of the International Atomic Energy Agency, was the first to institute custody proceedings in 1973 by his application for transfer of the child to him for custody and upbringing and in fact explicitly stated that he was voluntarily submitting to Austrian jurisdiction. He subsequently withdrew his application and, in response to the mother's counter-application for assignment of the child to her for custody and upbringing, asserted his immunity as a senior staff member of IAEA and stated that only that agency could validly waive such immunity. The court of first instance however held that Austrian jurisdiction was established since a declaration of voluntary submission to Austrian law was irrevocable. On the merits the court decided that the child was assigned to his legitimate mother for custody and upbringing. The court attempted to serve notice of its decision through the diplomatic channel. It was however informed by the Federal Ministry of Justice that IAEA had rejected service of the decision with the remark that such service would be a violation of the rights of the father and that execution of an Austrian judicial proceeding so as to be applicable to the father would require a waiver of immunity expressly stated by the Director-General of IAEA. The notice from the Ministry was accompanied by a letter from IAEA stating that the child's father held diplomatic rank with the Agency and enjoyed diplomatic immunity. Having thus failed in its attempt to serve notice of its decision, the court of first instance appointed an attorney as curator in accordance with article 119, paragraph 2 of the Austrian Code of Civil Procedure.

The curator appealed the decision of the court of first instance. The court of appeal remarked that according to article 32, paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations, only the sending State could waive immunity from jurisdiction. It nonetheless approved the result of the decision of the court of first instance, taking into consideration the fact that the application of the mother constituted a counter-application to be treated in the same way as a counter-claim in respect of which a diplomat, under article 32, paragraph 3 of the Vienna Convention, could not claim immunity from jurisdiction.

The curator then appealed before the Supreme Court the decision of the court of appeal, claiming that his appointment as curator was null and void.

[1] United Nations, *Treaty Series*, vol. 500, p. 95.

The Supreme Court considered as clearly established that the legitimate father was entitled to immunity within the scope of articles 31 and 32 of the Vienna Convention on Diplomatic Relations. It recalled that according to article XV, section 39 (*c*) of the Agreement between Austria and IAEA regarding the Headquarters of this agency,[2] those staff members of IAEA having the professional grade of P-5 and above "shall be accorded the same privileges and immunities, exemptions and facilities as the [Austrian] Government accords to members, having comparable rank, of the staff of chiefs of diplomatic missions accredited to the Republic of Austria". The Supreme Court upheld the conclusion of the court of appeal that the voluntary submission of the father to Austrian jurisdiction was not legally relevant because, according to article 32, paragraphs 1 and 2 of the Vienna Convention, the diplomat himself could not waive his immunity; it moreover concurred with the opinion of the court of appeal that the present case was one covered by article 32, paragraph 3 of the Vienna Convention, under which the initiation of judicial proceedings by a diplomat — an action which was not dependent on the consent of the sending State under any provision of the Convention — had an unalterable consequence: the diplomat who himself initiated judicial proceedings lost the right to invoke immunity in respect of a counter-claim directly connected with the principal claim. He thus ran the risk that the opposing party through a counter-claim might take action against him before the same jurisdiction. It was true that the mother's counter-application was not filed precisely with a counter-claim and that the father's own application had been withdrawn in the meantime. According to article 31, however, the diplomat had immunity in general from civil and administrative jurisdiction and article 32, paragraph 3, referred in general to the initiation of proceedings by the diplomat: it was therefore irrelevant whether a claim under national law was raised in the course of judicial or non-judicial proceedings.

The appellant further claimed that the minor himself enjoyed diplomatic immunity. The Supreme Court however held that since the child had been living since 1970 with his mother, he could not be regarded as forming part of the household of the diplomat within the meaning of article 37, paragraph 1, of the Vienna Convention. The child could therefore not be considered immune from Austrian civil jurisdiction. The possible immunity of the minor's stepfather, who was the mother's second husband and a senior staff member of UNIDO, did likewise not extend, in the Court's view, to the child who, although he belonged to the household of the UNIDO staff member, was not a member of that staff member's family within the meaning of article 37, paragraph 1, of the Vienna Convention.[3]

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2. Switzerland

ADMINISTRATIVE TRIBUNAL OF THE REPUBLIC AND CANTON OF GENEVA

X. *v.* DEPARTMENT OF JUSTICE AND POLICE: JUDGEMENT OF 15 JUNE 1977

Administrative decision suspending the driving licence of a WHO official enjoying immunity from criminal, civil and administrative jurisdiction — The immunity applies

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[2] *Ibid.*, vol. 339, p. 110.

[3] The Court recalled in this connexion that a proposal that the rights of the diplomat should also be accorded to his wife's children, which had been submitted by Sri Lanka (then Ceylon) in the Vienna Conference on Diplomatic Intercourse and Immunities, had to be withdrawn for lack of support (See *Official Records of the United Nations, Conference on Diplomatic Intercourse and Immunities,* vol. II (documents A/CONF.20/C.1/L.91 and A/CONF.20/L.2, para. 28), United Nations publication, Sales No. 62.X.1).

to acts performed by the official in the exercise of his functions, i.e. at any time except during his annual leave, unless there are reasons of public policy to the contrary — Application of the concept of public policy in the case of road traffic regulations — Question how and when immunity must be invoked — Rescission of the contested decision

Following a traffic accident in which he was involved, the appellant, a WHO official at the P-5 level, had his driving licence suspended for a period of three months by order of the Department of Justice and Police. He requested the Administrative Tribunal to rescind the order, *inter alia,* on the ground of the immunity to which he had been entitled at the time of the accident as an international civil servant, class P-5. In reply to an inquiry from the Administrative Tribunal concerning its practice, the Federal Political Department stated that a diplomat's driving licence could be revoked if he was no longer complying with the conditions on which the licence had been issued.

The Tribunal sought to determine whether, at the relevant time, the appellant had enjoyed diplomatic immunity and whether the Department of Justice and Police had been entitled to suspend his driving licence. It noted that, as the holder of an official identity card certifying that he was an international civil servant, class P-5, he enjoyed immunity from criminal, civil and administrative jurisdiction for acts performed in the exercise of his functions, i.e. at all times except during his annual vacation (cf. Max Sørensen, *Manual of Public International Law* (New York, 1968), p. 462). He could therefore assert the principle of the personal inviolability of diplomatic agents — a privilege which, in the case of international civil servants, was granted in the interests of their functions and not for their personal benefit — unless, the Tribunal emphasized, there were reasons of public policy (*ordre public*) to the contrary.

After referring to Philippe Cahier, who considered that "diplomatic privileges and immunities are subject to limitations in the interest of the public safety of the receiving State"[4] (which includes traffic safety), and to George Perrenoud, who conceded the possibility of suspending the driving licence of a diplomatic agent "whose manner of driving is a danger to public safety",[5] the Tribunal noted that the Federal Political Department had also spelt out the kind of infringement of road traffic safety for which a driving licence could be suspended when it had specified that such action might be taken if any circumstance which would have precluded the issue of a licence arose in the person of the diplomatic agent, or if he was physically unfit "to drive a motor vehicle", was addicted to drink or constantly violated traffic regulations. In such cases, suspension of the driving licence did not infringe the general principles of public international law laid down in the Vienna Convention on Diplomatic Relations.[6] The situation was entirely different where the suspension of the driving licence was the result of an infraction of traffic regulations; however serious the infringement of road safety might be, the Department was not entitled to order the suspension of the licence, since such a decision would be in contravention of the immunity from administrative jurisdiction enjoyed by diplomatic agents with respect to their functions, and in violation of the provisions of the Vienna Convention.

On the question before which authority, and at what stage, a diplomatic agent or international civil servant should plead immunity from legal process, the Tribunal recalled Philippe Cahier's statement that:

> "There are no set rules in diplomatic law concerning the manner in which immunity from legal process should be asserted before a court. When an action is

[4] P. Cahier, *Le Droit diplomatique contemporain* (Geneva and Paris, 1962), pp. 223 and 247.
[5] G. Perrenoud, *Le régime des privilèges et immunités des missions diplomatiques étrangères et des organisations internationales en Suisse* (Lausanne, 1949), pp. 151–152.
[6] United Nations, *Treaty Series,* vol. 500, p. 95.

brought against a diplomat, he may enter an appearance, represented by counsel, and request termination of the action on the ground of his diplomatic status".[7]

Similarly, the Tribunal noted that:

"The diplomat may, with the same end in view, arrange for a request to be submitted to the receiving State by the mission to which he belongs. Under the Vienna Convention system, the latter procedure should in fact be the rule, since diplomatic agents may waive their immunity from legal process only with the consent of the authorities to which they are subordinate (cf. articles 21 and 22 of the Agreement between the Swiss Federal Council and the World Health Organization concerning the legal status of WHO in Switzerland[8])".

In the present case, the appellant had not waived his immunity; even if he had, the Administrative Tribunal itself would have raised the issue of lack of competence *ratione personae,* since in matters of public law competence was strictly a legal question allowing of no derogation. Moreover, the nature and the purpose of immunity from legal process were such that the person enjoying it was not bound to observe any particular time-limit. The Tribunal referred in that connexion to Georges Perrenoud, who stated that "the issue of lack of competence by reason of immunity, which is a matter of public policy, may be raised at any stage so long as judgement has not been rendered".[9] Since the contested decision had been in the form of a unilateral administrative act taken without the person concerned really having had an opportunity to be heard, it could be impugned by means of an appeal to the Tribunal, and the appellant was then in a position somewhat similar to that of the defendant in a criminal case or the respondent in a civil case. While observing that some commentators also held that "enjoying immunity from jurisdiction meant simply enjoying the right to be the object of judicial proceedings . . . the immunity in question had never meant the inability to appear as plaintiff before the same courts",[10] the Tribunal nevertheless queried firstly, whether the question of immunity should not in principle be raised by means of a request to the receiving State from the diplomatic mission concerned, and, secondly, whether the administrative authority should not defer action until a diplomatic *démarche* had been made to the mission in question.

The Tribunal noted that the Department of Justice and Police had based its order on an isolated violation of a traffic regulation and that it had not been shown that the appellant was generally unfit to drive; it therefore ruled that he remained covered by

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[7] P. Cahier, *op. cit.,* p. 264.

[8] United Nations, *Treaty Series,* vol. 26, p. 331. The articles in question read as follows:

"Article 21

"OBJECT OF THE IMMUNITIES

"1. The immunities provided for in the present agreement in respect of officials of the World Health Organization are not designed for the personal benefit of those officials but solely to ensure the free functioning of the World Health Organization and the complete independence of its agents in all circumstances.

"WAIVING OF THE IMMUNITIES

"2. The Director-General of the World Health Organization has the right and duty to waive the immunity of any official in any case in which he considers that such immunity would impede the course of justice and could be waived without prejudice to the interests of the World Health Organization.

"Article 22

"PREVENTION OF ABUSES

"The World Health Organization shall co-operate at all times with the Swiss authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent any abuse in connexion with the privileges, immunities and facilities provided for in this agreement."

[9] G. Perrenoud, *op. cit.,* pp. 44–45. The Tribunal also referred to Jean-Flavien Lalive, "L'immunité de juridiction des Etats et des organisations internationales", *Recueil des Cours de l'Académie de droit international de La Haye,* 1953 — III (Leyden, 1955), t. 84, pp. 317 *et seq.*

[10] *Yearbook of the International Law Commission,* 1957, vol. I, pp. 113–115 (particularly para. 12), mentioned by P. Cahier, *op. cit.,* p. 272.

diplomatic immunity, which precluded any coercive action against him by the Genevan authorities. However, in view of the fact that there might have been some justification for the administrative authority's believing that he was not covered by immunity — for instance, because his functions in WHO and the extent of his immunity had not been immediately apparent — the Tribunal, referring in particular to André Grisel, who had written that "in administrative law, voidability is the rule and voidness the exception",[11] found that the contested order should be rescinded rather than declared void. It noted, however, that a decision would have to be declared void if there had been a clear failure to respect immunity from legal process, as would be the case where, for instance, the decision related to an ambassador or a minister or a head of mission, or to the Director-General of an international organization and his immediate assistants.[12]

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3. United States of America

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

(*a*) DUPREE ASSOCIATES, INC. *v.* THE ORGANIZATION OF AMERICAN STATES AND THE GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES: ORDER OF 31 MAY 1977

Case brought against an international organization coming under the International Organizations Immunities Act — Motion to dismiss presented by the defendants on the basis of their alleged immunity from suit — Extent of the immunity from suit enjoyed by foreign sovereigns — Question whether the restrictive concept of immunity developed in relation to foreign sovereigns extends to international organizations within the meaning of the International Organizations Immunities Act

The plaintiff sought damages in the amount of 1 000 000 dollars from the defendants for breach of contract. The defendants had moved dismissal of the case on the ground that they were immune from suit.

The Court recalled that under the International Organizations Immunities Act (22 U.S.C. Sec. 288 *et seq.*)[13] enacted in 1945:

> "(*b*) International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract"

It further recalled that the Act defined the term "international organization" and gave the President the authority to designate the organizations entitled to enjoy such immunity as follows:

> "For the purposes of this title, the term 'international organization' means a public international organization in which the United States participates pursuant

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[11] André Grisel, *Droit administratif suisse* (Neuchâtel, 1970), pp. 201 and 204. The Tribunal also referred to Fritz Fleiner, *Institutionen des deutschen Verwaltungsrecht*, 8th ed., 2nd reprint (Aalen, 1963), p. 206, and Hans Rudolf Schwarzenbach, *Grundriss des allgemeinen Verwaltungsrechts*, 6th ed. (Berne, 1975), p. 111.

[12] Cf. André Grisel, *op. cit.*, pp. 202–203, and Max Imboden and René A. Rhinow, *Schweizerische Verwaltungsrechtsprechung*, vol. 1 (Basel and Stuttgart, 1976), p. 239.

[13] United Nations Legislative Series, *Legislative texts and treaty provisions concerning the legal status, privileges and immunities of international organizations* (ST/LEG/SER.B/10 – Sales No. 60.V.2), p. 128.

to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in said sections."

The Court noted that the Organization of American States had been designated in 1954 through Executive Order No. 10533, 3 C.F.R. 194 (1954-1958 Compilation) as

"a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act".

Thus, the Court noted, it was quite clear that the defendants in the case were immune from some suits: the question was whether the immunity conferred upon them extended to the present suit.

The defendants argued that the United States Congress in passing the International Organizations Immunities Act in 1945 intended that the concept of immunity then in effect should apply to designated international organizations. That concept, as expressed by the State Department,[14] was that foreign sovereigns were entitled to absolute immunity.

The Court however noted that since 1952, the State Department had utilized a "restrictive" concept of immunity with respect to foreign sovereigns under which a foreign sovereign is immune with respect to its purely public and governmental acts *(jure imperii)* but is not immune and is subject to process and suit in all actions arising out of its private and commercial acts *(jure gestionis)*. The Court referred in this connexion to *Ocean Transport Co.* v. *Republic of Ivory Coast* (269 F. Supp.703 (E.D.La. 1967)) and to *Renchard* v. *Humphreys and Harding* (381 F. Supp.382 (D.D.C. 1974)).[15]

Examining the question whether the shift in State Department policy with respect to immunity of foreign sovereigns also affected international organizations, the Court referred to *Victory Transport, Inc.* v. *Comisaria General* (336 F. 2d 354 (2nd Cir. 1964)), *cert.denied,* 381 U.S. 934 (1965) in which it had been recognized that the restrictive concept of immunity was the governing principle with respect to immunity for foreign sovereigns and that since international organizations under the International Organizations Immunities Act were extended only that immunity enjoyed by foreign sovereigns, it followed that international organizations were entitled only to restricted immunity. The Court concurred with this reasoning.

Noting that the action was for breach of contract regarding construction of a building, i.e., a commercial activity, and that the State Department had refrained from urging that the defendants be granted immunity therefrom, the Court denied the defendants' motion to dismiss.

(*b*) DUPREE ASSOCIATES, INC. *v.* THE ORGANIZATION OF AMERICAN STATES AND THE GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES: ORDER OF 22 JUNE 1977

Motion for certification and stay pending appeal — Question whether international organizations coming under the International Organizations Immunities Act enjoy absolute immunity from suit — Restrictive immunity is no defence in a suit for breach of contract in relation to a commercial activity

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[14] The responsibility for determining the scope of immunity a foreign sovereign enjoys has been allocated to the State Department. This is done because the judicial branch has recognized that questions of immunity are political in nature, and should be dealt with by the executive branch: *see,* e.g. *Republic of Mexico* v. *Hoffman,* 324 U.S. 30 (1945).

[15] This policy has been codified into the United States Code by the Foreign Sovereigns Immunities Act of 1976 (P.L. 94–583, 90 Stat. 2091 *et seq.*), which was however not controlling as it had not gone into effect until 19 January 1977, well after the events involved in the present case occurred.

Wishing to take an appeal from the Court's order summarized under (*a*) above, the defendants moved for certification and for stay of proceedings pending the outcome of their appeal.

While recognizing that no appellate court had had occasion to face squarely the question whether international organizations are entitled to "absolute" or "restrictive" immunity[16] and while admitting that *Victory Transport, Inc.* v. *Comisaria General* could not validly be invoked in the present case since it involved an agency of the Spanish government, not an international organization, the Court maintained its reasoning as reflected under (*a*) above. It noted that, in the view of the defendants, international organizations were of a breed different from foreign sovereigns and that the differences warranted the application of the absolute immunity principle in all cases involving such organizations. It observed however that the United States Congress had expressly adopted the contrary principle that "International organizations . . . shall enjoy the *same* immunity from suit . . . as is enjoyed by foreign governments" and that had it recognized the distinctions advanced by the defendants and intended to accord absolute immunity to international organizations, it could easily have said so.

The Court reiterated its view that restrictive immunity was no defence in a suit for breach of contract in relation to the construction of a building: such a contract, even though the building was intended to serve as headquarters for the international organization, qualified as a commercial activity. In the light of the above, it denied the defendants' motion for certification and stay pending appeal.

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[16] The Court noted that apparently, the only case in which a court had dismissed a suit against an international organization was *Moulton* v. *Pan American Union* (C.A. No. 20776-63 (D.C. Ct. Gen. Sess.1963)). It expressed doubts as to whether the ground of decision was absolute immunity and suggested that a former employee's suit for benefits would likely be barred under the doctrine of restrictive immunity as well.

Part Four

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LEGAL BIBLIOGRAPHY OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

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C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS
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МЕЖПРАВИТЕЛЬСТВЕННЫЕ ОРГАНИЗАЦИИ, СВЯЗАННЫЕ С ОРГАНИЗАЦИЕЙ ОБЪЕДИНЕННЫХ НАЦИЙ
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