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UNITED NATIONS JURIDICAL YEARBOOK 1982

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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 twentieth 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 1982. Decisions given in 1982 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. In the case of treaties too voluminous to fit into the format of the Yearbook, an easily accessible source is provided.

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 1982.

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

CERN	European Organization for Nuclear Research
CMEA	Council for Mutual Economic Assistance
ECE	Economic Commission for Europe
ECLAC	Economic Commission for Latin America and the Caribbean
FAO	Food and Agriculture Organization of the United Nations
IAEA	International Atomic Energy Agency
IBRD WORLD BANK	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
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
IMO	International Maritime Organization
INTERPOL	International Criminal Police Organization
ITU	International Telecommunication Union
JAB	Joint Appeals Board
PAHO	Pan-American Health Organization (World Health Organization)
PLO	Palestine Liberation Organization
SWAPO	South West Africa People's Organization
UNCDF	United Nations Capital Development Fund
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNCTC	United Nations Centre on Transnational Corporations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
UNIDF	United Nations Industrial Development Fund
UNIDO	United Nations Industrial Development Organization
UNIFIL	United Nations Interim Force in Lebanon
UNITAR	United Nations Institute for Training and Research
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNTSO	United Nations Troop Supervision Organization in Palestine
UNU	United Nations University
UPU	Universal Postal Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization

Part One

LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter I

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

1. Bulgaria

NOTE DATED 27 JULY 1983 FROM THE PERMANENT MISSION OF BULGARIA TO THE UNITED NATIONS[1*]

A new paragraph (paragraph 3) has been added to article 170 of the Penal Code of the People's Republic of Bulgaria to provide for a term of imprisonment of one to three years in the case of violation of the immunity of the residence, vehicle or working premises of an internationally protected person. If such acts are committed during the night by one or more persons, the Penal Code provides for a term of imprisonment of one to five years.

A new paragraph has been added to article 93 to define internationally protected persons. This new paragraph (paragraph 13) reads as follows:

"An internationally protected person is a person entitled to international protection by virtue of an international treaty to which the People's Republic of Bulgaria is a party."

Article 170 of the Penal Code reads as follows:

"1. Any person who enters the residence of a foreigner by force, intimidation, ruse, abuse of authority or special technical means shall be sentenced to a term of imprisonment not exceeding one year or to a period of re-education not exceeding six months.

"2. Should the act referred to in the preceding paragraph be committed during the night or by an armed person or by two or more persons, the applicable punishment shall be a term of imprisonment not exceeding three years.

"3. Should the acts referred to in the preceding paragraphs be committed against the residence, vehicle or working premises of an internationally protected person, the applicable punishment shall be: in the context of paragraph 1—a term of imprisonment not exceeding three years; and in the context of paragraph 2—a term of imprisonment of one to five years.

"4. Any person who remains illegally in the residence of a foreigner in spite of an explicit request to leave shall be sentenced to a period of re-education not exceeding six months or shall be fined not more than 50 leva."

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* The notes to each chapter are to be found at the end of that particular chapter

2. Canada

(*a*) PRIVILEGES AND IMMUNITIES (INTERNATIONAL ORGANIZATIONS) ACT[2]

(i) IMCO PRIVILEGES AND IMMUNITIES ORDER, 1982

P.C. 1982-1155 22 April, 1982

His Excellency the Governor General in Council, on the recommendation of the Secretary of State for External Affairs, pursuant to section 3 of the Privileges and Immunities (International Organizations) Act, is pleased hereby to make the annexed Order respecting the privileges and immunities in Canada of the Inter-Governmental Maritime Consultative Organization (I.M.C.O.), 1982.

ORDER RESPECTING THE PRIVILEGES AND IMMUNITIES IN CANADA OF THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION (I.M.C.O.), 1982

Short title

1. This Order may be cited as the *I.M.C.O. Privileges and Immunities Order, 1982.*

Interpretation

2. In this Order,

"Convention" means the Convention on the Privileges and Immunities of the United Nations;[3]

"Organization" means the Inter-Governmental Maritime Consultative Organization.

Privileges and immunities

3. During the period commencing on April 26, 1982 and terminating on May 14, 1982,

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

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

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

(ii) UNESCO PRIVILEGES AND IMMUNITIES ORDER, 1982

P.C. 1982-1156 22 April 1982

His Excellency the Governor General in Council, on the recommendation of the Secretary of State for External Affairs, pursuant to section 3 of the Privileges and Immunities (International Organizations) Act, is pleased hereby to make the annexed Order respecting the privileges and immunities in Canada of the United Nations Educational, Scientific and Cultural Organization (U.N.E.S.C.O.), 1982.

ORDER RESPECTING THE PRIVILEGES AND IMMUNITIES IN CANADA OF THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (U.N.E.S.C.O.), 1982

Short title

1. This Order may be cited as the *U.N.E.S.C.O. Privileges and Immunities Order, 1982*

Interpretation

2. *In this Order,*

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

"Organization" means the United Nations Educational, Scientific and Cultural Organization.

Privileges and immunities

3. During the period commencing on April 26, 1982 and terminating on May 14, 1982,

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

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

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

(*b*) FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS ACT

FAO (N.A.F.C.—11th SESSION) PRIVILEGES AND IMMUNITIES ORDER, 1982

P.C. 1982-331 4th February 1982

His Excellency the Governor General in Council, on the recommendation of the Secretary of State for External Affairs, pursuant to subsection 2(2) of the Food and Agriculture Organization of the United Nations Act, is pleased hereby to make the annexed Order respecting the Privileges and Immunities in Canada of the Eleventh session of the North American Forestry Commission of the Food and Agriculture Organization of the United Nations.

ORDER RESPECTING THE PRIVILEGES AND IMMUNITIES IN CANADA OF THE ELEVENTH SESSION OF THE NORTH AMERICAN FORESTRY COMMISSION OF THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Short title

1. This Order may be cited as the *F.A.O. (N.A.F.C.—11th Session) Privileges and Immunities Order, 1982.*

Interpretation

2. In this Order,

"Commission" means the Eleventh Session of the North American Forestry Commission of the Food and Agriculture Organization of the United Nations; (*Commission*)

"Convention" means the Convention on the Privileges and Immunities of the United Nations; (*Convention*)

"meeting" means the meetings of the Commission to be held at Victoria, British Columbia, from February 16, 1982 to February 19, 1982; (*réunion*)

"officials of the Commission" includes all persons invited or required to attend or service the meeting on behalf of the Food and Agriculture Organization or any intergovernmental or non-governmental international organization; (*fonctionnaires de la Commission*)

"representatives of states and governments that are members of the Commission" includes all representatives of states and governments that are invited to attend the meeting. (*représentants d'Etats et de gouvernements*)

3. During the period commencing on February 9, 1982 and ending on February 26, 1982,

(*a*) the Commission shall have the legal capacities of a body corporate and shall have in Canada, to such extent as it may require for the performance of its functions, the privileges and immunities set forth in Articles II and III of the Convention for the United Nations;

(*b*) the representatives of states and governments that are members of the Commission shall have in Canada, to such extent as may be required for the performance of their functions, the privileges and immunities set forth in Article IV of the Convention for representatives of members; and

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

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3. Cape Verde

NOTE DATED 5 AUGUST 1983 FROM THE PERMANENT MISSION OF CAPE VERDE TO THE UNITED NATIONS[4]

. . .

Decree No. 114/82 of 24 December 1982, relating to the social security system, contains the following in article 6, paragraph 3:

> "Foreign workers in Cape Verde who are temporarily in the service (. . .) of international organizations are not covered by the social security system, unless they can prove that they are not covered by the social security system (. . .) in the organization to which they belong."

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4. Ireland

DIPLOMATIC RELATIONS AND IMMUNITIES ACT[5]

(*a*) INTERCOUNTRY PROJECT FOR STATISTICAL COMPUTING (PRIVILEGES AND IMMUNITIES) ORDER, 1982[6]

Whereas it is enacted by section 42A of the Diplomatic Relations and Immunities Act, 1967 (No. 8 of 1967), inserted by section 1 of the Diplomatic Relations and Immunities (Amendment) Act, 1976 (No. 2 of 1976), that the Government may by order make provision to enable international organisations, communities or bodies, their institutions or organs and their property, and persons to have and enjoy in the State any inviolability, exemptions, facilities,

immunities, privileges or rights provided for in relation to them by an international agreement to which the State is or intends to become a party;

And whereas the agreement relating to the Intercountry Project for the use of computers for statistical purposes and the design and development of automated statistical information systems and made between the Government and the United Nations Development Programme and signed on behalf of the Government and the United Nations Development Programme on the 23rd day of June 1982 is such an agreement;

Now, the Government, in exercise of the powers conferred on them by the said section 42 A, hereby order as follows:

1. This Order may be cited as the Intercountry Project for Statistical Computing (Privileges and Immunities) Order, 1982.

2. Paragraphs A and B of Annex 1 to the Agreement between the Government and the United Nations Development Programme signed on behalf of the Government and the United Nations Development Programme on the 23rd day of June, 1982 (a copy of which is set out in the Schedule hereto) shall apply for the purposes of section 42A of the Diplomatic Relations and Immunities Act, 1967 (No. 8 of 1967), inserted by section 1 of the Diplomatic Relations and Immunities (Amendment) Act, 1976 (No. 2 of 1976).

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT AND THE UNITED NATIONS DEVELOPMENT PROGRAMME

PARAGRAPHS A AND B OF ANNEX I

A. FACILITIES, PRIVILEGES AND IMMUNITIES

1. The UNDP, the ECE, and their personnel who participate in the execution of the Project shall be accorded the facilities, privileges and immunities specified or envisaged in the Agreement between the Governments and the UNDP (or its predecessor programmes). No provision in this Annex I shall be construed to limit or restrict the generality of any provision in the Agreements.

2. Each Government shall accord to representatives of the other Governments, attending meetings of the Steering Committee and its subordinate bodies, the privileges and immunities provided in Article IV of the Convention on the Privileges and Immunities of the United Nations.[3]

3. Each Government shall accord to officials of the UNDP, the ECE and others attending the meetings of the Steering Committee and its subordinate bodies, the privileges and immunities provided in Article V of the Convention on the Privileges and Immunities of the United Nations.

4. The UNDP shall provide the Governments with names of personnel and their dependants to whom the privileges and immunities referred to above shall apply.

B. GOVERNMENT PERSONNEL

5. Personnel of the Governments working on the Project and whose salaries are paid by their respective Governments shall remain the responsibility of their respective Governments. The Governments shall indemnify and hold harmless the UNDP and the ECE from any claims or actions by said Government personnel against the UNDP or the ECE arising out of the participation of said Government personnel in the Project. Under the same conditions, the UNDP and ECE shall be responsible for dealing with and settling the claims of personnel of the UNDP and ECE arising out of their participation in the Project.

6. Each Government shall extend to the personnel of the other Governments performing services for the Project in its territory, the same privileges and immunities accorded to officials of the United Nations under Article V of the Convention on the Privileges and Immunities of the United Nations.

(*b*) COMMON FUND FOR COMMODITIES (DESIGNATION OF ORGANIZATION) ORDER, 1982[7]

Whereas it is enacted by section 40 (1) of the Diplomatic Relations and Immunities Act, 1967 (No. 8 of 1967), that the Government may by order designate an international organisation of which the State or the Government is or intends to become a member to be an organisation to which Part VIII of that Act applies;

And whereas the Common Fund for Commodities is an organisation such as aforesaid;

Now, the Government, in exercise of the powers conferred on them by section 40 of the said Diplomatic Relations and Immunities Act, 1967, hereby order as follows:

1. This Order may be cited as the Common Fund for Commodities (Designation of Organisation) Order, 1982.

2. The Common Fund for Commodities is hereby designated as an organisation to which Part VIII of the Diplomatic Relations and Immunities Act, 1967 (No. 8 of 1967), applies.

3. Chapter X (the terms of which are set out in the Schedule to this Order) of the Agreement establishing the Common Fund for Commodities done at Geneva on the 27th day of June, 1980, shall apply for the purposes of section 42 of the Diplomatic Relations and Immunities Act, 1967.

SCHEDULE

CHAPTER X

of the Agreement establishing the Common Fund for Commodities done at Geneva on the 27th day of June, 1980

Article 40

PURPOSES

To enable the Fund to fulfil the functions with which it is entrusted, the status, privileges and immunities set forth in this chapter shall be accorded to the Fund in the territory of each Member.

Article 41

LEGAL STATUS OF THE FUND

The Fund shall possess full juridical personality and, in particular, the capacity to conclude international agreements with States and international organizations, to enter into contracts, to acquire and dispose of immovable and movable property, and to institute legal proceedings.

Article 42

IMMUNITY FROM JURIDICAL PROCEEDINGS

1. The Fund shall enjoy immunity from every form of legal process, except for actions which may be brought against the Fund:

(*a*) By lenders of funds borrowed by the Fund with respect to such funds;

(*b*) By buyers or holders of securities issued by the Fund with respect to such securities; and

(*c*) By assignees and successors in interest thereof with respect to the aforementioned transactions. Such actions may be brought only before courts of competent jurisdiction in places in which the Fund has agreed in writing with the other party to be subject. However, if no provision is made as to the forum, or if an agreement as to the jurisdiction of such courts is not effective for reasons other than the fault of the

party bringing legal action against the Fund, then such action may be brought before a competent court in the place in which the Fund has its headquarters or has appointed an agent for the purpose of accepting service or notice of process.

2. No action shall be brought against the Fund by Members, Associated ICOs ICBs, or their participants, or persons acting for or deriving claims from them, except in cases as in paragraph 1 of this article. Nevertheless, Associated ICOs, ICBs, or their participants shall have recourse to such special procedures to settle controversies between themselves and the Fund as may be prescribed in agreements with the Fund, and, in the case of Members, in this Agreement and in any rules and regulations adopted by the Fund.

3. Notwithstanding the provisions of paragraph 1 of this article, property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, any form of taking, foreclosure, seizure, all forms of attachment, injunction, or other judicial process impeding disbursement of funds or covering or impeding disposition of any commodity stocks or Stock Warrants, and any other interlocutory measures before the delivery of a final judgement against the Fund by a court having jurisdiction in accordance with paragraph 1 of this article. The Fund may agree with its creditors to limit the property or assets of the Fund which may be subject to execution in satisfaction of a final judgement.

Article 43

IMMUNITY OF ASSETS FROM OTHER ACTIONS

The property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, taking whether by executive or legislative action.

Article 44

IMMUNITY OF ARCHIVES

The archives of the Fund, wherever located, shall be inviolable.

Article 45

FREEDOM OF ASSETS FROM RESTRICTIONS

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls, and moratoria of any nature.

Article 46

PRIVILEGE FOR COMMUNICATIONS

As far as may be compatible with any international convention on telecommunications in force and concluded under the auspices of the International Telecommunication Union to which a Member is a party, the official communications of the Fund shall be accorded by each Member the same treatment that is accorded to the official communications of other Members.

Article 47

IMMUNITIES AND PRIVILEGES OF SPECIFIED INDIVIDUALS

All Governors, Executive Directors, their alternates, the Managing Director, members of the Consultative Committee, experts performing missions for the Fund, and the staff, other than persons in domestic service of the Fund:

(*a*) Shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives such immunity;

(*b*) When they are not nationals of the Member concerned, shall be accorded, as well as their families forming part of their household, the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by such Member to the representatives, officials and employees of comparable rank of other international financial institutions of which it is a member;

(*c*) Shall be granted the same treatment in respect of travelling facilities as is accorded by each Member to representatives, officials and employees of comparable rank of other international financial institutions of which it is a member.

Article 48

IMMUNITIES FROM TAXATION

1. Within the scope of its official activities, the Fund, its assets, property, income and its operations and transactions authorized by this Agreement shall be exempt from all direct taxation and from all customs duties on goods imported or exported for its official use, provided that this shall not prevent any Member from imposing its normal taxes and customs duties on commodities which originate from the territory of such Member and which are forfeited to the Fund through any circumstance. The Fund shall not claim exemption from taxes which are no more than charges for services rendered.

2. When purchases of goods or services of substantial value necessary for the official activities of the Fund are made by or on behalf of the Fund, and when the price of such purchases includes taxes or duties, appropriate measures shall, to the extent possible and subject to the law of the Member concerned, be taken by such Member to grant exemption from such taxes or duties or provide for their reimbursement. Goods imported or purchased under an exemption provided for in this article shall not be sold or otherwise disposed of in the territory of the Member which granted the exemption, except under conditions agreed with that Member.

3. No tax shall be levied by Members on or in respect of salaries and emoluments paid or any other form of payment made by the Fund to Governers, Executive Directors, their alternates, members of the Consultative Committee, the Managing Director and staff, as well as experts performing missions for the Fund, who are not their citizens, nationals or subjects.

4. No taxation of any kind shall be levied on any obligation or security issued or guaranteed by the Fund, including any dividend or interest thereon, by whomsoever held:

(*a*) which discriminates against such obligation or security solely because it is issued or guaranteed by the Fund; or

(*b*) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.

Article 49

WAIVER OF IMMUNITIES, EXEMPTIONS AND PRIVILEGES

1. The immunities, exemptions and privileges provided in this chapter are granted in the interests of the Fund. The Fund may waive to such extent and upon such conditions as it may determine, the immunities, exemptions and privileges provided in this chapter in cases where its action would not prejudice the interests of the Fund.

2. The Managing Director shall have the power, as may be delegated to him by the Governing Council, and the duty to waive the immunity of any of the staff, and experts performing missions for the Fund, in cases where the immunity would impede the course of justice and can be waived without prejudice to the interests of the Fund.

Article 50

APPLICATION OF THIS CHAPTER

Each Member shall take such action as is necessary for the purpose of making effective in its territory the principles and obligations set forth in this chapter.

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5. Netherlands

NOTE DATED 14 JUNE 1983 FROM THE PERMANENT MISSION OF THE NETHERLANDS TO THE UNITED NATIONS

. . .

In July 1982, the Netherlands Ministry of Finance wrote a summary of the fiscal status of the Representative of the United Nations High Commissioner for Refugees (UNHCR) in the Netherlands. The summary in question [reproduced below] was based on existing rules and regulations on the privileges and immunities of the United Nations.

. . .

SUMMARY

With regard to your letter of 14 April 1982 concerning the status of a Representative of the United Nations High Commissioner for Refugees (UNHCR) in the Netherlands, I have the honour to give you the following information:

1. The fiscal status of the UNHCR representative in the Netherlands is based on the provisions of the Convention of the Privileges and Immunities of the United Nations[3] (hereafter referred to as "the Convention"). United Nations officials in the Netherlands enjoy the privileges and immunities set out in Article V, Section 18, of the Convention. Moreover, under the terms of Section 19 of the same article the United Nations Secretary-General and all Assistant Secretaries General are deemed to have diplomatic status.

As the official concerned does not come into the category referred to in Section 19 there are no legal grounds for according him diplomatic status and therefore he cannot be exempted from wealth tax, VAT or road tax on his private car(s). Only his salary (and other emoluments) from the United Nations are exempt from the Netherlands income tax (without application of the progression proviso) in accordance with Article V, Section 18 (*b*), of the Convention.

Under the terms of Article V, Section 18 (g), he is entitled to import his furniture and effects, including one or more cars, duty free. The car(s) are then issued with ordinary Netherlands number plates. The temporary exemption (using document Benelux 4) you advocate is disadvantageous to the person concerned because he would have to pay tax on the residual value of the vehicle(s) if he sold them.

Assuming that he is covered by the United Nations social security system, he is not regarded as an insured person under the Netherlands national insurance schemes (Order concerning exemption for AOW (General Old Age Pensions Act), AWW (Widows' and Orphans' Benefits Act), AKW (General Family Allowances Act), AWBZ (Exceptional Medical Expenses Compensation Act) and AAW (General Disablement Benefits Act) for officials employed by international organisations.[8]

2. The UNHCR Branch Office in the Netherlands is part of the United Nations and tax concessions can be in accordance with the provisions laid down in Article II, Sections 7 and 8,

of the Convention. I have therefore seen fit to approve the following arrangements in respect of the Branch Office.

2.1 Besides the exemption from direct taxes excluding those for public utility services as laid down in Article II, Section 7 (*a*), of the Convention, the Branch Office will also be accorded the following exemptions:

a. exemption from taxes, duties and other levies on the import and export by the Branch Office of goods, including motor vehicles, for official use (Article II, Section 7 (*b*) and (*c*) of the Convention);

b. exemption from taxes and other levies included in the price of goods bought and services obtained in the Netherlands (except motor vehicles) for the Branch Office's official use (Article II, Section 8, of the Convention);

c. exemption on request from road tax on official vehicles.

2.2 *Import duty*

The exemption from import duty referred to above under item 2.1.a is made on the basis of an exemption permit issued by the Inspector of Customs and Excise in The Hague. Goods are declared for import duty-free on a "Douane 35" form and no security has to be provided.

2.3 *Import by post*

Letters, documents and other goods imported by post are exempted from duty providing it is reasonable to assume that they are intended for the Branch Office. No written declaration or exemption permit as described above is required.

2.4 *Renunciation of exemption*

Goods as defined in 2.1.a above obtained free of tax which are used for purposes other than those which gave entitlement to tax exemption (e.g., through sale, donation or hire) must be declared for import at the rates in force at the time of such declaration and, where appropriate, duty must be paid on the value of the goods at the time of such declaration.

2.5 *VAT (free circulation)*

In order to obtain exemption from VAT on goods and services obtained in the Netherlands as defined under 2.1.b above, the Branch Office should apply within three months of the end of each quarter to the Inspector of Customs and Excise in The Hague for a refund of tax paid in that quarter, using an OB 95 form or a form approved by the Inspector. The Inspector may set other conditions such as the submission of invoices and other documents to support applications.

VAT can only be refunded on goods to the value of Fl. 500 or more (excluding VAT) and therefore in principle no refund can be made in respect of invoices for less than this amount. However, the Branch Office may enter several invoices for less than Fl. 500 from the same firm on a collection statement:

a. If they relate to continuous services, such as gas, water and electricity supplies, and if the dates of the invoices are within the quarter in question;

b. if the invoices relate to a single order or agreement of some other kind, providing again that the dates of the invoices are within the quarter in question.

2.6 *Excise duty*

With regard to goods subject to excise duty, exemption may be granted in respect of:

a. mineral oil bought in the Netherlands for official use by the Branch Office; this includes the use of its motor vehicles and the heating of buildings used for official purposes;

b. tobacco products, alcoholic drinks and still and sparkling wines obtained from excise warehouses, tobacco manufacturing premises or credit warehouses for alcoholic substances or wines intended for the Branch Office's official use, including official receptions and other entertainment purposes.

Exemption as referred to under a. above is given in the form of a refund of the excise duty paid, and sole authority to grant such exemption is vested in the Inspector of Customs and

Excise in The Hague. The Branch Office should apply to him within three months of the end of each quarter for repayment of excise duty paid in that quarter, submitting with the application the original invoices relating to the mineral oil supplied. When mineral oil for use in motor vehicles is concerned, however, it is sufficient to submit receipts issued at the time of purchase, containing the following information:

a. the name of the supplier;

b. the name of the driver of the vehicle;

c. the type and quantity of mineral oil;

d. the place and date of purchase;

e. the registration number of the vehicle for which the mineral oil was supplied.

The receipts should be signed by the supplier and by the driver of the vehicle in question. They should be submitted with the application for refund and a separate statement of the quantities involved. If the documents are to be returned to the Branch Office, the Inspector will add an endorsement to the effect that exemption has been granted.

With regard to the exemption referred to under b. above, a permit must be obtained in advance from the Inspector of Customs and Excise in The Hague. A "Douane 39" form signed by the UNHCR representative in the Netherlands should be used to apply for exemption. The Inspector grants the application by issuing the permit. No security is required, though the Inspector may lay down other conditions. Exemption in this case cannot be given in the form of a refund.

2.7 *Vehicle Registration*

Motor vehicles imported as described under 2.2 above will be given a BN or GN registration number in the 8000 series and issued with a Benelux 4 certificate (no security required). The registration certificate will feature the words *"Slechts geldig met Benelux 4"* (Valid only in conjunction with Benelux 4 certificate).

3. In connection with paragraph 2.6 I would ask you to send me a specimen signature from the UNHCR representative in the Netherlands.

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6. Papua New Guinea

UNITED NATIONS AND SPECIALIZED AGENCIES (PRIVILEGES AND IMMUNITIES) ACT, 1975[9]

(*a*) UNITED NATIONS AND SPECIALIZED AGENCIES (PRIVILEGES AND IMMUNITIES) (AMENDMENT) ACT, 1977[10]

Being an Act to amend Section 7 of the *United Nations and Specialized Agencies (Privileges and Immunities) Act* 1975 so as to allow the Head of State, acting on advice, to prescribe privileges and immunities different from those prescribed in the Convention.

Made by the National Parliament.

PRIVILEGES AND IMMUNITIES (AMENDMENT OF SECTION 7)

Section 7 of the Principal Act is amended by omitting from Subsection (1) the words "as the case may be" and substituting the words:

> "as the case may be, or such privileges and immunities as the Head of State, acting on advice, by regulation determines."

(*b*) UNITED NATIONS AND SPECIALIZED AGENCIES (PRIVILEGES AND IMMUNITIES) (AMENDMENT) ACT, 1981[11]

Being an Act to amend the *United Nations and Specialized Agencies (Privileges and Immunities) Act* 1975, to provide for the granting of privileges and immunities to persons performing services on behalf of a Specialized Agency,

Made by the National Parliament, to come into operation in accordance with a notice published in the *National Gazette* by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. INTERPRETATION (AMENDMENT OF SECTION 5)

The definition of "Specialized Agency" in Section 5 of the Principal Act is amended by adding at the end thereof the following paragraph:

"(*n*) The United Nations Development Programme.".

2. PRIVILEGES AND IMMUNITIES (AMENDMENT OF SECTION 7)

Section 7 of the Principal Act is amended by inserting after Subsection (1) the following subsections:

"(1A) The Minister may grant to persons performing services on behalf of a Specialized Agency the privileges and immunities applicable to a person under Subsection (1).

"(1B) For the purposes of Subsection (1A), the expression 'persons performing services' has the same meaning that it has in the United Nations Development Programme Standard Basic Agreement.".

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7. Solomon Islands

(*a*) DIPLOMATIC PRIVILEGES AND IMMUNITIES ORDINANCE 1978[12]

AN ORDINANCE TO PROVIDE FOR DIPLOMATIC PRIVILEGES AND IMMUNITIES AND TO GIVE EFFECT TO THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS

[7 July 1978]

Enacted by the Governor of the Solomon Islands with the advice and consent of the Legislative Assembly of the Solomon Islands as follows:

1. This Ordinance may be cited as the Diplomatic Privileges and Immunities Ordinance 1978 and shall come into operation on 7th July 1978.

2. (1) In this Ordinance, unless the context otherwise requires—

"Convention" means the Vienna Convention on Diplomatic Relations signed in 1961, a copy of the English text of which is set out in the First Schedule to this Ordinance;

"organisation" means any organisation referred to in section 6 of this Ordinance;

"mission" means a diplomatic mission of any State;

"State" means a foreign state or any Commonwealth country.

(2) All expressions used in this Ordinance and defined in Article 1 of the Convention have the same meanings as those given to them in the Convention.

3. (1) Subject to the provisions of subsection (6) of this section, the provisions of Articles 1, 22 to 24 inclusive, and 27 to 40 inclusive of the Convention shall have the force of law in Solomon Islands.

(2) Without prejudice to the provisions of the last preceding subsection, the Minister, with the concurrence of the Minister responsible for finance, may from time to time determine either generally or in any case or class of case, the fiscal privileges which shall be accorded to any mission or persons connected with any mission, notwithstanding that the determination may extend treatment more favourable than that required by the provisions of the Convention, and may in like manner determine the terms and conditions on which those privileges may be enjoyed.

(3) For the purpose of giving effect to any custom or agreement by which Solomon Islands and any other State extend to each other treatment more favourable than is required by the provisions of the Convention, the Minister may from time to time, by order, declare that a mission of that State and persons connected with that mission shall be accorded such immunity from jurisdiction and inviolability, as are specified in the order:

Provided that nothing in this subsection shall apply with respect to persons to whom section 4 of this Ordinance applies.

(4) In subsections (2) and (3) of this section, the expression "treatment more favourable" includes the according of privileges or immunities, as the case may be, to persons who under the Convention may enjoy privileges and immunities only to the extent admitted by the receiving State.

(5) Where, by or by virtue of this Ordinance, immunity from jurisdiction is accorded to persons who are not diplomatic agents or persons enjoying immunity under Article 37 of the Convention, the immunity accorded to those first-mentioned persons may be waived in the manner and subject to the conditions specified in Article 32 of the Convention and the waiver shall have the same consequences as a waiver under that Article.

(6) For the purposes of the provisions of the articles referred to in subsection (1) of this section—

(*a*) a reference in those provisions to the receiving State shall be construed as a reference to Solomon Islands;

(*b*) a reference in those provisions to a national of the receiving State shall be construed as a reference to a Solomon Islands citizen;

(*c*) the reference in paragraph 1 of Article 22 to agents of the receiving State shall be construed as including a reference to any police officer and any person exercising a power of entry to premises;

(*d*) the reference in Article 32 to waiver by the sending State shall be construed as including a waiver by the head of the mission of the sending State or by a person for the time being performing the functions of the head of mission;

(*e*) Articles 35, 36 and 40 shall be construed as granting the privileges or immunities that those articles required to be granted;

(*f*) the reference in paragraph 1 of Article 36 to such laws and regulations as the receiving State may adopt shall be construed as including a reference to any law in force in Solomon Islands relating to the quarantine, or the prohibition or restriction of the importation into or the exportation from Solomon Islands of animals, plants, or goods:

Provided that any immunity from jurisdiction that a person may possess or enjoy by virtue of subsection (1) of this section shall not be prejudiced;

(*g*) the reference in paragraph 4 of Article 37 to the extent to which privileges and immunities are admitted by the receiving State, and the reference in paragraph 1 of Article 38 to any additional privileges and immunities that may be granted by the receiving State, shall, so far as they relate to privileges, be construed as references to such determinations as may be made by the Minister pursuant to subsection (2) of this section, and, so far as they relate to

immunities, be construed as references to such immunities as may be conferred by an order under subsection (3) of this section;

(*h*) the reference in paragraph 2 of Article 38 to the extent to which privileges and immunities are admitted by the receiving State shall, so far as it relates to privileges, be construed as reference to such determinations as may be made by the Minister pursuant to subsection (2) of this section, and, so far as it relates to immunities, be construed, in relation to persons to whom section 4 of this Ordinance applies, as a reference to immunities conferred by that section, and, in relation to other persons to whom that paragraph applies, as a reference to such immunities as may be conferred by an order under subsection (3) of this section.

4. The members of the administrative and technical staff and members of the service staff, of a mission who are Solomon Island citizens or are permanently resident in Solomon Islands shall be accorded immunity from jurisdiction, and inviolability, only in respect of official acts performed in the exercise of their functions.

5. Where the Minister is satisfied that the privileges and immunities accorded in relation to a mission of Solomon Islands in any State, or to persons connected with that mission, are less than those conferred by or by virtue of this Ordinance then in relation to the mission of that State, or to persons connected with that mission, he may, by order, withdraw, modify, or restrict, in relation to that mission or to persons connected with that mission, such of the privileges and immunities so conferred to such extent as appears to him to be proper.

6. (1) This section shall apply to any organisation declared by the Minister, by order, to be an organisation of which two or more States or the Governments thereof are members.

(2) The Minister may from time to time, by order—

(*a*) provide that any organization to which this section applies shall, to such extent as may be specified in the order, have the privileges and immunities specified in the Second Schedule to this Ordinance, and shall also have the legal capacities of a body corporate;

(*b*) confer upon—

(i) any persons who are representatives (whether of Governments or not) on any organ of the organisation or at any conference convened by the organisation or are members of any committee of the organisation or of any organ thereof;

(ii) such officers or classes of officers of the organisation as are specified in the order being the holders of such high offices in the organisation as are so specified;

(iii) such persons employed on missions on behalf of the organisation as are specified in the order,

to such extent as may be specified in the order, the privileges and immunities specified in the Third Schedule to this Ordinance;

(*c*) confer upon such other classes of officers and servants of the organisation as are specified in the order, to such extent as may be so specified, the privileges and immunities specified in the Fourth Schedule to this Ordinance and the Fifth Schedule to this Ordinance shall have effect for the purpose of extending to the staffs of such representatives and members as are mentioned in subparagraph (i) of paragraph (*b*) of this subsection and to the members of the families forming part of the household of officers of the organisation any privileges and immunities conferred on the representatives, members, or offers under that paragraph, except in so far as the operation of the Fifth Schedule to this Ordinance is excluded by the order conferring the privileges and immunities:

Provided that no order made under the provisions of this subsection shall confer any privilege or immunity upon any person as the representative of Her Majesty in right of Solomon Islands or of the Government of Solomon Islands or as a member of the staff of such a representative.

7. (1) Whenever the services of any person are provided for appointment to the public service of Solomon Islands pursuant to an agreement between any of the international organisations specified in the Sixth Schedule to this Ordinance and the Government of Solomon Islands, it shall be lawful for the Minister by order to confer upon any such person to such extent as

may be specified therein the immunities and privileges set out in the Seventh Schedule to this Ordinance or to which such person may be entitled by virtue of the appropriate treaty, convention or other arrangement to which Solomon Islands is a party.

(2) Every order made under the provisions of the last preceding subsection shall state the date from which the immunities and privileges thereby conferred shall take effect.

(3) Whenever any person ceases to be entitled to the immunities and privileges conferred by any order made under this Ordinance the Minister shall cause a notice to that effect to be published in the Gazette.

(4) The Minister may at any time by notice in the Gazette add to, vary or delete the whole or any part of the Sixth Schedule to this Ordinance with effect from the date specified in such notice.

(5) The fact that any person is or was entitled or not entitled to any of the immunities or privileges set out in the Seventh Schedule to this Ordinance may be conclusively proved by producing the Gazette containing the relevant order or notice, whichever is the case.

8. The Minister may from time to time by order confer on the Judges and Registrars of the International Court of Justice published by the Charter of the United Nations, and on suitors established by the Charter of the United Nations, and on suitors to that Court and their agents, counsel, and advocates, such privileges, immunities, and facilities as may be required to give effect to any resolution of, or convention approved by, the General Assembly of the United Nations.

9. Where—

(*a*) a conference is held in Solomon Islands and is attended by representatives of the Government of Solomon Islands and the Government or Governments of one or more States or of any of the territories for whose international relations any of those Governments is responsible; and

(*b*) it appears to the Minister that doubts may arise as to the extent to which the representatives of those Governments (other than the Government of Solomon Islands) and members of their official staffs are entitled to privileges and immunities,

the Minister may, by notice in the Gazette, direct that every representative of any such Government (other than the Government of Solomon Islands) shall be accorded such of the privileges and immunities conferred by or by virtue of section 3 and 4 of this Ordinance on a diplomatic agent as the Minister specifies, and that such of the members of his official staff as the Minister may direct shall be accorded such of the privileges and immunities conferred by or by virtue of sections 3 and 4 of this Ordinance on members of the diplomatic staff or the administrative and technical staff of a diplomatic mission as the Minister specifies.

10. Nothing in this Ordinance shall be construed as precluding the Minister from declining to accord privileges or immunities to or from withdrawing, modifying, or restricting privileges or immunities in relation to, nationals or representatives of any State, or the Government thereof, on the ground that the State or the Government thereof, is failing to accord corresponding privileges or immunities to Solomon Islands.

11. (1) Notwithstanding anything to the contrary in any Ordinance, the Minister, with the concurrence of the Minister responsible for finance, may from time to time wholly or partly exempt from any public or local tax, duty, rate, levy or fee any of the following Governments or persons—

(*a*) the Government of any State or the Government of any territory for whose international relations the Government of any such State is responsible;

(*b*) a representative or officer of the Government of any country other than Solomon Islands or of any provisional Government, national committee, international organisation, or other authority recognised by Solomon Islands, if he is temporarily resident in Solomon Islands in accordance with any arrangement made with the Government of Solomon Islands;

(*c*) a member of the official or domestic staff, or a spouse or dependent child, of any person to whom paragraph (*b*) of this subsection applies.

(2) Subject to the provisions of any international convention, treaty or arrangement to which Solomon Islands is a party, where a person who is a member of the official or domestic staff of a person to whom paragraph (*b*) of the last preceding subsection applies is a Solomon Islands citizen and not a citizen of the country concerned, or is not resident in Solomon Islands, solely for the purpose of performing his duties as such a member, that person shall not, and the spouse and dependent children of that person shall not by reason only of their being a member of his family, be entitled to any exemption granted under the last preceding subsection.

12. (1) The powers conferred on the Minister by sections 6, 7 and 11 of this Ordinance shall be deemed to include power to exempt from stamp duty under the Stamp Duties Ordinance and from any fee or duty under any other Ordinance any instrument or class of instruments to which any organisation, government, or person, as the case may be, to which or to whom the order or exemption applies is a party.

(2) Any exemption granted by the Minister under the last preceding section may be granted either unconditionally or subject to such conditions as the Minister thinks fit, and the Minister may at any time revoke any such exemption or revoke, vary, or add to any such conditions.

(3) Every exemption referred to in subsection (2) of this section shall come into force on such date as may be specified in that behalf by the Minister.

(4) Notwithstanding the provisions of any exemption referred to in subsection (2) of this section, any question arising as to the nature or extent of any such exemption, or to the governments or persons entitled to any such exemption, shall be referred to and be determined by the Minister. The decision of the Minister shall not be liable to be challenged, reviewed, quashed or called in question in any court.

13. (1) The Minister responsible for finance may direct that such refunds or payments be made from any public fund or account or from the money of any local authority, public body, or person as may in the opinion of that Minister by necessary to give effect to any fiscal privilege accorded pursuant to section 3 of this Ordinance or to any exemption granted under sections 6, 8, 9 or 11 of this Ordinance.

(2) Where any loss is suffered by any local authority, public body, or person by reason of the conferring of any such privilege or the granting of any such exemption or by the making of any refund of payment directed under this section, the Minister responsible for finance may direct that such payments be made from the Consolidated Fund to that local authority, public body, or person as may be necessary in the opinion of that Minister to reimburse that loss.

14. If in any proceedings any question arises whether or not any person or any organisation is or was at any time or in respect of any period accorded any privilege or immunity under or by virtue of this Ordinance, a certificate issued by the Minister stating any fact relevant to that question shall be conclusive evidence of that fact.

15. This Ordinance shall not affect any legal proceedings begun before the commencement of this Ordinance.

16. The Minister may make regulations for such matters as are contemplated by or necessary for giving full effect to this Ordinance and for the due administration thereof.

17. The Diplomatic Privileges Ordinance is hereby repealed.

FIRST SCHEDULE

THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS

(Not reproduced)[13]

SECOND SCHEDULE

PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGAN SATIONS

1. Immunity from suit and legal process.

2. The like inviolability of official premises and archives as is accorded in respect of the official premises and archives of a diplomatic mission.

3. Immunity in relation to its property and assets, wherever located and by whomsoever held, from search, requisition, confiscation, expropriation, or any other form of interference.

4. The like exemption from taxes and rates, other than taxes on the importation of goods, as is accorded to the Government of any foreign State.

5. Exemption from taxes on the importation of goods directly imported by the organisation for its official use in Solomon Islands or for exportation, or on the importation of any publications of the organisation directly imported by it, subject to compliance with such conditions as the Minister responsible for finance may determine for the protection of the revenue.

6. Exemption from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the organisation for its official use and in the case of any publications of the organisation directly imported or exported by it, subject to compliance with such conditions as the Minister responsible for finance may determine for the protection of the public health, the prevention of diseases in plants and animals, and otherwise in the public interest.

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

THIRD SCHEDULE

PRIVILEGES AND IMMUNITIES OF REPRESENTATIVES, MEMBERS OF COMMITTEES, HIGH OFFICERS, AND PERSONS ON MISSIONS

1. The like immunity from suit and legal process as is accorded to a diplomatic agent.

2. The like inviolability of residence, official premises, and official archives as is accorded to a diplomatic agent.

3. The like exemption from taxes and rates as is accorded to a diplomatic agent.

FOURTH SCHEDULE

PRIVILEGES AND IMMUNITIES OF OTHER OFFICERS AND SERVANTS

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

2. Exemption from taxes in respect of emoluments received as an officer or servant of the organisation.

3. Exemption from taxes on the importation of furniture and effects imported at the time of first taking up post in Solomon Islands that exemption to be subject to compliance with such conditions as the Minister responsible for finance may determine for the protection of the revenue.

FIFTH SCHEDULE

PRIVILEGES AND IMMUNITIES OF OFFICIAL STAFFS AND OF HIGH OFFICERS' FAMILIES

1. Where any person is accorded any such immunities and privileges as are mentioned in the Third Schedule to this Ordinance as the representative on any organ of the organisation or a member of any committee of the organisation or of an organ thereof, the members of his official staff accompanying him as such a representative or member shall also be accorded those immunities and privileges to the same extent as the members of the staff of a mission are accorded the immunities and privileges accorded to a diplomatic agent.

2. Where any person is accorded any such privileges and immunities as are mentioned in the Third Schedule to this Act as an officer of the organisation, the members of the family of that person who form part of his household shall also be accorded those privileges and immunities to the same extent as the members of the family of a diplomatic agent who form part of his household are accorded the privileges and immunities accorded to that diplomatic agent.

SIXTH SCHEDULE

INTERNATIONAL ORGANISATIONS

United Nations
International Labour Organisation
Food and Agriculture Organization of the United Nations
United Nations Educational, Scientific and Cultural Organization
International Civil Aviation Organization
World Health Organization
International Telecommunication Union
World Meteorological Organization
International Atomic Energy Agency
Universal Postal Union
United Nations Industrial Development Organization
United Nations Conference on Trade and Development
Inter-Governmental Maritime Consultative Organization
International Monetary Fund
International Bank for Reconstruction and Development
International Finance Corporation
Asian Development Bank
Commonwealth Secretariat
International Court of Justice
South Pacific Commission
United Nations Commission
United Nations Office of Technical Co-operation
United Nations Development Programme

SEVENTH SCHEDULE

IMMUNITIES AND PRIVILEGES

1. Immunity from suit and legal process in respect of words spoken or written and all acts performed in his official capacity.

2. Exemption from taxation on all stipend, emoluments and allowances paid to him by the international organization.

Passed by the Legislative Assembly this eighteenth day of April, one thousand nine hundred and seventy-eight.

(*b*) DIPLOMATIC PRIVILEGES (INTERNATIONAL ORGANISATIONS) ORDER 1979

In exercise of the powers conferred upon me by section 6 of the Diplomatic Privileges and Immunities Act 1978, I, Peter Kauona Kenninaraisoona Kenilorea, Privy Councillor and Minister responsible for Foreign Affairs, hereby declare the organisations specified in the Schedule to this Order to be organisations of which two or more states or the Governments thereof are

members and that each organisation shall have the privileges and immunities specified in the Second Schedule to that Act and shall also have the legal capacity of bodies corporate.

SCHEDULE

INTERNATIONAL ORGANISATIONS

United Nations Organization
International Labour Organisation
Food and Agriculture Organization of the United Nations
United Nations Educational, Scientific and Cultural Organization
International Civil Aviation Organization
World Health Organization
International Telecommunication Union
World Meteorological Organization
International Atomic Energy Agency
Universal Postal Union
United Nations Industrial Development Organization
United Nations Conference on Trade and Development
South Pacific Bureau of Economic Co-operation
Inter-Governmental Maritime Consultative Organization
International Refugee Organization
Commonwealth Secretariat
International Court of Justice
South Pacific Commission
United Nations Office of Technical Co-operation
United Nations Development Programme

Made at Honiara this seventh day of May 1979.

NOTES

[1] Translation prepared by the Secretariat of the United Nations on the basis of a French version provided by the Permanent Mission.

[2] See United Nations Legislative Series, *Legislative texts and treaty provisions concerning the legal status, privileges and immunities of international organizations* (ST/LEG/SER.B/10) (United Nations publication, Sales No. 60.V.2), p. 10, and *Juridical Yearbook, 1965*, p. 3.

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

[4] Translation prepared by the Secretariat of the United Nations on the basis of a French version provided by the Permanent Mission.

[5] *Juridical Yearbook*, 1967, p. 37.

[6] Statutory Instrument 203 of 1982.

[7] Statutory Instrument 235 of 1982.

[8] *Government Gazette 1980*, 131.

[9] Reproduced in *Juridical Yearbook, 1975*, p. 6.

[10] No. 36 of 1977.

[11] No. 17 of 1981.

[12] No. 16 of 1978.

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

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

No additional State acceded to the Convention in 1982.[2] The number of States parties to the Convention thus remains at 118.[3]

2. AGREEMENTS RELATING TO INSTALLATIONS AND MEETINGS

(*a*) Agreement between the United Nations and Finland for the establishment of the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations.[4] Signed at New York on 23 December 1981

Article VII

PRIVILEGES AND IMMUNITIES

1. United Nations officials, and experts on mission for the United Nations, performing functions in connection with the Institute shall enjoy the privileges and immunities provided under articles V and VI, respectively, and VII of the Convention on the Privileges and Immunities of the United Nations.[1]

2. Holders of United Nations fellowships for the Institute shall be granted such status and facilities, including transit to and from the Institute, as may be required for the performance of their functions in connection with the Institute.

3. All persons referred to in this article shall be granted facilities for speedy travel, and visas, when required, shall be issued promptly and without charge.

(*b*) Agreement between the United Nations and Sweden regarding the arrangements for the first meeting of the *Ad Hoc* Working Group of Legal and Technical Experts for the Elaboration of a Global Framework Convention for the Protection of the Ozone Layer.[5] Signed at Nairobi on 14 January 1982

Article X

LIABILITY

1. The Government shall be responsible for dealing with any action, claim or other demand against the United Nations or its personnel (including UNEP personnel) and arising out of:

(*a*) Injury to persons or damage to or loss of property in the premises referred to in article III above;

(*b*) Injury to persons or damage to or loss of property caused by, or incurred in using, the transport services referred to in article VI above;

(*c*) The employment for the meeting of the personnel provided by the Government under article VIII above.

2. The Government shall indemnify and hold harmless the United Nations, UNEP and their personnel in respect of any such action, claim or other demand.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946,[1] shall be applicable in respect of the meeting. In particular, the representatives of Governments referred to in article II shall enjoy the privileges and immunities provided under article IV, the officials of the United Nations performing functions in connection with the meeting shall enjoy the privileges and immunities provided under articles V and VII, and experts on missions for the United Nations in connection with the meeting shall enjoy the privileges and immunities under article VI of the Convention.

2. The representatives referred to in article II shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the meeting.

3. The representatives of the specialized agencies or of the International Atomic Energy Agency attending the meeting shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, respectively.

4. Without prejudice to the preceding paragraphs of this article, all persons performing functions in connection with the meeting and all those invited to the meeting shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the meeting.

5. All persons referred to in article II, all United Nations officials serving the meeting and all experts on mission for the United Nations in connection with the meeting shall have the right of entry into and exit from Sweden and no impediment shall be imposed on their transit to and from the meeting area. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible.

6. The participants in the meeting referred to in article II above and officials of UNEP and the United Nations serving the meeting and experts on mission for the United Nations in connection with the meeting shall have the right to take out of Sweden at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into Sweden in connection with the meeting at the United Nations official rate of exchange prevailing when the funds were brought in.

7. 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 meeting. It shall issue without delay any necessary import and export permits for this purpose.

(*c*) Exchange of letters constituting an agreement between the United Nations and Austria concerning the exemption from certain taxes of United Nations officials with duty station in Austria.[6] Vienna, 12 January 1982, and New York, 27 January 1982

I

LETTER FROM THE FEDERAL GOVERNMENT OF AUSTRIA

12 January 1982

I have the honour to refer to the accord reached between representatives of the Austrian Federal Government and the United Nations regarding exemption of United Nations officials from certain taxes and to propose that the following additional privileges be granted to United Nations officials with duty station in Austria and members of their families forming part of their household, provided they are not Austrian nationals or stateless persons permanently resident in Austria, without prejudice to the Agreement regarding the Headquarters of the United Nations Industrial Development Organization signed on 13 April 1967:[7]

1. Exemption from taxation on all income and property of officials and members of their families forming part of their households, insofar as such income and property do not come under the limited tax liability of the Austrian legislation on taxation of income or property.

2. Exemption from inheritance and gift taxes, insofar as such arise solely from the fact that the officials and members of their households reside or maintain their usual domicile in Austria.

If this proposal meets with the approval of the United Nations, I have the honour to propose that this Note and your affirmative reply thereto shall constitute an Agreement between the Federal Government of Austria and the United Nations that will come into force 30 days after notification of the United Nations by the Austrian Federal Government that the statutory requirements for its entry into force have been met.

(*Signed*) Willibald PAHR
Minister for Foreign Affairs

II

LETTER FROM THE UNITED NATIONS

27 January 1982

I have the honour to refer to your letter dated 12 January 1982 which, in the English language, reads as follows:

[See letter I]

I have the honour to confirm that the above-mentioned proposal is acceptable to the United Nations and that your note and this reply shall constitute an Agreement between the United Nations and the Federal Government of Austria.

(*Signed*) Javier PÉREZ DE CUÉLLAR
Secretary-General

(*d*) Agreement between the United Nations and Greece regarding the headquarters of the Co-ordinating Unit for the Mediterranean Action Plan.[8] Signed at Nairobi on 11 February 1982

Article III

INVIOLABILITY OF THE HEADQUARTERS SEAT

SECTION 7

(*a*) The Government recognizes the inviolability of the headquarters seat, which shall be under the control and authority of the Unit as provided in this Agreement.

(*b*) Except as otherwise provided in this Agreement or in the General Convention,[9] the laws of the Hellenic Republic shall apply within the headquarters seat.

(*c*) Except as otherwise provided in this Agreement or in the General Convention, the courts or other appropriate organs of the Hellenic Republic shall have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the headquarters seat.

SECTION 8

(*a*) The headquarters seat shall be inviolable. No officer or official of the Hellenic Republic, or other persons exercising any public authority within the Hellenic Republic, shall enter the headquarters seat to perform any duties therein except with the consent of, and under conditions approved by, the Director. The service of legal process, including the seizure of private property, shall not take place within the headquarters seat except with the express consent of, and under conditions approved by, the Director.

(*b*) Without prejudice to the provisions of the General Convention or article X of this Agreement, the Unit shall prevent the headquarters seat from being used as a refuge by persons who are avoiding arrest under any law of the Hellenic Republic, who are required by the Government for extradition to another country, or who are endeavouring to avoid service of legal process.

Article VI

COMMUNICATION AND PUBLICATIONS

SECTION 12

(*a*) All official communications directed to the Unit, or to any officials of the Environment Secretariat, at the headquarters seat, and all outward official communications of the Unit, by whatever means or in whatever form transmitted, shall be immune from censorship and from any other form of interception or interference with their privacy. Such immunity shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound recordings.

(*b*) The Unit shall have the right to use codes and to dispatch and receive correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

SECTION 13

(*a*) The Government recognizes the right of the Unit freely to publish and broadcast within the Hellenic Republic in the fulfilment of its purposes, it being understood that broadcasting will be effected through the national networks in accordance with the laws of the Hellenic Republic.

(*b*) The Unit shall, however, respect any laws of the Hellenic Republic, or any international conventions to which the Hellenic Republic is a party, relating to copyrights.

Article VII

FREEDOM FROM TAXATION

SECTION 14

(*a*) The Unit, its assets, income and other property shall be exempt from all forms of direct taxes, provided, however, that such tax exemption shall not extend to the owner or lessor of any property rented by the Unit and that the Unit will not claim exemption from taxes which are, in fact, no more than charges for public utility services.

(*b*) While the Unit will not generally claim exemption from taxes which constitute part of the cost of goods purchased by or services rendered to the Unit, including rentals, nevertheless, when the Unit is making important purchases for official use on which such taxes or duties have been charged or are chargeable, the Government shall, whenever possible, make appropriate administrative arrangements for the remission or refund of such taxes or duties. With respect to such taxes or duties, the Unit shall at all times enjoy at least the same exemptions and facilities as are granted to Greek governmental administrations or to chiefs of diplomatic missions accredited to the Hellenic Republic, whichever are the more favourable.

(*c*) In any transaction to which the Unit is a party, the Government shall, whenever possible, exempt the Unit from all taxes, recording fees and documentary taxes.

(*d*) Articles imported or exported by the Unit for official purposes shall be exempt from customs duties and other levies, and from prohibitions and restrictions on imports and exports.

(*e*) The Unit shall be exempt from customs duties and other levies, prohibitions and restrictions on the importation of service automobiles, and spare parts thereof, required for its official purposes.

(*f*) The Government shall, if requested, grant the Unit such facilities for the procurement of gasoline or other fuels and lubricating oils for each such automobile operated by the Unit in such quantities as are required for the work of the Unit and at such special rates as may be established for diplomatic missions in the Hellenic Republic.

(*g*) Articles imported in accordance with subsections (*d*) and (*e*), or obtained from the Government in accordance with subsection (*f*) of this section, may be sold by the Unit in the Hellenic Republic at any time after their importation or acquisition, subject to the Government regulations concerning payment by the buyer of customs duties and other levies.

Article VIII

FINANCIAL FACILITIES

SECTION 15

(*a*) Without being subject to any financial controls, regulations or moratoria of any kind, the Unit may freely:

(i) Purchase any currencies through authorized channels and hold and dispose of them;

(ii) Operate accounts in any currency;

(iii) Purchase through authorized channels, hold and dispose of funds, securities and gold; and

(iv) Transfer its funds, securities, gold and currencies to or from the Hellenic Republic, to or from any other country, or within the Hellenic Republic.

(*b*) The Government shall assist the Unit to obtain the most favourable conditions as regards exchange rates, banking commissions in exchange transactions and the like.

(*c*) The Unit shall, in exercising its rights under this section, pay due regard to any representations made by the Government in so far as effect can be given to such representations without prejudicing the interests of the Unit.

Article IX

SOCIAL SECURITY

SECTION 16

The Unit shall be exempt from all compulsory contributions to, and subject to the provisions of section 17, officials of the Environment Secretariat shall not be required by the Government to participate in, any social security scheme of the Hellenic Republic.

SECTION 17

The Government shall make such provisions as may be necessary to enable any official of the Unit who is not afforded social security coverage by the Unit to participate in the social security scheme of the Hellenic Republic. The Unit shall arrange, under conditions to be agreed upon, for the participation in the Greek social security system of those members of its staff who do not participate in the United Nations Joint Staff Pension Fund or to whom the Unit does not grant social security protection at least equivalent to that offered under Greek law.

Article X

TRANSIT AND RESIDENCE

SECTION 18

(*a*) The Government shall take all necessary measures to facilitate the entry into and sojourn in Greek territory, and shall place no impediment in the way of the departure from Greek territory, of the persons listed below; it shall ensure that no impediment is placed in the way of their transit to or from the headquarters seat and shall afford them any necessary protection in transit:

(i) Representatives of Member States, their families and other members of their households, as well as clerical and other auxiliary personnel and the spouses and dependent children of such personnel;

(ii) Officials of the Environment Secretariat, their families and other members of their households;

(iii) Officials of the United Nations, or of one of the specialized agencies or the International Atomic Energy Agency, attached to the Unit, and those who have official business with the Unit, and their spouses and dependent children;

(iv) Representatives of other organizations with which UNEP or the Unit has established official relations who have official business with the Unit;

(v) Persons, other than officials of the Environment Secretariat, performing missions authorized by UNEP or the Unit or serving on committees or other subsidiary organs of the Unit, and their spouses;

(vi) Representatives of the press, film, television or other information media who have been accredited to the Unit in its discretion after consultation with the Government;

(vii) Representatives of other organizations or other persons invited by the Unit to the headquarters seat on official business.

The Director shall communicate the names of such persons to the Government before their intended entry.

(*b*) This section shall not apply in the case of general interruption of transportation, which shall be dealt with as provided in section 11 (*b*), and shall not impair the effectiveness of generally applicable laws relating to the operation of means of transportation.

(*c*) Visas, where required for persons referred to in subsection (*a*), shall be granted without charges and as promptly as possible.

(*d*) No activity performed by any person referred to in subsection (*a*) in his official capacity with respect to the Unit shall constitute a reason for preventing his entry into or his departure from the territory of the Hellenic Republic or for requiring him to leave such territory.

(*e*) No person referred to in subsection (*a*) shall be required by the Government to leave the Hellenic Republic save in the event of an abuse of the right of residence, in which case the following procedure shall apply:

(i) No proceeding shall be instituted to require any such person to leave the Hellenic Republic except with the prior approval of the Minister for the time being responsible for foreign affairs of the Hellenic Republic;

(ii) In the case of a representative of a Member State, such approval shall be given only after consultation with the Government of the Member State concerned;

(iii) In the case of any other person mentioned in subsection (*a*), such approval shall be given only after consultation with the Executive Director, and if expulsion proceedings are taken against any such person, the Executive Director shall have the right to appear or to be represented in such proceedings on behalf of the person against whom such proceedings are instituted; and

(iv) Persons who are entitled to diplomatic privileges and immunities under section 22 shall not be required to leave the Hellenic Republic otherwise than in accordance with the customary procedure applicable to members, having comparable rank, or the staffs of chiefs of diplomatic missions accredited to the Hellenic Republic.

(*f*) This section shall not prevent the requirement of reasonable evidence to establish that persons claiming the rights granted by this section come within the classes described in subsection (*a*), or the reasonable application of quarantine and health regulations.

Article XI

REPRESENTATIVES TO THE UNIT

SECTION 19

Representatives of Member States to meetings of or convened by the Unit, and those who have official business with the Unit, shall, while exercising their functions and during their journey to and from the Hellenic Republic, enjoy the privileges and immunities provided in article IV of the General Convention.

SECTION 20

The Director shall communicate to the Government a list of persons within the scope of this article and shall revise such list from time to time as may be necessary.

Article XII

OFFICIALS AND EXPERTS OF THE ENVIRONMENT SECRETARIAT

SECTION 21

Officials of the Environment Secretariat shall enjoy within and with respect to the Hellenic Republic the following privileges and immunities:

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

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

(*c*) Immunity from inspection of official baggage, and if the official comes within the scope of section 22, immunity from inspection of personal baggage;

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

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

(*f*) Exemption from registration and circulation fees in respect of their automobiles;

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

(*h*) Exemption from national service obligations, provided that, with respect to Greek nationals, such exemption shall be confined to officials whose names have, by reason of their duties, been placed upon a list compiled by the Executive Director and approved by the Government; provided further that should officials, other than those listed, who are Greek nationals, be called up for national service, the Government shall, upon request of the Executive Director, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption of the essential work of the Unit;

(*i*) The right to purchase petrol free of duty for their vehicles on similar terms as are accorded to members of diplomatic missions accredited to the Hellenic Republic;

(*j*) Freedom to acquire or maintain within the Hellenic Republic or elsewhere foreign securities, foreign currency accounts, and other movables, and the right to take the same out of the Hellenic Republic through authorized channels without prohibition or restriction;

(*k*) Subject to the laws of the Hellenic Republic applicable to regions in the vicinity of frontiers, freedom to purchase one dwelling house within the Hellenic Republic for strictly personal use, and the right to finance such purchase through local mortgage arrangements under the same conditions applicable to Greek nationals; in the event of sale of such house, the right to take out of the Hellenic Republic, through authorized channels, the proceeds of the sale, after repayment of any outstanding local loan or local mortgage, in transferable currency;

(*l*) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crisis to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Hellenic Republic;

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

(i) Their furniture, household and personal effects, in one or more separate shipments, and thereafter to import necessary additions to the same;

(ii) One automobile, and in the case of officials accompanied by their dependants, two automobiles every three years, unless the Unit and the Government agree in particular cases that replacements may take place at an earlier date, because of loss, extensive damage or otherwise;

(iii) Reasonable quantities of certain articles, including liquor, tobacco, cigarettes and foodstuffs, for personal use or consumption and not for gift or sale;

(*n*) Automobiles imported in accordance with subsection (*m*) (ii) of this section may be sold in the Hellenic Republic at any time after their importation, subject to the Government regulations concerning payment by the buyer of customs duties;

(*o*) Officials of the Environment Secretariat other than officials of the Unit shall not enjoy the privileges, immunities and exemptions provided for in subsections (*e*), (*f*), (*h*), (*i*), (*k*), (*m*) and (*n*), of this section, it being understood, however, that this limitation is without prejudice to any privilege, immunity or exemption to which they may be entitled under the General Convention;

(*p*) Officials of the Unit who are locally recruited shall enjoy only those privileges and immunities provided in the General Convention, it being understood, nevertheless, that such privileges and immunities include exemption from taxation on pensions paid to them by the United Nations Joint Staff Pension Fund.

SECTION 22

In addition to the privileges and immunities specified in section 21, the Director and other officials of the Environment Secretariat having the Professional grade P-5 and above, and such additional categories of officials of the Unit as may be designated, in agreement with the Government, by the Executive Director in consultation with the Secretary-General of the United Nations on the grounds of the responsibilities of their positions in the Unit, shall be

accorded the same privileges and immunities, exemptions and facilities as the Government accords to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Hellenic Republic.

SECTION 23

Experts (other than officials coming within the scope of sections 21 and 22) performing missions authorized by, serving on committees or other subsidiary organs of, or consulting at its request in any way with the Unit, shall enjoy, within and with respect to the Hellenic Republic, the following privileges and immunities so far as may be necessary for the effective exercise of their functions:

(*a*) Immunity from personal arrest or detention and from seizure of their personal and official baggage;

(*b*) Immunity from legal process of any kind with respect to words spoken or written, and all acts done by them in the performance of their official functions, such immunity to continue notwithstanding that the persons concerned may no longer be employed on missions for, serving on committees of, or acting as consultants for, the Unit, or may no longer be present at the headquarters seat or attending meetings convened by the Unit;

(*c*) Inviolability of all papers, documents and other official material;

(*d*) The right, for the purpose of all communications with the Unit, to use codes and to dispatch or receive papers, correspondence or other official material by courier or in sealed bags;

(*e*) Exemption with respect to themselves and their spouses from immigration restrictions and alien registration;

(*f*) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crisis to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Hellenic Republic;

(*g*) The same privileges with respect to currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(*h*) The same immunities and facilities with respect to their personal and official baggage as the Government accords to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Hellenic Republic;

(*i*) Where the incidence of any form of taxation depends upon residence, periods during which the persons designated in this section may be present in the Hellenic Republic for the discharge of their duties shall not be considered as periods of residence; in particular, such persons shall be exempt from taxation on their salaries and emoluments received from the Unit during such periods of duty; and

(*j*) Experts of Greek nationality shall enjoy the privileges, immunities and exemptions provided for in this section only in so far as those privileges, immunities and exemptions coincide with those specified in section 22 of the General Convention.

SECTION 24

(*a*) The Director shall communicate to the Government a list of the officials of the Unit and experts within the scope of this article and shall revise such list from time to time as may be necessary.

(*b*) The Government shall furnish persons within the scope of this section with an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to all Greek authorities.

Article XIV

GENERAL PROVISIONS

SECTION 27

The Hellenic Republic shall not incur by reason of the location of the headquarters seat of the Unit within its territory any international responsibility for acts or omissions of the Unit or of officials of the Environment Secretariat acting or abstaining from acting within the scope of their functions, other than the international responsibility which the Hellenic Republic would incur as a Member of the United Nations.

SECTION 28

Without prejudice to the privileges and immunities accorded by this Agreement, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the Hellenic Republic. They also have a duty not to interfere in the internal affairs of the Hellenic Republic.

SECTION 29

(*a*) The Executive Director and the Director shall take every precaution to ensure that no abuse of a privilege or immunity conferred by this Agreement shall occur.

(*b*) Should the Government consider that an abuse of a privilege or immunity conferred by this Agreement has occurred, the Executive Director shall, upon request, consult with the appropriate Greek authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory to the Government and to the Executive Director, the matter shall be determined in accordance with the procedure set out in section 26.

SECTION 30

This Agreement shall apply irrespective of whether the Government maintains or does not maintain diplomatic relations with the State concerned and irrespective of whether the State concerned grants a similar privilege or immunity to diplomatic envoys or nationals of the Hellenic Republic.

. . .

SECTION 32

The provisions of this Agreement shall be complementary to the provisions of the General Convention. In so far as any provision of this Agreement and any provision of the General Convention relate to the same subject-matter, the two provisions shall, whenever possible, be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other.

(*e*) Agreement on co-operation between the United Nations (Economic Commission for Latin America) and Spain.[10] Signed at Madrid on 12 February 1982

Article X

Officials of the United Nations Economic Commission for Latin America who collaborate with the Programme, as well as officials of the United Nations, enjoy the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations of 13 February 1946,[1] to which Spain is a party.

(*f*) Exchange of notes constituting an agreement between the United Nations and Austria concerning the arrangements for the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space.[11] New York, 10 March 1982

I

NOTE FROM THE UNITED NATIONS

10 March 1982

I have the honour to refer to the arrangements for the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE 82) which the United Nations is arranging at the Hofburg in Vienna, Austria, from 9 to 21 August 1982. With the present letter I wish to obtain your Government's acceptance of the following arrangements:

. . .

LIABILITY

20. Without prejudice to paragraph (1) of article I of the Headquarters Seat Agreement signed 19 January 1981, the Government shall be responsible for dealing with any action, claim or other demand against the United Nations or its personnel and arising out of (*a*) injury to person or damage to or loss of property in the premises referred to in paragraphs 3 and 4 of this Agreement; (*b*) injury to person or damage to or loss of property caused by or incurred in using, the transport services referred to in paragraph 11 of this Agreement; and (*c*) the employment for the Conference of the personnel provided by the Government pursuant to paragraphs 13 and 14 of this Agreement.

21. The Government shall hold harmless the United Nations and its personnel in respect of any such action, claim or other demand.

PRIVILEGES AND IMMUNITIES

22. All representatives of States and of the United Nations Council for Namibia participating in the Conference in accordance with paragraph 1 (*a*) and (*b*) of this Agreement shall enjoy the privileges and immunities provided to representatives of Member States under UNIDO's Headquarters Agreement, signed 13 April 1967.

23. Observers referred to in paragraph 1 (*c*) and (*d*) of this Agreement shall enjoy immunity from legal process in respect of words spoken and written and of any act performed by them in their official capacity in connection with the Conference.

24. Personnel provided by the Government under paragraph 14 of this Agreement, with the exception of those who are assigned to hourly rates, shall enjoy immunity from legal process in respect of words spoken or written and of any act performed by them in their official capacity in connection with the Conference. Such immunity shall, however, not apply in case of an accident caused by vehicle, vessel or aircraft.

25. Observers from interested intergovernmental or non-governmental organizations participating in the Conference in accordance with paragraphs 1 (*g*) and (*h*) of this Agreement shall enjoy immunity from legal process in respect of words spoken or written and of any act performed by them in the exercise of their official functions in connection with the Conference.

. . .

I further propose that upon receipt of your affirmative answer, this exchange of letters shall constitute an Agreement between the United Nations and the Federal Government of Austria which shall enter into force on the date of your reply and shall remain in force for the duration of the Conference and for such time thereafter as is necessary for the complete executive of the provisions of this Agreement.

(*Signed*) Yash PAL
Secretary-General
Second United Nations Conference on the
Exploration and Peaceful Uses of Outer Space

II

NOTE FROM THE PERMANENT MISSION OF AUSTRIA
TO THE UNITED NATIONS

10 March 1987

I have the honour to refer to your note of 10 May 1982 which, in the English language, reads as follows:

[See note I]

I have the honour to confirm that the contents of the note are acceptable to the Austrian Government, and that your note and this reply shall constitute an Agreement between the Government of Austria and the United Nations which shall enter into force on the date of this reply and shall remain in force for the duration of the Conference and for such time thereafter as is necessary for the complete execution of the provisions of this Agreement.

(*Signed*) Karl FISCHER
Ambassador Extraordinary and Plenipotentiary,
Permanent Representative of Austria
to the United Nations

(*g*) Exchange of notes constituting an agreement between the United Nations and Malta concerning the arrangements for the Seminar on the question of Palestine, to be convened in Malta from 12 to 16 April 1982.[12] New York, 23 and 31 March 1982

I

NOTE FROM THE UNITED NATIONS

23 March 1982

I have the honour to refer to resolution 36/120 B adopted by the General Assembly at its 93rd plenary meeting on 10 December 1981, in particular to its paragraph 3 (*a*) by which the General Assembly requested the organization of regional seminars and, in addition, the organization, annually, of a seminar in North America.

The General Assembly's Committee on the Exercise of the Inalienable Rights of the Palestinian People has decided that the theme for the Seminars will be "The inalienable rights of the Palestinian people". The Committee further has received with appreciation the acceptance of Your Excellency's Government that one of these seminars be convened in Malta from 12 April to 16 April 1982, at the Mediterranean Conference Centre at Valletta.

. . .

With the present letter I have the honour to propose to your Government that the following terms should apply to the Seminar:

(i) The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, shall be applicable in respect of the Seminar. The representatives of States invited by the United Nations to participate in the Seminar shall enjoy the privileges and immunities accorded by article IV of the Convention and all other participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Seminar shall enjoy the privileges and immunities provided under articles V and VII of the Con-

vention. Officials of the specialized agencies participating in the Seminar shall be accorded the privileges and immunities provided under articles VI and VII of the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly of the United Nations on 21 November 1947;

(ii) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the Seminar shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Seminar;

(iii) Personnel provided by the Government pursuant to 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 Seminar;

(iv) All participants and all United Nations officials performing functions in connection with the Seminar shall have the right of unimpeded entry into and exit from Malta. Visas and entry permits, where required, shall be granted promptly upon application and free of charge;

(v) It is further understood that your Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of (i) injury or damage to person or property in conference or office premises provided for the Seminar; (ii) the transportation provided by your Government; and (iii) the employment for the Seminar of personnel provided or arranged by your Government; and your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand, except where it is agreed by the parties hereto that the damage, loss or injury giving rise to such actions, claim or demand are caused by the wilful misconduct or gross negligence of United Nations personnel;

(vi) Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement, shall, unless the parties otherwise agree, be submitted to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government, and the third, who shall be the chairman, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

I further propose that upon receipt of your Government's acceptance of this proposal the present letter and the letter in reply from your Government shall constitute an agreement between the Government of Malta and the United Nations concerning the arrangements for the Seminar.

(*Signed*) William B. BUFFUM
Under-Secretary-General
Political and General Assembly Affairs

II

NOTE FROM THE PERMANENT MISSION OF MALTA TO THE UNITED NATIONS

31 March 1982

I write to thank you for your letter dated 23 March, and to confirm that the terms proposed in that letter are acceptable to my Government.

In these circumstances, your letter and this reply thereto shall constitute the agreement between the United Nations and the Government of Malta concerning the arrangement for the Seminar on the Question of Palestine to be held in Malta from 12 to 16 April, 1982.

(Signed) Victor J. GAUCI
Permanent Representative

(*h*) Agreement between the United Nations and Mexico regarding the arrangements for the Meeting on the Structures for Science and Technology Policy Formulation and Implementation in Latin America and the Caribbean, to be convened in Mexico City from 27 to 30 April 1982.[5] Signed at Mexico City on 5 April 1982

Article IV

PRIVILEGES, IMMUNITIES AND VISAS

(*a*) I. The Convention on the Privileges and Immunities of the United Nations, with the reservations made by the Government on 26 November 1962, shall be fully applicable in respect of the Meeting. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations in accordance with article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Meeting shall enjoy the privileges and immunities provided under articles V and VII of the Convention.

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

III. Personnel provided by the Government pursuant to this Agreement shall enjoy immunity from legal process in respect of words written or spoken and any act performed by them in their official capacity in connection with the Meeting.

(*b*) All participants and all persons performing functions in connection with the Meeting shall have the right of entry into and exit from Mexico. Visas and entry permits, where required, shall be granted as speedily as possible and free of charge.

(*c*) The Government will be responsible for dealing with any claim or other demand against the United Nations arising out of:

I. Injury or damage to person or property in premises provided for the Meeting;

II. The transportation provided by the Government;

III. Actions or omissions of the personnel provided by the Government. The Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand, except if the parties agree that injury or damage were caused intentionally or by gross negligence of the United Nations personnel.

(*i*) Agreement between the United Nations and Italy regarding arrangements for the session of the Interim Committee on New and Renewable Sources of Energy, to be held in Rome from 7 to 18 June 1982.[5] Signed at Rome on 6 June 1982

Article X

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, hereinafter referred to as "the Convention", shall be applicable with respect to the Session.

2. The representatives of States, referred to in article II, 1 (*a*), and the representatives of the United Nations Council for Namibia, referred to in article II, 1 (*b*), shall enjoy the privileges and immunities provided under article IV of the Convention.

3. Officials of the United Nations performing duties in connection with the Session shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Representatives of the specialized agencies and of the International Atomic Energy Agency referred to in article II, 1 (*e*), as well as observers from intergovernment organizations, referred to in article II, 1 (*f*), shall enjoy the same privileges and immunities as are accorded to officials of the United Nations of a similar rank.

4. The experts referred to in article II, 1 (*g*), the representatives of organizations, referred to in article II, 1 (*c*) and (*d*), and observers from non-governmental Organizations referred to in article II, 1 (*f*), shall in connection with their participation in the Session enjoy the privileges and immunities provided for in article VI of the Convention.

5. Without prejudice to the preceding paragraphs of this article, all persons performing functions in connection with the Session, including all those invited to participate in the Session, shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Session.

6. Pursuant to articles IV, V and VII of the Convention, all persons referred to in article II or in the present article shall have the right of entry into and exit from Italy and no impediment shall be imposed on their transit to and from the Conference area. They shall be granted facilities for speedy travel. On the same basis, 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 Session. If the application for the visa is not made at least two and a half weeks before the opening of the Session, the visa shall be granted not later than three days from the receipt of the application.

(*j*) Exchange of letters constituting an agreement between the United Nations and Sweden concerning the arrangements for the Workshop on Utilization of Subsurface Space, to be held in Sweden from 24 to 29 October 1982.[13] New York, 25 May and 10 June 1982

I

LETTER FROM THE UNITED NATIONS

25 May 1982

I have the honour to refer to the arrangements for the Workshop on Utilization of Subsurface Space which is to be held in Sweden from 24 to 29 October 1982 with the assistance of the Swedish Rock Mechanics Research Foundation and with the co-operation of the Government of Sweden.

. . .

I wish to propose that the following terms shall apply to the Workshop:

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Workshop;

(ii) Officials of the United Nations participating in or performing a function in connection with the workshop shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

(iii) Officials of the Specialized Agencies participating in the Workshop shall enjoy the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies;

(iv) The participants in the workshop invited by the United Nations are designated by the organization as experts on mission and shall enjoy the privileges and immunities provided under article VI of the Convention on the Privileges and Immunities of the United Nations.

(*b*) All participants and all persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from Sweden. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Workshop, visas shall be granted not later than two weeks before the opening of the Workshop. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening.

(*c*) It is further understood that your Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of any injury or damage to person or property in conference or office premises provided for the Workshop.

. . .

Finally, I propose that upon receipt of your confirmation to me in writing of the above, and the attached agreement, this exchange of letters shall constitute an agreement between the United Nations and the Government of Sweden regarding the arrangements for the Workshop on Utilization of Subsurface Space, Sweden.

(*Signed*) Bi Jilong
Under-Secretary-General
Department of Technical Co-operation
for Development

II

LETTER FROM THE PERMANENT MISSION OF SWEDEN TO THE UNITED NATIONS

10 June 1982

I have the honour to acknowledge receipt of your letter dated 25 May 1982 regarding a Workshop on Utilization of Subsurface Space to be held in Sweden from 24 to 29 October 1982. In reply I have the honour to inform you that the Swedish Government agree with the arrangements as outlined in your letter and will regard that letter and this reply as constituting an Agreement between the Government of Sweden and the United Nations governing the preparations for and convening of the Workshop.

(*Signed*) Anders THUNBORG
Ambassador, Permanent Representative
of Sweden to the United Nations

(*k*) Agreement between the United Nations and Mexico regarding arrangements for the eighth session of the World Food Council of the United Nations, to be held at Acapulco from 21 to 24 June 1982.[5] Signed at Mexico City on 15 June 1982

Article X

LIABILITY

1. The Government shall be responsible for dealing with any action, claim or other demand against the United Nations or its personnel and arising out of:

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

(*b*) injury to person or damage to or loss of 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 under article VIII above.

2. The Government shall indemnify and hold harmless the United Nations and its personnel in respect of any such action, claim or other demand.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, shall be applicable in respect of the session. In particular, the representatives of States and of the United Nations Council for Namibia referred to in article II (*a*) and (*b*) shall enjoy the privileges and immunities provided under article IV, the officials of the United Nations performing functions in connection with the session shall enjoy the privileges and immunities provided under articles V and VII and experts on mission for the United Nations in connection with the session shall enjoy the privileges and immunities provided under article VI of the Convention.

2. The representatives/observers referred to in article II (*c*), (*e*) and (*g*) shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the session.

3. The personnel provided by the Government under article VIII above 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 session.

4. The representatives of the Specialized Agencies or of the International Atomic Energy Agency, referred to in article II (*d*), shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, respectively.

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

6. All persons referred to in article II, all United Nations officials serving the sessions and all experts on mission for the United Nations in connection with the session shall have the right of entry into and exit from Mexico, and no impediment shall be imposed on their transit to and from the conference areas. 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 session. If the application for the visa is not made at least two and a half weeks before the opening of the session, 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 session are delivered at the airport of arrival to participants who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the session.

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

8. The participants in the session and the representatives of information media, referred to in article II above, and officials of the United Nations serving the session and experts on mission for the United Nations in connection with the session shall have the right to take out of Mexico at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into Mexico in connection with the session at the United Nations official rate of exchange prevailing when the funds were brought in.

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

(*l*) Exchange of letters constituting an agreement between the United Nations and China concerning the International Meeting on Oilfield Development Techniques, to be held in China at Daqing Oilfield in September 1982.[14] New York, 3 and 16 June 1982

I

LETTER FROM THE UNITED NATIONS

3 June 1982

. . .

With the present letter I wish to request your Government's confirmation on the following *ad hoc* arrangements:

. . .

11. (*a*) (i) Articles I, II and III of the Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Meeting. In addition, the participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Meeting shall enjoy the privileges and immunities provided under articles V and VII of the Convention.

(ii) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the Meeting referred to in paragraphs 2, 3 and 10 above shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Meeting, and they shall have the right of unimpeded entry into and exit from China. Visas and entry permits where required shall be granted free of charge and as speedily as possible.

(*b*) It is further understood that your Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of:

(i) Injury or damage to person or property in conference or office premises provided for the Meeting;

(ii) The transportation provided by your Government for the Meeting. Your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand except where it is agreed that the claim or liability arises from the gross negligence or wilful misconduct of the above-mentioned individuals.

. . .

On receipt of acceptance by the Government of the above points, the present letter and the reply from Your Excellency will be taken to constitute an agreement between the United Nations and the Government of the People's Republic of China concerning the arrangements for the International Meeting on Oilfield Development Techniques.

(*Signed*) BI Jilong
Under-Secretary-General
Department of Technical
Co-operation for
Development

II

LETTER FROM THE PERMANENT MISSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE UNITED NATIONS

16 June 1982

I have the honour to refer to your letter dated 3 June 1982 and to confirm, on behalf of the Government of the People's Republic of China, the arrangements referred to in the above-mentioned letter concerning the International Meeting on Oilfield Development Techniques to be held in China at the Daqing Oilfield in September 1982 . . .

It is agreed that your letter mentioned above and this letter of reply constitute an agreement between the Chinese Government and the United Nations concerning the arrangements for the International Meeting on Oilfield Development Techniques.

(*Signed*) LING Qing
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of the
People's Republic of China to the
United Nations

(*m*) Exchange of letters constituting an agreement between the United Nations and Australia concerning the United Nations Symposium on Coal for Electricity Generation in Developing Countries, to be held in Australia in December 1982.[15] New York, 17 June 1982

I

LETTER FROM THE UNITED NATIONS

17 June 1982

. . .

The purpose of this letter is to specify the arrangements for which the Government of Australia and the United Nations are respectively responsible.

. . .

I would appreciate receiving your Government's confirmation of its agreement to the provisions outlined above and would be grateful for the confirmation of your Government's concurrence to the following conditions:

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Symposium;

(ii) Officials of the United Nations participating in or performing functions in connection with the Symposium shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

(iii) Officials of the specialized agencies participating in the Symposium shall enjoy the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies;

(iv) The participants in the Symposium invited by the United Nations are designated by the Organization as experts on mission and shall enjoy the privileges and immunities provided under article VI of the Convention on the Privileges and Immunities of the United Nations.

(*b*) All participants and all persons performing functions in connection with the Symposium shall be permitted to enter and leave Australia without delay. There will be no charge for the issue of visas and entry permits. When applications are made four weeks before the opening of the Symposium, visas shall be granted not later than two weeks before the opening of the Symposium. If the application is made less than four weeks before the opening, visas will be granted as speedily as possible and not later than three days before the opening.

(*c*) It is further understood that your Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of (i) injury or damage to person or property in conference or office premises provided for the Symposium, (ii) the transportation provided by your Government and (iii) the employment for the Symposium of personnel provided or arranged by your Government, and your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand except where such action, claim or other demand arises from gross negligence or wilful misconduct of United Nations staff.

. . .

I should be grateful to receive your confirmation that the foregoing *ad hoc* arrangements are acceptable to the Australian authorities.

(*Signed*) Bi Jilong
Under-Secretary-General
Department of Technical
Co-operation for Development

II

LETTER FROM THE PERMANENT MISSION OF AUSTRALIA TO THE UNITED NATIONS

17 June 1982

I have the honour to acknowledge receipt of your letter TE 326/I(II-38) of 17 June 1982 specifying the *ad hoc* arrangements for which the Government of Australia and the United Nations will be respectively responsible in respect of the proposed United Nations Symposium on Coal for Electricity Generation in Developing Countries.

The *ad hoc* arrangements you have proposed appear faithfully to reflect the conclusions of the consultations that have taken place and are acceptable to the Australian Government.

(*Signed*) H. D. ANDERSON
Permanent Representative of Australia
to the United Nations

(*n*) Exchange of letters constituting an agreement between the United Nations and Canada concerning the Interregional Workshop on Drilling in the Mineral Industry, to be held in Sudbury, Canada, from 14 to 28 August 1982.[16] New York, 26 May 1982, and Ottawa, 28 June 1982

I

LETTER FROM THE UNITED NATIONS

26 May 1982

We have received a letter from Ms. Judy Erols, Minister of State, Mines, Department of Energy, Mines and Resources enclosing a Memorandum of Understanding Between the Government of Canada and the United Nations regarding the Interregional Workshop on Drilling in the Mineral Industry.

I have the honour to inform you that the United Nations agrees with the terms of the Memorandum of Understanding and the Annex.

. . .

(*Signed*) BI Jilong
Under-Secretary-General
Department of Technical Co-operation
for Development

MEMORANDUM OF UNDERSTANDING

. . .

Article VI

The Convention of February 13, 1946 on the Privileges and Immunities of the United Nations, to which Canada is a party, will be applicable in respect of the Workshop. United Nations officials assigned to Canada for the purpose of the Workshop will have the privileges and immunities described in Article V of the Convention. The Workshop participants, lecturers and other persons temporarily under instructions from the United Nations for the purpose of the Workshop will have the privileges and immunities described in Article VI of this Convention. All the aforementioned persons, except Canadian citizens, will be granted visas, where required, free of charge, and entry to Canada as speedily as possible, in order to permit them to participate in the Workshop, in accordance with Article VII of the Convention.

Article VII

The United Nations will make appropriate arrangements for insurance to cover liability for any action, claim or other demand that may arise out of the holding of the Workshop in Canada and involve persons referred to in Article VI, including death or personal injury or property damage or its loss caused to the above persons or to any natural or juridical person in Canada. The cost, if any, of this insurance policy will be included among the expenditures effected by the United Nations from the contribution of the Government made in accordance with Article II of this Memorandum.

II

LETTER FROM THE GOVERNMENT OF CANADA

28 June 1982

I have the honour to refer to your letter of May 26 concerning the Interregional Workshop on Drilling in the Mineral Industry, to be held in Sudbury, Ontario, Canada, from August 14 to 28, 1982.

In this regard, I am attaching to my letter the text of the Understanding Between the United Nations and the Government of Canada, and its Annex, to which you agreed on behalf of the United Nations.

I am pleased to inform you that it also meets with the approval of the Government of Canada and therefore constitutes an understanding between the United Nations and the Government.

(*Signed*) Jacques DUPUIS
Assistant Under-Secretary
Bureau of Multilateral Affairs,
Department of External Affairs

(*o*) Agreement between the United Nations and the Philippines regarding arrangements for the eighth session of the Commission on Transnational Corporations, to be held in Manila from 30 August to 10 September 1982.[15] Signed at New York on 29 June 1982.

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 by 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 connection with the Session. The Government shall indemnify and hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands; except if it is agreed by the parties that such injury or damage was caused by gross negligence or wilful misconduct by the United Nations personnel.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, shall be applicable in respect to the session in accordance with the accession to the Convention by the Government on 28 October 1947.

2. The representatives referred to in article II, 1 (*a*) and the representatives of the United Nations Council for Namibia, referred to in article II, 1 (*b*), shall enjoy the privileges and immunities provided under article IV of the Convention.

3. The expert advisers referred to in article II, 1 (*g*) shall enjoy the privileges and immunities provided under article VI of the Convention.

4. Officials of the United Nations performing duties in connection with the Session shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Representatives of the specialized agencies and of the International Atomic Energy Agency referred to in article II, 1 (*e*) as well as the observers from intergovernmental organizations referred to in article II, 1 (*f*) shall enjoy the same privileges and immunities as are accorded to officials of the United Nations of a similar rank.

5. The representatives of organizations, referred to in article II, 1 (*c*) and (*d*), and the observers from non-governmental organizations, referred to in article II, 1 (*f*), shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Session.

6. The personnel provided by the Government pursuant to article VII, paragraph 2, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their official functions for the Session.

7. Without prejudice to the preceding paragraphs of this article, all persons performing functions in connection with the Session, including all those invited to participate in the Session, shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Session.

8. All persons referred to in article II or in the present article shall have the right of entry into and exit from the Philippines, and no impediment shall be imposed on their transit to and from the Conference area. 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 Session. If the application for the visa is not made at least two and a half weeks before the opening of the Session, the visa shall be granted not later than three days from the receipt of the application.

9. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the premises of the Session referred to in article II 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. The premises shall be inviolable for the duration of the Session, including the time required for the preparatory stage and the winding-up.

10. The participants in the Session, representatives of information media and the United Nations officials servicing the Session shall have the right to take out of the Philippines at the time of their departure, without any restrictions, any unspent portions of the funds they brought into the Philippines in connection with the Session at the United Nations rate of exchange prevailing when the funds were brought in.

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.

(*p*) Agreement between the United Nations and Panama regarding the establishment of a United Nations Information Centre in Panama.[5] Signed at New York on 7 October 1982

Article I

ESTABLISHMENT OF THE CENTRE

SECTION 1

A United Nations Information Centre shall be established in Panama City, Panama, to carry out the functions assigned to it by the Secretary-General within the framework of the Department of Public Information.

Article II

STATUS OF THE CENTRE

SECTION 2

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

SECTION 3

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

SECTION 4

The appropriate Panamanian authorities shall exercise their respective powers to ensure that the Centre shall be supplied with the necessary public services on equitable terms. The Centre shall enjoy treatment for the use of telephone, radio-telegraph and mail communication facilities, not less favourable than that normally accorded and extended to diplomatic missions.

Article III

FACILITIES AND SERVICES

SECTION 5

The Government shall make annual contributions toward the maintenance and operation of the Centre by providing (*a*) such non-recurrent expenditures as suitable, rent-free premises at a mutually agreeable location and suitable office furniture and other possible facilities necessary for the well-functioning of the Centre and (*b*) such recurrent facilities as for current repairs and maintenance of Centre premises, telecommunications within Panama, as well as three (3) local staff members.

The United Nations shall provide one (1) Professional and two (2) local level posts as well as the necessary operational funds from its regular budget.

Article IV

OFFICIALS OF THE CENTRE

SECTION 6

Officials of the Centre, except those who are locally recruited staff in the General Service or related categories, shall enjoy, within and with respect to Panama, the following privileges and immunities:

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

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

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

(*d*) Exemption from any form of taxation in respect of the salaries, emoluments, indemnities and pensions paid to them by the United Nations for services past or present;

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

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

(*g*) Immunity from National Service obligations;

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

(*i*) The same protection and repatriation facilities with respect to themselves, their spouses, their relatives dependent on them, and other members of their households as are accorded in times of international crises to diplomatic envoys; and

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

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

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

SECTION 7

In addition to the privileges and immunities specified in Section 6, the Director of the Centre shall enjoy, in respect of himself, his spouse, his relatives dependent on him, the privileges and immunities, exemptions and facilities normally accorded to diplomatic envoys of comparable rank. He shall for this purpose be included in the Diplomatic List by the Panamanian Ministry of Foreign Affairs.

SECTION 8

Officials of the Centre who are locally recruited staff in the General Service or related categories shall enjoy only, within and with respect to Panama, the privileges and immunities referred to in sub-paragraphs (*a*), (*b*), (*c*), (*d*) and (*g*) of Section 6 of this Agreement. These officials also shall enjoy such other privileges and immunities as they may be entitled to under Article V, Section 18, and Article VII of the Convention.

SECTION 9

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

Article V

GENERAL PROVISIONS

SECTION 10

The provisions of the Convention on the Privileges and Immunities of the United Nations, to which Panama acceded on 27 May 1947, shall fully apply to the Centre, and the provisions of this Agreement shall be complementary to those of the Convention related to the same subject-matter; the two provisions shall, where possible, be treated as complementary, so that both provisions shall be applicable and neither shall restrict the effect of the other.

SECTION 11

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

(*q*) Agreement between the United Nations and Egypt relating to the continuation and further extension of the Interregional Centre for Demographic Research and Training established at Cairo by the Agreement between the above Parties signed in New York on 8 February 1963,[17] in Cairo on 14 November 1968,[18] in New York on 22 June 1972[19] and in Cairo on 6 November 1976.[20] Signed at New York on 20 October 1982 and at Cairo on 6 November 1982

Article VII

FACILITIES, PRIVILEGES AND IMMUNITIES

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

2. Officials of the United Nations performing functions in connection with the Centre 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 as referred to in article II, and of the Advisory Committee as referred to in article III, who are not otherwise officials of the organizations, shall enjoy the privileges and immunities under article VI of the Convention whenever the aforementioned bodies are in session or whenever the members of these bodies are performing functions in connection with the Centre.

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 Centre.

4. All holders of United Nations fellowships at the Centre who are not nationals of the Arab Republic of Egypt shall have right of entry into and exit from the Arab Republic of Egypt 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.

(*r*) Memorandum of Understanding between the United Nations and Argentina regarding the Fifth Ministerial Meeting of the Group of 77 [5] Signed at Geneva on 3 December 1982

STAFF RECRUITED FOR OR ASSIGNED TO THE MEETING BY THE UNITED NATIONS

7. The United Nations Convention on Privileges and Immunities, to which the Argentine Republic is a Party, shall apply to the United Nations staff assigned to, or attending the Meeting. Such staff shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Experts on mission for the United Nations in connection with the Meeting shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

LIABILITY

5. The Government shall be responsible for dealing with any action, claim or other demand against the United Nations or its staff in connection with the Meeting.

6. The Government shall indemnify and hold harmless the United Nations and its staff in respect of any such action, claim or other demand.

(*s*) Agreement between the United Nations and Jamaica regarding the arrangements for the final part of the eleventh session of the Third United Nations Conference on the Law of the Sea for the purpose of signing the Final Act and the opening

of the Convention for signature, to be held at Montego Bay from 6 to 10 December 1982.[5] Signed at New York on 3 December 1982

Article X

LIABILITY

1. The Government shall be responsible for dealing with any action, claim or other demand against the United Nations or its officials and arising out of:

(*a*) Injury to persons or damage to or loss of property in the premises referred to in article III that are provided by or are under the control of the Government;

(*b*) Injury to persons or damage to or loss of property caused by, or incurred in using, the transport services referred to in article VI that are provided by or are under the control of the Government;

(*c*) The employment for the Conference of the personnel provided by the Government under article VIII.

2. The Government shall indemnify and hold harmless the United Nations and its officials in respect of any such action, claim or other demand except those arising from wilful misconduct or gross negligence.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which Jamaica is a party, shall be applicable in respect of the Conference. In particular, the representatives of States, territories and of the intergovernmental organs referred to in article II, paragraph 1 (i) (*a*) and (*b*), and paragraph 1 (ii) (*a*), (*b*), (*c*) and (*d*) above, shall enjoy the privileges and immunities provided under article IV of the Convention, the officials of the United Nations performing functions in connection with the Conference referred to in article II, paragraph 2 above, shall enjoy the privileges and immunities provided under articles V and VII of the Convention and any experts on mission for the United Nations in connection with the Conference shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

2. The representatives of observers referred to in article II, paragraph 1 (i) (*c*) above, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Conference.

3. The personnel provided by the Government under article VIII above, 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.

4. The representatives of the specialized or related agencies referred to in article II, paragraph 1 (i) (*d*) above, shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies[21] or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency,[22] as appropriate.

5. All other persons performing functions in connection with the conference, including those referred to in article VIII and all those invited to the Conference, shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the Conference.

6. All persons referred to in article II shall have the right of entry into and exit from Jamaica and no impediment shall be imposed on their transit to and from the Conference area. 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 provided the application for the visa is made at least

three weeks before the opening of the Conference; if the application is made later, the visa shall be granted not later than three days from the receipt of the application. Arrangements shall also be made to ensure that visas for the duration of the Conference are delivered at Donald Sangster International Airport, to participants who are unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Conference.

7. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the premises specified in article III, paragraph 1 above, shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention and access thereto shall be subject to the authority and control of the United Nations. The premises shall be inviolable for the duration of the Conference, including the preparatory stage and the winding-up.

8. All persons referred to in article II above, shall have the right to take out of Jamaica at the time of their departure, without any restriction, any unexpended portions of the funds they brought into Jamaica in connection with the Conference and to reconvert any such funds at the rate at which they had originally been converted.

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

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

Article VI

CLAIMS AGAINST UNICEF

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

Article VII

PRIVILEGES AND IMMUNITIES

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

Agreement between the United Nations (United Nations Children's Fund) and Somalia concerning the activities of UNICEF in Somalia.[5] Signed at Mogadiscio on 24 April 1982

This agreement contains provisions similar to articles VI and VII of the revised model agreement.

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4. AGREEMENTS RELATING TO THE UNITED NATIONS REVOLVING FUND FOR NATURAL RESOURCES EXPLORATION

Project Agreement (Natural Resources Exploration Project) between the United Nations (United Nations Revolving Fund for Natural Resources Exploration) and Mali.[23] Signed at Bamako on 12 October 1981

This Agreement contains provisions similar to article V and sections 6.02 and 6.03 of article VI of the Agreement reproduced in *Juridical Yearbook, 1979*, pp. 35-37.

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5. AGREEMENTS RELATING TO THE UNITED NATIONS CAPITAL DEVELOPMENT FUND

(*a*) Basic Agreement between the United Nations Capital Development Fund and Gambia[5] concerning assistance from the United Nations Capital Development Fund. Signed at Banjul on 21 January 1982

Article III

UTILIZATION OF ASSISTANCE

. . .

5. All goods, including vehicles and equipment, financed out of proceeds of the assistance shall belong to the UNCDF unless and until such time as ownership thereof is transferred, on terms and conditions mutually agreed upon between the parties, to the Government or to an entity nominated by it.

6. The Government shall cause all goods, including vehicles and equipment, financed out of the proceeds of the assistance, to be insured against all risks including but not limited to fire, theft, damage by improper handling, weather and other causes, during the transit, delivery to the site, installation and use of such goods and equipment. Vehicles and other movable equipment shall additionally be insured against collision damage and third-party liability. The terms and conditions of such insurance shall be consistent with sound commercial practices and shall cover the full delivery value of the goods and equipment. Such terms and conditions shall provide for the proceeds of the insurance of imported goods to be payable in a fully convertible currency. Any insurance proceeds shall be credited to the Account and shall in all respects become subject to and part of the funds governed by the Project Agreement.

7. Except as otherwise agreed by the UNCDF, the Government shall not create or permit to be created any encumbrance, mortgage, pledge, charge or lien of any kind on the goods, including vehicles and equipment, financed out of the proceeds of the assistance provided, however, that this paragraph shall not apply to any lien created at the time of purchase solely as security for the payment of the purchase price of such goods.

Article V

PRIVILEGES, IMMUNITIES AND FACILITIES

The provisions of articles IX (Privileges and immunities) and X (Facilities for execution of assistance) of the Basic Assistance Agreement of 24 February 1975 between the UNDP and the Government[24] shall apply *mutatis mutandis* to matters covered by this Basic Agreement, including matters covered by a Project Agreement.

(*b*) Basic Agreements between the United Nations Capital Development Fund and the Governments of Haiti,[5] Cape Verde,[5] Malawi,[5] Uganda,[5] Ethiopia,[5] Botswana,[5] United Republic of Tanzania,[5] Central African Republic,[5] Maldives,[5] Niger,[5] Guinea,[5] Lesotho,[5] Bhutan,[5] Togo,[5] Burundi,[5] Yemen[5] and Democratic Yemen[5] concerning assistance from the United Nations Capital Development Fund. Signed respectively at Port-au-Prince on 21 January 1982, at Praja on 23 January 1982, at Lilongwe on 2 February 1982, at Kampala on 5 February 1982, at Addis Ababa on 12 February 1982, at Gaborone on 15 February 1982,

at Dar es Salaam on 25 March 1982, at Bangui on 26 April 1982, at Male on 27 April 1982, at Niamey on 27 April 1982, at Conakry on 29 April 1982, at Maseru on 12 May 1982, at Thimphu on 11 June 1982, at Lomé on 7 July 1982, at Bujumbura on 29 September 1982, at Sana'a on 16 October 1982 and at Aden on 17 October 1982.

These agreements contain provisions similar to those reproduced under (*a*) above.

(*c*) Basic Agreement between the United Nations Capital Development Fund and Bangladesh[5] concerning assistance from the United Nations Capital Development Fund. Signed at Dacca on 6 March 1982

This Agreement contains provisions similar to those reproduced under (*a*) above, except that the provision corresponding to paragraph 6 of article II reads as follows:

"On all goods, including vehicles and equipment, financed out of the proceeds of the UNCDF assistance to the Government, the latter shall meet charges relating to customs clearance of such goods, their transportation from the port of entry to the project site together with any incidental handling on storage and related expenses. The insurance of such goods will be effected in accordance with the terms and conditions that will be agreed upon in the revised standard agreement between the Government and the United Nations Development Programme currently under active consideration."

and that the provision corresponding to article V reads as follows:

"PRIVILEGES, IMMUNITIES AND FACILITIES

"The provisions of article VIII (Facilities, privileges and immunities) of the Agreement of 31 July 1972 between the UNDP (Special Fund) and the Government[25] shall apply *mutatis mutandis* to matters covered by this Basic Agreement, including matters covered by a Project Agreement. The provisions of article VIII of the UNDP (Special Fund) Agreement shall, however, cease to apply upon signature and entry into force of the Basic Assistance Agreement between the UNDP and the Government which is presently under consideration by the Government; and thereupon the provisions of articles IX (Privileges and immunities) and X (Facilities for execution of assistance) of the Basic Assistance Agreement shall apply *mutatis mutandis* to matters covered by the Basic Agreement, including matters covered by a Project Agreement."

(*d*) Basic Agreement between the United Nations Capital Development Fund and Mali concerning assistance from the United Nations Capital Development Fund. Signed at Bamako on 29 January 1982

This Agreement contains provisions similar to those reproduced under (*a*) above except that the provision corresponding to paragraph 6 of article III reads as follows:

"6. The contents of the existing Agreement between UNDP and the Republic of Mali will apply to the insurance of all material and equipment provided by UNDP to projects in Mali."

(*e*) Basic Agreements between the United Nations Capital Development Fund and the Governments of Afghanistan[5] and Western Samoa[5] concerning assistance from the United Nations Capital Development Fund. Signed respectively at Kabul on 26 May 1982 and at Apia on 5 April 1982.

These agreements contain provisions similar to those reproduced under (*a*) above, except that the provision corresponding to article V is similar to the provision entitled "Privileges, immunities and facilities" reproduced under (*c*) above.

6. AGREEMENTS RELATED TO THE UNITED NATIONS ENVIRONMENT PROGRAMME

(*a*) Agreements on the provision of junior professional officers

(i) Agreement between the United Nations Environment Programme and the Libyan Arab Jamahiriya.[5] Signed at Nairobi on 19 May 1982

. . .

1. The Jamahiriya shall endeavour to provide Junior Professional Officers for service with United Nations Environment Programme in accordance with the following principles:

(*a*) Junior Professional Officers shall be made available by the Jamahiriya in response to specific requests from United Nations Environment Programme, and shall be assigned to functions for which the latter is responsible;

(*b*) The final decision regarding the appointment and assignment of Junior Professional Officers shall rest with United Nations Environment Programme;

(*c*) Junior Professional Officers shall, for the duration of their appointment with United Nations Environment Programme, be subject, as international civil servants, to the Staff Regulations and Rules of the United Nations as applicable to United Nations Environment Programme in accordance with their letters of appointment, a copy of which shall be provided to the Jamahiriya by the United Nations Environment Programme;

. . .

(ii) Agreement between the United Nations Environment Programme and the Federal Republic of Germany.[5] Signed at Nairobi on 3 September 1982.

This Agreement contains provisions similar to those reproduced in the *Juridical Yearbook, 1979*, p. 37.

(*b*) Agreement between United Nations Environment Programme and the Libyan Arab Jamahiriya on the provision of advisory services with regard to certain environmental matters.[8] Signed at Nairobi on 19 May 1982

Article III

1. The appointment of consultants shall be subject to the provisions prescribed by the United Nations for consultants, as indicated in the special service agreements. Those provisions shall include compensation under appendix D to the United Nations Staff Rules for death, injury or illness.

. . .

Article IV

. . .

3. To the consultants covered by this Agreement shall be applied the privileges, immunities and exemptions enjoyed under article IV (5) of the Agreement between the United Nations and Libya for the Provision of Operational and Executive Personnel of 27 June 1959.

. . .

Article V

1. The Jamahiriya shall deal with complaints which may be brought by third parties against officials of the United Nations Environment Programme to whom the provisions of this Agreement apply provided that neither of them is prejudiced by such complaints.

. . .

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

In 1982 the following States parties to the Convention undertook by a notification to apply the provisions of the Convention, in respect of the specialized agencies indicated below:[26]

State	*Date of receipt of notification*	*Specialized agencies*
Hungary	19 August 1982	IBRD, IMF
Gabon	30 November 1982	FAO, IBRD, ICAO, IDA, IFC, ILO, IMF, IMO, UNESCO, UPU, WHO, WIPO, WMO

As of 31 December 1982, 88 States were parties to the Convention.[27]

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2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) Agreements for the establishment of an FAO Representative's Office

In 1982, agreements for the establishment of an FAO Representative's Office, providing, *inter alia*, for privileges and immunities, were concluded with the following countries: Angola, China, Equatorial Guinea.

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

Agreements concerning specific sessions held outside FAO headquarters and containing provisions on privileges and immunities of FAO and participants similar to the standard text[28] were concluded in 1982 with the Governments of the following countries acting as hosts to such sessions:

Algeria, Australia,[29] Austria, Bangladesh, Bolivia,[29] Bulgaria,[29] Canada,[29] Columbia,[29] Costa Rica, Cyprus, Denmark, Egypt, France,[29] Hungary, India,[29] Indonesia, Italy,[29] Jamaica, Jordan, Kenya,[29] Malaysia, Morocco, Nepal, Nicaragua, Nigeria, Peru, Portugal,[29] Qatar, Senegal, Seychelles, Sierra Leone, Spain,[29] Togo, Tunisia, United Kingdom,[29] United States,[29] Uruguay,[29] Venezuela.

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

Agreements concerning specific training activities, containing provisions on privileges and immunities of FAO and participants similar to the standard text[30] were concluded in 1982 with the governments of the following countries acting as hosts to such training activities

Argentina, Botswana, Brazil, Cameroon, Costa Rica, Cyprus, Democratic People's Republic of Korea, India,[29] Indonesia, Jamaica, Kenya, Niger, Pakistan, Peru, Philippines, Senegal, Spain,[29] Suriname, Swaziland, United Republic of Tanzania, Thailand, Tunisia.

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3. WORLD HEALTH ORGANIZATION

Basic Agreements on technical advisory co-operation

Basic Agreements on technical advisory co-operation were concluded in 1982 between the World Health Organization and the following States:

State	*Place of signature*	*Date of signature*
Dominica	Roseau	2 April 1982
	Washington, D.C.	5 February 1982
Vanuatu	Port Vila	7 September 1982
	Manila	22 September 1982
China	Beijing	4 October 1982

These agreements contain provisions similar to article I, paragraph 6, and Article V of the Agreement of 1968 between the World Health Organization and Guyana.[31]

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4. INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION[32]

Exchange of notes constituting an agreement between the Inter-Governmental Maritime Consultative Organization and the Government of the United Kingdom of Great Britain and Northern Ireland to amend the Agreement regarding the Headquarters of the Organization, signed at London on 28 November 1968.[33] London, 20 January 1982[34]

I

NOTE FROM THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

20 January 1982

I have the honour to refer to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Inter-Governmental Maritime Consultative Organization regarding the headquarters of the Organization, signed at London on 28 November 1968 (hereinafter referred to as "the Agreement") and to discussions between officials of the Government and the Organization regarding the establishment of permanent missions to the Organization.

2. I now have the honour to propose that a new article be inserted in the Agreement after Article 13 as follows:

PART IV *bis*

PERMANENT REPRESENTATIVES

Article 13 bis

(1) Every person designated by a Member of the Organization as its Permanent Representative and the resident members of its mission of diplomatic rank shall enjoy, for the term of their business with the Organization, the privileges and immunities set out in Article V, Section 13, of the Convention.

(2) In addition they shall enjoy, for the term of their business with the Organization:

(*a*) The same exemption or relief from taxes and municipal rates and the same exemption from duties and taxes on the importation of goods imported for their personal use or for that of members of their families forming part of their household, including articles intended for their establishment, as are accorded to a diplomatic agent;

(*b*) a refund of duty and value-added tax on the importation of hydrocarbon oils purchased by them or on their behalf for their personal use or for that of members of their families forming part of their household;

(*c*) exemption from the provisions of any social security scheme established by the law of the United Kingdom; and

(*d*) in respect of members of their families forming part of their respective households, exemption from registration formalities for the purpose of immigration control, and exemption from any national service obligations which may be imposed.

(3) The provisions of Article V, Sections 14 and 16, and of Article VII, Section 25 of the Convention shall apply to the persons mentioned in paragraph (1) of this Article. Following completion of the procedures laid down by Section 25 in respect of any person, the privileges and immunities of that person shall cease on expiry of a reasonable time in which to leave the United Kingdom.

(4) The Government shall be notified by the Secretary-General in accordance with the procedure established by the Council, of the appointment of a Permanent Representative and of each member of the mission. Paragraphs (1) to (3) of this Article shall not apply to any person unless and until his name and status are duly notified to the Government.

(5) Paragraphs (1) to (3) of this Article shall not apply to any representative of the United Kingdom or to any citizen of the United Kingdom and Colonies. Paragraph (2) shall not apply to any person who is permanently resident in the United Kingdom; paragraph (1) shall only apply to a person so resident while exercising his official functions.

(6) This Article shall not prejudice the privileges and immunities to which representatives of Members may be entitled otherwise than under the provisions of this Article.

3. I have the honour to propose that the procedure for notification referred to in paragraph (4) of Article 13 *bis* above shall be that adopted by the Council on 17 June 1981.

4. If the foregoing proposal is acceptable to the Inter-Governmental Maritime Consultative Organization, I have the honour to propose that this Note, together with your reply in that sense, shall constitute an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Inter-Governmental Maritime Consultative Organization which shall enter into force on the date on which the United Kingdom legislation giving effect to the provisions of the new Article comes into operation.

(*Signed*) R. W. H. DU BOULAY
Protocol and Conference Department
Foreign and Commonwealth Office

II

NOTE FROM THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

20 January 1982

I have the honour to refer to your Note of 20 January 1982 which reads as follows:

[See note I]

I have the honour to inform you that this foregoing proposal is acceptable to the Inter-Governmental Maritime Consultative Organization, who therefore agrees that your Note and the present reply shall constitute an Agreement between the Organization and your Government which shall enter into force on the date on which the United Kingdom legislation giving effect to the amendment comes into operation.

(Signed) C. P. SRIVASTAVA
Secretary-General

5. INTERNATIONAL ATOMIC ENERGY AGENCY

(*a*) Agreement on the Privileges and Immunities of the International Atomic Energy Agency. Approved by the Board of Governors of the Agency on 1 July 1959[22]

The following Member States accepted the Agreement on the dates indicated below:

State	*Date of deposit of instrument of acceptance*
Cuba	24 August 1982[35]
Jordan	27 October 1982[36]

This brought up to 51 the number of States parties to this Agreement.

(*b*) Incorporation of provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency by reference in other agreements

(1) Article 10 of the Agreement between the Republic of Guatemala and the International Atomic Energy Agency for the application of the safeguards in connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force 1 February 1982.

(2) Article 10 of the Agreement between the Republic of Venezuela and the International Atomic Energy Agency for the application of safeguards relating to the Treaty on the Prohibition of Nuclear Weapons in Latin America and the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force 11 March 1982.

(3) Article 10 of the Agreement between the People's Republic of Bangladesh and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force 11 June 1982.

(4) Article 10 of the Agreement between the Arab Republic of Egypt and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force 30 June 1982.

(5) Section 24 of the Agreement between the Government of the Argentine Republic and the International Atomic Energy Agency for the application of safeguards to nuclear material supplied from the Union of Soviet Socialist Republics; entry into force 8 July 1982.

(6) Section 24 of the Agreement between the Government of the Republic of Chile and the International Atomic Energy Agency for the application of safeguards to nuclear material supplied from the United Kingdom of Great Britain and Northern Ireland; entry into force 22 September 1982.

(7) Section 27 of the Agreement between the Government of the Federal Republic of Germany, the Government of Spain and the International Atomic Energy Agency for the application of safeguards in connection with the Agreement between the Governments on co-operation in the field of the utilization of nuclear energy for peaceful purposes; entry into force 29 September 1982.

(8) Article 10 of the Agreement between the Republic of Colombia and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America; entry into force 22 December 1982.

(*c*) Provisions affecting the privileges and immunities of the International Atomic Energy Agency in Austria

Exchange of letters between the International Atomic Energy and Austria concerning the granting of additional tax exemption privileges to officials of the Agency and members of their household; entry into force 1 April 1982.

NOTES

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

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

[3] For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 1987* (United Nations publication, sales No. E.88.V.3).

[4] Came into force on 8 August 1982.

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

[6] Came into force on 1 April 1982.

[7] Reproduced in *Juridical Yearbook, 1967*, p. 44.

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

[9] Namely, the Convention on the Privileges and Immunities of the United Nations, approved by the General Assembly of the United Nations on 13 February 1946 (United Nations, *Treaty Series*, vol. 1, p. 15).

[10] Came into force on 6 October 1982.

[11] Came into force on 10 May 1982.

[12] Came into force on 31 March 1982.

[13] Came into force on 10 June 1982.

[14] Came into force on 16 June 1982.

[15] Came into force on 17 June 1982.

[16] Came into force on 12 July 1982.

[17] *Juridical Yearbook, 1963*, p. 25.

[18] *Juridical Yearbook, 1968*, p. 41.

[19] *Juridical Yearbook, 1972*, p. 23.

[20] Came into force provisionally on 6 November 1982.

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

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

[23] Came into force on 9 February 1982.

[24] See *Juridical Yearbook, 1975*, p. 25. For the text of articles IX and X of the Standard Basic Agreement see *Juridical Yearbook, 1973*, pp. 25 and 26.

[25] See *Juridical Yearbook, 1972*, p. 25. For the text of article VIII of the Model Argument, see *Juridical Yearbook, 1963*, p. 31.

[26] The Convention is in force with regard to each State party 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.

[27] For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 1984* (United Nations publication, Sales No. E.85.V.4).

[28] Reproduced in *Juridical Yearbook, 1972*, pp. 32 and 33.

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

[30] Reproduced in *Juridical Yearbook, 1972*, p. 33.

[31] Reproduced in *Juridical Yearbook, 1968*, p. 56.

[32] As a result of the entry into force of amendments to the IMCO Convention adopted in 1975, with effect from 22 May 1982 the Organization's name was changed to International Maritime Organization"; see p. 126.

[33] See *Juridical Yearbook, 1968*, p. 56.

[34] Entered into force on 19 May 1982.

[35] With the following reservation: "The Republic of Cuba does not consider itself bound by the provisions of sections 26 and 34 of articles VIII and X of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency under which the International Court of Justice shall have obligatory jurisdiction in differences which may arise out of the interpretation or application of the Agreement. With regard to the competence of the International Court of Justice on such matters, Cuba holds that for a difference to be referred to the Court for settlement the consent of all parties involved must be obtained in each particular case."

[36] With the following reservation: "The privileges and immunities recognized under this Agreement shall not be extended to the officials of the International Atomic Energy Agency who are Jordanian Nationals if their station is in Jordan itself."

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) Second special session of the General Assembly devoted to disarmament[2]

(i) *Twelfth special session*

The twelfth special session of the General Assembly, the second devoted to disarmament, opened on 7 June 1982 and concluded its work on 10 July 1982. It was convened pursuant to the decision made at the first special session of the General Assembly devoted to disarmament in 1978, as reflected in paragraph 119 of its Final Document[3] and Assembly resolution 33/71 H of 14 December 1978.

The General Assembly was unable at the special session either to adopt the comprehensive programme of disarmament which had been one of the main items on its agenda or to reach a consensus on any course of action which would help to halt and reverse the arms race. It approved only a Concluding Document containing a record of the proceedings and documentation of the special session, and an enumeration of its conclusions.[4]

The special session nevertheless did achieve certain positive results, as the General Assembly unanimously and categorically reaffirmed the validity of the Final Document adopted at the first special session as well as its solemn commitment to it.

Chapter III ("Conclusions") of the Concluding Document of the second special session is reproduced below.

III. CONCLUSIONS

57. The tenth special session of the General Assembly, the first special session devoted to disarmament, held in 1978, was an event of historic significance. The special session was convened in response to a growing concern among the peoples of the world that the arms race, especially the nuclear-arms race, represented ever-increasing threats to human well-being and even to the survival of mankind. At that session the international community of nations achieved, for the first time in the history of disarmament negotiations, a consensus on an international disarmament strategy, the immediate goal of which was the elimination of the danger of nuclear war and implementation of measures to halt and reverse the arms race. The final objective of the strategy was to achieve general and complete disarmament under effective international control. The conviction that all peoples had a legitimate right to expect early and significant progress in disarmament and a vital interest in its success led to the United Nations being given a central role and primary responsibility in the field of disarmament.

58. The historic consensus embodied in the Final Document of the Tenth Special Session of the General Assembly (resolution S-10/2) was rooted in a common awareness that the accumulation of weapons, particularly nuclear weapons, constituted much more a threat to than a protection of mankind. It was also based on recognition that the time had come to put an end to that situation, to abandon the use of force in international relations and to seek security in disarmament, that is to say, through a gradual but effective process beginning with a reduction in the current level of armaments. The Final Document recognized that in the contemporary world the security of States could be greatly enhanced by effective action aimed at preventing nuclear war, ending the arms race and achieving real disarmament. Progress in disarmament

would significantly contribute to pursuing the goals of economic and social development, particularly of developing countries. The consensus embodied in the Final Document sought to place disarmament negotiations in a unified perspective and became a most significant and integral part of the context within which negotiations on disarmament have been pursued.

59. In the course of the twelfth special session, the second special session devoted to disarmament, the General Assembly has noted that developments since 1978 have not lived up to the hopes engendered by the tenth special session. Despite the efforts that have been made by the international community to implement the decisions and recommendations of that session on a multilateral, bilateral and regional level, including action in the General Assembly and the Committee on Disarmament, and steps that have been taken on some specific measures contained in the Final Document, the objectives, priorities and principles there laid down have not been generally observed. The Programme of Action contained in the Final Document remains largely unimplemented. A number of important negotiations either have not begun or have been suspended, and efforts in the Committee on Disarmament and other forums have produced little tangible result. There has been some progress in certain negotiations and bilateral negotiations in the nuclear field have been initiated. The arms race, however, in particular the nuclear-arms race, has assumed more dangerous proportions and global military expenditures have increased sharply. In short, since the adoption of the Final Document in 1978, there has been no significant progress in the field of arms limitation and disarmament and the seriousness of the situation has increased.

60. The Final Document stated that disarmament, relaxation of international tension, respect for the right to self-determination and national independence, the peaceful settlment of disputes in accordance with the Charter of the United Nations and the strengthening of international peace and security are directly related to each other. Progress in any of these spheres has a beneficial effect on all of them; in turn, failure in one sphere has negative effects on others. The past four years have witnessed increasing recourse to the use or threat of use of force against the sovereignty and territorial integrity of States, military intervention, occupation, annexation and interference in the internal affairs of States and denial of the inalienable right to self-determination and independence of peoples under colonial or foreign domination. The period has also witnessed other actions by States contrary to the Final Document. The consequent tensions and confrontations have retarded progress in disarmament and have in turn been aggravated by the failure to make significant progress towards disarmament.

61. It was stressed that in a world of finite resources there is an organic relationship between expenditures on armaments and economic and social development. The vastly increased military budgets since 1978 and the development, production and deployment, especially by the States possessing the largest military arsenals, of new types of weapon systems represent a huge and growing diversion of human and material resources. Apart from the significant capital costs that these military expenditures represent, they have also contributed to current economic problems in certain States. Existing and planned military programmes constitute a colossal waste of precious resources which might otherwise be used to elevate living standards of all peoples; furthermore, such waste greatly compounds the problems confronting developing countries in achieving economic and social development.

62. The General Assembly regrets that at its twelfth special session it has not been able to adopt a document on the Comprehensive Programme of Disarmament and on a number of other items on its agenda. However, on two agenda items, relating to the United Nations programme of fellowships on disarmament and the World Disarmament Campaign, there are agreed texts (see annexes IV and V) for consideration and appropriate action by the General Assembly. The General Assembly was encouraged by the unanimous and categorical reaffirmation by all Member States of the validity of the Final Document of the Tenth Special Session as well as their solemn commitment to it and their pledge to respect the priorities in disarmament negotiations as agreed to in its Programme of Action. Taking into account the aggravation of the international situation and being gravely concerned about the continuing arms race, particularly in its nuclear aspect, the General Assembly expresses its profound preoccupation over the danger of war, in particular nuclear war, the prevention of which remains the most acute and urgent task of the present day. The General Assembly urges all Member States to consider as soon as possible relevant proposals designed to secure the avoidance of war, in particular nuclear war, thus ensuring that the survival of mankind is not endangered. The General Assembly also stresses the need for strengthening the central role of the United Nations in the field of disarmament and the implementation of the security system provided for in the Charter of the United Nations in accordance with the Final Document and to enhance the effectiveness of the Committee on Disarmament as the single mutlilateral negotiating body. In this regard the Committee on Disarmament is requested to report to the General Assembly at its thirty-seventh session on its consideration of an expansion of its membership, consistent with the need to enhance its effectiveness.

63. Member States have affirmed their determination to continue to work for the urgent conclusion of negotiations on and the adoption of the Comprehensive Programme of Disarmament, which shall encompass all measures thought to be advisable in order to ensure that the goal of general and complete disarma-

ment under effective international control becomes a reality in a world in which international peace and security prevail, and in which a new international economic order is strengthened and consolidated. To this end, the draft Comprehensive Programme of Disarmament is hereby referred back to the Committee on Disarmament, together with the views expressed and the progress achieved on the subject at the special session. The Committee on Disarmament is requested to submit a revised draft Comprehensive Programme of Disarmament to the General Assembly at its thirty-eighth session.

64. The other items on the agenda on which the special session has not reached decisions should be taken up at the thirty-seventh session of the General Assembly for further consideration.

65. The General Assembly is convinced that the discussion of disarmament problems, which it has undertaken at the special session and in which representatives of Member States—among them some heads of State or Government and many Foreign Ministers—have participated, and the active interest shown by peoples all over the world will provide a powerful impetus to Member States to redouble their efforts in the cause of disarmament. The General Assembly hopes that the World Disarmament Campaign, which it solemnly launched at the opening meeting of the special session, will further contribute to the mobilization of public opinion to the cause of disarmament and the strengthening of international peace and security. In this regard the campaign should provide an opportunity for discussion and debate in all countries on all points of view relating to disarmament issues, objectives and conditions.

66. The third special session of the General Assembly devoted to disarmament should be held at a date to be decided by the General Assembly at its thirty-eighth session.

(ii) *Follow-up to the special sessions of the General Assembly devoted to disarmament*

Among the items on the agenda of the General Assembly at its twelfth special session were those entitled "Review of implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session" and "Consideration and adoption of the Comprehensive Programme of Disarmament". The examination of these items in the relevant working and drafting groups of the *Ad Hoc* Committee of the Twelfth Special Session[5] entailed exhaustive exchanges of views and considerable concerted efforts towards compromise. Nevertheless, in the general debate in plenary, expressions of disappointment were often voiced regarding the lack of progress in implementation of the disarmament measures set out in the 1978 Final Document.[6] The importance of appropriate future follow-up action on the various issues raised during the special session and the need for positive political will were also stressed repeatedly in both the *Ad Hoc* Committee and the plenary bodies.

There were differing views in the *Ad Hoc* Committee as to how these objectives might best be achieved and therefore it was unable to reach agreement on a text for the item on the questions of review and appraisal. It also proved impossible to conclude consideration of the item on the comprehensive programme of disarmament.

Accordingly, the *Ad Hoc* Committee could only report to the General Assembly on the course and degree of progress of the work of its various groups. These reports were included in the Committee's report to the General Assembly, which was subsequently adopted as the Concluding Document of the Twelfth Special Session of the General Assembly.[4]

The parts of the Concluding Document of greatest relevance to the general question of follow-up are found in its chapter III, "Conclusions",[7] and in annex I, entitled "Texts for the draft Comprehensive Programme of Disarmament submitted by Working Group I". In particular, paragraph 59 under "Conclusions" evaluates earlier follow-up to the tenth special session, while paragraphs 63 and 64 discuss the work to be done as a follow-up to the twelfth special session.

Consideration by the General Assembly at its thirty-seventh session

At its thirty-seventh session, the General Assembly had on its agenda two items on the question of follow-up to its special sessions on disarmament, the established one on the implementation of the decisions and recommendations of the tenth special session and a new but similar one, entitled "Review and implementation of the Concluding Document of the Twelfth Special Session of the General Assembly". In connection with the two items, both of which

embraced many separate questions and proposals, the Assembly had before it a number of documents and adopted 21 draft resolutions in all (resolutions 37/78 H to 37/78 K of 9 December 1982 and 37/100 A to 37/100 J of 13 December 1982).

Of these, resolutions 37/78 B on "International co-operation for disarmament" and 37/78 F on "Implementation of the recommendations and decisions of the Tenth Special Session" are most pertinent to the present section and are therefore summarized below, while the rest are dealt with in the appropriate subsequent sections.

By resolution 37/78 B, the General Assembly, *inter alia*, called upon all States, in implementing the Final Document of the Tenth Special Session, to make active use of the principles and ideas contained in the Declaration on International Co-operation for Disarmament by actively participating in disarmament negotiations, with a view to achieving concrete results, and by conducting them on the basis of equality and undiminished security and the non-use of force in international relations, refraining at the same time from developing new directions and channels of the arms race. It also appealed to States which were members of military or political groupings to promote, on the basis of the Final Document, in the spirit of international co-operation for disarmament, the gradual mutual limitation of military activities of these groupings, thus creating conditions for their dissolution.[8]

And by resolution 37/78 F, the General Assembly invited all States, particularly nuclear-weapon States and especially those among them which possessed the most important nuclear arsenals, to take urgent measures with a view to implementing the recommendations and decisions contained in the Final Document of the Tenth Special Session, as well as to fulfilling the priority tasks listed in the Programme of Action set forth in section III of the Final Document and in the Concluding Document of the Twelfth Special Session. It also invited all States engaged in disarmament and arms limitation negotiations outside the framework of the United Nations to keep the General Assembly and the Committee on Disarmament informed of the results of such negotiations, in conformity with the relevant provision of the Final Document.[9]

(*b*) General and complete disarmament and other comprehensive approaches to disarmament

(i) *General and complete disarmament*

Deliberations of the Disarmament Commission

During the 1982 substantive session, held from 17 to 28 May, the goal of general and complete disarmament continued to play a key role both in determining the framework for the discussions of the Commission and in the drafting of its output, as evidenced by the numerous references to general and complete disarmament in the agreed texts submitted to the Assembly at its twelfth special session. *Inter alia*, within the agreed guidelines to the study of conventional disarmament, the Commission, in citing one of the principles governing the general approach to the study, stated, "Together with the negotiations on nuclear disarmament measures, the limitation and gradual reduction of armed forces and conventional weapons should be resolutely pursued within the framework of progress towards general and complete disarmament".[10]

The twelfth special session of the General Assembly

Throughout the session, the main preoccupation of the international community was with the nuclear danger, but the importance it continued to attach to the ultimate objective of general and complete disarmament found clear expression in its Concluding Document.[11]

Work of the Committee on Disarmament

In setting out the agenda and programme of work of its 1982 sessions (held at Geneva from 2 February to 23 April and from 3 August to 17 September), the Committee stated: "The

Committee on Disarmament, as the multilateral negotiating forum, shall promote the attainment of general and complete disarmament under effective international control."[12]

Consideration by the General Assembly at its thirty-seventh session

Under the agenda item entitled "General and complete disarmament", 11 resolutions were adopted by the General Assembly as resolutions 37/99 A to K of 13 December 1982. Resolutions B, G, H, J and K are summarized below, while the remainder are dealt with subsequently under the respective headings of the present summary.

By resolution B, the Assembly, expressing its conviction of the importance of ensuring an effective follow-up to the report of the Independent Commission on Disarmament and Security Issues in the United Nations system and in other relevant contexts, requested the Disarmament Commission to consider those recommendations and proposals in the report that related to disarmament and arms limitation and to suggest, in a report to the General Assembly, how best to ensure an effective follow-up thereto within the United Nations system or otherwise.[13]

By resolution G, the Assembly, being aware that objective information on military capabilities, in particular among nuclear-weapon States and other militarily significant States, could contribute to the building of confidence among States and to the conclusion of concrete disarmament agreements and, thereby, help to halt and reverse the arms race, called upon those States to consider additional measures to facilitate the provision of objective information on, and objective assessments of, military capabilities.[14]

By resolution H, the General Assembly, noting the provisions of article VII of 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 concerning the holding of review conferences, requested the Secretary-General to render the necessary assistance and to provide such services as might be required for the Second Review Conference in 1983 and its preparation. The Assembly recalled also its expressed hope for the widest possible adherence to the Treaty.[15]

By resolution I, the Assembly recalled that, in accordance with paragraph 1 of article VIII of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, five years after the entry into force of the Convention a conference of the States parties should be convened by the depository at Geneva. *Noting that the Secretary-General, as depository of the Convention, intended to convene the Review Conference at the* earliest practicable time after 5 October 1983, that is, after the expiration of the five-year period, the Assembly requested him to render the necessary assistance and to provide such services as might be required for the Review Conference and its preparation.[16]

By resolution K, the Assembly, recalling its resolution 31/90 of 14 December 1976, by which it had decided to keep the strengthening of the role of the United Nations in the field of disarmament under continued review, as well as resolution 34/87 E of 11 December 1979, in which it, *inter alia,* had reaffirmed that the United Nations had a central role and a primary responsibility in the field of disarmament, made an institutional arrangement to that effect.

(ii) *Development of a comprehensive programme of disarmament*

Consideration by the Committee on Disarmament

On 21 April 1982, the Committee adopted the report of the *Ad hoc* Working Group to which it annexed a draft Comprehensive Programme of Disarmament, which became an integral part of the special report of the Committee on Disarmament to the second special session of the General Assembly devoted to disarmament.[17]

Consideration by the General Assembly at its twelfth special session

At the second special session of the General Assembly devoted to disarmament, the question of a comprehensive programme of disarmament occupied a prominent place on the agenda.

Generally, Member States considered that it was a major task of the session to complete the elaboration of a comprehensive programme and to adopt it as a basis for disarmament endeavours in the years to come, and that all parties concerned should participate in a constructive way in the negotiations in the relevant subsidiary bodies of the session with a view to reaching a realistic and meaningful agreement. The result of the negotiations, however, fell short of expectations and accordingly the General Assembly stated in paragraph 63 of the Concluding Document that the draft Comprehensive Programme of Disarmament had thus been referred back to the Committee on Disarmament, together with the views expressed and the progress achieved on the subject at the special session. The Committee was requested to submit a revised draft Comprehensive Programme to the General Assembly at its thirty-eighth session.

Consideration by the General Assembly at its thirty-seventh session

The thirty-seventh regular session of the General Assembly, which opened only a few weeks after the conclusion of the second special session devoted to disarmament, did not yield any significant developments on the question, and no resolution was adopted.

(iii) *World Disarmament Conference*

The *Ad Hoc* Committee on the World Disarmament Conference continued its work during two sessions in 1982. In its report to the General Assembly at its second special session devoted to disarmament, the *Ad Hoc* Committee included a round-up of its work since the 1978 special session and reiterated the conclusions and recommendations contained in its report to the General Assembly at its thirty-sixth session.[18]

In its report to the thirty-seventh session of the General Assembly,[19] the *Ad Hoc* Committee reiterated that a world disarmament conference had received wide support among the membership of the United Nations, albeit with varying degrees of emphasis and different conditions related to its convening. It was evident from the updated positions of the nuclear-weapon States that they had reached no consensus, although their participation in such a conference had been deemed essential by most States Members of the Organization.

The special session did not make any recommendation concerning the convening of a world disarmament conference, except in the general context that the General Assembly at its thirty-seventh session should take up those items on which the special session had not reached a decision.

By resolution 37/97 of 13 December 1982,[20] the General Assembly renewed the mandate of the *Ad Hoc* Committee on the World Disarmament Conference and requested it to report to the General Assembly at its thirty-eighth session.

(*c*) Nuclear Disarmament

(i) *Nuclear arms limitation and disarmament*

In the absence of any specific recommendation evolving from the special session in the area of nuclear weapons and related issues, the General Assembly, in the Concluding Document of the session, limited itself to expressing its grave concern about the continuing arms race, especially in the nuclear sphere, and its profound preoccupation over the danger of war, in particular nuclear war, the prevention of which remained the most acute and urgent task.[21]

At its thirty-seventh session, the General Assembly adopted a number of draft resolutions dealing with nuclear questions; some of them are summarized below, while others are dealt with under the respective headings of the present summary.

By resolution 37/78 A,[22] the Assembly requested the Governments of the Union of Soviet Socialist Republics and the United States of America to transmit to the Secretary-General a joint report or two separate reports on the stage reached in their bilateral nuclear-arms negotiations.

By resolution 37/78 C,[23] the Assembly called upon the Committee on Disarmament to proceed without delay to negotiations on the cessation of the nuclear-arms race and nuclear disarmament, in accordance with paragraph 50 of the Final Document of the Tenth Special Session of the General Assembly, and especially to elaborate a nuclear-disarmament programme, and to establish for that purpose an *ad hoc* working group on the cessation of the nuclear arms race and on nuclear disarmament.

By resolution 37/78 E,[24] the Assembly reiterated its request to the Committee on Disarmament to start without delay negotiations within an appropriate organizational framework with a view to concluding a convention on the prohibition of the development, production, stockpiling, deployment and use of nuclear neutron weapons.

By resolution 37/99 A,[25] the Assembly once again requested the Committee on Disarmament to proceed without delay to talks with a view to elaborating an international agreement on the non-stationing of nuclear weapons on the territories of States where there were no such weapons at the time.

By resolution 37/99 E,[26] the Assembly requested the Committee on Disarmament, at an appropriate stage of its work on the item entitled "Nuclear weapons in all aspects", to pursue its consideration of the question of adequately verified cessation and prohibition of the production of fissionable material for nuclear weapons and other nuclear explosive devices.

By resolution 37/100 A,[27] the Assembly called upon all nuclear-weapon States to agree to a freeze on nuclear weapons, which would, *inter alia*, provide for a simultaneous total stoppage of any further production of nuclear weapons and a complete cut-off in the production of fissionable material for weapons purposes.

Lastly, by resolution 37/100 B,[28] the Assembly urged the Union of Soviet Socialist Republics and the United States of America, as the two major nuclear-weapon States, to proclaim, either through simultaneous unilateral declarations or through a joint declaration, an immediate nuclear-arms freeze which would be a first step towards the comprehensive programme of disarmament.

(ii) *Non-use of nuclear weapons and prevention of nuclear war*

In the Concluding Document of the Twelfth Special Session, the General Assembly expressed its profound preoccupation over the danger of war, especially nuclear war, the prevention of which had remained the most acute and urgent task of the day, and urged all Member States to consider, as soon as possible, relevant proposals designed to secure the avoidance of war, in particular nuclear war, thus ensuring that the survival of mankind would not be endangered.[29] At its thirty-seventh session of the General Assembly three resolutions were adopted on the subject.

By resolution 37/100 C,[30] the Assembly requested the Committee on Disarmament to undertake, on a priority basis, negotiations with a view to achieving agreement on an international convention prohibiting the use or threat of use of nuclear weapons under any circumstances, taking as a basis the text of the draft Convention on the Prohibition of the Use of Nuclear Weapons.

By resolution 37/78 I,[31] the Assembly requested the Committee on Disarmament to undertake, as a matter of the highest priority, negotiations with a view to achieving agreement on appropriate and practical measures for the prevention of nuclear war.

By resolution 37/78 J,[32] the Assembly considered that the solemn declarations by two nuclear-weapon States made or reiterated at the twelfth special session of the General Assembly concerning their respective obligations not to be the first to use nuclear weapons offered an important avenue to decrease the danger of nuclear war, and expressed the hope that the other nuclear-weapon States would consider making similar declarations with respect to not being the first to use nuclear weapons.

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

Detailed consideration of the issue had taken place mainly in the Committee on Disarmament. Various views had been expressed on the scope, the nature and the substance as well as the form of possible arrangements on effective international assurances for non-nuclear-weapon States against the use or threat of use of nuclear weapons. Although many issues involved had been clarified and there had been no objection, in principle, to the idea of an international convention, the adoption of a Security Council resolution had also been considered as an interim measure. No agreement had been reached on either solution. However, the two resolutions adopted by the General Assembly ensured that the Committee on Disarmament would continue in 1983 to explore ways and means of overcoming the difficulties.

By resolution 37/81 of 9 December 1982,[33] the Assembly appealed to all States, especially the nuclear-weapon States, to demonstrate the political will necessary to reach agreement on a common approach and, in particular, on a common formula which could be included in an international instrument of a legally binding character.

By resolution 37/80 of 9 December 1982,[34] the Assembly called once again upon all nuclear-weapon States to make solemn declarations, identical in substance, concerning the non-use of nuclear weapons against non-nuclear-weapon States having no such weapons on their territories, as a first step towards the conclusion of an international convention, and recommended that the Security Council should examine such declarations and, if they all met the objective mentioned in the resolution, should adopt an appropriate resolution approving them.

(iv) *Cessation of nuclear-weapon tests*

After years of arduous discussion, the Committee on Disarmament was finally able to establish an *Ad Hoc* Working Group under the item "Nuclear test ban." The mandate called for the Working Group to "discuss and define, through substantive examination, issues relating to verification and compliance with a view to making further progress towards a nuclear test ban."[35]

At the thirty-seventh session, the General Assembly adopted on 9 December three resolutions on the subject.

By resolution 37/85,[36] the Assembly, taking note of the "Basic provisions of a treaty on the complete and general prohibition of nuclear-weapon tests", urged the Committee on Disarmament to proceed promptly to practical negotiations with a view to elaborating a draft of the treaty. The Assembly furthermore called upon all the nuclear-weapon States, as a gesture of goodwill and with a view to creating more favourable conditions for the formulation of the treaty, not to conduct any nuclear explosions, starting from a date to be agreed among them and until the treaty was concluded, after the appropriate declarations had been made by them to that effect well in advance.

By resolution 37/72,[37] the Assembly urged all States that had not yet done so to adhere without delay to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water and, meanwhile, to refrain from testing in the environments covered by the Treaty and also urged the three original parties to the Treaty to abide strictly by the undertakings contained therein to seek "to achieve the discontinuance of all test explosions of nuclear weapons for all time" and "to continue negotiations to this end".

Finally, by resolution 37/73,[38] the Assembly reaffirmed its conviction that a treaty to achieve the prohibition of all nuclear-test explosions by all States for all time was a matter of the greatest urgency and highest priority, noted that the Committee on Disarmament had established an *Ad Hoc* Working Group under item 1 of its agenda, entitled "Nuclear test ban", and urged all members of the Committee on Disarmament, in particular the nuclear-weapon States, to co-operate with the Committee in fulfilling those tasks.

The inclusion of the additional item entitled "Immediate cessation and prohibition of nuclear-weapon tests" (resolution 37/85), in addition to the two items on the agenda pursuant to

previous resolutions on the subject, raised questions about the excessive number of resolutions dealing with a nuclear test-ban treaty and gave further evidence of the polarization of points of view regarding specific aspects of a test-ban agreement, i.e., verification and compliance and its modes and methods, participation and questions concerning peaceful nuclear explosions.

(v) *Nuclear-weapon-free zones*

In 1982, both at the second special session of the General Assembly on disarmament and at its subsequent regular session, the idea of establishing further nuclear-weapon-free zones in various regions, along the lines of the one set up in Latin America, continued to receive support from a very large number of delegations. Nevertheless, in practical terms, it seemed unlikely that a new nuclear-weapon-free zone would soon emerge in any of the regions for which concrete proposals were before the Assembly, namely, Africa, the Middle East and South Asia. It was repeatedly stated in the debate and in explanations of vote that initiatives to establish such zones could be effective only if all the countries in the region concerned were to agree to the concept.

At its thirty-seventh session, the General Assembly had four items on the subject on its agenda: (*a*) Implementation of General Assembly resolution 36/83 of 9 December 1981 concerning the signature and ratification of Additional Protocol I of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco); (*b*) Implementation of the Declaration on the Denuclearization of Africa; (*c*) Establishment of a nuclear-weapon-free zone in the region of the Middle East; and (*d*) Establishment of a nuclear-weapon-free zone in South Asia. In the context of the zone in the Middle East, a separate item entitled "Israeli nuclear armament" was also considered. The following resolutions were adopted by the General Assembly on 9 December under the above-mentioned items.

By resolution 37/71 of 9 December 1982,[39] the Assembly, taking into account that within the zone of application of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) there were some territories which were in a position to receive the benefits deriving from the Treaty through its Additional Protocol I, to which the States that *de jure* or *de facto* were internationally responsible for those territories might become parties, regretted that the signature of Additional Protocol I by France had not yet been followed by the corresponding ratification and urged France not to delay any further such ratification.

By resolution 37/74 A of 9 December 1982,[40] the Assembly once again reiterated its call upon all States to consider and respect the continent of Africa and its surrounding areas as a nuclear-weapon-free zone, condemned all forms of nuclear collaboration by any State, corporation, institution or individual with the racist régime of South Africa since such collaboration enabled it to frustrate, *inter alia,* the objective of the Declaration on the Denuclearization of Africa, and demanded that South Africa submit all its nuclear installations and facilities to inspection by the International Atomic Energy Agency.

By resolution 37/75 of 9 December 1982,[41] the Assembly urged all parties directly concerned to consider seriously taking the practical and urgent steps required for the implementation of the proposal to establish a nuclear-weapon-free zone in the region of the Middle East, called upon all countries of the region that had not done so, pending the establishment of the zone, to agree to place all their nuclear activities under International Atomic Energy Agency safeguards and invited those countries, also pending the establishment of the zone, not to develop, produce, test or otherwise acquire nuclear weapons or permit the stationing on their territories, or territories under their control, of nuclear weapons or nuclear explosive devices.

By resolution 37/82 of 9 December 1982,[42] the Assembly reaffirmed its demand that Israel renounce any possession of nuclear weapons and place all its nuclear activities under international safeguards, called again upon all States and other parties and institutions to terminate forthwith all nuclear collaboration with Israel and again requested the Security Council to investigate Israel's nuclear activities and the collaboration of other States, parties and institutions in those activities.

The related question of Israeli nuclear armament came up also in connection with the agenda item entitled "Armed Israeli aggression against the Iraqi nuclear installations and its grave consequences for the established international system concerning the peaceful uses of nuclear energy, the non-proliferation of nuclear weapons and international peace and security".[43]

And, finally, by resolution 37/76 of 9 December 1982,[44] the Assembly once again urged the States of South Asia and such other neighbouring non-nuclear-weapon States as might be interested to continue to make all possible efforts to establish a nuclear-weapon-free zone in South Asia and to refrain, in the meantime, from any action contrary to that objective.

(vi) *International co-operation in the peaceful uses of nuclear energy*

The Preparatory Committee for the United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy[45] held two substantive sessions in 1982 from 21 to 30 June and 27 October to 2 November. The Committee was unable to reach agreement on the draft provisional agenda of the Conference or on several other matters relating to its preparation.

During the deliberations of the General Assembly on the subject at its thirty-seventh session the general dichotomy of views between supplier and recipient countries as to whether the emphasis should be on non-proliferation or on technological dissemination continued to be in evidence and contributed to controversy over the texts of the relevant disarmament-related resolutions subsequently adopted by the Assembly.

By resolution 37/19 of 19 November 1982,[46] the Assembly urged all States to strive for effective and harmonious international co-operation in carrying out the work of the International Atomic Energy Agency and to implement strictly the mandate of its statute, in promoting the use of nuclear energy and the application of nuclear science and technology for peaceful purposes, in strengthening technical assistance and co-operation for developing countries and in ensuring the effectiveness of the Agency's safeguards system. It furthermore considered that Israel's threat to repeat its armed attack against nuclear facilities, as well as any other armed attack against such facilities, constituted, *inter alia,* a serious threat to the role and activities of IAEA in the development and further promotion of nuclear energy for peaceful purposes.

(*d*) Prohibition or restriction of use of other weapons

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

With regard to the views expressed at the twelfth special session of the General Assembly on negotiations towards a chemical weapons treaty, the questions surrounding the elaboration of the new convention received the most attention and many specific proposals were made, some of them dealing with a ban on chemical weapons (e.g., a proposal by the USSR on basic provisions of the convention[47]) or the questions of verification of such a ban (e.g., a document by the Federal Republic of Germany[48]) and others with means of ensuring compliance with existing agreements and preventing controversy in that regard.[49] Furthermore, several other proposals dealing with disarmament on a comprehensive basis or with questions of verification and compliance in general[50] also included considerations regarding chemical weapons.

As no substantive consideration of those proposals was possible during the session, they were listed in annex II to the Concluding Document of the Twelfth Special Session of the General Assembly[51] among the many items deserving further study to be submitted to the Assembly at its thirty-seventh session.

The Committee on Disarmament, for its part, continued, in accordance with its programme of work and in pursuance of General Assembly resolution 36/96 A and B of 9 December 1981,[52] negotiations towards a multilateral instrument on the total prohibition of chemical

weapons. Most of the work in 1982 was conducted in meetings of the *Ad Hoc* Working Group on Chemical Weapons, which was re-established at the beginning of the year with a broadened mandate. The Committee on Disarmament was able to make only limited progress in the work towards the elaboration of a chemical weapons convention, mainly by achieving a further and welcome clarification of at times divergent viewpoints. On the other hand, little tangible progress was made towards a consensus solution of the long-standing and difficult problems in the Committee regarding the question of scope and verification of the future convention.

The difficulties surrounding the question continued to be evidenced in the General Assembly during its thirty-seventh session. Although all States once again agreed that efforts to achieve an international instrument banning chemical weapons should be pursued urgently, a number of them objected to having two overlapping resolutions, i.e., 37/98 A and B of 13 December,[53] on the same aspect of the question. While in both resolutions the General Assembly urged the Committee on Disarmament to intensify the negotiations on a chemical weapons convention, in resolution 37/98 A the Assembly furthermore called for the resumption of the bilateral Soviet-American negotiations on the prohibition of chemical weapons and reiterated its call to all States to refrain from any action that could impede negotiations on the prohibition of such weapons and specifically to refrain from the production and deployment of binary and other new types of chemical weapons and from stationing chemical weapons on the territory of other States.

Other differences of viewpoint arose regarding proposals on the relevant existing instruments—the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction—which reflected efforts by their sponsors to build confidence in the effectiveness of those instruments. By resolution 39/98 C,[54] the Assembly recommended that the States parties should hold a special conference as soon as possible to establish a flexible, objective and non-discriminatory procedure to deal with issues concerning compliance with the biological weapons Convention and by resolution 37/98 D,[55] the Assembly requested the Secretary-General to devise procedures for the timely and efficient investigation of information concerning activities that might constitute a violation of the 1925 Geneva Protocol or of the relevant rules of customary international law and to assemble and organize systematically documentation relating to the identification of signs and symptoms associated with the use of such agents as a means of facilitating such investigations and the medical treatment that might be required.

Similarly, serious differences were evidenced in the General Assembly about reports on the alleged use of chemical weapons and the significance of the second and final report to the Assembly of the Group of Experts established in 1981 to investigate those allegations.[56] By resolution 37/98 E,[57] the Assembly, taking note of the final conclusion of the Experts Group that while it could not state that the allegations had been proved it could nevertheless not disregard the circumstantial evidence suggestive of the possible use of some sort of toxic chemical substance in some instances, called anew for strict observance by all States of the principles and objectives of the 1925 Geneva Protocol and condemned all actions that were contrary to those objectives.

(ii) *New weapons of mass destruction*

The need to ban the development and manufacture of new weapons of mass destruction and new systems of such weapons received widespread recognition and support in 1982. The consideration of the subject, however, continued to reflect the deeply rooted differences between the two approaches to the question. The Eastern European and some non-aligned States stressed the necessity of a general agreement prohibiting the development and production of all new types of weapons of mass destruction, to be listed in an annex to such an agreement, which would also provide for the conclusion of separate agreements banning such weapons, while Western States continued to hold the view that it would be more appropriate to negotiate agreements to ban

potential new weapons of mass destruction only on a case-by-case basis as such weapons were identified.

In the Disarmament Committee, a proposal to establish a group of governmental experts on the question again failed to obtain consensus. Instead, the Committee held informal meetings, with the participation of qualified governmental experts. The Committee reported to the General Assembly at its thirty-seventh session that it considered that this practice had allowed the Committee to follow the question in an appropriate and adequate manner and had enabled it to identify any case which might require particular consideration and which would justify the opening of specific negotiations.[58]

At its thirty-seventh session, the General Assembly, apart from the reassertion in resolution 37/77 A of 9 December 1982 of the established proposal emphasizing a comprehensive agreement and including a call for the States permanent members of the Security Council and other militarily significant States to make substantively identical declarations renouncing the creation of new weapons of mass destruction,[59] adopted also on 9 December 1982,[60] resolution 37/77 B, in which it called for new efforts to ensure that scientific and technical achievements might be used solely for peaceful purposes.

(iii) *Radiological weapons*

The ongoing work of the Committee on Disarmament on a radiological weapons treaty on the basis of the 1979 joint proposal of the Soviet Union and the United States[61] had faced serious obstacles because of the divergent views which had emerged in the course of negotiations, in particular those concerning the Swedish proposal to include in the text of the future treaty the prohibition of military attacks against civilian nuclear facilities. To alleviate those difficulties, the General Assembly at its thirty-seventh session adopted resolution 37/99 C of 13 December 1982,[62] by which it requested the Committee on Disarmament to continue negotiations with a view to an early conclusion of the elaboration of a treaty prohibiting the development, production, stockpiling and use of radiological weapons and to continue its search for a solution to the question of prohibition of military attacks on nuclear facilities.

(iv) *Prohibition of the stationing of weapons and prevention of an arms race in outer space*

The growing importance attached to the prevention of an arms race in outer space was reflected in the addition of a new item with that title to the 1982 agenda of the Committee on Disarmament. While there was widespread recognition of the need to ensure that any activity in outer space should be strictly for peaceful purposes, the questions of how best to tackle the overall subject gave rise to several different proposals suggesting various possible approaches and outlining the areas to which States felt priority should be given.[63] Consequently, the Committee was unable to reach consensus on the question of establishing a working group to begin negotiations on the item.

The importance of the subject was also reflected in the attention it received at the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE 82), held at Vienna from 9 to 21 August 1982. Especially significant was the extent to which concern was voiced with regard to the matter in the report of the Conference, particularly in its call for the competent organs of the United Nations to give "appropriate attention and high priority" to the matter.[64]

In the General Assembly at its thirty-seventh session, as in the other disarmament forums during the year, the main focus of discussion was on whether work should concentrate on a general agreement to prevent an arms race in outer space in all its aspects, thus preserving it strictly for peaceful purposes, or whether it should emphasize, as a matter of priority, a verifiable agreement also prohibiting satellite systems as a step towards other agreements which would fulfil the objective of preventing an arms race in outer space. The result of this discussion was that for the second successive year the Assembly adopted two resolutions on the sub-

ject, namely resolutions 37/83[65] and 37/99 D[66] of 13 December which, while containing much common ground, reflected the two above-mentioned approaches, particularly in their respective requests to the Committee on Disarmament.

(e) Consideration of conventional disarmament and other approaches

(i) *Limitation of conventional armaments and the arms trade on a world-wide and regional basis*

Although the need for conventional disarmament was recognized, differences had long persisted on how that goal might be pursued. They concerned not only questions of approach but also questions of priority and emphasis relating to nuclear *vis-à-vis* conventional disarmament efforts. While proponents of conventional disarmament, among them several Western States and China, had called for equal emphasis on conventional and nuclear disarmament and for the two to be pursued simultaneously, several States, largely non-aligned and arms recipient, had cautioned against equating conventional disarmament with nuclear disarmament. They held that the greatest threat to mankind was posed by nuclear weapons and therefore nuclear disarmament should remain, as stated in the Final Document of the Tenth Special Session of the General Assembly,[67] the highest priority item in multilateral disarmament efforts. According to those States, conventional disarmament efforts, while important, must not undermine the agreed order of priorities. Furthermore, conventional disarmament should not be limited to restraining the acquisition and transfer of such weapons but should also aim at limiting their production, since in their view restraints without curbs on production would be prejudicial to the interests of recipient countries needing weapons for legitimate national security purposes, as well as those of peoples struggling for self-determination and freedom.

The Disarmament Commission's consideration of the conventional arms race and conventional disarmament in 1982 took place largely in the context of two agenda items, namely that covering the elaboration of a general approach to negotiations on nuclear and conventional disarmament and, more directly, the item entitled "Elaboration of the general approach to the study on all aspects of the conventional arms race and on disarmament relating to conventional weapons and armed forces, as well as its structure and scope, taking into account General Assembly resolution 36/97 A". Two working papers were submitted in connection with the Commission's discussion in 1982.[68] The Commission was able to reach agreement at the session on a consensus text on the "Guidelines for the study on conventional disarmament."[69]

At the twelfth special session of the General Assembly, conventional disarmament was considered in the general debate[70] as well as under the items on the review of the implementation of the recommendations and decisions adopted at the first special session on disarmament, the comprehensive programme of disarmament and the Declaration of the 1980s of the Second Disarmament Decade. As on previous occasions, no State opposed the idea of limiting the buildup and transfer of conventional armaments, but difficulties such as differences over the modalities and measures for concrete action again caused a number of developing and recipient States to express reservations about, or to attach conditions to, the general question of reducing conventional weapons.

The question of the international arms trade, or transfers, continued to generate expressions of concern, especially over the increasing role of the developing countries, mainly as recipients, in that trade. Those countries had purchased 62 per cent of weapons sold worldwide during the period from 1974 to 1981.[71]

The approach to the subject that attracted the widest expressions of support was again the regional approach. It was commended by a large number of States from all socio-economic, political and geographical groupings and, in particular, by Western States. It was argued that, as most conflicts occurred at local or regional levels, States tended generally to base their military policies and plans largely on regional considerations. Effective regional arms restraint measures, therefore, could advance prospects for reducing world-wide tensions and for total disarmament. The question of conventional disarmament was also considered in connection

with the efforts by the special session to adopt a comprehensive programme of disarmament. The negotiations on the programme were based on a draft text[72] submitted to the session by the Committee on Disarmament. Although the General Assembly was unable at the special session to adopt a document on the comprehensive programme of disarmament, it made some progress in its negotiations on the subject. The resultant draft texts are contained in annex I to the Concluding Document of the Twelfth Special Session.[73] References to conventional disarmament appear mainly in sections III (Principles), IV (Priorities) and V (Measures and stages of implementation).

The question of the limitation of conventional weapons did not appear as a separate item on the agenda of the thirty-seventh session of the General Assembly, but it was widely referred to, both in the general debate and in the Assembly of the First Committee. A common trend at the session, as at other recent sessions, was that the importance of conventional disarmament was increasingly acknowledged by a broad spectrum of Member States of all socio-economic, political and regional groupings.

In order to encourage concrete negotiations at the regional level and to establish a link between regional and global action on disarmament, resolution 37/100 F[74] on both nuclear and conventional disarmament, was adopted under the agenda item "Review and implementation of the Concluding Document of the Twelfth Special Session of the General Assembly". By that resolution, the Assembly expressed the hope that Governments would consult with each other on appropriate regional disarmament measures and encouraged them to consider the possible establishment or strengthening of regional institutional arrangements to promote the implementation of such measures.

Of particular relevance to the regulation of conventional armaments was the agenda item of the General Assembly entitled "United Nations Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects". By resolution 37/79 of 9 December 1982[75] on the item, the Assembly urged those States which had not yet done so to exert their best endeavours to become parties to the Convention and the Protocols annexed thereto, as early as possible, so as to obtain their entry into force and, ultimately, their universal adherence.

(ii) *Reduction of military budgets*

The United Nations had endeavoured since 1950 to deal with the question of limitation of military expenditures. In the Final Document of the 1978 special session[76] the General Assembly advocated the reduction of military budgets as well as further consideration of steps to be taken to facilitate this. Accordingly, the following year the Disarmament Commission included in its recommendations relating to the elements of a comprehensive programme of disarmament the item "Reduction of military expenditures".[77] The problems relating to the item were discussed in 1982 by the Disarmament Commission and by the General Assembly at both its special and regular sessions. While no delegation questioned the value of the goal of reducing military expenditures, no progress was made in narrowing down the differences in views between the Eastern European and the Western States on the practical implementation of such reductions. The developing countries, in particular, expressed regret at the squandering of resources on arms at a time when two thirds of humanity lived in hunger and poverty. Explicit statements on military budgets appeared in paragraphs 59 and 61 of the Concluding Document of the Twelfth Special Session of the General Assembly.[73]

At its thirty-seventh session, the Assembly, by resolution 37/95 A of 13 December 1982,[78] urged all States, in particular the most heavily armed States, pending the conclusion of agreements on the reduction of military expenditures, to exercise self-restraint in their military expenditures with a view to reallocating the funds thus saved to economic and social development, especially for the benefit of developing countries. It also requested the Disarmament Commission to continue, at its session to be held in 1983, the consideration of the item entitled "Reduction of military budgets" with a view to identifying and elaborating the principles that should govern further actions of States in freezing and reducing military expenditures, keeping

in mind the possibility of embodying such principles in a suitable document at an appropriate stage.

Moreover, by resolution 37/95 B, also of 13 December 1982,[79] The Assembly stressed the need to increase the number of reporting States with a view to the broadest possible participation from different geographic regions and representing different budgeting systems and also reiterated its recommendation that all Member States should report annually, by 30 April, to the Secretary-General, by using the reporting instrument, their military expenditures of the latest fiscal year for which data were available.

(iii) *Declaration of the Indian Ocean as a Zone of Peace*

The Declaration of the Indian Ocean as a Zone of Peace was adopted by the General Assembly on 16 December 1971 as resolution 2832 (XXVI). By that Declaration, the Indian Ocean, within limits to be determined, together with airspace above and the ocean floor subjacent thereto, was designated for all time as a zone of peace.

The following year, by its resolution 2992 (XXVII) of 15 December 1972, the General Assembly established the *Ad Hoc* Committee on the Indian Ocean.[80] In 1974, the Assembly requested the littoral and hinterland States of the Indian Ocean to enter into consultations with a view to convening a conference on the Indian Ocean. Since an agreement in principle on such a conference had emerged among those States and all invited States, the Assembly in 1977 requested the *Ad Hoc* Committee to make preparations for a meeting of the littoral and hinterland States as a step towards convening the expected conference. That Meeting in 1979 set out recommendations concerning the convening of a full conference on the Indian Ocean and included them in its report to the General Assembly.[81] The *Ad Hoc* Committee, having been requested by the Assembly in its resolution 35/150 of 12 December 1980 to finalize all preparations for the Conference, was nevertheless unable to make definitive progress in the preparations for the Conference or to finalize the dates for its convening.

The discussion in 1982 in the *Ad Hoc* Committee on the Indian Ocean as well as in the General Assembly and other bodies reflected the unfavourable developments in the international situation and the continued adherence by Member States to two basically divergent positions with regard to the convening of the Conference on the Indian Ocean. Most delegations, including non-aligned and Eastern European States, held that the *Ad Hoc* Committee should proceed without delay to practical preparations for the Conference with a view to completing them for its opening in Colombo in 1983, as a necessary step in the implementation of the Declaration of the Indian Ocean as a Zone of Peace. On the other hand, the Western States concerned reiterated their position that the lack of real progress on the harmonization of views and the prevailing political and security climate in the region were not propitious for the convening of the Conference. However, by its resolution 37/96 of 13 December 1982,[82] the Assembly requested the *Ad Hoc* Committee to continue its work on the necessary harmonization of views on the remaining issues related to the convening of the Conference and to make every effort to accomplish the necessary preparatory work for the Conference.

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2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) Development and strengthening of good-neighbourliness between States

In its resolution 37/117 of 16 December 1982,[82] adopted upon the recommendation of the First Committee,[83] the General Assembly deemed it appropriate, taking into account the report of the Secretary-General concerning good-neighbourliness[84] together with other ideas and proposals which might be submitted subsequently by Member States, to clarify the elements of good-neighbourliness as part of a process of elaborating, at an appropriate time, a suitable international document on the subject.

(*b*) Implementation of the Declaration on the Strengthening of International Security[85]

In its resolution 37/118 of 16 December 1982,[86] adopted upon the recommendation of the First Committee,[87] the General Assembly called upon all States to contribute effectively to the implementation of the Declaration on the Strengthening of International Security; also called upon all States, in particular nuclear-weapon States and other militarily significant States, to take immediate steps aimed at promoting the system of collective security as envisaged in the Charter together with measures for the effective halting of the arms race and for the achievement of general and complete disarmament under effective international control; requested once again the Security Council to consider ways and means to ensure the implementation of the relevant provisions of the resolution as well as to examine all existing mechanisms and to propose new ones aimed at enhancing the authority and enforcement capacity of the Council in accordance with the Charter, and to explore also the possibility of holding periodic meetings of the Council, in conformity with Article 28 of the Charter, at the ministerial or higher level in specific cases, so as to enable it to play a more active role in preventing potential conflicts; reiterated the need for the Security Council, in particular its permanent members, to ensure the effective implementation of its decisions in compliance with the relevant provisions of the Charter; called upon all States participating in the Conference on Security and Co-operation in Europe, at Madrid, to take all possible measures and exert every effort in order to ensure substantial and balanced results of that meeting in the implementation of the principles and goals established by the Final Act of the Conference signed at Helsinki on 1 August 1975, as well as the continuity of the multilateral process initiated by the Conference, which had great significance for the strengthening of peace and security in Europe and in the world; and considered that the security of the Mediterranean and the security of the adjacent regions were interdependent and that further efforts were necessary for the creation of conditions of security and fruitful co-operation in all fields for all countries and peoples of the Mediterranean.

(*c*) Implementation of the collective security provisions of the Charter of the United Nations for the maintenance of international peace and security

In its resolution 37/119 of 16 December 1982,[88] adopted upon the recommendation of the First Committee,[89] the General Assembly requested the Security Council as a matter of high priority to study the question of implementation of the collective security provisions of the Charter of the United Nations, with a view to strengthening international peace and security, and to report to the General Assembly at its thirty-eighth session.

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

The Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space held its twenty-first session from 1 to 19 February 1982 at Geneva.[90] It continued on a priority basis its detailed consideration of the legal implications of remote sensing of the earth from space, with the aim of formulating draft principles. The Sub-Committee's Working Group on remote sensing had carried out a principle-by-principle reading of the draft principles as formulated at that time with special attention being paid to the discussion of principles XII (access of a sensed State to primary data obtained by remote sensing) and XV (dissemination or disposing of data or information on natural resources obtained by remote sensing). A number of issues remained to be agreed upon before the draft principles could be finalized.

The Sub-Committee re-established its Working Group on the agenda item concerning consideration of the possibility of supplementing the norms of international law relevant to the use of nuclear power sources in outer space. The Working Group had before it the report of the Legal Sub-Committee on its twentieth session in 1981;[91] the report of the Scientific and Techni-

cal Sub-Committee on its eighteenth session in 1981, which contained in its annex II the report of its Working Group on the use of nuclear power sources in outer space;[92] and the report of the Scientific and Technical Sub-Committee on the work of its nineteenth session in 1982.[93]

The Working Group agreed that in considering this agenda item it should begin with the discussion of assistance to States affected by the accidental re-entry of a space object with a nuclear power source on board, as it seemed most likely that the Working Group would make progress under that heading. The question was considered taking into account several working papers submitted by delegations[94] as well as various views expressed by them.

The Sub-Committee continued to consider the matters relating to the definition and/or delimitation of outer space and outer space activities, bearing in mind, *inter alia*, questions relating to the geostationary orbit. The Sub-Committee noted that the subject had been considered in chapter VI of the report of the Scientific and Technical Sub-Committee.[95] The Sub-Committee also had before it two working papers submitted to it at its eighteenth session and to the Committee on the Peaceful Uses of Outer Space at its twenty-second session by the delegation of the USSR.[96] Some delegations referred to resolution 3 of the 1979 World Administrative Radio Conference of ITU which, *inter alia*, stated that "attention should be given to relevant technical aspects concerning the special geographical situation of particular countries."

The Committee on the Peaceful Uses of Outer Space at its twenty-fifth session, held at United Nations Headquarters from 22 March to 1 April 1982, took note with appreciation of the report of the Legal Sub-Committee on the work of its twenty-first session and made a recommendation as to the work to be done by the Sub-Committee at its twenty-second session in 1983. At the same session the Committee also dealt with an agenda item concerning the elaboration of a draft set of principles governing the use by States of artificial earth satellites for direct television broadcasting. The Committee established an informal working group to consider the matter. The Working Group decided to consider the principle "Consultation and agreements between States" and to concentrate on paragraph 2 of that principle. Informal suggestions regarding the paragraph were discussed but no agreement was reached.

At its thirty-seventh session, by its resolution 37/89 of 10 December 1982,[97] adopted on the recommendation of the Special Political Committee,[98] the General Assembly endorsed the recommendations of the Committee on the Peaceful Uses of Outer Space concerning the future work of its Legal Sub-Committee and invited States that had not yet become parties to the international treaties governing the use of outer space[99] to give consideration to ratifying or acceding to those treaties.

By its resolution 37/90 of 10 December 1982,[100] adopted on the recommendation of the Special Political Committee,[101] the General Assembly, taking note of the report of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space,[102] endorsed the recommendations pertaining to international co-operation in the exploration and peaceful uses of outer space, as contained in the report of the Conference.[103]

Furthermore, by its resolution 37/92 of 10 December 1982,[104] adopted also on the recommendation of the Special Political Committee,[105] the General Assembly adopted the Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting. The text of the Principles is reproduced below.

Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting

A. Purposes and objectives

1. Activities in the field of international direct television broadcasting by satellite should be carried out in a manner compatible with the sovereign rights of States, including the principle of non-intervention, as well as with the right of everyone to seek, receive and impart information and ideas as enshrined in the relevant United Nations instruments.

2. Such activities should promote the free dissemination and mutual exchange of information and knowledge in cultural and scientific fields, assist in educational, social and economic development, particularly in the developing countries, enhance the qualities of life of all peoples and provide recreation with due respect to the political and cultural integrity of States.

3. These activities should accordingly be carried out in a manner compatible with the development of mutual understanding and the strengthening of friendly relations and co-operation among all States and peoples in the interest of maintaining international peace and security.

B. Applicability of international law

4. Activities in the field of international direct television broadcasting by satellite should be conducted in accordance with international law, including the Charter of the United Nations, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,[19] of 27 January 1967, the relevant provisions of the International Telecommunication Convention and its Radio Regulations and of international instruments relating to friendly relations and co-operation among States and to human rights.

C. Rights and benefits

5. Every State has an equal right to conduct activities in the field of international direct television broadcasting by satellite and to authorize such activities by persons and entities under its jurisdiction. All States and peoples are entitled to and should enjoy the benefits from such activities. Access to the technology in this field should be available to all States without discrimination on terms mutually agreed by all concerned.

D. International co-operation

6. Activities in the field of international direct television broadcasting by satellite should be based upon and encourage international co-operation. Such co-operation should be the subject of appropriate arrangements. Special consideration should be given to the needs of the developing countries in the use of international direct television broadcasting by satellite for the purpose of accelerating their national development.

E. Peaceful settlement of disputes

7. Any international dispute that may arise from activities covered by these principles should be settled through established procedures for the peaceful settlement of disputes agreed upon by the parties to the dispute in accordance with the provisions of the Charter of the United Nations.

F. State responsibility

8. States should bear international responsibility for activities in the field of international direct television broadcasting by satellite carried out by them or under their jurisdiction and for the conformity of any such activities with the principles set forth in this document.

9. When international direct television broadcasting by satellite is carried out by an international intergovernmental organization, the responsibility referred to in paragraph 8 above should be borne both by that organization and by the States participating in it.

G. Duty and right to consult

10. Any broadcasting or receiving State within an international direct television broadcasting satellite service established between them requested to do so by any other broadcasting or receiving State within the same service should promptly enter into consultations with the requesting State regarding its activities in the field of international direct television broadcasting by satellite, without prejudice to other consultations which these States may undertake with any other State on that subject.

H. Copyright and neighbouring rights

11. Without prejudice to the relevant provisions of international law, States should co-operate on a bilateral and multilateral basis for protection of copyright and neighbouring rights by means of appropriate agreements between the interested States or the competent legal entities acting under their jurisdiction. In such co-operation they should give special consideration to the interests of developing countries in the use of direct television broadcasting for the purpose of accelerating their national development.

I. Notification to the United Nations

12. In order to promote international co-operation in the peaceful exploration and use of outer space, States conducting or authorizing activities in the field of international direct television broadcasting by satellite should inform the Secretary-General of the United Nations, to the greatest extent possible, of the nature of such activities. On receiving this information, the Secretary-General should disseminate it immediately and effectively to the relevant specialized agencies, as well as to the public and the international scientific community.

J. Consultations and agreements between States

13. A State which intends to establish or authorize the establishment of an international direct television broadcasting satellite service shall without delay notify the proposed receiving State or States of such intention and shall promptly enter into consultation with any of those States which so requests.

14. An international direct television broadcasting satellite service shall only be established after the conditions set forth in paragraph 13 above have been met and on the basis of agreements and/or arrangements in conformity with the relevant instruments of the International Telecommunication Union and in accordance with these principles.

15. With respect to the unavoidable overspill of the radiation of the satellite signal, the relevant instruments of the International Telecommunication Union shall be exclusively applicable.

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3. ECONOMIC, SOCIAL, HUMANITARIAN AND CULTURAL QUESTIONS

(*a*) Environmental questions

(i) *Session of a special character of the Governing Council of the United Nations Environment Programme*[106]

The Governing Council of the United Nations Environment Programme met for its special session at UNEP headquarters, Nairobi, from 10 to 18 May 1982. It was convened in accordance with General Assembly resolutions 35/74 of 5 December 1980 and 36/189 of 17 December 1981 to commemorate the tenth anniversary of the United Nations Conference on the Human Environment (Stockholm, June 1972). At the outset of the general debate, delegations agreed that the session should provide a forum for evaluating the environmental situation in the light of changing circumstances; determining the issues requiring urgent attention and vigorous action; and, in the "spirit of Nairobi", undertaking renewed efforts to ensure that the earth was maintained as a suitable place for human life for present and future generations. It was suggested that the principles of the Stockholm Declaration[107] might be considered as a "code of environmental conduct" for the present and for the future. Delegations expressed their continuing support for the Declaration and the Plan of Action[108] as valid expressions of the international community's common will to deal with environmental problems in a co-operative manner. Among activities frequently mentioned by delegations as deserving special attention from UNEP in the coming decade was the progressive development of environmental law in line with the conclusions and recommendations of the *Ad Hoc* Meeting of Senior Government Officials Expert in Environmental Law.[109]

By its resolution I of 18 May 1982, "The environment in 1982: retrospect and prospect",[110] the Governing Council expressed its conviction that the principles of the Declaration of the United Nations Conference on the Human Environment were as valid at the time as they were in 1972, and, together with the principles adopted at Nairobi at the session of a special character, provided basic guidance for effective and sustained environmental progress. The Governing Council adopted also on 18 May 1982 the Nairobi Declaration,[110] the text of which reads as follows:

NAIROBI DECLARATION

The world community of States, assembled in Nairobi from 10 to 18 May 1982 to commemorate the tenth anniversary of the United Nations Conference on the Human Environment, held in Stockholm, having reviewed the measures taken to implement the Declaration and Action Plan adopted at that Conference, solemnly requests Governments and peoples to build on the progress so far achieved, but expresses its serious concern about the present state of the environment world-wide, and recognizes the urgent necessity of intensifying the efforts at the global, regional and national levels to protect and improve it.

1. The Stockholm Conference was a powerful force in increasing public awareness and understanding of the fragility of the human environment. The years since then have witnessed significant progress in environmental sciences; education, information dissemination and training have expanded considerably; in nearly all countries, environmental legislation has been adopted, and a significant number of countries have incorporated within their constitutions provisions for the protection of the environment. Apart from the United Nations Environment Programme, additional governmental and non-governmental organizations have been established at all levels, and a number of important international agreements in respect of environmental co-operation have been concluded. The principles of the Stockholm Declaration are as valid today as they were in 1972. They provide a basic code of environmental conduct for the years to come.

2. However, the Action Plan has only been partially implemented, and the results cannot be considered as satisfactory, due mainly to inadequate foresight and understanding of the long-term benefits of environmental protection, to inadequate co-ordination of approaches and efforts, and to unavailability and inequitable distribution of resources. For these reasons, the Action Plan has not had sufficient impact on the international community as a whole. Some uncontrolled or unplanned activities of man have increasingly caused environmental deterioration. Deforestation, soil and water degradation and desertification are reaching alarming proportions, and seriously endanger the living conditions in large parts of the world. Diseases associated with adverse environmental conditions continue to cause human misery. Changes in the atmosphere—such as those in the ozone layer, the increasing concentration of carbon dioxide and acid rain—pollution of the seas and inland waters, careless use and disposal of hazardous substances and the extinction of animal and plant species constitute further grave threats to the human environment.

3. During the last decade, new perceptions have emerged: the need for environmental management and assessment, the intimate and complex interrelationship between environment, development, population and resources and the strain on the environment generated, particularly in urban areas, by increasing population have become widely recognized. A comprehensive and regionally integrated approach that emphasizes this interrelationship can lead to environmentally sound and sustainable socio-economic development.

4. Threats to the environment are aggravated by poverty as well as by wasteful consumption patterns: both can lead people to over-exploit their environment. The International Development Strategy for the Third United Nations Development Decade and the establishment o a new international economic order are thus among the major instruments in the global effort to reverse environmental degradation. Combination of market and planning mechanisms can also favour sound development and rational environmental and resource management.

5. The human environment would greatly benefit from an international atmosphere of peace and security, free from the threats of any war, especially nuclear war, and the waste of intellectual and natural resources on armaments, as well as from *apartheid,* racial segregation and all forms of discrimination, colonial and other forms of oppression and foreign domination.

6. Many environmental problems transcend national boundaries and should, when appropriate, be resolved for the benefit of all through consultations amongst States and concerted international action. Thus, States should promote the progressive development of environmental law, including conventions and agreements, and expand co-operation in scientific research and environmental management.

7. Environmental deficiencies generated by conditions of underdevelopment, including external factors beyond the control of the countries concerned, pose grave problems which can be combated by a more

equitable distribution of technical and economic resources within and among States. Developed countries, and other countries in a position to do so, should assist developing countries affected by environmental disruption in their domestic efforts to deal with their most serious environmental problems. Utilization of appropriate technologies, particularly from other developing countries, could make economic and social progress compatible with conservation of natural resources.

8. Further efforts are needed to develop environmentally sound management and methods for the exploitation and utilization of natural resources and to modernize traditional pastoral systems. Particular attention should be paid to the role of technical innovation in promoting resource substitution, recycling and conservation. The rapid depletion of traditional and conventional energy sources poses new and demanding challenges for the effective management and conservation of energy and the environment. Rational energy planning among nations or groups of nations could be beneficial. Measures such as the development of new and renewable sources of energy will have a highly beneficial impact on the environment.

9. Prevention of damage to the environment is preferable to the burdensome and expensive repair of damage already done. Preventive action should include proper planning of all activities that have an impact on the environment. It is also important to increase public and political awareness of the importance of the environment through information, education and training. Responsible individual behaviour and involvement are essential in furthering the cause of the environment. Non-governmental organizations have a particularly important and often inspirational role to play in this sphere. All enterprises, including multinational corporations, should take account of their environmental responsibilities when adopting industrial production methods or technologies, or when exporting them to other countries. Timely and adequate legislative action is important in this regard.

10. The world community of States solemnly reaffirms its commitment to the Stockholm Declaration and Action Plan, as well as to the further strengthening and expansion of national efforts and international co-operation in the field of environmental protection. It also reaffirms its support for strengthening the United Nations Environment Programme as the major catalytic instrument for global environmental co-operation, and calls for increased resources to be made available, in particular through the Environment Fund, to address the problems of the environment. It urges all Governments and peoples of the world to discharge their historical responsibility, collectively and individually, to ensure that our small planet is passed over to future generations in a condition which guarantees a life in human dignity for all.

(ii) *Tenth session of the Governing Council of the United Nations Environment Programme*

The tenth session of the Governing Council was held at UNEP headquarters, Nairobi, from 20 to 31 May 1982.

It was agreed that, since the session had been immediately preceded by the Council's session of a special character, there should be no general debate. The Governing Council adopted a number of decisions dealing with legal matters, brief summaries of which are produced below.

By its decision 10/14 of 31 May 1982 on programme matters,[111] the Governing Council, in section VI, "Environmental law", recommended to the General Assembly that it reiterate the terms of General Assembly resolution 34/186 as a whole, including its requests to all States to use the principles on the conservation and harmonious utilization of natural resources shared by two or more States[112] as guidelines and recommendations in the formulation of bilateral and multilateral agreements regarding such resources, took note of the report of the Executive Director on international conventions and protocols in the field of the environment[113] and authorized him to transmit it, together with fifth supplement to the register of those conventions and protocols,[114] to the General Assembly at its thirty-seventh session in accordance with resolution 3436 (XXX) and proposed to the General Assembly that it recommend to States that they consider the guidelines contained in the conclusions of the study of the legal aspects concerning the environment related to offshore mining and drilling within the limits of national jurisdiction made by the Working Group of Experts on Environmental Law[115] when formulating relevant national legislation or undertaking negotiations for the conclusion of international agreements.

By its decision 10/17 of 31 May 1982 on protection of the ozone layer,[116] the Governing Council commended the valuable efforts of the *Ad hoc* Working Group of Legal and Technical

Experts for the Elaboration of a Global Framework Convention for the Protection of the Ozone Layer in initiating the work aimed at the elaboration of such a convention for the purpose of preventing adverse effects on man, life and the environment; approved the recommendations of the *Ad Hoc* Working Group for its future work; and urged all Governments and other interested parties to support actively the work of the *Ad Hoc* Working Group.

By its decision 10/20 of 31 May 1982 on expansion and implementation of the regional seas program,[116] the Governing Council, *inter alia,* recalling recommendations of the United Nations Conference on the Human Environment 32 and 33 on mammals, 46 to 48 on international co-operation in the field of living marine resources and 86 to 91 on the monitoring and study of marine pollution, its effects and appropriate remedies,[117] urged all member States to give fullest support to the adoption and ratification of relevant conventions and protocols for the protection and development of the regional marine environment and coastal areas.

By its decision 10/21 of 31 May 1982 on environmental law,[118] the Governing Council, noting with approval the report of the *Ad Hoc* Meeting of Senior Government Official Experts in Environmental Law, held at Montevideo from 28 October to 6 November 1981,[119] endorsed the conclusions and recommendations of Montevideo;[120] adopted the programme for the development and periodic review of environmental law;[121] requested the Executive Director to take, in consultation with Governments and international organizations concerned, all appropriate steps for the early implementation of the specific recommendations for initial action,[122] and to actively promote, particularly in co-operation and collaboration with the specialized agencies and other parts of the United Nations system within the context of the system-wide medium-term environmental programme, the appropriate implementation of the programme; called upon Governments and international organizations concerned to co-operate in and support the implementation of the programme; and further called upon United Nations organizations and bodies, and intergovernmental organizations outside the United Nations system, as well as non-governmental organizations active in the field of environmental law to co-operate fully with the United Nations Environment Programme in the implementation of the programme.

Furthermore, by its decision 10/24 of 31 May 1982 on follow-up to the *Ad Hoc* Meeting of Senior Government Officials Expert in Environmental Law,[123] the Governing Council, *inter alia,* recalling the report of the *Ad Hoc* Meeting,[124] authorized the Executive Director to convene, in 1983/1984, after consultations with Governments and the international agencies concerned regarding their preparation, three meetings of government experts to consider guidelines or principles on: (*a*) marine pollution from land-based sources; (*b*) environmentally sound transport, handling (including storage) and disposal of toxic and dangerous wastes; and (*c*) the exchange of information relating to trade in and use and handling of potentially harmful chemicals in particular pesticides.

(iii) *Consideration by the General Assembly*

At its thirty-seventh session, the General Assembly had before it the report of the Governing Council of the United Nations Environment Programme on its session of a special character and its tenth session.[125] By its resolution 37/219 of 20 December 1982,[126] adopted on the recommendation of the Second Committee,[127] the General Assembly recognized that the session of a special character had represented a unique opportunity for Governments to re-emphasize their continued commitment and support to the cause of the environment and the United Nations Environment Programme; endorsed the Nairobi Declaration[128] in which the world community, *inter alia,* had reaffirmed its commitment to the Declaration of the United Nations Conference on the Human Environment[106] and the Action Plan for the Human Environment[107] adopted at Stockholm, as well as its support for strengthening the United Nations Environment Programme as the major catalytic instrument for global environmental co-operation, and urged all Governments and peoples of the world to discharge their historical responsibility to ensure that the planet Earth was passed over to future generations in a condition that guaranteed a life in human dignity for all; and further endorsed the assessment by the UNEP Governing Council at its session of a special character of the major achievements and failures in the implementa-

tion of the Action Plan for the Human Environment; the identification at the session of the perceptions of environmental issues that had evolved over the past decade and the major environmental trends, potential problems and priorities for action by the United Nations system during the period 1982-1992; the basic orientation of UNEP for 1982-1992 as recommended by the Governing Council at the session; as well as the conclusions reached at the session with respect to the institutional arrangements for the United Nations Environment Programme.

Furthermore, by its resolution 37/217 of 20 December 1982,[129] adopted on the recommendation of the Second Committee,[130] the General Assembly had welcomed Governing Council decision 10/13 by which the Council had approved the structure and objectives of the system-wide medium-term environment programme[131] and had taken note of its general content; welcomed the adoption by the Governing Council, in its decision 10/21, of the programme for the development and periodic review of environmental law[132] and the measures to be taken for the early effective implementation of that programme, took note of Governing Council decision 10/14 and in that context took note of the progress report on co-operation in the field of the environment concerning natural resources shared by two or more States[133] and reiterated the terms of its resolution 34/186 as a whole; and took note of the conclusions of the study of the legal aspects concerning the environment related to offshore mining and drilling within the limits of national jurisdiction[134] made by the Working Group of Experts on Environmental Law and recommended that Governments should consider the guidelines contained in the conclusions when formulating national legislation or undertaking negotiations for the conclusion of international agreements for the prevention of pollution of the marine environment caused by offshore mining and drilling within the limits of national jurisdiction.

(iv) *World Charter for Nature*

By its resolution 37/7 of 28 October 1982,[135] the General Assembly, having considered the report of the Secretary-General on the revised draft World Charter for Nature[136] as well as his supplementary report,[137] adopted and solemnly proclaimed the World Charter for Nature. The text of the Charter reads as follows:

WORLD CHARTER FOR NATURE

The General Assembly,

Reaffirming the fundamental purposes of the United Nations, in particular the maintenance of international peace and security, the development of friendly relations among nations and the achievement of international co-operation in solving international problems of an economic, social, cultural, technical, intellectual or humanitarian character,

Aware that:

(*a*) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients,

(*b*) Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation,

Convinced that:

(*a*) Every form of life is unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognition, man must be guided by a moral code of action,

(*b*) Man can alter nature and exhaust natural resources by his action or its consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources,

Persuaded that:

(*a*) Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by man,

(*b*) The degradation of natural systems owing to excessive consumption and misuse of natural resources, as well as to failure to establish an appropriate economic order among peoples and among States, leads to the breakdown of the economic, social and political framework of civilization,

(*c*) Competition for scarce resources creates conflicts, whereas the conservation of nature and natural resources contributes to justice and the maintenance of peace and cannot be achieved until mankind learns to live in peace and to forsake war and armaments,

Reaffirming that man must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations,

Firmly convinced of the need for appropriate measures, at the national and international, individual and collective, and private and public levels, to protect nature and promote international co-operation in this field,

Adopts, to these ends, the present World Charter for Nature, which proclaims the following principles of conservation by which all human conduct affecting nature is to be guided and judged.

I. GENERAL PRINCIPLES

1. Nature shall be respected and its essential processes shall not be impaired.

2. The genetic viability on the earth shall not be compromised; the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival, and to this end necessary habitats shall be safeguarded.

3. All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitats of rare or endangered species.

4. Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist.

5. Nautre shall be secured against degradation caused by warfare or other hostile activities.

II. FUNCTIONS

6. In the decision-making process it shall be recognized that man's needs can be met only by ensuring the proper functioning of natural systems and by respecting the principles set forth in the present Charter.

7. In the planning and implementation of social and economic development activities, due account shall be taken of the fact that the conservation of nature is an integral part of those activities.

8. In formulating long-term plans for economic development, population growth and the improvement of standards of living, due account shall be taken of the long-term capacity of natural systems to ensure the subsistence and settlement of the populations concerned, recognizing that this capacity may be enhanced through science and technology.

9. The allocation of areas of the earth to various uses shall be planned and due account shall be taken of the physical constraints, the biological productivity and diversity and the natural beauty of the areas concerned.

10. Natural resources shall not be wasted, but used with a restraint appropriate to the principles set forth in the present Charter, in accordance with the following rules:

(*a*) Living resources shall not be utilized in excess of their natural capacity for regeneration;

(*b*) The productivity of soils shall be maintained or enhanced through measures which safeguard their long-term fertility and the process of organic decomposition, and prevent erosion and all other forms of degradation;

(*c*) Resources, including water, which are not consumed as they are used shall be reused or recycled;

(*d*) Non-renewable resources which are consumed as they ae used shall be exploited with restraint, taking into account their abundance, the rational possibilities of converting them for consumption, and the compatibility of their exploitation with the functioning of natural systems.

11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular:

(*a*) Activities which are likely to cause irreversible damage to nature shall be avoided;

(*b*) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed;

(*c*) Activities which may disturb nature shall be preceded by assessment of their consequences, and environmental impact studies of development projects shall be conducted sufficiently in advance, and if they are to be undertaken, such activities shall be planned and carried out so as to minimize potential adverse effects;

(*d*) Agriculture, grazing, forestry and fisheries practices shall be adapted to the natural characteristics and constraints of given areas;

(*e*) Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations.

12. Discharge of pollutants into natural systems shall be avoided and:

(*a*) Where this is not feasible, such pollutants shall be treated at the source using the best practicable means available;

(*b*) Special precautions shall be taken to prevent discharge of radioactive or toxic wastes.

13. Measures intended to prevent, control or limit natural disasters, infestations and diseases shall be specifically directed to the causes of these scourges and shall avoid adverse side-effects on nature.

III. IMPLEMENTATION

14. The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level.

15. Knowledge of nature shall be broadly disseminated by all possible means, particularly by ecological education as an integral part of general education.

16. All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation.

17. Funds, programmes and administrative structures necessary to achieve the objective of the conservation of nature shall be provided.

18 Constant efforts shall be made to increase knowledge of nature by scientific research and to disseminate such knowledge unimpeded by restrictions of any kind.

19. The status of natural processes, ecosystems and species shall be closely monitored to enable early detection of degradation or threat, ensure timely intervention and facilitate the evaluation of conservation policies and methods.

20. Military activities damaging to nature shall be avoided.

21. States and, to the extent they are able, other public authorities, international organizations, individuals, groups and corporations shall:

(*a*) Co-operate in the task of conserving nature through common activities and other relevant actions, including information exchange and consultations;

(*b*) Establish standards for products and manufacturing processes that may have adverse effects on nature, as well as agreed methodologies for assessing these effects;

(*c*) Implement the applicable international legal provisions for the conservation of nature and the protection of the environment;

(*d*) Ensure that activities within their jurisdictions or control do not cause damage to the natural systems located within other States or in the areas beyond the limits of natural jurisdiction;

(*e*) Safeguard and conserve nature in areas beyond national jurisdiction.

22. Taking fully into account the sovereignty of States over their natural resources, each State shall give effect to the provisions of the present Charter through its competent organs and in co-operation with other States.

23. All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation.

24. Each person has a duty to act in accordance with the provisions of the present Charter; acting individually, in association with others or through participation in the political process, each person shall strive to ensure that the objectives and requirements of the present Charter are met.

(*b*) International code of conduct on the transfer of technology

By its resolution 37/210 of 20 December 1982,[138] adopted on the recommendation of the Second Committee,[139] the General Assembly invited the Secretary-General of the United Nations Conference on an International Code of Conduct on the Transfer of Technology to undertake all the necessary work, including the identification of negotiating parameters, and the preparation of appropriate recommendations on all the issues outstanding in the draft code for submission to all members of the United Nations Conference on Trade and Development at least six weeks before the fifth session of the United Nations Conference on the International Code of Conduct on the Transfer of Technology.

(*c*) Office of the United Nations High Commissioner for Refugees[140]

During the reporting period, the Office of the United Nations High Commissioner for Refugees pursued the search for appropriate and durable solutions to the problems of refugees. At the same time, new arrivals in Africa, Central America, Asia and Europe required emergency relief and enlarged many existing refugee populations. Special attention was given by the international community to the situation of refugees in Africa; while there were promising results in some areas, continued vigilance and intensified action were required elsewhere. In South-East Asia, the resettlement of massive numbers of Indo-Chinese through the concerted efforts of resettlement countries, UNHCR and voluntary agencies has significantly reduced the overall case-load, although an important number still remain in need of durable solutions. Elsewhere in Asia, the situation of Afghan refugees in Pakistan continued to give rise to serious concern and to require a substantial amount of assistance. In Central America, the refugee situation remained tense and volatile, requiring increased UNHCR presence and action. New outflows of refugees in Europe called for involvement by the Office on a slightly larger scale than usual on that continent. Against the background of such serious developments in various parts of the world, the High Commissioner welcomed several important instances of voluntary repatriation, with encouraging signs that this would continue.

While some of these developments had certainly been positive, the more general context contained elements which necessarily gave rise to concern. There were indications that Governments in different areas of the world were adopting an increasingly restrictive approach in granting durable asylum and in identifying persons to be regarded as refugees of concern to the international community. This restrictive approach might be due to the continuing arrival of substantial numbers of asylum-seekers, leading in certain countries to a wave of public hostility against asylum-seekers in general. Moreover, the economic recession in a number of countries had encouraged the view that all aliens—including refugees—were potential competitors for limited or decreasing economic opportunities. This in turn had resulted in an identification of refugees with ordinary aliens, thereby overlooking their special situation.

In line with these developments, increasing attention was being paid in many quarters to the causes of refugee situations and to problems connected with large-scale influxes. In this specific context it was, however, of the utmost importance to ensure that the fundamental principles of international protection, defined in international instruments and in the legislation of many countries, should not in any way be weakened, endangered or called into question. This applied in particular to the principles relating to asylum and *non-refoulement*. With reference to the basic international refugee instruments, it should be noted that during 1982 two more States became parties to the 1951 Convention relating to the Status of Refugees and three more States became parties to the 1967 Protocol relating to the Status of Refugees.

During the reporting period, as in previous years, increased emphasis was given to the promotion, advancement and dissemination of principles of protection and of refugee law, including efforts to promote the teaching of international protection as a separate branch of international law. A landmark event in this regard was the Symposium on the Promotion,

Dissemination and Teaching of Fundamental Human Rights of Refugees which was held at Tokyo in December 1981 under the joint auspices of UNESCO, UNHCR and UNU. The Symposium, *inter alia*, considered the ways in which research into and the teaching of refugee law could be fostered both within institutions of higher learning and the public at large.

At its thirty-third session, held at Geneva from 11 to 20 October 1982, the Executive Committee of the Programme of the United Nations High Commissioner for Refugees considered the question of international protection of refugees and adopted a number of conclusions on the subject. The Committee, *inter alia*, reiterated the fundamental importance of international protection as a primary task entrusted to the High Commissioner under the statute of his Office; reaffirmed the importance of the basic principles of international protection and, in particular, the principle of *non-refoulement*, which was progressively acquiring the character of a peremptory rule of international law; expressed concern that the problems arising in the field of international protection had increased in seriousness since the Committee's thirty-second session and that the basic rights of refugees and asylum-seekers had been violated in different areas of the world, *inter alia*, through military attacks on refugee camps and settlements, acts of piracy and the forcible return of refugees and asylum-seekers to their countries of origin; noted with satisfaction the continuing progress as regards further accessions to the 1951 Convention relating to the Status of Refugees[141] and the 1967 Protocol thereto,[142] and welcomed accession to those basic international refugee instruments by Japan, Bolivia and China; expressed the hope that further States would accede to the Convention and Protocol and to the other international instruments defining the basic rights of refugees at the universal and the regional levels; welcomed the increasingly broad acceptance of the principles of international protection on the part of Governments and the efforts undertaken by the High Commissioner to promote a wider understanding of international refugee law and urged the continued development and elaboration of refugee law in response to the new and changing humanitarian and other problems of refugees and aslyum-seekers; welcomed the High Commissioner's initiative to organize courses of lectures on refugee law in co-operation with the International Institute of Humanitarian Law at San Remo, Italy; reiterated the fundamental character of the obligation to rescue asylum-seekers in distress at sea; and stressed the importance for coastal States, flag States, countries of resettlement and the international community as a whole to take appropriate steps to facilitate the fulfilment of that obligation in its various aspects; stressed the fundamental importance of respecting the relevant principles of international humanitarian law as reflected in the note prepared by the Office of the High Commissioner;[143] reiterated the importance of the establishment of procedures for determining refugee status and urged those States parties to the 1951 Convention and 1967 Protocol that had not yet done so to establish such procedures in the near future; and recognized that, in view of the importance of the problem of manifestly unfounded or abusive applications for refugee status, the question should be further examined by the Sub-Committee of the Whole on International Protection at its next meeting, as a separate item on its agenda and on the basis of a study to be prepared by UNHCR.

By its resolution 37/195 of 18 December 1982,[144] adopted on the recommendation of the Third Committee,[145] the General Assembly reaffirmed the fundamental nature of the High Commissioner's function to provide international protection and the need for Governments to co-operate fully with him to facilitate the effective exercise of the essential function, in particular, by acceding to and fully implementing the relevant international and regional instruments and by scrupulously observing the principles of asylum and *non-refoulement*. By its resolution 37/196 of 18 December 1982,[146] adopted on the recommendation of the Third Committee,[147] the General Assembly decided to continue the Office of the United Nations High Commissioner for Refugees for a further period of five years from 1 January 1984. Furthermore, by its resolution 37/197,[148] adopted also on the recommendation of the Third Committee,[149] the General Assembly requested the Secretary-General, in close co-operation with the Secretary-General of the Organization of African Unity and the United Nations High Commissioner for Refugees, to convene at Geneva in 1984 a second International Conference on Assistance to Refugees in Africa.

(*d*) International drug control

In the course of 1982, one more State became a party to the 1961 Single Convention on Narcotic Drugs, 1961,[150] and one more State as well to the 1971 Convention on Psychotropic Substances.[151]

By its resolution 37/168 of 17 December 1982,[152] adopted on the recommendation of the Third Committee,[153] the General Assembly approved the projects recommended by the Commission on Narcotic Drugs in its resolution 1 (S-VII)[154] for implementation in 1983; urged all Member States, non-member States parties to the international drug control treaties, specialized agencies and other international organizations and private institutions concerned with the drug abuse problem to strengthen their participation in and support for activities related to the International Drug Abuse Control Strategy and the programme of action[154] and also urged Member States to contribute or to increase their contributions to the United Nations Fund for Drug Abuse Control in order to ensure the success of the International Drug Abuse Control Strategy and to give firm impetus to the world community's battle against international drug traffickers and against drug abuse.

(*e*) Crime prevention and criminal justice

PRINCIPLES OF MEDICAL ETHICS[155]

By its resolution 37/194 of 18 December 1982,[156] adopted on the recommendation of the Third Committee,[157] the General Assembly adopted the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment; called upon all Governments to give the Principles the widest possible distribution, in particular among medical and paramedical associations and institutions of detention or imprisonment, in an official language of the State; and invited all relevant intergovernmental organizations, in particular the World Health Organization, and non-governmental organizations concerned to bring the Principles to the attention of the widest possible group of individuals, especially those active in the medical and paramedical field. The text of the Principles reads as follows:

PRINCIPLES OF MEDICAL ETHICS RELEVANT TO THE ROLE OF HEALTH PERSONNEL, PARTICULARLY PHYSICIANS, IN THE PROTECTION OF PRISONERS AND DETAINEES AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Principle 1

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

Principle 2

It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.[158]

Principle 3

It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

Principle 4

It is a contravention of medical ethics for health personnel, particularly physicians:

(*a*) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments;[159]

(*b*) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

Principle 5

It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health.

Principle 6

There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.

(*f*) Human rights question

(i) *Status and implementation of international instruments*

a. *International Covenants on Human Rights*[160]

In 1982, four more States became parties to the International Covenant on Economic, Social and Cultural Rights;[161] three more States became parties to the International Covenant on Civil and Political Rights;[162] and one more State became a party to the Optional Protocol to the International Covenant on Civil and Political Rights.[162]

By its resolution 37/191 of 18 December 1982,[163] adopted on the recommendation of the Third Committee,[164] the General Assembly noted with appreciation the report of the Human Rights Committee on its fourteenth, fifteenth and sixteenth sessions;[165] took note of Economic and Social resolution 1982/33 of 6 May 1982 concerning the review of the composition, organization and administrative arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights; again invited all States that had not yet done so to become parties to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights as well as to consider acceding to the Optional Protocol to the International Covenant on Civil and Political Rights; also invited the States parties to the International Covenant on Civil and Political Rights to consider making the declaration provided for in article 41 of the Covenant; appreciated that the Human Rights Committee continued to strive for uniform standards in the implementation of the provisions of the International Covenant on Civil and Political Rights and of the Optional Protocol thereto; and requested the Secretary-General to continue to keep the Human Rights Committee informed of the activities of the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women and also to transmit the annual reports of the Human Rights Committee to those bodies.

b. *International Convention on the Elimination of All Forms of Racial Discrimination*[166]

In 1982, six more States became parties to the Convention. By its resolution 37/44 of 3 December 1982,[167] adopted on the recommendation of the Third Committee,[168] the General Assembly, taking note of decision 1 (XXV) of 15 March 1982 of the Committee on the Elimination of Racial Discrimination, entitled "General recommendation VI",[169] appealed to all

States parties to the Convention to fulfil their obligations under article 9 of the Convention and to submit their reports within the appropriate time and requested the Secretary-General to invite the views and observations of States parties to the Convention on the causes of the situation described in general recommendation VI and to submit an analysis of the replies received in a report to the General Assembly at its thirty-eighth session, together with such suggestions as he might wish to make with a view to improving the situation. It also requested the Secretary-General, in preparing his report, to consider the situation described in general recommendation VI of the Committee in the overall framework of reporting obligations that Member States had under the various human rights instruments in order to be able to take into account similar and related problems which might have arisen in compliance with such obligations. Furthermore, by its resolution 37/45 of 3 December 1982,[170] adopted on the recommendation of the Third Committee,[171] the General Assembly expressed its satisfaction with the increase in the number of States which had ratified the Convention or acceded thereto; reaffirmed its conviction that ratification of or accession to the Convention on a universal basis and implementation of its provisions were necessary for the realization of the objectives of the Decade for Action to Combat Racism and Racial Discrimination; requested States that had not yet become parties to the Convention to ratify it or accede thereto; and called upon States parties to the Convention to consider the possibility of making the declaration provided for in article 14 of the Convention whereby a State party may recognize the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of violation by that State party of any of the rights set forth in the Convention. Moreover, by its resolution 37/46 of 3 December 1982,[172] adopted also on the recommendation of the Third Committee,[173] the General Assembly called upon all Member States to adopt effective legislative, socio-economic and other necessary measures in order to ensure the elimination or prevention of discrimination based on race, colour, descent or national or ethnic origin; called upon the States parties to the Convention to protect fully, by the adoption of relevant legislative and other measures, the rights of national or ethnic minorities, as well as the rights of indigenous populations; reiterated its invitation to the States parties to the Convention to furnish the Committee on the Elimination of Racial Discrimination with information on the implementation of the provisions of the Convention; and took note with appreciation of the Committee's contribution to the work of the Preparatory Sub-Committee for the Second World Conference to Combat Racism and Racial Discrimination and to the regional seminars held in implementation of the Programme for the Decade for Action to Combat Racism and Racial Discrimination.

c. *International Convention on the Suppression and Punishment of the Crime of* Apartheid[174]

In 1982, four more States became parties to the Convention. By its resolution 37/47 of 3 December 1982,[175] adopted on the recommendation of the Third Committee,[176] the General Assembly appealed once again to those States that had not yet done so to ratify or to accede to the Convention without further delay; appreciated the constructive role played by the Group of Three of the Commission on Human Rights, established in accordance with article IX of the Convention, in analysing the periodic reports of States and in publicizing the experience gained in the international struggle against the crime of *apartheid;* requested States parties to the Convention to take fully into account the guidelines prepared by the Group of Three;[177] called upon all States parties to the Convention to implement fully article IV thereof concerning the prevention and prosecution of the crime of *apartheid* by adopting legislative, judicial and administrative measures to prosecute, bring to trial and punish, in accordance with their jurisdiction, persons responsible for, or accused of, the acts enumerated in article II of the Convention; requested the Commission of Human Rights to continue to undertake the functions set out in article X of the Convention and invited the Commission to intensify, in co-operation with the Special Committee against *Apartheid,* its efforts to compile periodically the progressive list of individuals, organizations, institutions and representatives of States deemed responsible for crimes enumerated in article II of the Convention, as well as of those against whom or which

legal proceedings had been undertaken; requested the Secretary-General to intensify his efforts, through appropriate channels, to disseminate information on the Convention and its implementation with a view to further promoting ratification of or accession to the Convention; and called upon all States to participate actively in the Second World Conference to Combat Racism and Racial Discrimination, to be held in 1983, and to contribute to achieving effective results at that Conference.

d. *Status of the Convention on the Elimination of All Forms of Discrimination against Women*[178]

In 1982, 13 more States became parties to the Convention. By its resolution 37/64 of 3 December 1982,[179] adopted on the recommendation of the Third Committee,[180] the General Assembly noted with appreciation that an increasing number of Member States had ratified or acceded to the Convention, invited all States that had not yet done so to become parties to the Convention by ratifying or acceding to it and welcomed the election of the twenty-three members of the Committee on the Elimination of Discrimination against Women on 16 April 1982,[181] as well as the fact that the Committee had already commenced its work.

(ii) *Torture and other cruel, inhuman or degrading treatment or punishment*[182]

By its resolution 37/193 of 18 December 1982,[183] adopted on the recommendation of the Third Committee,[184] the General Assembly requested the Commission on Human Rights to complete as a matter of highest priority, at its thirty-ninth session, the drafting of a convention on torture and other cruel, inhuman or degrading treatment or punishment, with a view to submitting a draft, including provisions for the effective implementation of the future convention, to the General Assembly at its thirty-eighth session.

(iii) *Summary or arbitrary executions*

By its resolution 37/182 of 17 December 1982,[185] adopted on the recommendation of the Third Committee,[186] the General Assembly, recalling its resolution 36/22 of 9 November 1981, in which it had condemned the practice of summary or arbitrary executions, and taking note of resolution 1982/13 of 7 September 1982 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,[187] in which the Sub-Commission recommended that effective measures should be adopted to prevent the occurrence of summary and arbitrary executions, welcomed Economic and Social Council resolution 1982/35 of 7 May 1982, in which it was decided to appoint for one year a special rapporteur to examine the questions related to summary or arbitrary executions and to submit to the Commission on Human Rights, at its thirty-ninth session, a comprehensive report on the occurrence and extent of the practice of such executions, together with his conclusions and recommendations; requested all Governments to cooperate with and to assist the Special Rapporteur of the Commission in the preparation of his report; and requested the Commission on Human Rights, on the basis of the report of the Special Rapporteur to be prepared in conformity with Economic and Social Council resolution 1982/35, to make recommendations concerning appropriate action to combat and eventually eliminate the practice of summary or arbitrary executions.

(iv) *Capital punishment*[188]

By its resolution 37/192 of 18 December 1982,[189] adopted on the recommendation of the Third Committee,[190] the General Assembly requested the Commission on Human Rights to consider the idea of elaborating a draft of a second optional protocol to the International Covenant on Civil and Political Rights,[162] aiming at the abolition of the death penalty, at its thirty-ninth and fortieth sessions, taking into account the documents considered by the General Assembly on the subject as well as the views of Governments thereon, and to submit a report, through the Economic and Social Council, to the Assembly at its thirty-ninth session.

(v) *Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms*

By its resolution 37/199 of 18 December 1982,[191] adopted on the recommendation of the Third Committee,[192] the General Assembly reiterated its request that the Commission on Human Rights continue its current work on the overall analysis with a view to further promoting and improving human rights and fundamental freedoms and on the overall analysis of the alternative approaches and ways and means for improving the effective enjoyment of human rights and fundamental freedoms, in accordance with the provisions of General Assembly resolution 32/130 of 16 December 1977 and the concepts set forth therein, bearing in mind also other relevant texts; reaffirmed that it was of paramount importance for the promotion of human rights and fundamental freedoms that Member States should undertake specific obligations through accession to, or ratification of, international instruments in the field and, consequently, that the standard-setting work within the United Nations system in the field of human rights and the universal acceptance and implementation of the relevant international instruments should be encouraged; reiterated that the international community should accord, or continue to accord, priority to the search for solutions to mass and flagrant violations of human rights of the peoples and individuals affected by situations such as those described in paragraph 1 (*e*) of its resolution 32/130, paying due attention also to other situations of violations of human rights; expressed its deep concern at the current situation with regard to the achievement of the objectives and goals for the establishment of the new international economic order and its adverse effects on the full realization of human rights and, in particular, the right to development; reaffirmed that international peace and security were essential elements in the full realization of the right to development; declared that the right to development was an inalienable human right; considered it necessary that all Member States promote international co-operation on the basis of respect for the independence and sovereignty of each State, including the right of each people to choose its own socio-economic and political system, with a view to resolving international problems of an economic, social and humanitarian character; reaffirmed also that, in order to ensure the full enjoyment of all rights and complete personal dignity, it was necessary to promote the right to education and the right to work, health and proper nourishment, through adoption of measures at the national level, including those that provided for the right of workers to participate in management, as well as adoption of measures at the international level, including the establishment of the new international economic order; and requested the Commission on Human Rights to take the necessary measures to promote the right to development, taking into account the results achieved by this Working Group of Governmental Experts on the Right to Development, and welcomed the decision of the Commission, in its resolution 1982/17 of 9 March 1982,[193] that the Working Group should continue its work with the aim of presenting as soon as possible a draft resolution on the right to development. Furthermore, by its resolution 37/200 of 18 December 1982,[194] adopted also on the recommendation of the Third Committee,[195] the General Assembly affirmed that a primary aim of international co-operation in the field of human rights was a life of freedom and dignity for each human being, that all human rights and fundamental freedoms were indivisible and interrelated and that the promotion and protection of one category of rights should never exempt or excuse States from the promotion and protection of the others; recognized that the realization of the potentialities of the human person in harmony with the community should be seen as the central purpose of development; affirmed that everyone had the right to participate in, as well as to benefit from, the development process; urged all States to co-operate with the Commission on Human Rights in its study of violations of human rights and fundamental freedoms in any part of the world; requested the Commission on Human Rights at its thirty-ninth session to continue its efforts to improve the capacity of the United Nations system to take urgent action in cases of serious violations of human rights, bearing in mind the proposals submitted by the Sub-Committee on Prevention of Discrimination and Protection of Minorities on possible terms of reference for the draft mandate of a High Commissioner for Human Rights;[196] requested the Secretary-General to take appropriate measures to strengthen the Centre for Human Rights of the Secretariat; and also requested the Secretary-General, in the light of the thirty-fifth anniversary of

the Universal Declaration of Human Rights, to include in the updated study on international conditions and human rights, which the General Assembly, in its resolution 36/133 of 14 December 1981, had requested him to submit to it at its thirty-eighth session, an overview of trends in the field of human rights with emphasis on the problems still being encountered.

(vi) *New international humanitarian order*

By its resolution 37/201 of 18 December 1982,[197] adopted on the recommendation of the Third Committee,[198] the General Assembly, bearing in mind that all Governments that had provided their views on the proposal for the promotion of a new international humanitarian order had supported the intentions underlying the proposal and the need for developing greater international awareness of humanitarian issues and more effective means of dealing with such issues,[199] noting the proposal for the establishment, outside the framework of the United Nations, of an Independent Commission on International Issues, composed of leading personalities in the humanitarian field or having wide experience of government or world affairs,[200] and recognizing further that the deliberations of such a commission, if established, could be useful for further study of the proposal, requested Governments that had not yet done so to communicate their views on the proposal to the Secretary-General.

(vii) *Right to education*

By its resolution 37/178 of 17 December 1982,[201] adopted on the recommendation of the Third Committee,[202] the General Assembly, recalling the International Covenant on Economic, Social and Cultural Rights, adopted by its resolution 2200 A (XXI) of 16 December 1966, which recognized the right of everyone to education, took note of the conclusions contained in the report of the Director-General of the United Nations Educational, Scientific and Cultural Organization on the right to education;[203] again invited all States to consider the adoption of appropriate legislative, administrative and other measures, including material guarantees, in order to ensure full implementation of the right to universal education through, *inter alia*, free and compulsory primary education, universal and gradually free-of-charge secondary education, equal access to all educational facilities and the access of the young generation to science and culture; invited all States to give all necessary attention to defining and determining in a more precise manner the means for implementing the provisions concerning the role of education in the International Development Strategy for the Third United Nations Development Decade; appealed once again to all States, in particular the developed countries, to support actively, through fellowships and other means, including the general increasing of resources for education and training, the efforts of the developing countries in the education and training of national personnel needed in industry, agriculture and other economic and social sectors; and invited UNESCO to continue its intensive efforts for the promotion at the universal level of the right to education and to inform the General Assembly, in appropriate forms, on the progress achieved in the field.

(viii) *Measures to improve the situation and ensure the human rights and dignity of all migrant workers*

By its resolution 37/170 of 17 December 1982,[204] adopted on the recommendation of the Third Committee,[205] the General Assembly took note of the report of the Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families;[206] invited the Secretary-General to transmit to Governments the report of the Working Group so as to allow the members of the Group to continue their task during the inter-sessional meeting to be held in the spring of 1983, as well as to transmit the results obtained at that meeting in order that the General Assembly might consider them during its thirty-eighth session; and also invited the Secretary-General to transmit the above-mentioned documents to the competent organs of the United Nations and to international organizations concerned, for their information, so as to enable them to continue their co-operation with the Working Group.

(ix) *Question of the international legal protection of the human rights of individuals who are not citizens of the country in which they live*

By its resolution 37/169 of 17 December 1982,[207] adopted on the recommendation of the Third Committee,[208] the General Assembly took note of the report of the open-ended Working Group established for the purpose of concluding the elaboration of the draft declaration on the human rights of individuals who are not citizens of the country in which they live,[209] as well as the fact that it had not had sufficient time to conclude its task; requested the Secretary-General to transmit to Governments, competent organs of the United Nations system and international organizations concerned the reports of the open-ended working groups established at the thirty-fifth,[210] thirty-sixth[211] and thirty-seventh sessions[209] and to invite them to bring up to date the documents they had submitted in accordance with Economic and Social Council decision 1979/36 or to submit new comments on the basis of the above-mentioned reports, and decided to establish, at its thirty-eighth session, an open-ended working group for the purpose of concluding the elaboration of the draft declaration on the subject.

(x) *Question of a convention on the rights of the child*

By its resolution 37/190 of 18 December 1982,[212] adopted on the recommendation of the Third Committee,[213] the General Assembly, aware of the importance of an international convention on the rights of the child for more effective protection of children's rights and noting with appreciation that further progress had been made in the elaboration of a draft convention on the subject prior to[214] and during[215] the thirty-eighth session of the Commission on Human Rights, invited all Member States to offer their effective contribution to the elaboration of a draft convention and requested the Commission on Human Rights to give the highest priority at its thirty-ninth session to the question of completing a draft convention.

(xi) *Elimination of all forms of religious intolerance*

By its resolution 37/187 of 18 December 1982,[216] adopted on the recommendation of the Third Committee,[217] the General Assembly, reaffirming its resolution 36/55 of 25 November 1981, in which it had proclaimed the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,[218] endorsed Economic and Social Council decision 1982/138 of 7 May 1982, in which the Council had requested the Secretary-General to disseminate widely, as a matter of priority and in as many languages as possible, the Declaration; invited all Governments to take the necessary measures to ensure wide publicity for the Declaration; requested the Secretary-General to bring the Declaration to the attention of the appropriate specialized agencies and other appropriate bodies within the United Nations system for the consideration of measures to implement the Declaration, and to report to the Commission on Human Rights at its thirty-ninth session on the views expressed; and requested the Commission on Human Rights to consider what measures might be necessary to implement the Declaration and to encourage understanding, tolerance and respect in matters relating to freedom of religion or belief and to report, through the Economic and Social Council, to the General Assembly at its thirty-eighth session.

(xii) *Regional arrangements for the protection of human rights*

By its resolution 37/172 of 17 December 1982,[219] adopted on the recommendation of the Third Committee,[220] the General Assembly, recalling its resolutions 32/127 of 16 December 1977, 33/167 of 20 December 1978, 34/171 of 17 December 1979, 35/197 of 15 December 1980 and 36/154 of 16 December 1981 concerning regional arrangements for the promotion of human rights, noted with satisfaction the progress achieved so far in the promotion and protection of human rights at the regional level, under the auspices of the United Nations, the specialized agencies and the regional intergovernmental organizations; commended the Organization of African Unity for its continuing efforts to promote respect for the guarantees and norms

of Human and Peoples' Rights[221] and the efforts to obtain its early entry into force; and requested the Secretary-General to compile and update his reports on the status of regional arrangements for the promotion and protection of human rights and to include therein a review of the exchanges of experience and information between the United Nations and regional organs and organizations for the promotion and protection of human rights as well as ways and means to further those exchanges, and to report to the General Assembly at its thirty-eighth session.

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

The eleventh session of the Third United Nations Conference on the Law of the Sea was held at United Nations Headquarters in New York from 8 March to 30 April 1982 with the aim of the adoption of a convention.[222] Since that goal was not reached, the eleventh session of the Conference was resumed at the same place from 22 to 24 September 1982.[223] The final part of the eleventh session and Conclusion of the Conference was held at Montego Bay, Jamaica, from 6 to 10 December 1982.[223]

A total of 152 States and the United Nations Council for Namibia participated in the eleventh session: 152 of them attended the first part[224] and 133 States as well as the United Nations Council for Namibia participated in the final part of the session.[225]

In accordance with the programme of work for the final decision-making session,[226] the main objective of the session was the expeditious and successful completion of the work of the Conference. To achieve that goal the Conference at the first stage of the session continued consultations and negotiations on pending issues. Three issues had been identified as being outstanding: treatment to be accorded to preparatory investments; the resolution establishing the Preparatory Commission; and the question of participation in the convention. Apart from those outstanding issues, delegations suggested improvements to the text of the draft convention with a view to promoting general agreement, and the informal plenary met to consider the recommendations of the Drafting Committee resulting from its inter-sessional meetings held from 18 January to 26 February 1982.

At its 182nd plenary meeting, on 30 April 1982, the Conference adopted[227] the United Nations Convention on the Law of the Sea,[228] as well as resolution I establishing the Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea;[229] resolution II governing preparatory investment in pioneer activities relating to polymetallic nodules;[230] resolution III providing that provisions concerning rights and interests under the Convention shall be implemented for the benefit of the peoples of the territories that had not attained full independence or were under colonial domination, with a view to promoting their well-being and development;[231] and resolution IV concerning national liberation movements.[232] The Conference also adopted a resolution on development of national marine science, technology and ocean service infrastructures.[233] During its resumed session (New York, 22 and 24 September), the Conference completed its consideration of the Drafting Committee recommendations and approved the Final Act and decided to accept the invitation from the Government of Jamaica to host the Conference in Jamaica from 6 to 10 December 1982 for the signing of the Final Act and the opening of the Convention for signature. At the final part of the session (Montego Bay, 6 to 10 December), the Final Act of the Conference[234] was signed and the United Nations Convention on the Law of the Sea[235] was opened for signature.[236] The Conference heard statements by delegations on the Convention and the related resolutions.

Consideration by the General Assembly

By its resolution 37/66 of 3 December 1982,[237] the General Assembly, taking note of the adoption, on 30 April 1982, of the United Nations Convention on the Law of the Sea[235] and the

related resolutions by an overwhelming majority of States, welcomed the adoption of the Convention and the related resolutions; called upon all States to consider signing and ratifying the Convention at the earliest possible date to allow the effective entry into force of the new legal régime for the uses of the sea and its resources; appealed to the Governments of all States to refrain from taking any action directed at undermining the Convention or defeating its object and purpose; approved the assumption by the Secretary-General of the responsibilities entrusted to him under the Convention and the related resolutions and also approved the stationing of an adequate number of secretariat staff in Jamaica for the purpose of servicing the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea, as required by its functions and programme of work; authorized the Secretary-General to convene the Preparatory Commission and to provide the Commission with the services required to enable it to perform its functions efficiently and expeditiously; and approved the financing of the expenses of the Preparatory Commission from the regular budget of the United Nations.

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5. INTERNATIONAL COURT OF JUSTICE[238, 239]

Cases before the Court

(i) *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*[240]

On 24 February 1982, the Court delivered at a public sitting a judgment of which a summary outline and the complete text of the operative paragraph are given below.[241]

The Court began its judgment by recapitulating the various stages of the proceedings (paras. 1-15), defining the geographical setting of the dispute, namely the region known as the Pelagian Block or Basin (paras. 17-20 and 32-36), and noting that petroleum prospection and exploitation had been carried out on the continental shelf (para. 21).

Turning to the Special Agreement between Tunisia and Libya by which the proceedings had been instituted (paras. 22-31), the Court recalled that under article 1, paragraph 1, it had been requested to state "the principles and rules of international law" which might "be applied for the delimitation of the areas of the continental shelf" respectively appertaining to each of the two States, and had further been specifically called upon, in rendering its decision, to take account of the following three factors: (*a*) equitable principles; (*b*) the relevant circumstances which characterize the area; and (*c*) the new accepted trends in the Third United Nations Conference on the Law of the Sea.

Article 1, second paragraph, of the Special Agreement required the Court to "clarify the practical method for the application of these principles and rules . . . so as to enable the experts of the two countries to delimit these areas without difficulties". The Court was therefore not called upon itself to draw the actual delimitation line. The parties were in disagreement as to the scope of the task entrusted to the Court by that text, but a careful analysis of the pleadings and arguments on the point led the Court to conclude that there was only a difference of emphasis as to the respective roles of the Court and of the experts. Articles 2 and 3 of the Special Agreement made it clear that the parties recognized the obligation to comply with the judgment of the Court, which would have the effect and binding force attributed to it under Article 94 of the Charter, Articles 59 and 60 of the Statute and Article 94, paragraph 2, of the Rules of Court. The Parties were to meet as quickly as possible after the judgment was given with a view to the conclusion of a treaty. The Court's view was that at that stage there would be no need for negotiation between the experts of the Parties regarding the factors to be taken into account in their calculations, since the Court would have determined that matter.

The Court then dealt with the question of the principles and rules of international law applicable to the delimitation (paras. 36-107), which it examined in the light of the parties' arguments. After first setting forth some general considerations (paras. 36-44), it examined the

role of the new accepted trends at the Third United Nations Conference on the Law of the Sea (paras. 45-50). Next it turned to the question whether the natural prolongation of each of the two States could be determined on the basis of physical criteria (paras. 51-68); having found that there was just one continental shelf common to both States, if concluded that the extent of the continental shelf area appertaining to each could not be ascertained from criteria of natural prolongation. The Court went on to consider the implications of equitable principles (paras. 69-71) and to review the various circumstances characterizing the area which were likely to be relevant for the purposes of the delimitation (paras. 72-107).

Finally, the Court examined the various methods of delimitation (paras. 108-132) contended for by the parties, explained why it could not accept them, and indicated what method would in its judgment enable an equitable solution to be reached in the present case.

The conclusions reached by the Court are indicated in the operative paragraph of the judgment, which is worded as follows:

"The Court, by ten votes to four, finds that:

"A. The princples and rules of international law applicable for the delimitation, to be effected by agreement in implementation of the present judgment, of the areas of continental shelf appertaining to the Republic of Tunisia and the Socialist People's Libyan Arab Jamahiriya respectively, in the area of the Pelagian Block in dispute between them as defined in paragraph B, subparagraph (1), below, are as follows:

"(1) the delimitation is to be effected in accordance with equitable principles, and taking account of all relevant circumstances;

"(2) the area relevant for the delimitation constitutes a single continental shelf as the natural prolongation of the land territory of both Parties, so that in the present case, no criterion for delimitation of shelf areas can be derived from the principle of natural prolongation as such;

"(3) in the particular geographical circumstances of the present case, the physical structure of the continental shelf areas is not such as to determine an equitable line of delimitation.

"B. The relevant circumstances referred to in paragraph A, subparagraph (1), above, to be taken into account in achieving an equitable delimitation include the following:

"(1) the fact that the area relevant to the delimitation in the present case is bounded by the Tunisian coast from Ras Ajdir to Ras Kaboudia and the Libyan coast from Ras Ajdir to Ras Tajoura and by the parallel of latitude passing through Ras Kaboudia and the meridian passing through Ras Tajoura, the rights of third States being reserved;

"(2) the general configuration of the coasts of the parties, and in particular the marked change in direction of the Tunisian coastline between Ras Ajdir and Ras Kaboudia;

"(3) the existence and position of the Kerkennah Islands;

"(4) the land frontier between the parties, and their conduct prior to 1974 in the grant of petroleum concessions, resulting in the employment of a line seawards from Ras Ajdir at an angle of approximately 26° east of the meridian, which line corresponds to the line perpendicular to the coast at the frontier point which had in the past been observed as a *de facto* maritime limit;

"(5) the element of a reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the coastal State and the length of the relevant part of its coast, measured in the general direction of the coastlines, account being taken for this purpose of the effects, actual or prospective, of any other continental shelf delimitation between States in the same region.

"C. The practical method for the application of the aforesaid principles and rules of international law in the particular situation of the present case is the following:

"(1) the taking into account of the relevant circumstances which characterize the area defined in paragraph B, subparagraph (1), above, including its extent, calls for it to be treated, for the purpose of its delimitation between the Parties to the present case, as made up of two sectors, each requiring the application of a specific method of delimitation in order to achieve an overall equitable solution;

"(2) in the first sector, namely in the sector closer to the coast of the Parties, the starting point for the line of delimitation is the point where the outer limit of the territorial sea of the parties is intersected by a straight line drawn from the land frontier point of Ras Ajdir through the point 33° 55′ N, 12° E, which line runs at a bearing of approximately 26° east of north, corresponding to the angle followed by the north-western boundary of Libyan petroleum concessions numbers NC 76, 137, NC 41 and NC 53, which was aligned on the south-eastern boundary of Tunisian petroleum concession "Permis complémentaire offshore du Golfe de Gabès" (21 October 1966); from the intersection point so determined, the line of delimitation between the two continental shelves is to run north-east through the point 33° 55′ N, 12° E, thus on that same bearing, to the point of intersection with the parallel passing through the most westerly point of the Tunisian coastline between Ras Kaboudia and Ras Ajdir, that is to say, the most westerly point on the shoreline (low-water mark) of the Gulf of Gabès;

"(3) in the second sector, namely in the area which extends seawards beyond the parallel of the most westerly point of the Gulf of Gabès, the line of delimitation of the two continental shelves is to veer to the east in such a way as to take account of the Kerkennah Islands; that is to say, the delimitation line is to run parallel to a line drawn from the most westerly point of the Gulf of Gabès bisecting the angle formed by a line from that point to Ras Kaboudia and a line drawn from that same point along the seaward coast of the Kerkennah Islands, the bearing of the delimitation line parallel to such bisector being 52° to the meridian; the extension of this line northeastwards is a matter falling outside the jurisdiction of the Court in the present case, as it will depend on the delimitation to be agreed with third States.

"In favour: *Acting President* Elias; *Judges* Lachs, Morozov, Nagendra Singh, Monsler, Ago, Sette-Camara, El-Khani, Schwebel and *Judge ad hoc* Jiménez de Aréchaga;

"Against: *Judges* Forster, Gros, Oda and *Judge ad hoc* Evensen."

Judges Ago, Schwebel and Jiménez de Aréchaga appended separate opinions to the judgment.[242] Judges Gros, Oda and Evensen appended dissenting opinions.[243]

(ii) *Application for review of Judgement No. 273 of the United Nations Administrative Tribunal*[244]

On 20 July 1982, the Court delivered at a public sitting an advisory opinion,[245] a summary outline and the complete text of the operative paragraph of which are reproduced in chapter VII below.

(iii) *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*[246]

After consideration of the parties' answers contained in their joint letter of 6 January 1982 providing the Court with further explanations or clarifications on several points of the case, the Court decided to accede to the request by the Governments of Canada and the United States that a special chamber be formed, and held an election on 15 January 1982.

On 20 January 1982, by 11 votes to 2 (Judges Morozov and El-Khani), the Court adopted an order whereby it constituted a special chamber to deal with the question of delimitation of the maritime boundary between Canada and the United States in the Gulf of Maine area, with the composition having resulted from the above-mentioned election: Judges Gros, Ruda, Mosler, Ago and Schwebel. The order noted that, in application of Article 31, paragraph 4, of the Statute of the Court, the Acting President had requested Judge Ruda to give place in due course to the judge *ad hoc* to be chosen by Canada, and that Judge Ruda had indicated his readiness to do so.[247] Judge Oda appended a declaration to the order,[248] and Judges Morozov and El-Khani appended dissenting opinions.[249] Canada chose Professor Maxwell Cohen as a judge *ad hoc* to sit in the Chamber thus constituted, and Judge Ruda duly gave place to him.

The Chamber constituted to deal with the case elected Judge R. Ago to be its President and was thus composed as follows: Judge Ago, President; Judges Gros, Mosler and Schwebel; Judge *ad hoc* Cohen.

On 29 January 1982, the Chamber held its first public sitting. Judge *ad hoc* Cohen made on that occasion the solemn declaration required by the Statute and Rules of the Court.

On 1 February 1982, after the parties had confirmed the indications given in the Special Agreement and the Chamber had been consulted, the Court made an Order[250] fixing 26 August 1982 as the time-limit for the filing of Memorials by Canada and the United States. The subsequent procedure was reserved for further decision. The Order was adopted by 10 votes to 2 (Judges Morozov and El-Khani). The judge *ad hoc* was in attendance at the Court's invitation and expressed his support for the Order. At the request of one of the parties, the time-limit in question was extended to 27 September 1982 by an Order which the President of the Chamber made on 28 July 1982.[251]

The Memorials were filed by the agents of the parties within the time-limit fixed. By an Order dated 5 November 1982,[252] the President of the Chamber fixed 28 June 1983 as the time-limit for the filing of the Counter-Memorials, which were duly filed within that time-limit.

(iv) *Continental Shelf (Libyan Arab Jamahiriya/Malta)*[253]

On 26 July 1982, the Governments of the Libyan Arab Jamahiriya and Malta notified jointly to the Registrar a Special Agreement concluded between them on 23 May 1976 and in force since the exchange of the instruments of ratification on 20 March 1982. The Special Agreement requests the Court to decide the following question:

> "What principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of the continental shelf which appertains to the Libyan Arab Republic and how in practice such principles and rules can be applied by the two parties in this particular case in order that they may without difficulty delimit such areas by an agreement as provided in article III."

The article III referred to provides for negotiation after the case with a view to reaching agreement on the delimitation in accordance with the Court's decision.

On 27 July 1982, the Vice-President of the Court made an Order[254] whereby, having regard to a provision of the Special Agreement between the parties, he fixed 26 April 1983 as the time-limit for the filing of a Memorial by each party.

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6. INTERNATIONAL LAW COMMISSION[255]

THIRTY-FOURTH SESSION OF THE COMMISSION[256]

The International Law Commission held its thirty-fourth session at Geneva from 3 May to 23 July 1982. The session was mainly devoted to completing, on the basis of the eleventh report submitted by the Special Rapporteur,[257] the second reading of the draft articles on the

law of treaties between States and international organizations or between international organizations,[258] which it forwarded to the General Assembly with the recommendation to convoke a conference to conclude a convention on the subject.

Regarding the question of State responsibility, the Commission considered the third report of the Special Rapporteur,[259] which, besides a revision of the draft articles presented in the second report, analysed various "sub-systems" of international law, that is, the link between "primary" rules imposing obligations, "secondary" rules dealing with the determination of the existence of an internationally wrongful act and of its legal consequences, and the rules concerning the implementation of State responsibility and their interrelationship. At the end of the debate the Commission decided to refer articles 1 to 6 of Part II, as proposed in the third report, to the Drafting Committee.

On the question of international liability for injurious consequences arising out of acts not prohibited by international law, the Commission had before it the third report of the Special Rapporteur[260] containing, *inter alia,* a schematic outline of the topic. The discussion concentrated upon the schematic outline and upon the future of the topic.

With regard to the questions of the jurisdictional immunities of States and their property, the fourth report submitted by the Special Rapporteur[261] dealt with part III of the draft articles concerning exceptions to State immunity and contained two articles, article 11 (Scope of the present part) and article 12 (Trading or commercial activity). The consideration of the topic, in order to give the new and enlarged Commission the opportunity to become more familiar with the issues involved, began with a general exchange of views on all the draft articles which had been presented to the Commission. Following the extensive debate on those articles, the Commission confirmed its referral to the Drafting Committee of articles 7 to 10. It also referred articles 11 and 12 to the Drafting Committee. The Commission further decided that articles 2, 3 and 6 should be re-examined by the Drafting Committee in the light of the discussions. On the report of the Drafting Committee, the Commission adopted provisionally the text of articles 1, 2 (subparagraph 1(*a*)), 7, 8 and 9.

Regarding the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the Commission considered the third report submitted by the Special Rapporteur.[262] The report consisted of two parts: part I, entitled "Reconsideration of the draft articles on general provisions"; and part II, entitled "Draft articles on the status of the diplomatic courier, the diplomatic courier *ad hoc* and the captain of a commercial aircraft or the master of a ship carrying a diplomatic bag". It contained 14 draft articles. At the conclusion of the debate, the Commission decided to refer the 14 draft articles to the Drafting Committee.

With regard to the topic draft Code of Offences against the Peace and Security of Mankind, the Commission established a Working Group on whose recommendation it decided, *inter alia,* to accord the necessary priority to the draft Code within its five-year programme. The Commission also undertook certain work on the topic the law of the non-navigational uses of international watercourses.

Consideration by the General Assembly

At its thirty-seventh session, the General Assembly had before it the report of the International Law Commission on the work of its thirty-fourth session.[263] By its resolution 37/111 of 16 December 1982,[264] adopted on the recommendation of the Sixth Committee,[265] the General Assembly expressed its appreciation to the International Law Commission for the work it had accomplished at its thirty-fourth session and, in particular, for having completed the final reading of the draft articles on the law of treaties between States and international organizations or between international organizations;[266] and recommended that the Commission should continue its work aimed at the preparation of drafts on all the topics in its current programme. The Assembly also reaffirmed its previous decisions concerning the increased role of the Codification Division of the Office of Legal Affairs of the Secretariat and approved the conclu-

sions reached by the Commission on maintaining the provision of summary records of its meetings and that limitations on the length of documents could not be imposed to its documentation as well as the request of the Commission that the practice of listing in each summary record of its meetings the members attending that particular meeting be reinstated.

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7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[267]

FIFTEENTH SESSION OF THE COMMISSION[268]

The United Nations Commission on International Trade Law (UNCITRAL) held its fifteenth session in New York from 26 July to 6 August 1982.

With respect to international contract practices, the Commission considered the draft uniform rules on liquidated damages and penalty clauses. After deliberation on whether the rules should be embodied in a convention, a model law or in general conditions, the Commission noted that the uniform rules might be cast in a form which might enable the rules to be used for several purposes. The Commission examined also the substance of the draft uniform rules. Since the Drafting Group was unable to complete its work of preparing a revised text of the draft uniform rules in the time available, it was decided that the Secretariat should submit a revised text for the consideration of the Commission at its sixteenth session, taking into account the discussion at the fifteenth session and within the Drafting Group. A decision on the form to be adopted for the uniform rules could also be taken at that session.

On the question of international payments, the Commission had before it draft Conventions on International Bills of Exchange and International Promissory Notes and on International Cheques. The Commission considered the possible further course of action concerning the two draft Conventions. While a number of suggestions were made as to which body should next review the draft texts, the Commission was agreed that it was premature to decide this question at the session. It was felt that a final decision could be taken only after the comments by Governments on the draft Conventions had been received and an analytical compilation had been prepared by the Secretariat. Accordingly, the Commission decided to postpone its final decision on the future course of action to its seventeenth session, to be held in 1984. It decided also to place the item on the agenda of its sixteenth session to allow for possible discussion in case pertinent information would then be available. The Commission examined also the question of the establishment of a universal unit of account for international conventions. It adopted the unit of account provision and the two alternative provisions for the adjustment of the limit of liability in international transport and liability conventions and recommended that in the preparation of future international conventions containing limitation of liability provisions or in the revision of existing conventions the unit of account provision as well as one of the two alternative provisions for adjustment of the limitation of liability as adopted by the Commission[269] should be used.

Regarding the question of electronic funds transfer, the Commission decided that the Secretariat should begin the preparation of a legal guide on the subject in co-operation with the UNICTRAL Study Group on International Payments. In carrying out the project the Secretariat was urged to take appropriate steps to ascertain banking practice as well as the applicable legal rules from all regions of the world, including the circulation of a questionnaire if it were deemed advisable. In that connection it was suggested that the Study Group should be enlarged to assure adequate representation from the developing countries. The Secretariat was also requested to submit to some future session of the Commission a report on the legal value of computer records in general.

With respect to international commercial arbitration, the Commission finalized the recommendations concerning administrative services provided in arbitrations under the UNCITRAL Arbitration Rules[270] and requested the Secretary-General to transmit them to Governments and

to arbitral institutions and other interested bodies such as chambers of commerce. With regard to model arbitration law, the Commission took note of the report of the Working Group on the work of its third session and suggested that the list of issues dealt with in a working paper prepared by the Secretariat,[271] to which the Working Group had added some issues possibly to be included in the model law, was not to be regarded as exhaustive but that the Working Group should be open to any further suggestions for inclusion of yet other issues. It was suggested in particular that the Working Group should consider such issues as the relevance of limitation of actions in the context of arbitration proceedings and the time period during which arbitral awards would be enforceable.

On the question of the new international economic order, there was general agreement in the Commission's Working Group on the subject that the Secretariat should now commence the drafting of the legal guide on contractual provisions relating to contracts for the supply and construction of large industrial works. The Working Group requested the Secretariat to submit a few sample draft chapters and an outline of the structure of the guide to its next session. The report of the Working Group was approved by the Commission. The Commission also took note of General Assembly resolution 36/107 of 10 December 1981 on progressive development of the principles and norms of international law relating to the new international economic order as well as of information given by the Secretariat on its co-operation with UNITAR, which had been entrusted with a study relating to the issue.

The Commission considered the status of conventions that were the outcome of its work[272] and noted that, pursuant to paragraph 8 of General Assembly resolution 36/32 of 13 November 1981, the Secretary-General had brought those conventions to the notice of all States which had not ratified or acceded to them, provided those States with appropriate information as to the mode of their entry into force and the current status of ratifications and accessions and had drawn the attention of those States to the view of the Commission that an early entry into force and a wide acceptance of those conventions would be of great value for the unification of international trade law.

With regard to training and assistance in the field of international trade law, the Commission agreed that the Secretariat should continue to explore various possibilities of collaborating with other organizations and institutions in the organization of regional seminars and also to use those occasions for the promotion of legal texts emanating from the work of the Commission.

In connection with General Assembly resolution 36/111 of 10 December 1981, in which the Commission had been requested to submit any written comments and observations which it deemed appropriate on chapter II of the report of the International Law Commission on the work of its thirtieth session,[273] and in particular on the draft articles on most-favoured-nation clauses adopted by the International Law Commission, the Commission was divided as to whether it should proceed to formulate the requested comments and observations. Accordingly, the Commission noted that in the absence of a consensus no substantive comments on the draft articles could be submitted.

Consideration by the General Assembly

At its thirty-seventh session, the General Assembly, by its resolution 37/106 of 16 December 1982,[274] adopted on the recommendation of the Sixth Committee,[275] commended the United Nations Commission on International Trade Law for the progress made in its work and for its efforts to enhance the efficiency of its working methods; reaffirmed the mandate of UNCITRAL as the core legal body within the United Nations system in the field of international trade law to co-ordinate legal activities in the field in order to avoid duplication of efforts and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law; reaffirmed the importance of bringing into effect the conventions emanating from the work of UNCITRAL for the global unification and harmonization of international trade law; reaffirmed also the importance, in particular for the developing countries, of

the work of UNCITRAL concerned with training and assistance in the field of international trade law; and recommended that UNCITRAL should continue its work on the topics included in its programme of work. Furthermore, by its resolution 37/107 of 16 December 1982,[274] adopted also on the recommendation of the Sixth Committee,[275] the Assembly recommended that in the preparation of future international conventions containing limitation of liability provisions or in the revision of existing conventions, the unit of account provision as well as one of the two alternative provisions for adjustment of the limitation of liability adopted by UNCITRAL[269] should be used.

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8. LEGAL QUESTIONS DEALT WITH BY THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY AND BY *AD HOC* LEGAL BODIES

(*a*) Peaceful Settlement of International Disputes

By its resolution 37/10 of 15 November 1982,[276] adopted on the recommendation of the Sixth Committee,[277] the General Assembly approved the Manila Declaration on the Peaceful Settlement of International Disputes, expressed its appreciation to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization for its important contribution to the elaboration of the text of the Declaration and urged that all efforts be made so that the Declaration would become generally known and fully observed and implemented. The text of the Declaration reads as follows:

MANILA DECLARATION ON THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

The General Assembly,

Reaffirming the principle of the Charter of the United Nations that all States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

Conscious that the Charter of the United Nations embodies the means and an essential framework for the peaceful settlement of international disputes, the continuance of which is likely to endanger the maintenance of international peace and security,

Recognizing the important role of the United Nations and the need to enhance its effectiveness in the peaceful settlement of international disputes and the maintenance of international peace and security, in accordance with the principles of justice and international law, in conformity with the Charter of the United Nations,

Reaffirming the principle of the Charter of the United Nations that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Reiterating that no State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State,

Reaffirming the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,[278]

Bearing in mind the importance of maintaining and strengthening international peace and security and the development of friendly relations among States, irrespective of their political, economic and social systems or levels of economic development,

Reaffirming the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and in other relevant resolutions of the General Assembly,

Stressing the need for all States to desist from any forcible action which deprives peoples, particularly peoples under colonial and racist régimes or other forms of alien domination, of their inalienable right to self-determination, freedom and independence, as referred to in the Declaration on Principles of Interna-

tional Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Mindful of existing international instruments as well as respective principles and rules concerning the peaceful settlement of international disputes, including the exhaustion of local remedies wherever applicable,

Determined to promote international co-operation in the political field and to encourage the progressive development of international law and its codification, particularly in relation to the peaceful settlement of international disputes,

Solemnly declares that

I

1. All States shall act in good faith and in conformity with the purposes and principles enshrined in the Charter of the United Nations with a view to avoiding disputes among themselves likely to affect friendly relations among States, thus contributing to the maintenance of international peace and security. They shall live together in peace with one another as good neighbours and strive for the adoption of meaningful measures for strengthening international peace and security.

2. Every State shall settle its international disputes exclusively by peaceful means in such a manner that international peace and security, and justice, are not endangered.

3. International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means in conformity with obligations under the Charter of the United Nations and with the principles of justice and international law. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with the sovereign equality of States.

4. States parties to a dispute shall continue to observe in their mutual relations their obligations under the fundamental principles of international law concerning the sovereignty, independence and territorial integrity of States, as well as other generally recognized principles and rules of contemporary international law.

5. States shall seek in good faith and in a spirit of co-operation an early and equitable settlement of their international disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements or agencies or other peaceful means of their own choice, including good offices. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate to the circumstances and the nature of their dispute.

6. States parties to regional arrangements or agencies shall make every effort to achieve pacific settlement of their local disputes through such regional arrangements or agencies before referring them to the Security Council. This does not preclude States from bringing any dispute to the attention of the Security Council or of the General Assembly in accordance with the Charter of the United Nations.

7. In the event of failure of the parties to a dispute to reach an early solution by any of the above means of settlement, they shall continue to seek a peaceful solution and shall consult forthwith on mutually agreed means to settle the dispute peacefully. Should the parties fail to settle by any of the above means a dispute the continuance of which is likely to endanger the maintenance of international peace and security, they shall refer it to the Security Council in accordance with the Charter of the United Nations and without prejudice to the functions and powers of the Council set forth in the relevant provisions of Chapter VI of the Charter.

8. States parties to an international dispute, as well as other States, shall refrain from any action whatsoever which may aggravate the situation so as to endanger the maintenance of international peace and security and make more difficult or impede the peaceful settlement of the dispute, and shall act in this respect in accordance with the purposes and principles of the United Nations.

9. States should consider concluding agreements for the peaceful settlement of disputes among them. They should also include in bilateral agreements and multilateral conventions to be concluded, as appropriate, effective provisions for the peaceful settlement of disputes arising from the interpretation or application thereof.

10. States should, without prejudice to the right of free choice of means, bear in mind that direct negotiations are a flexible and effective means of peaceful settlement of their disputes. When they choose to resort to direct negotiations, States should negotiate meaningfully, in order to arrive at an early settlement acceptable to the parties. States should be equally prepared to seek the settlement of their disputes by the other means mentioned in the present Declaration.

11. States shall in accordance with international law implement in good faith all the provisions of agreements concluded by them for the settlements of their disputes.

12. In order to facilitate the exercise by the peoples concerned of the right to self-determination as referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the parties to a dispute may have the possibility, if they agree to do so and as appropriate, to have recourse to the relevant procedures mentioned in the present Declaration, for the peaceful settlement of the dispute.

13. Neither the existence of a dispute nor the failure of a procedure of peaceful settlement of disputes shall permit the use of force or threat of force by any of the States parties to the dispute.

II

1. Member States should make full use of the provisions of the Charter of the United Nations, including the procedures and means provided for therein, particularly Chapter VI, concerning the peaceful settlement of disputes.

2. Member States shall fulfil in good faith the obligations assumed by them in accordance with the Charter of the United Nations. They should, in accordance with the Charter, as appropriate, duly take into account the recommendations of the Security Council relating to the peaceful settlement of disputes. They should also, in accordance with the Charter, as appropriate, duly take into account the recommendations adopted by the General Assembly, subject to Articles 11 and 12 of the Charter, in the field of peaceful settlement of disputes.

3. Member States reaffirm the important role conferred on the General Assembly by the Charter of the United Nations in the field of peaceful settlement of disputes and stress the need for it to discharge effectively its responsibilities. Accordingly, they should:

(*a*) Bear in mind that the General Assembly may discuss any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations and, subject to Article 12 of the Charter, recommend measures for its peaceful adjustment;

(*b*) Consider making use, when they deem it appropriate, of the possibility of bringing to the attention of the General Assembly any dispute or any situation which might lead to international friction or give rise to a dispute;

(*c*) Consider utilizing, for the peaceful settlement of their disputes, the subsidiary organs established by the General Assembly in the performance of its functions under the Charter;

(*d*) Consider, when they are parties to a dispute brought to the attention of the General Assembly, making use of consultations within the framework of the Assembly, with a view to facilitating an early settlement of their dispute.

4. Member States should strengthen the primary role of the Security Council so that it may fully and effectively discharge its responsibilities, in accordance with the Charter of the United Nations, in the area of the settlement of disputes or of any situation the continuance of which is likely to endanger the maintenance of international peace and security. To this end they should:

(*a*) Be fully aware of their obligation to refer to the Security Council such a dispute to which they are parties if they fail to settle it by the means indicated in Article 33 of the Charter;

(*b*) Make greater use of the possibility of bringing to the attention of the Security Council any dispute or any situation which might lead to international friction or give rise to a dispute;

(*c*) Encourage the Security Council to make wider use of the opportunities provided for by the Charter in order to review disputes or situations the continuance of which is likely to endanger the maintenance of international peace and security;

(*d*) Consider making greater use of the fact-finding capacity of the Security Council in accordance with the Charter;

(*e*) Encourage the Security Council to make wider use, as a means to promote peaceful settlement of disputes, of the subsidiary organs established by it in the performance of its functions under the Charter;

(*f*) Bear in mind that the Security Council may, at any stage of a dispute of the nature referred to in Article 33 of the Charter or of a situation of like nature, recommend appropriate procedures or methods of adjustment;

(*g*) Encourage the Security Council to act without delay, in accordance with its functions and powers, particularly in cases where international disputes develop into armed conflicts.

5. States should be fully aware of the role of the International Court of Justice, which is the principal judicial organ of the United Nations. Their attention is drawn to the facilities offered by the Interna-

tional Court of Justice for the settlement of legal disputes, especially since the revision of the Rules of the Court.

States may entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

States should bear in mind:

(*a*) That legal disputes should as a general rule be referred by the parties to the International Court of Justice, in accordance with the provisions of the Statute of the Court;

(*b*) That it is desirable that they:

(i) Consider the possibility of inserting in treaties, whenever appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties;

(ii) Study the possibility of choosing, in the free exercise of their sovereignty, to recognize as compulsory the jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute;

(iii) Review the possibility of identifying cases in which use may be made of the International Court of Justice.

The organs of the United Nations and the specialized agencies should study the advisability of making use of the possibility of requesting advisory opinions of the International Court of Justice on legal questions arising with the scope of their activities, provided that they are duly authorized to do so.

Recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered an unfriendly act between States.

6. The Secretary-General should make full use of the provisions of the Charter of the United Nations concerning the responsibilities entrusted to him. The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security. He shall perform such other functions as are entrusted to him by the Security Council or by the General Assembly. Reports in this connection shall be made whenever requested to the Security Council or the General Assembly.

Urges all States to observe and promote in good faith the provisions of the present Declaration in the peaceful settlement of their international disputes;

Declares that nothing in the present Declaration shall be construed as prejudicing in any manner the relevant provisions of the Charter or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter, in particular those relating to the peaceful settlement of disputes;

Declares that nothing in the present Declaration could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist régimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration;

Stresses the need, in accordance with the Charter, to continue efforts to strengthen the process of the peaceful settlement of disputes through progressive development and codification of international law, as appropriate, and through enhancing the effectiveness of the United Nations in this field.

(*b*) United Nations Conference on Succession of States in respect of State Property, Archives and Debts

By its resolution 37/11 of 15 November 1982,[279] adopted on the recommendation of the Sixth Committee,[280] the General Assembly, considering that the draft articles adopted by the International Law Commission at its thirty-third session[281] represented a good basis for the elaboration of an international convention and such other instruments as might be appropriate on the question, decided that the United Nations Conference on Succession of States in respect of State Property, Archives and Debts should be held from 1 March to 8 April 1983 at Vienna.

(*c*) Draft Code of Offences against the Peace and Security of Mankind

By its resolution 37/102 of 16 December 1982,[282] adopted on the recommendation of the Sixth Committee,[283] the General Assembly invited the International Law Commission to continue its work with a view to elaborating the draft Code of Offences against the Peace and Security of Mankind, in conformity with paragraph 1 of Assembly resolution 36/106 of 10 December 1981 and taking into account the Commission's decision to accord the necessary priority to the topic within its five-year programme.[284]

(*d*) Progressive development of the principles and norms of international law relating to the new international economic order

By its resolution 37/103 of 16 December 1982,[285] adopted on the recommendation of the Sixth Committee,[286] the General Assembly requested the United Nations Institute for Training and Research to prepare the third and final phase of the analytical study it had undertaken on the progressive development of the principles and norms of international law relating to the new international economic order in accordance with Assembly resolution 36/106 of 10 December 1981 and to complete it in time for the Secretary-General to submit it to the General Assembly at its thirty-eighth session; urged Member States to submit relevant information with respect to the study, including proposals concerning further action to be taken on it; and requested the United Nations Commission on International Trade Law, the United Nations Conference on Trade and Development, the United Nations Industrial Development Organization, the regional commissions, the United Nations Centre on Transnational Corporations and other relevant intergovernmental and non-governmental organizations active in the field to submit relevant information and to co-operate fully with the Institute in the implementation of the resolution.

(*e*) Observer status of national liberation movements by the Organization of Africa Unity and/or by the League of Arab States

By its resolution 37/104 of 16 December 1982,[287] adopted on the recommendation of the Sixth Committee,[288] the General Assembly invited all States that had not done so, in particular those that were hosts to international organizations or to conferences convened by, or held under the auspices of, international organizations of a universal character, to consider as soon as possible the question of ratifying, or acceding to, the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character;[289] and called once more upon the States concerned to accord to the delegations of the national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States, and accorded observer status by international organizations, the facilities, privileges and immunities necessary for the performance of their functions in accordance with the provisions of the Convention in question.

(*f*) Enhancing the effectiveness of the principles of non-use of force in international relations

In accordance with General Assembly resolution 36/31 of 13 November 1981, the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations met at United Nations Headquarters from 29 March to 23 April 1982.[290] It held a general debate on the questions within its mandate and established an open-ended working group which considered the revised version of the working paper by the delegations of Benin, Cyprus, Egypt, India, Iraq, Morocco, Nepal, Nicaragua, Senega and Uganda, which

had been submitted in the final stages of the preceding session by those delegations[291] and which had not been considered in depth at that session. In the statement made by the Chairman of the Special Committee, a set of ideas was proposed aimed at facilitating the reconciling of the various views both on conceptual issues and on practical measures related to the enhancement of the effectiveness of the principle of non-use of force in international relations in accordance with the Committee's mandate under resolution 36/31.[292]

At its thirty-seventh session, the General Assembly, by its resolution 37/105 of 16 December 1982,[293] adopted on the recommendation of the Sixth Committee,[294] decided that the Special Committee should continue its work with the goal of drafting, at the earliest possible date, a world treaty on the non-use of force in international relations as well as the peaceful settlement of disputes or such other recommendations as the Committee deemed appropriate; requested the Special Committee, in order to ensure further progress in its work, to begin at its forthcoming session, as the next step, the elaboration of the formulas of the working paper containing the main elements of the principle of non-use of force in international relations, taking duly into account the proposals submitted to it and, in particular, the efforts undertaken at its session in 1982; and requested the Special Committee to be mindful of the importance of reaching general agreement whenever it had significance for the outcome of its work.

(*g*) Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

By its resolution 37/108 of 16 December 1982,[295] adopted on the recommendation of the Sixth Committee,[296] the General Assembly strongly condemned acts of violence against diplomatic and consular missions and representatives as well as against missions and representatives to international intergovernmental organizations and officials of such organizations; urged States to observe and to implement the principles and rules of international law governing diplomatic and consular relations and, in particular, to take all necessary measures in conformity with their international obligations effectively to ensure the protection, security and safety of all diplomatic and consular missions and representatives officially present in territory under their jurisdiction; recommended that States should co-operate closely with regard to practical measures designed to enhance the protection, security and safety of diplomatic and consular missions and representatives and with regard to exchange of information on the circumstances of all serious violations thereof; called upon States that had not yet done so to consider becoming parties to the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives, *inter alia*, the Vienna Convention on Diplomatic Relations of 1961,[297] the Vienna Convention on Consular Relations of 1963[298] and the respective optional protocols thereto, as well as the Convention of 1973 on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;[299] invited all States to report to the Secretary-General serious violations of the protection, security and safety of diplomatic and consular missions and representatives and the State in which the violation took place and the State where the alleged offender was present to report on measures taken to bring the offender to justice and eventually to communicate, in accordance with its laws, the final outcome of the proceedings against the offender, and on measures adopted with a view to preventing a repetition of such violations; and requested the Secretary-General to invite States to inform him of their views with respect to any measures needed to enhance the protection, security and safety of diplomatic and consular missions and representatives.

(*h*) International convention against the recruitment, use, financing and training of mercenaries

Pursuant to General Assembly resolution 36/76 of 4 December 1981, the *Ad Hoc* Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and

Training of Mercenaries met at United Nations Headquarters from 25 January to 19 February 1982.[300] It carried out a brief review of the draft convention submitted by the Nigerian delegation in 1981,[301] starting with article 3, since the questions dealt with in articles 1 and 2 had already been extensively discussed at the previous session, and leaving aside for the moment the preamble and the final clauses. It also decided to establish working groups A and B. Working Group A dealt with issues of definition and with the question of the scope of the convention. Having regard to the comments exchanged on the subject in Working Group A, it seemed helpful for the future work of the Committee towards the fulfilment of its mandate to provide a framework for dealing with the question of the definition and scope of the convention. The framework presented by the Chairman[302] would form the basis for further discussion and negotiations. Working Group B dealt with all other issues relevant to the future convention. The Working Group agreed that it would take up at a later stage the issues which had a direct link with the questions being dealt with in Working Group A (such as jurisdiction and extradition), so that the discussion of those issues might benefit from the progress which would by then have been made in Working Group A. Working Group B therefore decided to concentrate at the initial stage of its work on the issues of penalties, implementation, the status of mercenaries, mutual assistance, the taking of custody, the communication of the outcome of final proceedings and judicial guarantees, dealt with in articles 3, 4, 5, 9, 10, 12 and 11, respectively, of the two Nigerian working papers.[303]

At its thirty-seventh session, the General Assembly, by its resolution 37/109 of 16 December 1982,[304] adopted on the recommendation of the Sixth Committee,[305] decided that the *Ad Hoc* Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries should continue its work in 1983 with the goal of drafting, at the earliest possible date, an international convention on the subject.

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

By its resolution 37/110 of 16 December 1982,[306] adopted on the recommendation of the Sixth Committee,[307] the General Assembly, having considered the report of the Working Group on the Review of the Multilateral Treaty-making Process,[308] established pursuant to General Assembly resolution 36/112 of 10 December 1981, decided to reconvene the Working Group at its thirty-eighth session with the aim of completing the examination of the matters referred to in paragraph 2 of that resolution and reiterated its request to the Secretary-General to prepare and publish as soon as possible new editions of the *Handbook of Final Clauses*[309] and the *Summary of Practice of the Secretary-General as Depository of Multilateral Agreements*,[310] taking into account relevant new developments and practices in that respect.

(*j*) Convention on the Law of Treaties between States and International Organizations or between International Organizations

By its resolution 37/112 of 16 December 1982,[311] adopted on the recommendation of the Sixth Committee,[312] the General Assembly, noting that the International Law Commission had completed at its thirty-fourth session the second reading of the draft articles on the law of treaties between States and international organizations or between international organizations,[258] decided that an international convention should be concluded on the basis of the draft articles adopted by the Commission.

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

In accordance with General Assembly resolution 36/122 of 11 December 1981, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the

Organization met at the United Nations Office at Geneva from 22 February to 19 March 1982.[313] It established an open-ended Working Group to discuss the topics referred to in paragraphs 4 and 5 of resolution 36/122 and in paragraph 4 of resolution 36/110 of 10 December 1981, namely, proposals regarding the question of the maintenance of international peace and security, including those relating to the functioning of the Security Council, rationalization of existing procedures of the United Nations and peaceful settlement of disputes. The Special Committee finalized the draft Manila declaration on the peaceful settlement of international disputes. With regard to the question of the maintenance of international peace and security, the Working Group considered proposals contained in the informal compilation of proposals submitted at its 1976 to 1980 sessions,[314] the draft recommendation presented at the 1981 session by Egypt on behalf of non-aligned countries of the Special Committee[315] and two proposals submitted by France.[316] The main trends of the debate on those proposals were reflected in the statement of the Rapporteur. The Special Committee was unable, owing to lack of time, to consider proposals made by Member States on the question of rationalization of existing procedures of the United Nations. However, it was agreed that the question was of importance to the work of the United Nations and that it should be considered at the next session of the Special Committee.

At its thirty-seventh session, the General Assembly, by its resolution 37/114 of 16 December 1982,[317] adopted on the recommendation of the Sixth Committee,[318] welcomed the adoption by the General Assembly of the Manila Declaration on the Peaceful Settlement of International Disputes[319] as a significant achievement of the Special Committee; requested the Special Committee at its next session in 1983 to accord priority in its work to the proposals regarding the question of the maintenance of international peace and security, to continue its work on the question of the peaceful settlement of disputes by considering the remaining proposals contained in the list prepared by the Special Committee in accordance with General Assembly resolution 33/94 of 16 December 1978[320] and to consider proposals made by Member States on the question of rationalization of existing procedures of the United Nations, as agreed by the Special Committee, as well as to consider any proposals under other relevant topics; and requested the Special Committee to be mindful of the importance of reaching general agreement whenever that had significance for the outcome of its work.

(*l*) Draft Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally[321]

By its resolution 37/115 of 16 December 1982,[322] adopted on the recommendation of the Sixth Committee,[323] the General Assembly, recalling its resolution 36/167 of 16 December 1981, whereby it had decided, *inter alia*, that appropriate measures should be taken to finalize the draft Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, requested the Secretary-General to circulate to Member States, for their views, the draft Declaration, as well as the conclusions contained in the report of the Secretary-General.[324]

(*m*) State of signatures and ratifications of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of international armed conflicts (Protocol I) and the protection of victims of non-international armed conflicts (Protocol II)

By its resolution 37/116 of 16 December 1982,[325] adopted on the recommendation of the Sixth Committee,[326] the General Assembly, having considered the report of the Secretary-General[327] on the state of signatures and ratifications of the two Protocols Additional[328] to the Geneva Convention of 1949[329] and relating to the protection of victims of armed conflicts, and concerned at the fact that so far only a limited number of States had signed, ratified or acceded to the two Protocols, reiterated its call to all States to consider without delay the matter of rati-

fying or acceding to the two Protocols and called upon all States becoming parties to Protocol I to consider the matter of making the declaration provided for under article 90 of that Protocol.

(*n*) Report of the Committee on Relations with the Host Country[330]

The Committee on Relations with the Host Country held five meetings in 1982. In its report to the General Assembly at its thirty-seventh session, the Committee included a set of recommendations whereby it, *inter alia*, urged the host country to take all necessary measures in order to continue to prevent any acts violating the security of missions and the safety of their personnel or the inviolability of their property, and in order to ensure normal conditions for the existence and functioning of all missions; also urged the host country to continue to take measures to apprehend, bring to justice and punish all those responsible for committing criminal acts against missions accredited to the United Nations as provided for in the 1972 Federal Act for the Protection of Foreign Officials and Official Guests of the United States; and called upon the missions of States Members of the United Nations to co-operate as fully as possible with the federal and local United States authorities in cases affecting the security of those missions and their personnel.

The General Assembly, by its resolution 37/113 of 16 December 1982,[331] adopted on the recommendation of the Sixth Committee,[332] endorsed the recommendations of the Committee on Relations with the Host Country contained in its report; urged the host country to continue to take all necessary measures effectively to ensure the protection, security and safety of the missions accredited to the United Nations and their personnel, including practicable measures to prohibit illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts against the security and safety of such missions and representatives; strongly condemned the acts violating the security of all missions accredited to the United Nations and the safety of their personnel; and urged the host country and the missions concerned, in any cases in which problems arose regarding privileges and immunities of members of missions to the United Nations, to make full use of the good offices of the Secretary-General in pursuit of solutions satisfactory to the parties involved.

(*o*) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

By its decision 37/427 of 16 December 1982,[333] adopted on the recommendation of the Sixth Committee,[334] the General Assembly took note of the report of the Working Group on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,[335] established in accordance with General Assembly decision 36/426 of 10 December 1981 to elaborate a final version of the draft Body of Principles, a task which it had not been able to conclude, and decided that an open-ended working group of the Sixth Committee would be established at the outset of its thirty-eighth session with a view to expediting the finalization of the draft Body of Principles.

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9. CO-OPERATION BETWEEN THE UNITED NATIONS AND THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

By its resolution 37/8 of 29 October 1982,[336] the General Assembly, having heard the statements of the Secretary-General of the United Nations[337] and the Secretary-General of the Asian-African Legal Consultative Committee[338] on further strengthening and widening the scope of the co-operation between the United Nations and the Committee, noted with deep

satisfaction the ongoing close and effective co-operation between the United Nations and the Committee in the field of progressive development and codification of international law and other areas of common interest.

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10. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH[339]

The United Nations Institute for Training and Research continued its training programmes for officials whose responsibilities were related to the United Nations and its discussion and orientation seminars on issues facing the United Nations (i.e., the Law of the Sea, techniques of drafting international agreements, international negotiations). It also continued to administer the international law fellowship programme, a major part of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, established under General Assembly resolution 2099 (XX) of 20 December 1965. Under the same Programme, UNITAR organized a regional training and refresher course in international law for Asian and Pacific countries which was held at Seoul from 18 to 29 October 1982.

In the area of research activities, the Institute continued to carry out a project on the evaluation of the liability of States for damages arising from scientific and technological innovations. It completed a survey of national legislation protecting the rights of children and also completed phase II of a study concerning the progressive development of international law relating to the new international economic order. A document analysing the texts of relevant instruments[340] as well as the report of the Secretary-General[341] were submitted to the thirty-seventh session of the General Assembly.[342]

Among the studies published by UNITAR in 1982, mention should be made of the monograph by Thomas M. Franck and Mark Munansanger entitled *The new international economic order: international law in the making*.[343]

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

1. INTERNATIONAL LABOUR ORGANISATION[344]

The International Labour Conference, which held its sixty-eighth session at Geneva in June 1982, adopted the following instruments: a Convention concerning the establishment of an international system for the maintenance of rights in social security;[345] a Convention and a Recommendation concerning termination of employment at the initiative of the employer;[346] and a Protocol to the plantations Convention, 1958 (No. 110).[347]

The Committee of Experts on the Application of Conventions and Recommendations met at Geneva from 11 to 24 March 1982 and presented its report.[348]

The Governing Body Committee on Freedom of Association met at Geneva and adopted reports Nos. 214,[349] 215,[349] and 216[349] (219th Session of the Governing Body, March 1982); Report No. 217[350] (220th Session of the Governing Body, May-June 1982); Reports Nos. 218[351] 219,[351] 220[351] and 221[351] (221st Session of the Governing Body, November 1982).

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2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) Office of the Legal Counsel[352]

CONSTITUTIONAL MATTERS

In addition to current legal advice and services provided to the Director-General and various departments within the organization, the Office of the Legal Counsel provided legal services to the Committee on Constitutional and Legal Matters (CCLM), the Council and other statutory bodies of the organization.

a. *Meetings of the Committee on Constitutional and Legal Matters and of the Council*

Both CCLM, at its forty-second session, held from 27 to 30 September, and the Council at its eighty-second session, held from 22 November to 1 December,[353] considered two substantive questions: (i) the immunity of FAO from legal process in Italy; and (ii) revision of the statutes of the Advisory Committee on Marine Resources Research.

i. *Immunity of FAO from legal process in Italy*[354]

At its 82nd session, the council was informed that the Corte di Cassazione had decided that in the particular circumstances the Italian courts had jurisdiction—and hence FAO did not enjoy immunity from legal process—with respect to an action brought against the organization by the landlord of one of the buildings occupied by it for its services.[355]

The Council was of the opinion that the question of the scope of FAO's immunity from legal process turned principally on the text of article VIII, section 16, of the Headquarters Agreement, which reads as follows:

> "FAO and its property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case FAO shall have expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution."[356]

The Council agreed with CCLM that the wording of section 16 was clear and unambiguous and that the phrase "immunity from every form of legal process" should be given its full literal meaning. In other words, the only case in which FAO could become subject to the jurisdiction of the Italian courts was when it had expressly waived its immunity in accordance with section 16.

The Council considered that the literal meaning of section 16 must be deemed to have reflected the intentions of the parties at the time when the Headquarters Agreement was concluded. It was also felt that the governing bodies could not, at that time, have envisaged that FAO's immunity from legal process could be limited in the manner subsequently held by the Corte di Cassazione.

The Council further considered that its conclusions regarding the meaning of section 16 were borne out by the fundamental purposes for which immunity from legal processes was accorded to intergovernmental organizations, especially those in the United Nations system. Those purposes were to ensure that the intergovernmental organizations concerned could carry out their aims smoothly and independently. To do this, it was essential *inter alia* that the organization should not be exposed to litigation before the national courts of its various member States; that the confidentiality of its internal procedures and records should be safeguarded; and that activities of the organization should be carried out exclusively under the supervision of its governing bodies and should not be subjected to decisions of the national authorities of any single Member State. In this connection, the Council noted that the organization's immunity from legal process did not result in a denial of justice, since (as in the case under consideration) alternative methods of settling disputes were provided for.

Having been informed that the Corte di Cassazione's judgement was couched in terms from which it appeared that the Italian courts would have jurisdiction over any FAO activity that they considered as not having a direct and necessary connection with the achievement of FAO's constitutional aims, or even as being a transaction of a private law nature, the Council decided to place on record its serious concern at both the immediate and the longer term consequences of the situation that had arisen.

In the context of the immediate implications for FAO, the actions before the lower courts would be resumed. In this connection, the Council gave the Director-General its full support for his position that FAO was immune from the jurisdiction of the Italian courts and considered that he should avoid any participation in the proceedings before the Italian courts that was inconsistent with this status. The Council considered that any attempt to enforce any measures of execution against FAO would involve a breach of article VIII, section 16, of the Headquarters Agreement which specifically provided for immunity from such measures.

The Council was assured by the representative of the Italian Government that the organization would be fully protected from any measures of execution resulting from judgements of the Italian courts, in the light of article VIII, section 17, of the Headquarters Agreement,[357] since the implementation of such measures was the responsibility of the Executive.

The Council noted the above assurance with appreciation. At the same time, it agreed with CCLM that the host Government, in consultation with the landlord, should find a suitable method of solving the problems arising out of the lease without any further recourse to the Italian courts.

The Council was aware that, even if the Italian Government found a solution to the problem, the judgement rendered by the Corte di Cassazione would be followed by the Italian courts. Consequently, the status and activities in Italy of FAO and other organizations in the United Nations system would be seriously compromised. The Council concluded that if, owing to the independence of the judiciary, the host Government could not at the moment guarantee the application of article VIII, section 16, of the Headquarters Agreement in accordance with its clear wording, it should take the necessary action, for example, through the enactment of appropriate legislation, to ensure that the immunity of FAO from legal process was fully respected in the future.

On the proposal of the Independent Chairman, the Council adopted a resolution (resolution 1/82) by which:

(*a*) It reaffirmed the sanctity of article VIII, section 16, of the Headquarters Agreement concerning the immunity of FAO from every form of legal process;

(*b*) It requested the host Government to find a suitable method of solving the problem, in consultation with the landlords of the building, with a view to the settlement of the dispute out of court;

(*c*) It invited the Independent Chairman of the Council to convey to the President of the Italian Republic, the Prime Minister and the Minister of Foreign Affairs the concern of the Council on the matter and to seek their help in ensuring that FAO enjoyed the status envisaged under the Headquarters Agreement both in letter and in spirit.

ii. *Amendments to the statutes of the Advisory Committee on Marine Resources Research*

The Council endorsed CCLM's conclusions that the text of the revised statutes of the Advisory Committee on Marine Resources Research (established under article VI.2 of the Constitution), as proposed by the Director-General, was in conformity with the Basic Texts and relevant decisions of the Conference.[358]

b. *Application for membership*

At its eighty-second session, the Council took cognizance of the applications for membership submitted by Antigua and Barbuda and by Belize.

Pending a decision by the Conference on those applications, and pursuant to rule XXV.11 of the general rules of the organization and paragraphs B.1, B.2 and B.5 of the "Statement of Principles relating to the Granting of Observer Status to Nations", the Council authorized the Director-General to invite Antigua and Barbuda and Belize to participate in an observer capacity, at appropriate Council meetings as well as at regional and technical meetings of the organizations of interest to them.

c. *Status of conventions and agreements and amendments thereto for which the Director-General of FAO acts as depository*

(i) In 1982 the amendments to the International Plant Protection Convention[359] were accepted by the following countries: El Salvador, Finland, Guyana, Israel, Soviet Union, United Kingdom, United States.

(ii) In 1982 the amendments to the Plant Protection Agreement for the South East Asia and Pacific Region[360] were accepted by the following countries: France, Laos, Sri Lanka.

(iii) In 1982 the Agreement for the Establishment of a Centre on Integrated Rural Development for Asia and the Pacific (CIRDAP)[361] was ratified by Thailand.

(iv) In 1982 the Agreement for the Establishment of a Centre on Integrated Rural Development for Africa (CIRD Africa)[362] was accepted by Mozambique.

(v) In 1982 the Agreement for the Establishment of a Regional Centre on Agrarian Reform and Rural Development of Latin America and the Caribbean (CARRDLAC)[363] was ratified by Nicaragua.

d. *Other activities of legal interest*

i. *World Conference on Fisheries Management and Development*[364]

At its eighty-second session, the Council endorsed the recommendation of the Programme Committee that the Conference should be open to all States members of FAO, the United Nations, any of its specialized agencies, or IAEA.

ii. *Change of name of the region "Latin America"*[365]

At its eighty-second session, the Council noted that the Seventeenth Regional Conference for Latin America, which had been held at Managua, had endorsed a proposal to change the name of the region from "Latin America" to "Latin America and the Caribbean". The Council agreed with the proposal (whereby the region would be known as "Latin America and the Caribbean"; the Regional Conference, "Regional Conference for Latin America and the Caribbean"; and the Regional Office for Latin America, "Regional Office for Latin America and the Caribbean") and invited the Conference to endorse the changes.

(*b*) Legislation Branch[366]

(i) *Legislative research and publications*[367]

Research was conducted, *inter alia*, on legislation on coastal State requirements for foreign fishing; fisheries; joint ventures; forestry and wildlife legislation in Africa; the law of international water resources; regional compendia of fisheries legislation; legislation on food for infants and small children; and meat export and import legislation.

(ii) *Collection, translation and dissemination of legislative information*

FAO published the semi-annual *Food and Agriculture Legislation* Annotated lists of relevant laws and regulations appear regularly in *Land Reform, Land Settlement and Co-operatives*, also a semi-annual FAO publication. Similar lists are also published in the semi-

annual *Food and Nutrition Review* and in *Unasylva (An international journal of forestry and forest industries).*

3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) Constitutional and procedural questions

MEMBERSHIP OF THE ORGANIZATION

Indicated below is information on the signature and acceptance of the Constitution of UNESCO[368] by States which became members of the organization within the period covered by the present review:

State	*Date of signature*	*Date of deposit of instrument of acceptance*
Bhutan	13 April 1982	13 April 1982
Belize	10 May 1982	10 May 1982
Antigua and Barbuda	15 July 1982	15 July 1982

Under the terms of articles II and XV of the Constitution, each of the above-mentioned States became a member of the organization on the respective date on which its acceptance took effect.

(*b*) International regulations

(i) *Entry into force of instruments previously adopted*

In accordance with the terms of its article 18, the Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region,[369] adopted on 21 December 1979 at Paris, by an International Conference of States convened by UNESCO, entered into force on 18 February 1982, that is, one month after the deposit with the Director-General of the fifth instrument of ratification.

(ii) *Instruments adopted by international conferences of States for which UNESCO became the depository*

—Protocol to Amend the Convention on Wetlands of International Importance Especially as Waterfowl Habitat[370] (adopted on 3 December 1982 at Paris, France).

(*c*) Human rights

Examination of cases and questions concerning the exercise of human rights coming within the competence of UNESCO

The Committee on Conventions and Recommendations met in private session at UNESCO headquarters from 21 April to 3 May and 30 August to 7 September 1982 in order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3 of the Executive Board.

At its spring session, the Committee examined 58 communications of which 54 were examined as to their admissibility and 4 were examined on their substance. Of the 54 commun-

ications examined as to admissibility, 6 were declared admissible, 13 were declared inadmissible, 6 were struck from the list since they were considered as having been settled and 1 was forwarded to another organization of the United Nations system. The examination of 32 communications was suspended. The Committee presented its report to the Executive Board at its one hundred twelfth session.

At its fall session, the Committee had before it 55 communications of which 45 were examined as to their admissibility, 1 was declared admissible and 12 were declared irreceivable. The examination of 37 communications was suspended, 4 communications were struck from the list since they were considered as having been settled and 1 communication concerning a missing person was transmitted to the Working Group on Enforced or Involuntary Disappearances, set up by the United Nations Commission on Human Rights. The Committee presented its report on its examination of those communications to the Executive Board at its one hundred thirteenth session. Due to the urgent nature of one communication, it was examined by the Committee at an extraordinary session held on 3 December 1982.

(*d*) Copyright and neighbouring rights

(i) *Safeguarding of folklore*

A Committee of Governmental Experts on the Safeguarding of Folklore, convened by UNESCO at its headquarters from 22 to 26 February 1982, analysed on an interdisciplinary basis, within the framework of an overall and integrated approach, various aspects of folklore including its definition, identification, conservation, preservation and utilization on the basis of a global survey on the totality of the protection of folklore. The Committee reached a consensus on the long-awaited definition of folklore and, *inter alia*, made a number of recommendations to the member States as well as to the organization for the safeguarding of folklore and stressed that UNESCO should continue its studies and deliberations aimed at formulating international recommendations in this regard.[371]

(ii) *Intellectual property aspects of folklore protection*

Based on the preparatory work of two joint UNESCO/WIPO working groups on the intellectual property aspects of folklore protection (meeting in January 1980 and February 1981, respectively), a joint UNESCO/WIPO Committee of Governmental Experts on the Intellectual Property Aspects of the Protection of Expressions of Folklore met at Geneva from 28 June to 2 July 1982 and adopted the Model Provisions for National Laws on the Protection of Expressions of folklore against Illicit Exploitation and other Prejudicial Actions.[372]

(iii) *"Domaine public payant"*

In pursuance of resolution 5/01 adopted by the General Conference of UNESCO at its twenty-first session and of the decisions of their respective governing bodies, UNESCO and WIPO jointly convened a Committee of Non-Governmental Experts on the "Domaine Public Payant", which met at Geneva from 26 to 29 April 1982 to prepare guidelines on the question of "domaine public payant". On the basis of an analysis of the replies to the survey of existing provisions on the application of the system of "domaine public payant" in national legislation, the Committee considered that a list of topics could be defined with a view to preparing draft model guidelines, and accordingly nine relevant topics, including categories of works, prior authorization, competent authorities, beneficiaries and remedies, to the extent that they concerned works in the public domain, were selected for deliberation. The findings of the Committee would be submitted to the 1983 sessions of the Intergovernmental Copyright Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union.[373]

(iv) *Copyright and neighbouring rights problems raised by distribution by cable*

The subcommittees of the Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union), of the Intergovernmental Copyright Committee of the Universal Copyright Convention[374] and of the Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)[375] met at UNESCO headquarters from 13 to 17 December 1982 to examine the copyright and so-called neighbouring rights problems raised by distribution by cable, on the basis, in particular, of the draft Annotated Model Provisions for the Protection of Authors, Performers, Producers of Phonograms and Broadcasting Organizations prepared by the secretariats of ILO, UNESCO and WIPO. In concluding their discussions of the various relevant aspects of the issue, the subcommittees noted that in spite of the progress they had achieved, they were not in a position to reach sufficiently elaborated conclusions and therefore recommended to their respective secretariats that proper measures be taken to enable them to resume their work at a later date before the 1983 sessions of the three committees and that consultants be appointed by Governments by mid-1983 to advise the three secretariats on a revised edition of the draft Annotated Model Provisions.[376]

(v) *Copyright problems arising from the use of computers for access to or the creation of works*

The second joint UNESCO/WIPO Committee of Governmental Experts on Copyright Problems Arising from the Use of Computers for Access to or the Creation of Works met at UNESCO headquarters from 7 to 11 June 1982. The Committee considered the draft Recommendations on the subject prepared by the two secretariats in consultation with the officers of the first Committee on these problems (which had met in December 1980) and adopted the Recommendations for Settlement of Copyright Problems Arising from the Use of Computer Systems for the Access to or the Creation of Works. The Committee asked the secretariat to assure wide dissemination of those Recommendations among member States and to inform the Intergovernmental Copyright Committee of the Universal Copyright Convention[377] and the Executive Committee thereof at their next sessions to be held in December 1983.

(vi) *Access by the visually and aurally handicapped to material reproducing works protected by copyright*

In pursuance of the decisions of their respective governing bodies and of the recommendation made by the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention at their 1981 sessions, UNESCO and WIPO jointly convened a Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright at UNESCO headquarters from 25 to 27 October 1982. The Working Group drafted two alternatives, A and B, of Model Provisions concerning the Access by Handicapped Persons to the Work Protected by Copyright—one permitting the reproduction in Braille of any published work or authorized translation thereof without the consent of the author and without payment of remuneration, subject to the obligations under the international conventions and the absence of a motive of commercial gain, and the other permitting such reproduction against payment of remuneration subject to the same obligations. The two Model Provisions also covered reproduction in large print or by sound recording or broadcasting by means of a radio-reading service of works of the above-mentioned category free or against payment of remuneration but with permission from the competent authority, subject to similar conditions.[378]

(vii) *Guidelines on the system of translation and reproduction licences for developing countries under the Copyright Conventions*

The joint UNESCO/WIPO Working Group on the Formulation of Guidelines on the System of Translation and Reproduction Licences for Developing Countries under the Copyright

Conventions held its third meeting at UNESCO headquarters from 6 to 0 December 1982 to clarify certain aspects further and to finalize the text of the Guidelines, wh ich had been adopted at its second meeting in 1980. The Working Group amended certain par; graphs of the Guidelines and also decided to change the title of the document to read "A lvisory Notes on the Implementation of the System of Translation and Reproduction Licences or Developing Countries under the Copyright Conventions".[379]

(viii) *Model contracts concerning co-publishing and commissi ned works*

In pursuance of the deliberations of the first ordinary session of the Joint UNESCO/WIPO Consultative Committee (1981) within the framework of the Joint Int ernational UNESCO/ WIPO Service for Access by Developing Countries to Works Prot ected by Copyright, UNESCO and WIPO jointly convened a Working Group on Model Con racts concerning Co-publishing and Commissioned Works at Geneva from 8 to 12 Novembe 1982. The Working Group considered the preliminary drafts of Model Contracts concerning relations between an author and a publisher in respect of commissioned works; relations betw en a translator and a publisher with respect to commissioned translations; and the co-productio n of copies of a work by a publisher holding rights in the work and a publisher in a develop ng country; and also made several observations to be taken into account in preparing revised drafts of each of the draft model contracts. The Working Group noted that the joint secretari t would report on its meeting to the above-mentioned UNESCO/WIPO Joint Consultative Committee during its second session in July 1983.[380]

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4. INTERNATIONAL CIVIL AVIATION ORGANIZ ATION

(*a*) Legal activities

There was no legal meeting during the year 1982; however, pursuan to the recommendations of the twenty-third session of the Assembly and decisions of the C uncil, a considerable amount of work was done in preparation for the twenty-fifth session of th Legal Committee.

In accordance with the report of the Panel of Experts on the wo k programme of the Legal Committee, in October 1981, the Council had decided that the Legal Bureau should undertake simultaneously a study on the following two items: (*a*) liabilit of air traffic control agencies; and (*b*) study of the status of the instruments of the Warsaw System. A preliminary study of the items was considered by the Council at its one hundred fi th session, in March 1982; the study was accompanied by detailed questionnaires on each item. The secretariat study and the questionnaires attached thereto were sent to Contracting States an international organizations for their comments and replies. Furthermore, during the same session the Council, bearing in mind the decision of the twenty-third session of the Assemb y which directed the Council to convene a session of the Legal Committee to consider the qu stion of revising the general work programme, decided to convene the twenty-fifth session of the Legal Committee at Montreal, Canada, from 12 to 27 April 1983.

(*b*) Unlawful interference with international civil aviation an d its facilities

The Committee on Unlawful Interference with International Civil A iation and its Facilities held eight meetings during the year. It considered proposals concernin g the implementation of Assembly resolution A23-22, entitled "Refusal to allow unlawfully seized aeroplanes to land", and presented its recommendations to the ICAO Council. In accor ance with the recommendation of the Committee, the Council on 30 June adopted a resolutio n entitled "Assistance to unlawfully seized aircraft", in which it urged each Contracting State t provide, as it might find practicable, such measures of assistance to an aircraft subjected t an act of unlawful

seizure—including the provision of navigational aids, air traffic services and permission to land—as might be necessitated by the circumstances.

In response to a recommendation made by the United Nations Security Council Commission of Inquiry established under Security Council resolution 496 (1981), the Committee considered measures and procedures to prevent the clandestine transportation of weapons and munitions in checked baggage.

The Council noted the conclusion of the Committee that provisions had been adopted in annexes 17 and 9 to the Chicago Convention[381] with a view to eliminating the clandestine transportation of weapons and munitions on board aircraft engaged in international air transport and that it was up to Contracting States to apply those provisions.

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5. WORLD HEALTH ORGANIZATION

(*b*) Constitutional and legal developments

During 1982 Bhutan became a member of the World Health Organization through the deposit of an instrument of acceptance of the WHO Constitution[382] on 8 March 1982.[382] At the end of the year there were 158 members and one associate member of the organization.

The amendments to articles 24 and 25 of the Constitution, adopted in 1976 by the Twenty-ninth World Health Assembly and providing for an increase in the membership of the Executive Board from 30 to 31, were accepted by a further 27 members, bringing the total number of acceptances to 86.

The amendment to article 74 of the Constitution, adopted in 1978 by the Thirty-first World Health Assembly to include an Arabic version among the authentic texts, was accepted by a further eight members, bringing the total number of acceptances to 24.

The Thirty-fifth World Health Assembly, on the recommendation of the Executive Board at its Sixty-ninth session, adopted resolution WHA35.14 on policy on patents. By that resolution the Assembly decided that it would be the policy of WHO to obtain patents, inventors' certificates or interests in patents on patentable health technology developed through projects supported by WHO, where such rights and interests were necessary to ensure the development of the new technology; the organization would use its patent rights, and any financial or other benefits associated therewith, to promote the development, production and wide availability of health technology in the public interest.

(*b*) Health legislation and human rights

At its thirty-seventh session, the General Assembly of the United Nations adopted the revised resolution on principles of medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment.[383] Those principles are based on proposals made by WHO and the Council for International Organizations of Medical Sciences (CIOMS).

WHO and CIOMS commenced in 1982 a joint study of the principles that should govern the use of laboratory animals in human medical research with a view to promulgating international guidelines on the subject.

A meeting was held at Copenhagen in November 1982 on strategies for the legal implementation of the International Code of Marketing of Breast-milk Substitutes: The purpose of the meeting was to inform Member States on the Code and to develop national strategies for its legal implementation.

A study was undertaken to assist Governments and health officials to develop effective legislation as part of a campaign to reduce morbidity and mortality from smoking-related diseases. A survey of legislative texts was carried out and conclusions were drawn concerning experience with attempts to control smoking by means of legislation.

6. WORLD BANK

International Centre for Settlement of Investment Disputes

(i) *Signatures and ratifications*

During 1982, El Salvador signed the Convention.[384] On 31 December 1982, the number of Contracting States stood at 81, and seven countries had signed the Convention but had not yet deposited an instrument of ratification.

(ii) *Disputes submitted to the Centre*

In 1982, the Centre registered one new request for arbitration and its first request for conciliation proceedings. The arbitration proceedings involved *Société Ouest Africaine des Bétons Industriels (SOABI)* v. *The State of Senegal.* The conciliation proceedings involved *SEDITEX Engineering Beratungsgesellschaft für die Textilindustrie mbH* v. *the Government of the Democratic Republic of Madagascar.*

7. INTERNATIONAL MONETARY FUND

Membership, quotas, and participation in the Special Drawing Rights Department

In 1982, Antigua and Barbuda, Belize and Hungary became members of the Fund,[385] on 25 February, 16 March and 6 May respectively, raising the membership of the Fund to 146. All three of the aforementioned States elected to participate in the Special Drawing Rights Department; thus, all members of the Fund were participants in that Department at the end of 1982. The application of Poland for membership was pending.

The Fund continued its work during 1982 on the Eighth General Review of Quotas, which was completed on 31 March 1983 by a resolution of the Board of Governors which authorized an increase of 47.5 per cent in aggregate Fund quotas from the level of 61,059.8 million special drawing rights to SDR 90,034.8 million. The new quotas are intended to become effective by the end of 1983 in order to enable the Fund to carry out its tasks of assisting in the financing and adjustment of members' payments imbalances and to better reflect members' relative positions in the world economy.

Financial assistance

The Fund increased its financial assistance to members substantially in 1982. New commitments of resources under the Supplementary Financing Facility ceased on 22 February. Members continued, however, to have similar access to resources of the Fund under the Fund's policy of enlarged access, which was approved in March and became operative on 7 May. On 17 November, the Fund permitted members to use the Fund's Buffer Stock Financing Facility for contributions under the 1979 International Natural Rubber Agreement and the Sixth International Tin Agreement. During 1982 internal procedures regarding members that were not current in their financial obligations to the Fund were modified to promote compliance.

CHARGES AND REMUNERATION

On 9 June 1982, the Fund revised the criteria for determining the rate of charge for the conditional use of its ordinary resources. At the beginning of each financial year, starting 1 May 1983, the rate of charge shall be determined at the beginning of each financial year on the basis of the estimated income and expense of the Fund during the year and the target amount of net income for the year. The latter shall be 3 per cent of the Fund's reserves at the beginning of the year or such other percentage as the Executive Board may determine, particularly in the light of the results in the previous financial year. If the Fund's net income for a financial year exceeds the target amount for that year, the Executive Board may deem any part of the excess over the target amount that has been placed in reserve as income for the next year in determining the rate of charge for that next year. Following these criteria the Fund deemed SDR 92 million of its net income for fiscal year 1982 as income for fiscal year 1983 for the purpose of calculating the rate of charge for fiscal year 1983, which was set at 6.6 per cent per annum. On 23 April 1982 the Fund decided to permit members needing SDRs to pay charges to the Fund within 30 days to obtain them from the Fund in exchange for other members' currencies selected by the Fund.

BORROWING

On 13 January 1982, the Fund adopted Guidelines for Borrowing by the Fund. Also in 1982, the Fund staff considered proposals which led to the adoption, on 24 February 1983, of a decision of the Executive Board to increase the size of the General Arrangements to Borrow (GAB) from SDR 6.4 billion to SDR 17 billion and to amend them to permit their use to finance purchases by non-participants in GAB, if necessary to preserve the stability of the international monetary system, and to permit Switzerland to become a participant in GAB.

SPECIAL DRAWING RIGHTS

Two international development institutions and a joint central bank were prescribed as "other holders" of SDRs in 1982, bringing the total number of "other holders" to 13. The Bank of Central African States was prescribed on 26 February, the Islamic Development Bank on 5 April, and the Asian Development Bank on 15 October. The Fund continued to consider whether to make additional allocations of SDRs but did not reach any conclusion on the question.

During 1982 the International Telecommunication Union adopted SDR as its unit of account, bringing to 15 the number of international and regional organizations using SDR in determining a unit of account.

SURVEILLANCE

Article IV, section 3, of the Fund's Articles of Agreement[386] provides that the Fund shall oversee the international monetary system and the compliance of each member with its obligations concerning exchange and related policies. In order to fulfil these tasks the Fund must exercise firm surveillance over the exchange rate policies of members and adopt policies to guide members with respect to those policies. During 1982 the Fund intensified its consultations with members under its principles and procedures for surveillance, adopted in 1977. These included regular consultations under article IV that, in principle, take place annually with each member, consultations with members to help the Executive Board review the world economic outlook or major economic developments taking place in the country and other *ad hoc* consultations.

STATUS UNDER ARTICLE VIII OR ARTICLE XIV

Article VIII of the Fund's Articles of Agreement requires each member to refrain from imposing restrictions on the making of payments and transfers for current international transac-

tions, or discriminatory currency arrangements or multiple currency practices without the approval of the Fund, and to ensure the convertibility of balances of its currency held by other members. Article XIV, however, permits a member to avail itself of transitional arrangements that were in effect at the time it became a member of the Fund. As of the end of 1982, 56 members had accepted the obligations of article VIII, sections 2, 3 and 4, of the Articles of Agreement, 89 members were availing themselves of the transitional arrangements under article XIV, section 2, and one member had not yet completed formal procedures to establish its status under these provisions.

SUBSIDY PAYMENTS

Subsidy payments totalling SDR 9.3 million were made under the Oil Facility Subsidy Account on 1 June 1982 to certain members of the Fund on the average daily balances of the Fund's holdings of their currencies that were outstanding during fiscal year 1982 under the 1975 Oil Facility and were subject to charges. Subsidy payments amounting to SDR 44.3 million were also made on 10 August 1982 under the Supplementary Financing Facility Subsidy Account to certain members in respect of the charges paid by them on the Fund's holdings of their currencies acquired as a result of purchases under the Supplementary Financing Facility and the policy on exceptional use of the Fund's resources.

The Subsidy Account for the Oil Facility was established on 1 August 1975 to assist members most seriously affected by oil price increases by reducing the interest cost of using the 1975 Oil Facility. The Supplementary Financing Facility Subsidy Account was established on 17 December 1980 to assist the low-income developing members to meet the cost of using resources made available through the Fund's Supplementary Financing Facility and under the policy on exceptional use.

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8. UNIVERSAL POSTAL UNION[387]

The Universal Postal Union continued its study of the legal and administrative problems entrusted by the Congress to the Executive Council. Among the most important problems which may be of interest to other organizations, specific mention should be made of the following studies.

ORGANIZATION, FUNCTIONING AND METHODS OF WORK OF THE CONGRESS

The basic purpose of the study is to lighten and shorten the deliberations of the Congress, the supreme organ of UPU, which in principle meets every five years for six weeks. The study, which reappraises the entire procedure governing the mechanism of the Congress, has already led to a series of decisions which will become operational for the 1984 Hamburg Congress. However, the study will not really be completed until 1984, and will be the subject of an exhaustive report at that time.

ORGANIZATION, FUNCTIONING AND METHODS OF WORK OF THE EXECUTIVE COUNCIL AND DELIMITATION OF POWERS BETWEEN THE EXECUTIVE COUNCIL AND THE CONSULTATIVE COUNCIL FOR POSTAL STUDIES

The study's principal objective has been to redefine and specify the powers of the Executive Council, in view of the practice that has developed since its establishment in 1948. It will be the subject of a report and proposals which will be submitted to the 1984 Hamburg Congress.

QUORUM REQUIRED FOR AMENDING THE CONSTITUTION

Having been instructed to consider various aspects of the quorum requirement within the organs of the Congress, the Executive Council decided to recommend that the Hamburg Congress should reintroduce into the rules of procedure of the Congress a quorum equal to the required majority for amending the Constitution, namely, two thirds of the States members of the Union.

On the other hand, the Executive Council has not deemed it advisable to recommend a reduction in the quorum currently required for the opening of plenary meetings and meetings of the commissions, namely, a majority of the member States represented in the Congress or, where appropriate, a majority of the States represented in the Congress and parties to the optional arrangements when they are under consideration. It should be noted that these different quorums are also those required for the taking of decisions within the organs of the Congress, except with respect to the Constitution and the general regulations, which require larger quorums.

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9. WORLD METEOROLOGICAL ORGANIZATION

(*a*) Questions relating to the Convention[388] and the General Regulations

INTERPRETATION OF THE TERM "DESIGNATED" IN REGULATION 142 OF THE GENERAL ASSEMBLY

The Executive Committee considered the draft report prepared by the Secretary-General, as requested by the Committee at its thirty-third session, containing the study prepared by the Secretary-General and the detailed amendments which would satisfy each of the two alternative interpretations of the term "designated" in regulation 142 of the General Regulations.

In connection with the request made by the Committee to emphasize the suggestion to confine the list of candidates for an acting member of the Committee to those coming from the same Region as the outgoing member, it was felt that such a suggestion would suffice if it were reflected in the accompanying text to be submitted to the Ninth Congress in connection with the proposed amendments to the regulation rather than in the General Regulations or the rules of procedure of the Executive Committee.

The Committee noted that only the proposed amendments to article 16 of the Convention and to regulation 142 of the General Regulations were to be submitted to the Ninth Congress and that any amendments to the rules of procedure of the Committee would be dealt with accordingly by the Committee itself depending on the final interpretation of the term by the Ninth Congress.

The Executive Committee incorporated its view in resolution 26 of its thirty-fourth session (EC-XXXIV).

In examining the proposed amendments to article 16 of the Convention, the Committee also noted that the reference in the article to the fact that a member of the Executive Committee in casting his vote might be acting in more than one capacity appeared to be redundant, taking into account the provisions of regulation 8 of the WMO General Regulations.

With a view to avoiding possible misinterpretations, the Committee concluded that, if the Congress decided to amend article 16 of the Convention as a result of its interpretation of the term "designated" in regulation 142, it would be preferable to delete at the same time the relevant part of the sentence containing the aforesaid reference.

The Committee therefore requested the Secretary-General, in submitting to the Ninth Congress, in accordance with resolution 26 (EC-XXXIV), the proposed amendments to article

16 of the Convention, to emphasize that the proposed deletion, although incorporated in the proposed amended text of the article, is to be considered as a matter distinct from the question of the interpretation of the term "designated" in regulation 142.

PROCEDURES RELATING TO INVITATIONS FOR SESSIONS OF CONSTITUENT BODIES

The Committee studied and approved the proposed draft amendment to annex I to the General Regulations (reference: regulation 16) and requested the Secretary-General to present the proposal to the Ninth Congress on behalf of the Committee.

DISCREPANCY BETWEEN THE ENGLISH AND FRENCH TEXTS OF ARTICLE 14 (*f*) OF THE CONVENTION

The Executive Committee considered the draft resolution prepared by the Secretary-General, as requested by the Committee at its thirty-third session, for the interpretation of the Convention in connection with this article. The Committee expressed the desire that the proposed editorial adjustment of the English text of the article should be made by a formal amendment of the article. Therefore, following up on its own interpetation of the article already expressed during its thirty-third session, the Committee decided to submit the editorial adjustment as a formal proposal for the amendment of article 14 (*f*) to the Ninth Congress.

The Committee reflected its view on the matter in resolution 27 (EC-XXXIV).

DISTRIBUTION OF SEATS ON THE EXECUTIVE COMMITTEE AMONGST THE DIFFERENT REGIONS

The Executive Committee reviewed the results of the second consultation undertaken by the Secretary-General with the members of the Organization on the subject of the distribution of seats on the Committee amongst the different Regions. Judging from the comments resulting from the two consultations held on the matter, the Committee identified the following suggestions as the most frequently proposed:

(*a*) There should be a mechanism whereby the Regions have greater representation;

(*b*) There should be a proportional distribution in accordance with the number of members from each Region in relation to the total number of members of the Organization;

(*c*) There should be three bodies within the Executive Committee each with 10 seats:

(i) The administrative body with members represented by the elected president, the three vice-presidents and the six presidents of regional associations;

(ii) The permanent representative body with the members representing the more economically developed countries, the largest contributors to the budget, the largest in area, the most scientifically developed and the most active in the World Weather Watch (WWW), taking into account that all six Regions must be represented by at least one of their members;

(iii) Elected members of the Regions in proportion to the number of members in the Region;

(*d*) The election of all members must be made by the Congress, except in the case of presidents of regional associations;

(*e*) The level of participation in WWW, as the main programme of WMO, must be considered as a strong point in electing members to the permanent body;

(*f*) It is not possible to refer to the idea of personal qualifications and competence of members because this would require a previous evaluation of each member;

(*g*) Consideration might be given to the possibility of electing permanent representatives instead of individuals so that their successors could take the vacant seats in case of retirement, resignation or death;

(*h*) The selection of mathematical formulas acceptable to all would be very difficult;

(*i*) The minimum number of members should be such that there is in most circumstances at least one elected member from each Region.

Although the Executive Committee noted that the existing distribution system of seats in the Committee did not seem to adapt itself to the increase in membership of the Organization, it was felt that the present criteria as well as the consultation process during the Congress in connection with the distribution of seats in the Committee were still supported by an appreciable number of members.

In this connection, concern was expressed that at present Region IV was not adequately represented in the Executive Committee. The hope was expressed that at some point a way could be found to rectify the situation.

The Executive Committee, aware of the difficulties involved in reaching a possible consensus on the matter, decided to submit the comments received from members as a result of the two consultations held on the question to the Ninth Congress for its consideration.

PROPOSED AMENDMENTS TO THE GENERAL REGULATIONS

The Executive Committee examined the proposals for amendment of certain of the General Regulations, the need for which had arisen as a result of the experience gained since the Eighth Congress in the application of those regulations. The Committee decided to recommend to the Ninth Congress the adoption of the proposed amendments to the General Regulations and requested the Secretary-General to submit the amendments to the Ninth Congress.

(*b*) Membership of the organization

In 1982, Belize, Vanuatu and Swaziland became members of the organization under article 3 (*b*) of the Convention on 24 June, 24 July and 2 December respectively, those dates being the thirtieth day after the respective deposits of the instruments of accession to the Convention.

The total membership of the organization at the end of 1982 comprised 152 States and five Territories.

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10. INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

(*a*) Members of the organization

In 1982, Nicaragua became a member of the Inter-Governmental Maritime Consultative Organization (17 March). As at 31 December 1982, the number of members of the organization was 122. There was also one associate member.

(*b*) Amendments to the IMCO Convention

The amendments adopted on 14 November 1975[389] to the Convention on the Inter-Governmental Maritime Consultative Organization, done at Geneva on 6 March 1948,[390] entered into force on 22 May 1982. The amendments changed as from 22 May 1982 the name of the Organization to "International Maritime Organization" (IMO). They also expanded article I of the Convention to include activities concerning "the prevention and control of marine pollution from ships" and "legal matters related to the purposes set out in this article". In addition, the amendments provided for the institutionalization of the Legal Committee and the Marine Environment Protection Committee in the IMO Constitution.

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11. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

MEMBERSHIP

At its sixth session, held from 13 to 15 December 1982, the Governing Council of IFAD approved the membership of three countries: Belize, Saint Vincent and the Grenadines and Suriname. As at 31 December 1982, IFAD had a total membership of 137 States—20 in category I (developed countries), 12 in category II (oil-exporting developing countries) and 105 in category III (other developing countries).

ADOPTION OF IFAD'S PROCUREMENT GUIDELINES

In order to regulate the acquisition of goods and related services needed to carry out a project or a programme, the Agreement establishing IFAD requires that the Executive Board shall adopt suitable regulations for the procurement of goods and services to be financed from the resources of IFAD. Accordingly, the Executive Board, after due deliberation at its Sixteenth Session, in September 1982, adopted the Guidelines for procurement under financial assistance from the International Fund for Agricultural Development. These Guidelines, in general, adhere to the principles of international competitive bidding followed by major international financial institutions. The recipient country may procure the required goods and services only from the member countries of IFAD. However, if justifications exist, the Executive Board, upon the recommendations of the president, may waive the membership restriction for a particular project and, as an exceptional measure, allow the recipient country to make procurement from a country that may not be a member of IFAD.

Conforming to the requirements of the Agreement establishing IFAD, in the evaluation of bids the recipient is to give a margin of preference within a prescribed range to procurement from developing member countries of IFAD. For the goods manufactured within the recipient country, the margin of preference can be up to 15 per cent of the bid price, and up to 5 per cent of the bid price in the case of goods manufactured in other developing member countries. Similarly, in the evaluation of bids for civil works contracts, the recipient can give up to a 7.5 per cent margin of preference for domestic contractors under conditions to be agreed with IFAD. After evaluation, if a bid from a developing member country is lowest in price or equivalent to the bid from a country that is not entitled to preference, then such a bid is to be considered for the award of contract. In the interest of economy and efficiency or under special circumstances and in agreement with IFAD, the recipient may not give some or all preferences.

The Procurement Guidelines will apply to all exclusively IFAD-financed projects and programmes approved by the Executive Board after its sixteenth session. In the case of co-financed projects and programmes, regulations of the international or regional financial institution that is to co-finance the project or programme with IFAD and administer such project or programme on behalf of IFAD as IFAD's Co-operating Institution will continue to be applied to the procurement of goods and related services financed from IFAD's resources. In the application of the co-operating institution's procurement regulations, IFAD has to ensure that such regulations are consistent with the general principles of IFAD's Procurement Guidelines.

USE OF CONSULTANTS BY IFAD AND ITS BORROWERS

The Executive Board of IFAD, at its sixteenth session, held in September 1982, deliberated on the issue of adopting rules for the use of consultants by IFAD and its borrowers. Regarding the use of consultants by IFAD itself, the Board decided that there was no need for detailed guidelines in that regard since the Board had the opportunity regularly to assess the use and need for such consultants when reviewing IFAD's annual budget proposals. With regard to the use of consultants by borrowers for projects financed by IFAD, the Board noted that since IFAD did not itself administer projects it would have to permit the guidelines of its co-operating institutions to be used. With respect to projects that were exclusively financed by IFAD, however, the Board decided that the eligibility criteria set out in IFAD's Procurement

Guidelines should be observed and that in engaging consultant services appropriate preferences should be given to consultants from developing member countries.

CO-OPERATION WITH OTHER INTERNATIONAL ORGANIZATIONS

In accordance with section 2 of article 8 of the Agreement establishing IFAD, IFAD seeks collaboration in its activities with other United Nations organizations, intergovernmental organizations, international financial institutions, non-governmental organizations and governmental agencies concerned with agricultural development. To carry out this collaboration, IFAD is empowered to conclude co-operation agreements with any of these organizations. These agreements assume special importance in co-operation activities involving the identification, preparation and appraisal of projects, since article 7, section 2, of the Agreement establishing IFAD makes it mandatory for IFAD to entrust the administration of its loans, for the purposes of the disbursement of the proceeds of the loans and the supervision of the implementation of the projects, to competent international institutions.

To broaden further the scope of its co-operation, IFAD signed a number of new co-operation agreements and working arrangements during 1982 with entities whose activities in development and food production correspond to IFAD's areas of interest. These new entities were:

(*a*) Arab Bank for Economic Development in Africa (BADEA);

(*b*) Andean Development Corporation (CAF);

(*c*) Central American Bank for Economic Integration (BCIE);

(*d*) United Nations Industrial Development Organization (UNIDO);

(*e*) Organization of African Unity (OAU).

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12. INTERNATIONAL ATOMIC ENERGY AGENCY

SAFEGUARDS AGREEMENTS

By the end of 1982, safeguards agreements were in force with 90 States. The total number of parties to the Treaty on the Non-Proliferation of Nuclear Weapons[391] was 121, including three nuclear-weapon States. Seventy safeguards agreements concluded pursuant to the Treaty were in force.

REGIONAL CO-OPERATION IN ASIA

The Regional Co-operative Agreement (RCA) for Research, Development and Training Related to Nuclear Science and Technology, concluded in 1972[392] and extended for a period of five years in 1977,[393] was extended for a further period of five years with effect from 12 June 1982.[394] By the end of 1982, RCA as thus extended was in force for the Agency and the following 13 member States in the Asia and the Pacific region: Australia, Bangladesh, India, Indonesia, Japan, Republic of Korea, Malaysia, Pakistan, Philippines, Singapore, Sri Lanka, Thailand and Viet Nam.

In October, the Government of Viet Nam notified the Director General of its acceptance of the Agreement Establishing the Asian Regional Co-operative Project on Food Irradiation[395] within the framework of RCA. By the end of 1982, the Agreement was in force for the Agency and the following 11 member States: Bangladesh, India, Indonesia, Japan, Republic of Korea, Malaysia, Pakistan, Philippines, Sri Lanka, Thailand and Viet Nam.

ADVISORY SERVICES IN NUCLEAR LEGISLATION

As a follow-up to the advisory services provided to Chile in 1981, which resulted in the passing of a law on nuclear safety and nuclear third-party liability in October 1982, advice was

given on the elaboration of regulations for the licensing of activities involving radioactive materials and nuclear installations and for the physical protection of nuclear materials.

Advisory services were also provided to Uruguay on the framing of legislation concerning radiation protection and nuclear safety and on related organizational and regulatory matters.

PHYSICAL PROTECTION OF NUCLEAR MATERIAL

By the end of 1982, 33 States and the European Atomic Energy Community (EURATOM) had signed the Convention on the Physical Protection of Nuclear Materia [396] and six States had ratified it. Pursuant to article 19 of the Convention, 21 ratifications are required for its entry into force.

INTERNATIONAL SPENT FUEL MANAGEMENT

A major study on international spent fuel management was completed in July 1982 by a group of experts convened in 1979 to examine the potential for international co-operation in the management of spent fuel from nuclear reactors and to assist the Agency in defining what role it might play in solving problems created by growing accumulations of spent fuel.

Experts from 24 member States and three international organizations took part in the work of the Group. An essential finding was that for a number of countries international co-operation might offer advantages over strictly national approaches as regards the economic and management aspects of spent fuel storage. The necessary groundwork on international aspects of shared storage arrangements was done by the Group, and the conceptual work performed by it would facilitate the consideration of co-operative arrangements among interested parties. The Group concluded that arrangements similar to those provided for in various existing bilateral and multinational agreements in the nuclear field would be feasible for spent fuel management.

INTERNATIONAL PLUTONIUM STORAGE

In October 1982, the Expert Group on International Plutonium Storage (IPS) completed its work, which had been started in 1978. The purpose of the Group's study, in which experts from 34 member States and one international organization took part, was to examine the technical and operational aspects of establishing an IPS system within the framework of the Agency, including the harmonization of IPS procedures with existing safeguards. In its final report, the Expert Group identified three alternative approaches to procedures for implementing an IPS system and provided supporting material on international plutonium stores and possible institutional arrangements.

COMMITTEE ON ASSURANCES OF SUPPLY

The Committee on Assurances of Supply (CAS), established by the Board of Governors in June 1980, has continued its consideration of the question of the assurance of supplies of nuclear material, equipment and technology and fuel cycle services in accordance with mutually acceptable considerations of non-proliferation, and of the Agency's role and responsibilities thereto. This has been an issue not only between industrially advanced and developing countries but also among industrially advanced countries.

The Committee held its fifth and sixth sessions in April and October 1982 respectively. At those sessions, it continued consideration of the topics "Principles of international co-operation in the field of nuclear energy", in accordance with its mandate, and "Emergency and back-up mechanisms". In addition, the Committee began consideration of a third topic, "Revision mechanisms".

FUEL SUPPLY ARRANGEMENTS

On 20 December 1982, the Agency and the Governments of the United States and Yugoslavia amended the fourth supply agreement, concluded between them on 16 January 1980,[397]

in connection with the Agency's assistance to Yugoslavia for the transfer of enriched uranium from the United States for a research reactor in Yugoslavia. The amendment[398] provides for the transfer to Yugoslavia, through the Agency, of approximately 5,098 grams of low-enriched uranium.

HOST COUNTRY ARRANGEMENTS

An agreement between the Agency and the Government of Austria was concluded on 1 March 1982 for the inclusion of the Agency's laboratories at Seibersdorf in the headquarters of the Agency. The agreement includes provisions regarding operational safety.

SAFE TRANSPORT OF RADIOACTIVE MATERIALS

As part of its efforts to provide adequate and compatible safety standards for use as a basis for the national and international transport of radioactive materials, the Agency continued its work on developing and updating universally applicable regulations for safe transport. A revised and expanded edition of the "Advisory material for the application of the IAEA transport regulations"[399] was issued in March 1982; a major draft revision of the Transport Regulations[400] was circulated for review by member States prior to completion of the revision, scheduled for 1984.

MUTUAL EMERGENCY ASSISTANCE

As a result of a request by the Board of Governors in February 1982, a group of experts met in June 1982 to study the most appropriate means of responding to the need for mutual assistance in connection with a nuclear accident. The group, *inter alia*, recommended the development of a single set of provisions that could be applied to emergency assistance and could serve as a model for the negotiation of bilateral or regional agreements, which are to be encouraged.

NOTES

[1] This summary has been prepared on the basis of *The United Nations Disarmament Yearbook*, vol. 7: 1982 (United Nations publication, Sales No. E.83.IX.7).

[2] For the preparatory work for the second special session of the General Assembly see *The United Nations Disarmament Yearbook*, vol. 6: 1981 (United Nations publication, Sales No. E.82.IX.7), pp. 51-60, and vol. 7: 1982 (United Nations publication, Sales No. E.83.IX.7), pp. 7-14.

[3] *Official Records of the General Assembly, Tenth Special Session, Supplement No. 4* (A/S-10/4), sect. III; the Final Document is reproduced in *Juridical Yearbook, 1978*, p. 42, and in *The United Nations Disarmament Yearbook*, vol. 3, 1978 (United Nations publication, Sales No. E.79.IX.3), appendix I.

[4] *Official Records of the General Assembly, Twelfth Special Session, Annexes*, agenda items 9, 10, 11, 12 and 13, document A/S-12/32; the Concluding Document is reproduced in *The United Nations Disarmament Yearbook*, vol. 7: 1982, appendix I.

[5] See A/S-12/AC.1/PV.1-15.

[6] See A/S-12/PV.1-29.

[7] Reproduced in the present volume, pp. 61-63.

[8] Adopted by a recorded vote of 116 to 12 (Western States), with 12 abstentions.

[9] Adopted by a recorded vote of 134 to none, with 16 abstentions (Western States, Colombia and Lebanon).

[10] *Official Records of the General Assembly, Twelfth Special Session, Supplement No. 3* (A/S-12/3), annex III, para. 4 (*d*).

[11] See, in particular, paragraph 63 of the conclusions, p. 62 of the present volume.

[12] *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 27* (A/37/27), appendix II (see CD/335, appendix II, document CD/242).

[13] Resolution 37/99 B was adopted without a vote.

[14] Resolution 37/99 G was adopted by a recorded vote of 121 to none, with 17 abstentions (including Eastern European States, except Romania).

[15] Resolution 37/99 H was adopted without a vote.

[16] Resolution 37/99 I was adopted by a recorded vote of 135 to none, with 7 abstentions.

[17] *Official Records of the General Assembly, Twelfth Special Session, Supplement No. 2* (A/S-12/2), appendix I.

[18] *Ibid., Supplement No. 4* (A/S-12/4), paras. 32-34.

[19] *Ibid., Thirty-seventh Session, Supplement No. 28* (A/37/28).

[20] Adopted without a vote.

[21] See especially paragraphs 59 and 62 of the Concluding Document, p. 62 of the present volume.

[22] Adopted by a recorded vote of 114 (including China) to 1 (United States), with 32 abstentions.

[23] Adopted by a recorded vote of 118 to 19, with 9 abstentions.

[24] Adopted by a recorded vote of 81 to 14, with 52 abstentions.

[25] Adopted by a recorded vote of 70 to 18 (mainly Western States), with 51 abstentions.

[26] Adopted by a recorded vote of 121 to none, with 22 abstentions.

[27] Adopted by a recorded vote of 122 to 16 (mainly Western States), with 6 abstentions (including China).

[28] Adopted by a recorded vote of 119 to 17 (mainly Western States), with 5 abstentions.

[29] See paragraph 62 of the Concluding Document, p. 62 of the present volume.

[30] Adopted by a recorded vote of 117 to 17, with 8 abstentions..

[31] Adopted by a recorded vote of 130 to none, with 17 abstentions (Western States).

[32] Adopted by a recorded vote of 112 to 19, with 15 abstentions.

[33] Adopted by a recorded vote of 144 to none, with 3 abstentions (India, United Kingdom and United States).

[34] Adopted by a recorded vote of 108 to 17 (Western States), with 19 abstentions.

[35] *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 27* (A/37/27 and Corr.1), para. 39.

[36] Adopted by a recorded vote of 115 to 5 (Australia, China, France, United Kingdom and United States), with 25 abstentions.

[37] Adopted by a recorded vote of 124 to 2 (United Kingdom and United States), with 19 abstentions.

[38] Adopted by a recorded vote of 111 to 1 (United States), with 35 abstentions.

[39] Adopted by a recorded vote of 136 to none, with 7 abstentions.

[40] Adopted by a recorded vote of 134 to none, with 13 abstentions.

[41] Adopted without a vote.

[42] Adopted by a recorded vote of 106 to 2 (Israel and United States), with 34 abstentions.

[43] See resolution 37/18, adopted by a recorded vote of 119 to 2 (Israel and United States), with 13 abstentions.

[44] Adopted by a recorded vote of 99 to 2 (Bhutan and India), with 45 abstentions.

[45] Established by General Assembly resolution 35/112 of 5 December 1980; in accordance with resolution 36/78 of 9 December 1981, six new members were appointed to the Preparatory Committee, in addition to those already appointed in 1981. The Committee in 1982 was thus composed of 64 Member States, as follows: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian SSR, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guatemala, Hungary, India, Indonesia, Iraq, Ireland, Italy, Ivory Coast, Japan, Libyan Arab Jamahiriya, Malaysia, Mauritania, Mexico, Morocco, Netherlands, Niger, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Romania, Senegal, Spain, Sri Lanka, Sweden, Syrian Arab Republic, Thailand, Turkey, Ukrainian SSR, USSR, United Arab Emirates, United Kingdom, United Republic of Cameroon, United States, Uruguay, Venezuela, Yugoslavia and Zaire.

[46] Adopted by a vote of 105 to 2 (Israel and United States), with 25 abstentions.

[47] A/S-12/AC.1/12 and Corr.1.

[48] A/S-12/AC.1/37 and Corr.1.

[49] A/S-12/AC.1/18 (Belgium), A/S-12/AC.1/29 and Corr.1 (German Democratic Republic) and A/S-12/AC.1/41 (France).

[50] See, for instance, A/S-12/22 (Netherlands), A/S-12/AC.1/5 (Hungary), A/S-12/AC.1/10 and Corr.1 (USSR) and A/S-12/AC.1/23 and Corr.1 (China).

[51] See note 4.

[52] *Official Records of the General Assembly, Twelfth Special Session, Supplement No. 2* (A/S-12/2), para. 66, sect. III.

[53] Resolution 37/98 A was adopted by a recorded vote of 95 to 1 (United States), with 46 abstentions; resolution 37/98 B was adopted without a vote.

[54] Adopted by a vote of 124 to 15, with 1 abstention.

[55] Adopted by a vote of 86 to 19, with 33 abstentions.

[56] A/37/259, annex.

[57] Adopted by a recorded vote of 83 to 22, with 33 abstentions.

[58] *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 27* (A/37/27 and Corr.1), paras. 76-89.

[59] Adopted by a recorded vote of 119 to none, with 26 abstentions.

[60] Adopted by a recorded vote of 114 to 10 (Western States), with 17 abstentions.

[61] Documents CD/31 and CD/32 of 9 July 1979; see also *Official Records of the General Assembly, Twelfth Special Session, Supplement No. 2* (A/S-12/2), para. 69.

[62] Adopted without a vote.

[63] *Official Records of the General Assembly, Twelfth Special Session, Supplement No. 2* (A/S-12/2), paras. 80-83, and *ibid., Thirty-seventh Session, Supplement No. 27* (A/37/27 and Corr.1), paras. 97-106.

[64] A/CONF.101/10 and Corr.1 and 2, para. 426.

[65] Adopted by a recorded vote of 138 to 1, with 7 abstentions.

[66] Adopted by a recorded vote of 112 to none, with 29 abstentions.

[67] *Official Records of the General Assembly, Tenth Special Session, Supplement No. 4* (A/S-10/4), sect. III, para. 45; the Final Document is reproduced in *Juridical Yearbook, 1978*, p. 42.

[68] By Denmark (A/CN.10/33) and by the German Democratic Republic (A/CN.10/34).

[69] *Official Records of the General Assembly, Twelfth Special Session, Supplement No. 3* (A/S-12/3), annex III.

[70] A/S-12/PV.2-25.

[71] According to estimates of the Stockholm International Peace Research Institute, in *World Armaments and Disarmament, SIPRI Yearbook 1982* (London, Taylor & Frances, 1982), p. 176.

[72] *Official Records of the General Assembly, Twelfth Special Session, Supplement No. 2* (A/S-12/2), appendix I.

[73] See note 4.

[74] Adopted without a vote.

[75] Adopted without a vote.

[76] See *Official Records of the General Assembly, Tenth Special Session, Supplement No. 4* (A/S-10/4), sect. III, paras. 89 and 90.

[77] *Ibid., Thirty-fourth Session, Supplement No. 42* (A/34/42), para. 19, sect. III.A, para. 4.

[78] Adopted without a vote.

[79] Adopted by a recorded vote of 96 to 13 (including the Eastern European States), with 9 abstentions.

[80] The *Ad Hoc* Committee in 1982 was composed of the following 46 Member States: Australia, Bangladesh, Bulgaria, Canada, China, Democratic Yemen, Djibouti, Egypt, Ethiopia, France, German Democratic Republic, Germany, Federal Republic of, Greece, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Liberia, Madagascar, Malaysia, Maldives, Mauritius, Mozambique, Netherlands, Norway, Oman, Pakistan, Panama, Poland, Romania, Seychelles, Singapore, Somalia, Sri Lanka, Sudan, Thailand, USSR, United Kingdom, United Republic of Tanzania, United States, Yemen, Yugoslavia and Zambia.

[81] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 45* (A/34/45).

[82] Adopted without a vote.

[83] See A/37/742.

[84] A/37/476.

[85] General Assembly resolution 2734 (XXV); reproduced in *Juridical Yearbook, 1970*, p. 62.

[86] Adopted by a recorded vote of 116 to none, with 19 abstentions.

[87] See A/37/743.

[88] Adopted without a vote.

[89] See A/37/744.

[90] For the report of the Legal Sub-Committee, see A/AC.105/305.

[91] A/AC.105/288 and Add.1.

[92] A/AC.105/287.

[93] A/AC.105/304.

[94] Working papers of Canada (A/AC.105/C.2/L.129 and L.135); Italy (WG/NPS(1981)/WP.2); Argentina and Chile (WG/NPS(1982)/WP.1); Brazil (WG/NPS(1982)/WP.3 and Rev.1); and Nigeria (WG/NPS(1982)/WP.4).

[95] A/AC.105/304.

[96] A/AC.105/C.2/L.121 and A/AC.105/L.112 respectively.

[97] Adopted without a vote.

[98] See A/37/646.

[99] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (General Assembly resolution 2222 (XXI), annex); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects (resolution 2777 (XXVI), annex); Convention on Registration of Objects Launched into Outer Space (resolution 3235 (XXIX), annex); Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (resolution 34/68, annex).

[100] Adopted without a vote.

[101] See A/37/646.

[102] *Report of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space, Vienna, 9-21 August 1982* (A/CONF.101/10 and Corr.1 and 2).

[103] *Ibid.*, para. 361.

[104] Adopted by a recorded vote of 107 to 13, with 73 abstentions.

[105] See A/37/646.

[106] For detailed information, see *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 25* (A/37/25).

[107] *Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972* (United Nations publication, Sales No. E.73.II.A.14), chap. I.

[108] *Ibid.*, chap. II.

[109] UNEP/GC.10/5/Add.2 and Corr.1 (English only) and Corr.2.

[110] Adopted without a vote.

[111] Approved by consensus.

[112] UNEP/GC.10/8 and Corr.1 and 2 and Add.1.

[113] UNEP/GC.10/5/Add.1 and Corr.1.

[114] UNEP/GC/INFORMATION/5/Supplement 5.

[115] UNEP/GC.9/5/Add.5, annex III.

[116] Approved by consensus.

[117] See *Report of the United Nations Conference on the Human Environment.*

[118] Approved by consensus.

[119] UNEP/GC.10/5/Add.2 and Corr.1 (English only) and Corr.2.

[120] *Ibid.*, pp. 2-4.

[121] *Ibid.*, pp. 5-16.

[122] *Ibid.*, sect. II.E, pp. 14-16.

[123] Approved by consensus.

[124] UNEP/GC.10/5/Add.2 and Corr.1 (English only) and Corr.2.

[125] *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 25* (A/37/25).

[126] Adopted without a vote.

[127] A/37/680/Add.8.

[128] *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 25* (A/37/25), part one, annex II; the Nairobi Declaration is reproduced in the present volume, pp. 80-81.

[129] Adopted without a vote.

[130] See A/37/680/Add.8.

[131] UNEP/GC.10/7 and Corr.1.

[132] See UNEP/GC.10/5/Add.2 and Corr.1 and 2.

[133] A/37/396 and Corr.1, annex.

[134] See UNEP/GC.9/5/Add.5, annex III.

[135] Adopted by a recorded vote of 111 to 1, with 18 abstentions.

[136] A/36/539.

[137] A/37/398 and Add.1.

[138] Adopted without a vote.

[139] See A/37/680/Add.2.

[140] For detailed information, see *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 12* (A/37/12) and *ibid., Supplement No. 12A* (A/37/12/Add.1).

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

[142] *Ibid.*, vol. 606, p. 267.

[143] EC/SCP/25.

[144] Adopted without a vote.

[145] See A/37/692.

[146] Adopted without a vote.

[147] See A/37/692.

[148] Adopted without a vote.

[149] See A/37/692.

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

[151] *Ibid.*, vol. 1019, p. 175.

[152] Adopted without a vote.

[153] See A/37/745.

[154] Set out in the report of the Commission on its seventh special session, *Official Records of the Economic and Social Council, 1981, Supplement No. 4* (E/1981/24), annex II.

[155] For background information on the question, see *Juridical Yearbook, 1981*, p. 59.

[156] Adopted without a vote.

[157] See A/37/727.

[158] See the Declaration of the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 3452 (XXX), annex), article 1 of which states:

> "1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.
>
> "2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment."

Article 7 of the Declaration states:

> "Each State shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture."

The text of the resolution is also reproduced in *Juridical Yearbook, 1975*, p. 48.

[159] Particularly the Universal Declaration of Human Rights (resolution 217 A (III)), the International Covenants on Human Rights (resolution 2200 A (XXI), annex), the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 3452 (XXX), annex) and the Standard Minimum Rules for the Treatment of Prisoners (*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).

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

[161] United Nations, *Treaty Series*, vol. 993, p. 3.

[162] *Ibid.*, vol. 999, p. 171.

[163] Adopted without a vote.

[164] See A/37/718.

[165] *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40* (A/37/40).

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

[167] Adopted without a vote.

[168] See A/37/581.

[169] *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 18* (A/37/18), chap. IX.A.

[170] Adopted without a vote.

[171] See A/37/581.

[172] Adopted by a recorded vote of 131 to 2, with 15 abstentions.

[173] See A/37/581.

[174] For the text of the Convention see General Assembly resolution 3068 (XXVIII) of 30 November 1973; and United Nations, *Treaty Series*, vol. 1015, p. 244. Also reproduced in *Juridical Yearbook, 1973*, p. 70.

[175] Adopted by a recorded vote of 124 to 1, with 22 abstentions.

[176] See A/37/581.

[177] E/CN.4/1286, annex.

[178] For the text of the Convention see General Assembly resolution 34/180 of 18 December 1979. Also reproduced in *Juridical Yearbook, 1979*, p. 115.

[179] Adopted without a vote.

[180] See A/37/677.

[181] For the composition of the Committee, see A/37/349, annex III.

[182] For background information on this question see *Juridical Yearbook, 1980* pp. 66 and 67.

[183] Adopted without a vote.

[184] See A/37/727.

[185] Adopted without a vote.

[186] See A/37/745.

[187] See E/CN.4/1983/4-E/CN.4/Sub.2/1982/43 and Corr.1., chap. XXI, sect. A.

[188] For background information on the question see *Juridical Yearbook, 1981*, p. 62.

[189] Adopted without a vote.

[190] See A/37/718.

[191] Adopted by a recorded vote of 113 to 1, with 26 abstentions.

[192] See A/37/693.

[193] See *Official Records of the Economic and Social Council, 1982, Supplement No. 2* (E/1982/12 and Corr.1), chap. XXVI, sect. A.

[194] Adopted by a recorded vote of 81 to 38, with 20 abstentions.

[195] See A/37/693.

[196] See E/CN.4/1983/4-E/CN.4/Sub.2/1982/43 and Corr.1., chap. XXI, sect. A, resolution 1982/27.

[197] Adopted without a vote.

[198] See A/37/746.

[199] A/37/145, para. 4.

[200] See A/36/245, annex, para. 10.

[201] Adopted without a vote.

[202] See A/37/745.

[203] See A/37/521, annex.

[204] Adopted without a vote.

[205] See A/37/745.

[206] See A/C.3/37/7 and Corr.1 and 2.

[207] Adopted without a vote.

[208] See A/37/745.

[209] A/C.3/37/8.

[210] A/C.3/35/14 and Corr.1.

[211] A/C.3/36/11.

[212] Adopted without a vote.

[213] See A/37/717.

[214] See E/1982/12/Add.1, sect. C.

[215] See *Official Records of the Economic and Social Council, 1982, Supplement No. 2* (E/1982/12 and Corr.1), chap. XI.

[216] Adopted without a vote.

[217] See A/37/715.

[218] The text of the Declaration is reproduced in *Juridical Yearbook, 1981*, pp. 63-65.

[219] Adopted without a vote.

[220] See A/37/745.

[221] See American Society of International Law, *International Legal Materials* vol. XXI, No. 1, January 1982, p. 59.

[222] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVI (United Nations publication, Sales No. E.84.V.2).

[223] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3).

[224] *Ibid.*, vol. XVI (United Nations publication, Sales No. E.84.V.2), document A/CONF.62/119.

[225] *Ibid.*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/123.

[226] *Ibid.*, vol. XV (United Nations publication, Sales No. E.84.V.4), document A/CONF.62/116.

[227] Adopted by a recorded vote of 130 to 4, with 17 abstentions (the delegation of Liberia subsequently informed the Secretariat that it had intended to abstain in the vote).

[228] *Ibid.*, document A/CONF.62/L.78, as amended by *ibid.*, vol. XVI (United Nations publication, Sales No. E.84.V.2), documents A/CONF.62/L.93; L.132, annexes I, II, III and V L.137; and L.141.

[229] *Ibid.*, document A/CONF.62/L.94, as amended by A/CONF.62/L.132, annex III, para. 2, and A/

CONF.62/L.137, para. 2.

[230] *Ibid.*, document A/CONF.62/L.132, annex IV, as amended by A/CONF.62/L.141.

[231] *Ibid.*, document A/CONF.62/L.94.

[232] *Ibid.*, document A/CONF.62/L.132, annex I.

[233] *Ibid.*, document A/CONF.62/L.127. Adopted without a vote.

[234] *Ibid.*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/121.

[235] *Ibid.*, document A/CONF.62/122.

[236] The Convention was signed by 119 countries.

[237] Adopted by a recorded vote of 135 to 2, with 22 abstentions.

[238] For the composition of the Court, see *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 51*, sect. X, p. 253.

[239] As of 31 December 1982, 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 47.

[240] For detailed information, see *I.C.J. Reports 1979, I.C.J. Reports 1980, I.C.J. Reports 1981, I.C.J. Reports 1982, I.C.J. Yearbook 1978-1979*, No. 33, *I.C.J. Yearbook 1979-1980*, No. 34, *I.C.J. Yearbook 1980-1981*, No. 35, and *I.C.J. Yearbook 1981-1982*, No. 36.

[241] The summary outline which follows is taken from *I.C.J. Yearbook 1981-1982*, No. 36, p. 127. For the full text of the judgment, see *I.C.J. Reports 1982*, p. 18.

[242] *I.C.J. Reports 1982*, p. 95.

[243] *Ibid.*, p. 143.

[244] For detailed information, see *I.C.J. Yearbook 1981-1982*, No. 36, p. 130.

[245] *I.C.J. Reports 1982*, p. 325.

[246] For detailed information, see *I.C.J. Yearbook 1981-1982*, No. 36, and *I.C.J. Yearbook 1982-1983*, No. 37.

[247] *I.C.J. Reports 1982*, p. 9.

[248] *Ibid.*, p. 10.

[249] *Ibid.*, pp. 11 and 12.

[250] *Ibid.*, p. 15.

[251] *Ibid.*, p. 557.

[252] *Ibid.*, p. 560.

[253] For detailed information, see *I.C.J. Yearbook 1981-1982*, No. 36, and *I.C.J. Yearbook 1982-1983*, No. 37.

[254] *I.C.J. Reports 1982*, p. 554.

[255] For the membership of the Commission, see *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 10* (A/37/10), chap. I.

[256] For detailed information, see *Yearbook of the International Law Commission, 1982*, vol. I and vol. II (Parts One and Two) (United Nations publications, Sales Nos. E.83.V.2 and E.83.V.3 (Parts I and II)).

[257] *Ibid.*, vol. II (Part One) (United Nations publication, Sales No. E.83.V.3 (Part I)), document A/CN.4/353.

[258] *Ibid.* (Part Two) (United Nations publication, Sales No. E.83.V.3 (Part II)), document A/37/10, chap. II.

[259] *Ibid.* (Part One) (United Nations publication, Sales No. E.83.V.3 (Part I)), document A/CN.4/354 and Add.1 and 2.

[260] *Ibid.*, document A/CN.4/360.

[261] *Ibid.*, document A/CN.4/357.

[262] *Ibid.*, document A/CN.4/359 and Add.1.

[263] *Ibid.* (Part Two) (United Nations publication, Sales No. E.83.V.3 (Part II)), document A/37/10.

[264] Adopted without a vote.

[265] See A/37/700.

[266] See p. 99 of the present report.

[267] For the membership of the Commission, see *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 17* (A/37/17).

[268] For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XIII, 1982 (United Nations publication, Sales No. E.84.V.5).

[269] *Ibid.*, part one, III, B, para. 63.

[270] *Ibid.*, part two, III, C, document A/CN.9/222.

[271] *Ibid.*, III, B, document A/CN.9/WG.II(WP.35).

[272] Convention on the Limitation Period in the International Sale of Goods (New York, 1974); Protocol amending the Convention on the Limitation Period in the International Sale of Goods (Vienna, 1980); United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg); and United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). A note by the Secretary-General

entitled "Status of conventions" (*ibid.*, part two, VII, document A/CN.9/227) sets forth the status of signatures, ratifications and accessions to these Conventions as at 15 May 1982.

[273] *Official Records of the General Assembly, Thirty-third Session, Supplement No. 10*, A/33/10 and Corr.1 (Arabic only); see also *Yearbook of the International Law Commission, 1978*, vol. II (Part Two) (United Nations publication, Sales No. E.79.V.6 (Part II)).

[274] Adopted without a vote.

[275] See A/37/620.

[276] Adopted without a vote.

[277] See A/37/590.

[278] General Assembly resolution 2625 (XXV), annex.

[279] Adopted by a recorded vote of 136 to 1.

[280] See A/37/593.

[281] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10* (A/36/10 and Corr.1), chap. II, sect. D.

[282] Adopted by a recorded vote of 126 to none, with 17 abstentions.

[283] See A/37/714.

[284] *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 10* (A/37/10), para. 255.

[285] Adopted by a recorded vote of 113 to 1, with 30 abstentions.

[286] See A/37/720.

[287] Adopted by a recorded vote of 110 to 10, with 17 abstentions.

[288] See A/37/750.

[289] *Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), p. 207; the text of the Convention is reproduced also in *Juridical Yearbook, 1975*, pp. 87-116.

[290] For the report of the Special Committee, see *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 41* (A/37/41).

[291] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 41* (A/36/41), para. 259. Originally circulated as document A/AC.193/WG/R.2/Rev.1.

[292] *Ibid., Thirty-seventh Session, Supplement No. 41* (41/37/41), paras. 371 and 372.

[293] Adopted by a recorded vote of 119 to 15, with 8 abstentions.

[294] See A/37/721.

[295] Adopted without a vote.

[296] See A/37/699.

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

[298] *Ibid.*, vol. 596, p. 261.

[299] General Assembly resolution 3166 (XXVIII), annex.

[300] For the report of the *Ad Hoc* Committee, see *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 43* (A/37/43 and Corr.1).

[301] A/AC.207/L.3; reproduced in *ibid.*, annex I.

[302] *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 43* (A/37/43 and Corr.1), para. 94.

[303] A/AC.207/L.3 (see note 300, above) and L.9.

[304] Adopted without a vote.

[305] See A/37/648.

[306] Adopted without a vote.

[307] See A/37/751.

[308] A/C.6/37/L.29.

[309] ST/LEG/6.

[310] ST/LEG/7.

[311] Adopted without a vote.

[312] See A/37/700.

[313] For the report of the Special Committee, see *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 33* (A/37/33).

[314] That compilation is reproduced in paragraph 152 of the report of the Special Committee on the work of its 1980 session, *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 33* (A/35/33 and Corr.1).

[315] *Ibid., Thirty-seventh Session, Supplement No. 33* (A/37/33 and Corr.1) para. 188; a revised version of the draft recommendation appears in paragraph 254.

[316] *Ibid.*, paras. 256 and 265.

[317] Adopted by a recorded vote of 125 to none, with 17 abstentions.

[318] See A/37/722.

[319] See pp. 103-106 above.

[320] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 33* (A/34/33), para. 13.

[321] For background information on the question, see *Juridical Yearbook, 1981*, p. 67.

[322] Adopted without a vote.

[323] See A/37/710.

[324] A/37/146.

[325] Adopted without a vote.

[326] See A/37/641.

[327] A/34/445.

[328] A/32/144, annexes I and II.

[329] United Nations, *Treaty Series*, vol. 75, Nos. 970-973.

[330] For detailed information, see *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 26* (A/37/26).

[331] Adopted without a vote.

[332] See A/37/752.

[333] Adopted without a vote.

[334] A/37/701, para. 10.

[335] A/C.6/37/L.16.

[336] Adopted without a vote.

[337] *Official Records of the General Assembly, Thirty-seventh Session, Plenary Meetings*, 49th meeting, paras. 2-7.

[338] *Ibid.*, paras. 9-17.

[339] For detailed information, see *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 14* (A/37/14), and *ibid., Thirty-eighth Session, Supplement No. 14* (A/38/14).

[340] UNITAR/DS/5.

[341] A/37/409.

[342] See also p. 107 of the present volume.

[343] United Nations publication, Sales No. E.82.XV.PE/6.

[344] With regard to the adoption of instruments, information on the preparatory work, which by virtue of the double-discussion procedure normally covers a period of two years, is given in the year during which the instrument was adopted, in order to facilitate reference work.

[345] *Official Bulletin*, vol. LXV, 1982, Series A, No. 2, pp. 61-71; English, French, Spanish. Regarding preparatory work, see *First Discussion*—Maintenance of migrant workers' rights in social security (revision of Convention No. 48), International Labour Council (ILC), 67th Session (1981), Reports 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 V (2), 82 and 96 pages respectively; English, French, German, Russian, Spanish. See also ILC, 67th Session (1981), *Record of Proceedings*, No. 32; No. 39, pp. 16-21; English, French, Spanish. *Second Discussion*—Maintenance of migrant workers' rights in social scurity (revision of Convention No. 48), ILC, 68th Session (1982), Reports IV (1) and IV (2), 47 and 53 pages respectively; English, French, German, Russian, Spanish. See also ILC, 68th Session (1982), *Record of Proceedings*, No. 28; No. 33, pp. 1-7; No. 35, pp. 13-16; English, French, Spanish.

[346] *Official Bulletin*, vol. LXV, 1982, Series A, No. 2, pp. 72-83; English, French, Spanish. Regarding preparatory work, see: *First Discussion*—Termination of employment at the initiative of the employer, ILC, 67th Session (1981), Reports VIII (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 VIII (2), 107 and 147 pages respectively; English, French, German, Russian, Spanish. See also ILC, 67th Session (1981), *Record of Proceedings*, No. 33; No. 39, pp. 21-26; English, French, Spanish. *Second Discussion*—Termination of employment at the initiative of the employer, ILC, 68th Session (1982), Reports V (1) and V (2), 80 and 87 pages respectively; English, French, German, Russian, Spanish. See also ILC, 68th Session (1982), *Record of Proceedings*, No. 30; No. 35, pp. 1-9; No. 36, pp. 6 and 14-21; English, French, Spanish.

[347] *Official Bulletin*, vol. LXV, 1982, Series A, No. 2, pp. 84 and 85; English, French, Spanish. *Single Discussion*—Revision of the plantations Convention (No. 110) and recommendation (No. 110), 1958, ILC, 68th Session (1982), Reports 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 VII (2), 30 and 31 pages respectively; English, French, German, Russian, Spanish. See also ILC, 68th Session (1982), *Record of Proceedings*, No. 18; No. 24, pp. 1-3; No. 29, pp. 10-14; English, French, Spanish.

[348] The report has been published as report III (part 4) to the 68th Session of the Conference and comprises two volumes: vol. A: "General report and observations concerning particular countries" (report

III (part 4A)), 271 pages; English, French, Spanish. Vol. B: "Tripartite consultat on (International Labour Standards): general survey of the reports relating to Convention No. 144 and Re commendation No. 152" (report III (part 4B)), 76 pages; English, French, Spanish.

[349] *Official Bulletin*, vol. LXV, 1982, Series B, No. 1.

[350] *Ibid.*, No. 2.

[351] *Ibid.*, No. 3.

[352] For general information on the organization and functions of the Office c f the Legal Counsel, see *Juridical Yearbook, 1972*, p. 60.

[353] CL 82/5, paras. 4-28, and CL 82/REP, paras. 200-223.

[354] See chapter VIII of the present volume, pp. 234-237.

[355] CL 82/4, paras. 87-94; CL 82/11, paras. 2.77-2.79; CL 82/5, paras. 4-: 3; CCLM 42/2; CL 82/LIM/2; CL 82/PV/14; CL 82/PV/15; CL 82/PV/19 and CL 82/REP, paras. 200-218.

[356] It is worth noting that section 16 of the Headquarters Agreement is : n almost word-for-word reproduction of section 2 of the Convention on the Privileges and Immunities of t ie United Nations and of section 4 of the Convention on the Privileges and Immunities of the Specialized A gencies.

[357] The text of that section reads as follows: "The property of FAO, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropr ation and any other form of interference, whether by executive, administrative, judicial or legislative action."

[358] CL 82/REP, paras. 219-223.

[359] United Nations, *Treaty Series*, vol. 150, p. 67; see also *Juridical Yearbook, 1979*, p. 79, and *Juridical Yearbook, 1981, p. 81.*

[360] *Ibid.*, vol. 247, p. 400; see also *Juridical Yearbook, 1979*, p. 78.

[361] *Ibid.*, vol. 1138, p. 3; see also *Juridical Yearbook, 1978*, p. 88.

[362] *Ibid.*, vol. 1175, p. 18818; see also *Juridical Yearbook, 1979*, p. 79, and *Juridical Yearbook, 1980*, p. 85.

[363] See *Juridical Yearbook, 1981*, p. 81.

[364] CL 82/REP, paras. 168-172.

[365] CL 82/REP, paras. 241-243.

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

[367] See part four, Bibliography, especially pages 274-275.

[368] United Nations, *Treaty Series*, vol. 4, p. 275.

[369] *UNESCO's Standard-Setting Instruments* (UNESCO, Paris, 1981), I.A.5.

[370] For the text of the Convention, see United Kingdom, *Treaty Series*, No. 34 (1976).

[371] Report of the Committee (UNESCO/CPY/TPC/I/4).

[372] Report of the Committee (UNESCO/WIPO/FOLK/CGE/I/6).

[373] Report of the Committee (UNESCO/WIPO/DPP/CE/I/4).

[374] United Nations, *Treaty Series*, vol. 216, p. 133.

[375] *Ibid.*, vol. 496, p. 43.

[376] Draft Annotated Model Provisions for the Protection of Authors, Perfor ers, Producers of Phonograms and Broadcasting Organizations (BEC/IGC/ICR/SC.2/CTV/4); Report of :he Subcommittees (BEC/IGC/ICR/SC.2/CTV/5).

[377] Report of the Committee (UNESCO/WIPO/CEGO/II/7).

[378] Report of the Working Group (UNESCO/WIPO/WGH/I/3).

[379] Report of the Working Group (UNESCO/WIPO/WG/III/CWA/5).

[380] Report of the Working Group (UNESCO/WIPO/CCC/WG.1/6).

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

[382] *Ibid.*, vol. 14, p. 185, and vol. 377, p. 380.

[383] Resolution 37/194; for the text of the principles, see p. 88 of the present volume.

[384] Convention on the Settlement of Investment Disputes between State: and Nationals of Other States, United Nations, *Treaty Series*, vol. 575, p. 159. The text is reproduced in *Juridical Yearbook, 1966*, p. 196.

[385] For the Articles of Agreement of the International Monetary Fund, s e United Nations, *Treaty Series*, vol. 2, p. 39.

[386] See *Juridical Yearbook, 1977*, pp. 87 and 88.

[387] Translation prepared by the Secretariat of the United Nations on the bas s of a French version provided by UPU.

[388] Convention of the World Meteorological Organization, signed at Washi gton on 11 October 1947; United Nations, *Treaty Series*, vol. 77, p. 143.

[389] IMCO resolution A.358(IX); see also United Kingdom, *Treaty Series*, N . 34 (1982).

[390] United Nations, *Treaty Series*, vol. 289, p. 3.

[391] *Ibid.*, vol. 729, p. 161.
[392] INFCIRC/167.
[393] INFCIRC/167/Add.8.
[394] The Second Extension Agreement of 1 April 1982 is reproduced in document INFCIRC/167/Add.11.
[395] INFCIRC/285.
[396] INFCIRC/274/Rev.1.
[397] INFCIRC/32/Add.4, sect. I.
[398] INFCIRC/32/Add.4/Mod.1.
[399] Safety Series, No. 37, 2nd ed., 1982 (STi/PuB/589).
[400] *Ibid.*, No. 6, 1973; rev. ed. (as amended), 1979 (STi/PuB/517).

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

United Nations Convention on the Law of the Sea, done at Montego Bay, on 10 December 1982

[The text of the Convention is reproduced in A/CONF.62/122 and Corr.1-11 (United Nations publication, Sales No. E.83.V.5)]

Chapter V[1]

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Decisions of the Administrative Tribunal of the United Nations[2]

1. JUDGEMENT NO. 289 (14 MAY 1982): TALAN *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[3]

Request for compensation for damages caused by the delay in the payment of the life insurance benefits—The Applicant sought relief in accordance with article 2, paragraph 2(b) of the statute of the Tribunal—Application of staff rule 206.2—Assessment of the damages sustained by the Applicant as a result of the delay caused by the negligence of the Respondent's services—Argument of the Applicant based on the decline during the delay in the rate of exchange of the United States dollar vis-à-vis *the French franc—Obligation to compensate by the payment of interest for the damage resulting from undue delay in the payment of a sum of money—Claim for compensation for moral damage*

The Applicant, the widow of a former United Nations technical assistance expert, acting on her own behalf and on behalf of her minor children, had requested the Tribunal to order and take measures and decisions to make amends for the substantial financial loss, caused *inter alia* by the decline in the exchange rate of the dollar, and the moral injury suffered by her and her children through misconduct on the part of the administration of the United Nations which resulted in an undue delay in the payment of death benefits under the life insurance taken out by her late husband.

The Tribunal first observed that the Applicant had rightly sought relief before the Tribunal in accordance with article 2, paragraph 2 (*b*), of its statute, which states that the Tribunal shall be open "to any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied". The Tribunal observed further that the rights to which the Applicant and her children were entitled derived from the Applicant's husband's participation in the group life insurance plan subscribed to by the United Nations in accordance with staff rule 206.2. Participation in the plan was compulsory for experts in the category to which the Applicant's husband belonged. The application of the rule entailed no financial responsibility for the Respondent, except with regard to the insurance subsidies. However, the Respondent's services, i.e., the Insurance Unit, were directly involved in establishing contact with the insurance company, particularly when insurance benefits were to be paid to the beneficiaries.

With reference to the Applicant's claim for compensation from the Respondent for the injuries caused by the negligence of the Respondent's services, the Tribunal noted that that claim had to do with the contractual obligations which made participation in the group insurance plan compulsory for the Applicant's husband, under staff rule 206.2. It observed, however, that to give a ruling on the claim for compensation necessitated reference to the general principles which were applicable with respect to administrative responsibility.

Having considered the performance of the Respondent's services in the case, the Tribunal noted that negligence on the part of those services had had serious negative implications for the Applicant.

With regard to the Applicant's claim for compensation for the amounts she would have earned if her financial transactions had taken place nine months earlier, the Tribunal found that

the insurance contract had stipulated payment in dollars without any reference to a foreign currency or to the price of gold. The injury alleged by the Applicant had to do with the decisions she had taken with a view to preserving the value of those funds, and whatever favourable or unfavourable consequences might ensue, immediately or in the long run, could not be directly attributed to the conduct of the United Nations. The Tribunal also noted that, when it came to determining the compensation payable for the administration's injurious conduct, claims by the Applicant on the basis of changes in the cost-of-living index could only rest on considerations of equity and not on a legal principle of general application.

The Tribunal was of the view that, when payment of a sum of money was unduly delayed, interest was payable and the payment of interest constituted compensation for the damage resulting from the delay. In the present case, since the delay was attributable to the United Nations, the Organization was responsible for payment of the interest, which should be in United States dollars without regard to the exchange rate against other currencies prevailing on the date on which payment would be made. The Tribunal accordingly decided that the Applicant was entitled to receive for herself and her children interest for the nine months' delay on the full amount of the insurance benefits themselves. There should be deducted from the amount of that interest the sum already paid by the company as interes . The debt-claim thus created on the date on which the insurance benefits were received by the Applicant should bear interest, payable by the Respondent to the Applicant and her children, from that date until the date of execution of the judgement.

In determining the applicable interest rate, the Tribunal noted the *B'rubé* case (Judgement No. 280),[4] in which the Tribunal had set a compensatory interest rate of 12 per cent on the amount to be reimbursed as a result of injurious conduct attributable to the services of the Respondent, and considered that the same rate should apply in the presen case.

With respect to the Applicant's claim for compensation for moral damages, the Tribunal recognized that the administration's conduct had been the direct cause of genuine disruption in the life of the Applicant at a time when she had to cope with all kinds of hardships and to earn her living in distressing circumstances. The Tribunal decided therefore that, in addition to the interest for the late payment, the Applicant was entitled to receive a sum of $2,000 by reason of the difficulties she had had to contend with and the costs she had incurred as a direct result.

2. JUDGEMENT NO. 300 (15 OCTOBER 1982): SHEYE *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[5]

Suspension without pay of a staff member and non-renewal of his fixed-term appointment—Mitigation by the Respondent, acting on the recommendations of the Joint Appeals Board, of the disciplinary measure imposed on the Applicant—The Secretary-General's authority in disciplinary matters—Request for rescission of the decision not to renew the Applicant's fixed-term appointment—The circumstances did not create a legal expectancy of renewal of the Applicant's appointment.

The Applicant, a Field Service Officer (radio technician) with a fixed-term appointment, was assigned to the United Nations Truce Supervision Organization (UNTSO) headquarters at Jerusalem. On 5 May 1980, when the Field Service began a strike action, the Applicant removed a radio set which linked UNTSO to the United Nations Interim Force in Lebanon (UNIFIL). Upon its removal, the set was taken by the Applicant to the workshop allegedly for repair; it was reinstalled three hours later.

As a result of this incident, which was considered an illegal interference with vital communications facilities jeopardizing the security of the United Nations personnel and peace-keeping forces in the area, the Applicant was suspended from duty without pay pending an investigation under rule 110.4 of the Staff Rules. After the investigation, he was dismissed for misconduct as a disciplinary measure under staff rule 110.3 (*b*).

Maintaining that he had removed the radio set in good faith for the purpose of repairing it, the Applicant requested the Tribunal to order the Respondent to rescind the decision to suspend him without pay for a period of three months and to grant him a renewal of his appointment or, alternatively, to pay him prompt, effective and adequate compensation.

The Applicant contended that the Respondent's finding that his conduct had been "seriously negligent and unsatisfactory" had been "legally defective" inasmuch as it had been reached without due process, that the decision had been based on a mistake of fact and failure to take into account essential facts and that, further, it had been tainted by prejudice and extraneous considerations. He claimed also that he had had a "'legal expectancy" of renewal of his appointment created by the letter of 26 March 1981 informing him that he would be reinstated.

The Joint Appeals Board, before which the Applicant filed an appeal, stated *inter alia* that it was more probable than not that the Applicant had removed the radio set in good faith and recommended that his dismissal for the misconduct should be rescinded, with the consequence of his reinstatement in the service of the United Nations.

The Respondent noted that JAB in its conclusions differed with the conclusion of the UNTSO investigation that the Applicant had not removed the radio set in order to repair it or for any other proper reason and reserved his position in this regard. The Respondent maintained that, regardless of what the Applicant's motive had been, his actions resulted in the interruption of a vital link in the UNTSO communications facilities which could have had serious repercussions and determined that such actions had constituted unsatisfactory conduct warranting disciplinary action. The Respondent, however, taking into account the terms of the Board's report and all circumstances of the case, particularly the Applicant's prior record, decided to reinstate him in the service of the Organization for the duration of his fixed-term appointment and to pay him full salary and allowances for three months when he had been suspended without pay.

The Tribunal held that the decision of the Respondent to impose upon the Applicant disciplinary measures did not constitute a denial of due process, was not based on a mistake of fact and was not motivated by prejudice or other extraneous considerations.

In connection with the Applicant's reference to the recommendation of JAB that his dismissal for misconduct should be rescinded, the Tribunal observed that the reports of JAB were advisory and that the Respondent was entitled to reach different conclusions from those of that body on a consideration of all the facts and circumstances of the case.

The Tribunal noted further that it had in its jurisprudence consistently recognized the Secretary-General's authority to take decisions in disciplinary matters and had established its own competence to review decisions in disciplinary matters only in certain exceptional circumstances, e.g., in case of failure to accord due process to the affected staff member before reaching a decision (Judgement No. 210, *Reid*).[6] As the Tribunal had found that such conditions were not present in the case, it could not entertain the Applicant's claim for rescission of the Respondent's decision on the ground of the severity of the penalty. In that connection the Tribunal observed that the fact that the Applicant's undisciplined behaviour had occurred while he was serving in a body of a military character justified the severity of the disciplinary measure.

The Tribunal further observed that neither the text of the letter dated 26 March 1981, in which the Respondent had clearly stated that the Applicant's reinstatement in the service of the Organization had been ordered for the duration of his fixed-term appointment, nor any other circumstances which had been referred to by the Applicant, had created a legal entitlement to the renewal of his fixed-term appointment.

The Tribunal held that the Respondent was not bound by any contractual or statutory provision to renew the Applicant's fixed-term contract, nor had the Tribunal found any evidence of prejudice on the part of the Respondent in that respect.

For the above reasons, the Tribunal rejected all of the Applicant's claims.

B. Decisions of the Administrative Tribunal of the International Labour Organisation[7]

1. JUDGEMENT NO. 477 (28 JANUARY 1982): SCHAFFTER *v.* CENTRAL OFFICE FOR INTERNATIONAL RAILWAY TRANSPORT[8]

Claim to payment of the non-resident's allowance prescribed in article 17 of the staff regulations—Purpose of the non-resident's allowance—Factual and legal status of the complainant's stay in Switzerland—Reasons do not necessarily have to be given for a decision

The complainant, a French citizen, contended that he was "not locally recruited" and was claiming the non-resident's allowance, which he had been refused by the impugned decision. He observed that under article 17 of the staff regulations officials who were not locally recruited were entitled to a non-resident's allowance. According to article 26 of the staff regulations, an official is regarded as internationally recruited if he is "not locally recruited within the meaning of article 27", according to which "an official . . . is considered to be locally recruited if on appointment he fulfils one of the following conditions: . . (*b*) whatever his nationality, he has been resident in Switzerland for one year". The complainant stated that because one year before his appointment he had been in the employ of the French Ministry for Foreign Affairs and had been working, and also living, at the residence of the Ambassador of France at Berne, and being then the holder of an identity card as a member of the administrative staff of a diplomatic mission in Switzerland, his legal status was not that of a "resident". Furthermore, in 1976 the Director-General had granted him an education allowance on behalf of his son the payment of which was subject to the same conditions as that of the non-resident's allowance.

The Tribunal pointed out that the purpose of the non-resident allowance as prescribed in article 17 was to compensate non-Swiss officials for the cost of settling in Switzerland. The complainant, having lived in Berne from 1952 to 1972 and worked there in the French Embassy, was therefore resident both factually and with intention to reside, within the meaning of the staff regulations, for several years before joining the staff of the organization. The complainant's objections to that conclusion were not to the point; *inter alia*, the decision on granting an education allowance for his son was based on another provision, not on the rule of non-resident allowance. Whether it had been right or wrong, it was irrelevant to the case.

The complainant claimed also that the decision of the Administrative Committee which dismissed his appeal suffered from a formal flaw. He alleged the existence of a general rule whereby for any decision which caused prejudice reasons should be given, at least provided that its author did not have discretion in the matter.

The Tribunal stated that that plea failed. It observed that there were many decisions taken in international organizations and challenged before the Tribunal for which no reasons were given, and these included discretionary decisions. But that did not prevent a staff member from defending his rights. The reasons for the decision he impugned, even when not stated, would be apparent, if not from correspondence exchanged between the parties before it was taken, then at least from the organization's memorandum in reply to the complaint, on which the complainant was invited to comment in his rejoinder. Accordingly, in the absence of an express exception, there was no reason to require an organization, contrary to its usual practice, to give reasons for all of its decisions. All that was required was that the lack of reasons for the decision should cause the complainant no prejudice. Since the complainant had possessed all papers which had enabled him to plead his case, he had therefore suffered no prejudice whatever from the absence of a statement of the reasons for the impugned decision and could not rely on such absence to support his claim.

For the above reasons, the Tribunal dismissed the complaint.

2. JUDGEMENT NO. 479 (28 JANUARY 1982): DE ALARCON *v.* WORLD HEALTH ORGANIZATION[8]

Objection to the method of computing compensation for significant loss of functions and of earning capacity arising in the course of short-term employment—Deduction of the retirement pension payable by the staff member's former employer unauthorized because the pension was not paid in respect of the same series of circumstances—Claims for an allowance in respect of inflation and for interest

The complainant, a reader in psychiatry at the University of Southampton, was appointed by WHO on 25 May 1979 to carry out a one-month mission to Nicaragua in July 1974. During the mission he contracted an illness which grew steadily worse and which in 1976 was diagnosed as "active chronic hepatitis". Because of poor health he had to retire prematurely, on September 1978, at the age of 53. By a letter of 5 March 1979 the Secretary of the Advisory Committee on Compensation Claims informed him that he was entitled to payment of $US 20,000 as compensation for the 66 per cent loss of function which he had suffered. By a letter of 10 August 1979, the Secretary informed him that the Director-General had decided to accord him the prescribed benefit payable for loss of earning capacity. The amount of the benefit was to be equivalent to two thirds of pensionable remuneration less the amount of the pension paid by the superannuation scheme of the University of Southampton.

The complainant objected to the method of computing the benefits payable by WHO, and in particular to the deduction from the pension he was entitled to under the University superannuation scheme, as this deduction was not compulsory and ought in his case to have been waived.

The Tribunal observed that the WHO scheme for compensation of staff for death, injury or illness arising in the course of employment contained in section II.7, annex E of the manual was designed to fit the circumstances of staff in regular employment. The principal benefits are a lump-sum payment for loss of enjoyment of life and, on invalidity, a pension for loss of earning capacity. For total disability the lump sum was fixed in 1974 at $30,000, with a percentage reduction for lesser disabilities. For total loss of earning capacity the invalidity pension was fixed at two thirds of the annual pensionable remuneration, which was much the same as gross salary. It was in respect of the pension that the chief difficulty in the case arose, for the complainant, of course, had no gross salary.

With regard to the invalidity pension, the Tribunal concluded that the deduction by the organization of the whole of the retirement pension payable by Southampton University, thus reducing the invalidity pension as calculated by somewhat more than half, was not authorized by rule 6 (*b*) because the retirement pension was not "paid in respect of the same series of circumstances". Furthermore, the Tribunal considered that the only conclusion on the facts of the case was that the complainant's earning capacity had been totally extinguished and accordingly the degree of incapability should be assessed at 100 per cent.

With regard to the complainant's claim for an allowance in respect of inflation and for interest, the Tribunal observed that it was the general policy of the Tribunal to ensure that, as far as practicable, money withheld by the organization in error should, when it was eventually paid, have the same value in the hands of the complainant as it would have had if paid on the due date and that the complainant's loss of use of the money in the interval should be compensated by interest at the market rate. There was no difficulty in the case about protection against inflation since the payments from which the unauthorized deductions had been made were themselves index-linked under rule 31 (*b*), the reimbursement of the deduction should likewise be index-linked. The question whether in addition interest should be paid on the basic sum—i.e., on the amount due on the day when it should have been paid—had to depend on whether or not in the country of residence index-linked loans were commonly free of interest or other inducements to the lender. Since in the United Kingdom an index-linked loan commonly carried some other inducement, the Tribunal considered that it would be appropriate to order payment of interest on the basic sum at the rate of 2 per cent per annum.

For the above reasons the Tribunal ordered the Director-General to give effect to the impugned decision of 10 August 1979 as if the words "less deduction of the pension paid by the University retiring fund" were omitted; to pay to the complainant all the deductions made by virtue of those words and each deduction being adjusted for payment in the manner described above to compensate his loss of use of the money; to make a new determination of the amount of the invalidity pension in the light of the conclusion that the complainant's degree of incapacity should be assessed at 100 per cent; and to pay to the complainant the sum of £3,000 in respect of his costs.

3. JUDGEMENT NO. 493 (3 JUNE 1982): VOLZ *v.* EUROPEAN ORGANIZATION FOR THE SAFETY OF AIR NAVIGATION[9]

Non-renewal of short-term appointment—Tribunal competent under article 92 of the general conditions of employment—Complaint receivable since filed within the time-limit set in article VII of the statute of the Tribunal—As a rule the Tribunal does not apply municipal law—The renewal of a short-term appointment is a matter for the Director-General's discretion.

The complainant, a citizen of the Federal Republic of Germany, joined the European Organization for the Safety of Air Navigation (EUROCONTROL Agency) in 1976 on a three-year appointment as an assistant technician stationed at the Karlsruhe centre for air navigation control. His appointment was extended by a decision of 26 June 1980, to 31 December 1980. On 22 October 1980, the termination of his appointment was confirmed. He appealed, but by a letter of 23 December the Director-General informed him that his appeal was inadmissible because the decision of 22 October had merely confirmed the expiry of the appointment at the end of the year. The complainant filed his complaint in which he contended that there was no valid reason for not extending his appointment. He alleged that the non-renewal was a disguised form of dismissal and as such was not authorized by the staff regulations. He maintained that according to the general conditions of employment a dispute should go to the Tribunal only if there was no competent national jurisdiction. The dispute related to employment in the Federal Republic of Germany, and its courts had jurisdiction. According to the labour law of the Federal Republic the complainant had been unfairly dismissed. If the Tribunal nevertheless held that it was competent, the complainant invited it to quash the decision of 22 October 1980; to hold that the proper law was that of the Federal Republic and that he suffered unfair dismissal according to that law; and to order the extension of his appointment by five years from 1 January 1981, subsidiarily, to order the defendant to pay him the severance grant due to him under the staff regulations, the compensation payable in accordance with the case law of the Federal Republic and costs.

As to the question of its competence, the Tribunal observed that on appointment the complainant had accepted the general conditions of employment of the EUROCONTROL Agency, article 92 of which states that the Tribunal may hear any dispute regarding their non-observance.

Regarding the receivability of the complaint, the Tribunal noted that since the Director-General's decision to reject the complainant's internal appeal and to confirm the decision of 22 October 1980 had not been taken until 23 December 1980, the complaint had been filed within the time-limit set in article VII of the statute of the Tribunal and was therefore receivable.

With regard to the question of the proper law, the Tribunal stated that as a rule it would not apply municipal law. In accordance with article II of its statute, the Tribunal hears complaints alleging the non-observance of terms of appointment or of the staff regulations. In reaching its decisions it construes such texts by the accepted methods of legal interpretation. It also draws upon general principles of law in so far as they may apply to the international civil service. It takes no account of municipal law, however, except in so far as such law embodies those principles. As to the matters raised in the case, the provisions of municipal law differed and did not apply outside the municipal context. The municipal law cited by the complainant was therefore immaterial. In particular, the complainant's citizenship of the Federal Republic of

Germany, his residence in that country and the fact that he was working for EUROCONTROL there afforded no reasons for applying the law of the Federal Republic.

On the question of the non-renewal of the appointment, the Tribunal noted that under the rules applying to the complainant and in accordance with the general conditions of employment his appointment was to terminate automatically on the expiry of the contract and any subsequent extension. It was a matter for the Director-General's discretion whether to renew a short-term appointment and it did not appear from the evidence that his exercise of that discretion had been tainted with any abuse of authority. There were therefore no grounds for setting aside the decision.

For the above reasons, the Tribunal dismissed the complaint.

4. JUDGEMENT NO. 495 (3 JUNE 1982): OLIVARES SILVA *v.* PAN-AMERICAN HEALTH ORGANIZATION (WORLD HEALTH ORGANIZATION)[8]

Non-renewal of contract because of unavailability of funds—Contention that the decision was in breach of staff rules 910 and 920—Discretionary power of the administration to extend temporary appointments—Burden of proof in case of claims of victimization—Tribunal not satisfied that funds were not or could not have been available for extension—In the circumstances either decision for renewal or for non-renewal can be justified—Probability that a bias against the complainant was a factor in not renewing his contract

The complainant was first employed by the organization in October 1973 on a two-year contract which subsequently had been renewed from year to year. He was then notified that until October 1979, because of the unavailability of funds, under staff rule 1040 his contract would not be renewed after its expiry on 31 December of that year.

The complainant alleged that the decision had been based on personal prejudice despite the need for his services and that there were in fact funds to finance his post. He contended that the decision had been in breach of staff rule 910, which guaranteed the staff's right of association, and staff rule 920, which laid down its right of representation. The complainant maintained that the treatment he had received was just part of a broad pattern of victimization of elected staff representatives, often ill-disguised in the form of non-renewal of contract.

In his claim for relief he asked that the decision be quashed; that he be given normal two-year renewal from 1 January 1980; that he be awarded remuneration from that date to the date of his complaint; and that he be awarded moral, punitive or exemplary damages for the breach of his fundamental rights. He also claimed costs and damages for injury to his professional reputation.

The Tribunal observed that it was well established that the decision to make or withhold an offer of extension was a discretionary decision to be taken by the Director in the organization, and therefore one over which the Tribunal had only a limited power of review. It was also established that, in accordance with the principle of freedom of association, officers and members of the Staff Association might act in furtherance of their common interests and should not be penalized by the administration for any such activity that was not otherwise improper. It was not disputed that any such penalization would be an abuse of the Director's discretion and within the power of the Tribunal to review.

The Tribunal noted that it did not accept the submission of the complainant that in every case in which a staff member was so involved the burden of proof passed to the organization to show that his activities had had nothing to do with the decision, since each case must be decided on the proper inferences to be drawn from its own facts.

As to the unavailability of funds, the Tribunal was on the whole not satisfied that funds were not or could not have been available for some extension of the complainant's contract.

With regard to the complainant's allegation that the administration followed a policy of penalizing staff members because of their activities in the Association, the Tribunal observed that the cases produced in evidence by the PAHO Association were in fact too few in number

and too diverse in character to give the Tribunal much help in resolving the question whether participation in the Staff Association had been of itself a source of prejudice.

The Tribunal observed that in the case good reasons could be found either for renewal or for non-renewal of the complainant's contract. Objectively, a decision either way could be justified. In such a case it was enough for the complainant to show that it had been more probable than not that a bias against him had been a factor in the Director's mind when he had been considering whether the contract should be terminated. The Tribunal concluded that it had been more probable than not, and therefore the Tribunal would quash the Director's decision. However, in view of the uncertainty of the complainant's prospects, the compensation to be awarded to him could not be large. But since it was larger than what would have been paid to him under staff regulation 1050, it was unnecessary to consider the subsidiary issue as to whether the complainant's appointment had been lawfully terminated.

For the above reasons, the Tribunal quashed the Director's decision and ordered the organization to pay to the complainant $US 15,000 as compensation for the non-renewal of his contract and $8,000 in respect of his costs.

5. JUDGEMENT NO. 507 (3 JUNE 1982): AZOLA BLANCO AND VELIZ GARCIA *v.* EUROPEAN SOUTHERN OBSERVATORY[8]

Termination of the complainants' employment because of "an extremely difficult economic situation"—Receivability of the complaints—Application of article LS II 5.04 of the local staff regulations—Relevance of application of the national case law—Decisions of the local Supreme Court can be used as an aid to interpretation—Concept of excess of power—Impugned decision was outside the Director-General's authority

On 6 March 1981, the complainants received letters terminating their employment with the European Southern Observatory (ESO) in Chile on the same day because of "an extremely difficult economic situation". Their posts were abolished under article LS II 5.04 (10) of the local staff regulations. The complainants appealed forthwith to the Director-General, who refused the appeal. His letter of 21 May 1981 containing that decision was the decision impugned in the complaints.

The complainants contended that the dismissals should be quashed on the ground that essential facts had been disregarded. Under the article in question a contract might be terminated to meet the "functional requirements" of the organization. The article had been taken verbatim from the Chilean Labour Code, which the Chilean courts interpreted as justifying termination only when there were permanent economic difficulties irrevocably affecting future operations. The terminations had not been justified by any such difficulties. The complainants accordingly invited the Tribunal to quash the decision impugned and to order their reinstatement in ESO and the payment of salary up to the date of reinstatement; subsidiarily to order the payment of compensation for unjustified dismissal; and further subsidiarily, to order payment of the benefits provided for in the local staff regulations.

In its reply, ESO submitted that the letters of 6 March 1981 obviously had embodied the Director-General's own final decisions and, since more than 90 days had elapsed between 6 March and the filing of the complaints, the complaints were time-barred. Subsidiarily, ESO submitted that the complaints were unfounded since Chilean case law was irrelevant even if the ESO rules were identical to those of the Chilean Labour Code.

The Tribunal observed that the complainants assumed rightly that the Director-General would not reach a final decision until after he had considered carefully what they had to say. His letter of 21 May was not, as the organization contended, "purely confirmatory" of the letter of 6 March and it contained the final decision. The objection to receivability was overruled.

The Tribunal held that ESO, in arguing for its interpretation of the article in question, objected to the reference to the rulings of the Supreme Court of Chile on the mistaken ground that that was to apply the law of Chile to which the organization was not subject. The Tribunal

observed that the decisions of the Supreme Court were not of course binding on the Tribunal, but that did not mean that they could not be used as an aid to interpretation. The Tribunal considered that it seemed unlikely that the object of the discussed provision was to allow for the usual fluctuations in prosperity to eliminate surplus expenditure one year and might be to put it back in a year or two later. That was what ESO was doing in the case. The trimming of staff would obviously be a prudent measure. But that was not enough to bring article LS II 5.04 (10) to bear. In supposing that it was, the Director-General must have misconstrued the regulation and thus been led to exceed his powers. The decision impugned was outside his authority and must be quashed on that ground.

For the above reasons, the Tribunal quashed the decision of the Director-General dated 21 May 1981 and ordered the organization, finding reinstatement to be impossible or inadvisable, to pay to each complainant as compensation for wrongful dismissal a sum equal to three times the total gross remuneration paid to him in respect of the period 1 March 1980 to 26 February 1981 and as improved by any retroactive adjustment granted by the organization.

6. JUDGEMENT NO. 536 (18 NOVEMBER 1982): VILLEGAS *v.* INTERNATIONAL LABOUR ORGANISATION[10]

Applications for review and interpretation of Judgements Nos. 404 and 442—No formal requirements for the framing of Tribunal's judgements—Formal correctness of Judgement No. 442—Principle of res judicata*—No grounds for review and interpretation of the judgements*

The complainant requested the review and interpretation of Judgements Nos. 404 and 442.[11]

She contended that Judgement No. 442, which had dismissed the first application for review of Judgement No. 404, suffered from a formal defect in that the reasons for it were not stated. She argued that to comply with article VI of the statute of the Tribunal, according to which "the reasons for a judgement shall be stated", the text of a judgement should be in three parts: a summary of the facts, the considerations and the operative part, or decision. Judgement No. 442 did not summarize the facts. In her view, therefore, it could not be regarded as stating the reasons for the decision because the summary, the essential basis of the reasoning set out in the considerations, was lacking.

The Tribunal observed that, although the practice had indeed been to recapitulate the parties' submissions before proceeding to the considerations, the recapitulation did not constitute a distinct part of the judgement. Since there was no formal requirement the Tribunal need comply with, it might, if it wished, set out the parties' submissions in the considerations, and the mere absence of a recapitulation afforded no grounds for setting a judgement aside.

In Judgement No. 442 there were particularly sound reasons for not recapitulating the facts since the procedure followed was the summary one laid down in article 8 (3) of the rules of court. This was an article the Tribunal might apply if it was detrimental neither to the complainant's interests nor to the defendant's to dispense with further memoranda. The Tribunal so decided at its own discretion, being alone competent to determine the procedure, and it was not a decision to which the complainant might object. The Tribunal therefore rejected her allegation of a formal defect in Judgement No. 442.

With regard to the applications for review of the judgements, the Tribunal noted that review was an exceptional procedure and a derogation from the principle of *res judicata*. Accordingly, the complainant might not put forward repeatedly the same pleas in favour of review. Since she had not put forward any new plea in favour of review that she had been unable to rely on in the first one, or such as the Tribunal might have omitted to hear in Judgement No. 442, her claims in that regard failed.

Having concluded that Judgements Nos. 404 and 442 were clear and unambiguous, the Tribunal rejected the complainant's application for their interpretation.

For the above reasons, the Tribunal dismissed the applications.

7. JUDGEMENT NO. 537 (18 NOVEMBER 1982): LHOEST *v.* WORLD HEALTH ORGANIZATION[10]

Claim for termination payment under staff rule 1030.3.4—English and French versions of the rule differ—Since both texts adopted by the Executive Board are authentic, the Director-General's "correction" of the French version is null and void—Director-General's authority limited to making proposals for amendment of the staff rules—French text reflects the Executive Board's intent

The matter in dispute related to a "termination payment" payable to the complainant by virtue of WHO staff rule 1030.3.4. The complainant asked WHO to award him such payment in accordance with the French version of the rule as in force in 1979, according to which a staff member whose appointment was terminated under rule 1030 should receive a termination payment at the rates set out in rule 1050.4 provided that "the total payments in 1030.3.3 and 1050.4" due in the 12 months following termination were not more than one year's pensionable remuneration less staff assessment.

WHO contended that there had been a material error in the rule and that it needed to be supplemented by reference to the English version, which prescribed payment of the termination payment at the rates set out in rule 1050.4 provided that "the total payments in 1030.3.2, 1030.3.3 and 1050.4" due in the 12 months following termination were not more than one year's pensionable remuneration less staff assessment. Thus the English text provided for the deduction of sums paid under rule 1030.3.2 whereas the French did not.

WHO's first plea was that the text the Executive Board had really adopted had been the English one, the French translation being erroneous. Its second plea was that the error had been put right in a new edition of the staff rules published in March 980. Since the complainant had retired in December 1980, he could not in any event base himself on a superseded text.

The Tribunal observed that the Executive Board had adopted the French version of rule 1030.3.4, and the Executive Board alone could amend it. Instead it had been the Director-General who had decided to alter the French text, and the fact that he had done so was immaterial since according to rule 020 the Director-General's authority was limited to making proposals for amendment.

What the Tribunal had to decide was which text the Board had at that time actually adopted. Both the French and the English were authentic. In such circumstances the Tribunal would interpret the texts according to the usual methods. The French version of the rule had been approved by the Executive Board on 21 January 1978. Since there had been no substantive change of the rule at that time, the corresponding text was to be found in the old set of rules. Having analysed them, the Tribunal took the view that only the French text reflected the Executive Board's intent.

For the above reasons, the Tribunal quashed the impugned decision and referred the complainant back to WHO for recalculation of the benefit prescribed in rule 1030.3.4 in accordance with the French text of the rule.

C. Decisions of the World Bank Administrative Tribunal[12]

1. DECISION NO. 10 (8 OCTOBER 1982): SALLE *v.* INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT[13]

Termination of a probationary appointment—In accordance with Personnel Manual Statements, No. 4.02, the probationer has a legal right to the observance of his condition of employment—Merits of the Bank's decision will not be reviewed by the Tribunal except for the purpose of satisfying itself that there has been no abuse of discretion and the appropriate standards of justice have been met.

The Applicant contested IBRD's decision to terminate his probationary appointment rather than confirm it or extend his probation.

The Tribunal observed that it was of the essence of probation that the organization be vested with the power both to define its own needs, requirements and interests and to decide whether, judging by the staff member's performance during the probationary period, he did or did not qualify for permanent Bank employment. Those determinations necessarily lay within the responsibility and discretion of the Respondent, as the Tribunal had found in its Decision No. 7 (*Buranavanichkit*). It was also of the essence of probation that the evaluation of the probationer's suitability for Bank employment might be subject to changes during his period of probation. The Tribunal noted that, although contingent upon confirmation, the relationship between the Bank and the probationer was nevertheless a legal one. The probationer was a staff member "entitled to all appropriate staff benefits" (Personnel Manual Statements, No. 4.02), and he had a legal right to the observance of his conditions of employment. The observance of the probationer's conditions of employment was all the more imperative since the period of probation was a difficult one for the staff member both in terms of adjustment to the Bank's needs and policies and because of the inherent insecurity of his situation. While it was the duty of the Tribunal to draw the appropriate conclusions from any non-observance of the conditions of employment of a staff member under probation, the Tribunal would not substitute its own judgement for that of the Respondent on the staff member's suitability for permanent employment. As the Tribunal had declared in the above-mentioned Decision No. 7, the merits of the Bank's decision would not be reviewed by the Tribunal except for the purpose of satisfying itself that there had been no abuse of discretion and that the appropriate standards of justice had been met.

Having reviewed the Applicant's contentions, the Tribunal concluded that the Respondent's decision to terminate the Applicant's appointment had not amounted to the non-observance of the Applicant's contract of employment or terms of appointment.

For the above reasons, the Tribunal rejected the application.

2. Decision No. 11 (8 October 1982): van Gent *v.* International Bank for Reconstruction and Development[13]

Applicant's contention that reassignment as a result of the abolition of his Department was not carried out properly—Provisions concerning the reassignment of Tourism Projects staff as set forth in the memorandum of February 1978 constitute part of the conditions of the Applicant's employment—Non-observance of the prescribed procedures gives the Applicant a legitimate ground of complaint

Because of the Bank's decision to phase out lending for tourism projects, provisions for the abolition of the Tourism Projects Department and treatment of its staff were presented in a memorandum of February 1978. Efforts were also commenced to find suitable reassignment positions for its staff, including the Applicant, Division Chief at the "N" level.

After unsuccessful efforts at locating an acceptable position for the Applicant and after he had been without an assignment for almost a year, on 2 July 1980, he was advised that he would continue to be placed on lists for "N" level positions but would not be forced into such a position and that in the meantime he could take up a regular assignment as Deputy Division Chief at "M" level with his "N" level salary and grade retained. As an alternative he was offered a package of termination benefits. While reserving his right to appeal, the Applicant accepted the position of Deputy Chief under protest and provisionally; he also rejected the termination arrangements, which he claimed were inadequate.

The Applicant's main contentions were that the Respondent had not followed or had improperly interpreted, or had unilaterally changed, the principles it had adopted for the fair treatment of Tourism Projects staff as stated in the memorandum of February 1978. In particular, paragraph 25 of the memorandum, which had been written specifically to ensure the protection of the legitimate rights and concerns of the Tourism Projects staff, and which stated the

principles which should be applied so as to accord them fair treatment, had not been properly implemented. The Applicant also alleged that the Respondent had used unfair, inconsiderate and discriminatory practices in the reassignment process.

The pleas on the merits submitted by the Applicant were for rescission of the decision to place him in an "M" level position with the sole alternative of resignation from the Bank under an inadequate termination arrangement; and rescission of the decision made in May 1980 no longer to "force" him into an "N" level position. Believing, however, that a rescission of the contested decision would not provide an adequate solution, the Applicant requested the Tribunal to establish a fair and adequate termination arrangement that would undo, and compensate him for, the consequences of the Respondent's failure to perform its obligations.

The Tribunal observed that, while under article II of its statute it must determine whether there had been non-observance of the contract of employment or terms of appointment of staff members, such a determination had to be made in the current case not just with respect to the particular decision, but also with respect to the entire process of reassignment of the Applicant as a consequence of the phasing out of tourism lending by the Bank. Such process had constituted, as the Applicant alleged, a continuous breach of the principles for the treatment of Tourism Projects staff as set forth in the memorandum of February 1978.

As to the legal status of that memorandum, the Tribunal did not share the Respondent's position that described it as a "non-binding guideline to be followed as far as possible" and concluded that paragraphs 23 to 25 of the memorandum constituted part of the conditions of employment of the Applicant within the meaning of article II of its statute.

The Tribunal found that the non-observance of the prescribed procedures gave the Applicant a legitimate ground of complaint, since it was possible that such non-observance had caused the whole reassignment exercise to fail. Accordingly, the Tribunal considered that the remedy for the non-observance of the conditions of employment lay in the award of an appropriate termination package. In the circumstances of the case and taking into account the fact that the reassignment of the Applicant had involved no reduction of salary, the Tribunal found no justification for the very extensive pecuniary claims sought by the Applicant.

For the above reasons, the Tribunal decided to reject the Applicant's plea to rescind the decisions contested; to fix the date of the judgement as the starting day for the period of 90 days within which the Applicant might exercise the option for the alternatives offered him; to extend the period of special leave to 24 months counted from the day the option was exercised; and to confirm the offer of out-placement assistance in the event the Applicant left the Bank.

3. Decision No. 12 (8 October 1982): Matta *v.* International Bank for Reconstruction and Development[13]

Termination of the Applicant's employment through recourse to the system of disability retirement—Primary reason for this lies mainly not in the Applicant's technical skills but in the personality condition confirmed by the medical report—Inclusion in the Applicant's record of reference to the negative aspects of her performance and to her personality problems was a proper fulfilment of the Respondent's obligation to evaluate periodically her performance

Although her unsatisfactory performance had been the real reason for her termination, the Applicant's employment was ultimately terminated through recourse to the system of disability retirement. The applicant did not accept the decision of the Pension Benefits Administration Committee. Her main contentions on the merits were that her unsatisfactory Anniversary Evaluation Reports (AERs) had been unjustified; that the process by which AERs were completed was a violation of the provisions of personnel manual statement No. 4.01; and that the reason for her problems was the Respondent's failure to provide her with a stable work environment. In general, the Applicant alleged that she had been discriminated against because of her age.

The Applicant sought reinstatement in her job with the Respondent or a lump sum award in the amount of five years' compensation. She also requested "a clean record", the removal of

the "stigma" placed on her as being disabled and punitive damages in the amount of $500,000 for the pain and suffering caused by the Respondent's treatment of her.

Examination of the evidence supporting the decision to terminate the Applicant's employment through recourse to the system of disability retirement led the Tribunal to the conclusion that the decision of the Pension Benefits Administration Committee had been based on sufficient evidence. The evidence showed that the Applicant's technical skills had not been the primary source of complaint by her supervisors and that it had been her personality condition, confirmed by a medical report, that had interfered with the Applicant's overall performance, seriously impairing her ability to establish healthy and positive work relationships with colleagues and supervisors. Under those circumstances reinstatement of the Applicant would be inappropriate.

The Tribunal found nothing in the record to substantiate the Applicant's allegation that the negative parts of her AERs had been the result of disparate treatment by her supervisors because of her age.

In the light of the above, the Tribunal concluded that the inclusion in the Applicant's record of reference to the negative aspects of her performance and of her personality problems had been a proper fulfilment of the Respondent's obligation to evaluate her performance periodically. Her request for "a clean record" was therefore not well-founded. The Tribunal also found that the non-reassignment of the Applicant had not amounted to a violation of the Respondent's obligations under the reassignment provisions.

For the above reasons, the Tribunal dismissed the pleas and requests of the Applicant.

NOTES

[1] In view of the exceptionally large number of judgements which were rendered in 1982 by Administrative Tribunals of the United Nations and related intergovernmental organizations, only those judgements which are of general interest have been summarized in the present edition of the *Yearbook*. For the integral text of the complete series of judgements rendered by the three Tribunals, namely Judgements Nos. 281 to 300 of the United Nations Administrative Tribunal, Judgements Nos. 465 to 542 of the Administrative Tribunal of the International Labour Organisation and Judgements Nos. 7 to 12 of the World Bank Administrative Tribunal, see, respectively: *Judgements of the United Nations Administrative Tribunal,* Numbers 231 to 300, 1978-1982 (United Nations Publication, Sales No. E.83.X.1); *Judgements of the Administrative Tribunal of the International Labour Organisation:* 48th Ordinary Session and *ibid.*, 49th Ordinary Session; and *World Bank Administrative Tribunal Reports*, 1982 and *ibid.*, 1983, part I.

[2] 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 1983, 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: ICAO and IMO. In addition, agreements limited to applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund had been concluded with ILO, FAO, UNESCO, WHO, ITU, ICAO, WMO and IAEA.

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 contracts or terms of appointment.

[3] Mme Paul Bastid, Vice-President, presiding; Mr. Samar Sen, Vice-President; Mr. T. Mutuale, Member; Mr. Herbert Reis, Alternate Member.

[4] For a summary of the judgement, see *Juridical Yearbook 1981,* p. 122.

[5] Mr. Endre Ustor, President; Mr. Samar Sen, Vice-President; Mr. Arnold Kean, Vice-President; Mr. Herbert Reis, Alternate Member.

[6] For a summary of the judgement, see *Juridical Yearbook 1976,* p. 131.

[7] 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 provi-

sions 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 1982, the World Health Organization (including the Pan American Health Organization), 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 European 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, the World Tourism Organization, the African Training and Research Centre in Administration for Development and the Central Office for International Railway Transport. 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 for 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.

[8] Mr. André Grisel, President; Mr. Jacques Ducoux, Vice-President; Lord Devlin, Judge.

[9] Mr. André Grisel, President; Lord Devlin, Judge; Mr. Héctor Gros Espiell, Deputy Judge.

[10] Mr. André Grisel, President; Mr. Jacques Ducoux, Vice-President; Sir William Douglas, Deputy Judge.

[11] For summaries of the judgements see *Juridical Yearbook, 1980*, p. 162, and *Juridical Yearbook, 1981*, p. 123, respectively.

[12] The Tribunal is competent to hear and pass judgement upon any applications alleging non-observance of the contract of employment or terms of appointment, including all pertinent regulations and rules in force at the time of the alleged non-observance, of members of the staff of the International Bank for Reconstruction and Development, the International Development Association and the International Finance Corporation (referred to collectively in the statute of the Tribunal as the "Bank Group").

The Tribunal is open to any current or former member of the staff of the Bank Group, any person who is entitled to claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

[13] Mr. E. Jiménez de Aréchaga, President; Mr. A. K. Abul-Magd and Mr. P. Weil, Vice-Presidents; Mr. R. Gorman, Mr. N. Kumarayya, Mr. E. Lauterpacht and Mr. C. D. Onyeama, Members.

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. USE OF THE TERMS "REPRESENTATIVE" AND "OBSERVER" IN UNITED NATIONS PRACTICE

Cable to the Legal Liaison Officer, United Nations Industrial Development Organization

We confirm that it is established United Nations practice to use the term "representative" in United Nations records and reports exclusively for persons representing States participating in the United Nations meetings with full rights including the right to vote. Except as indicated below, persons representing all other participants, including States and intergovernmental organizations, participating without the right to vote are referred to as "observers" in reports and other official records of meetings. A special exception to this practice has been made for persons representing the specialized agencies and the International Atomic Energy Agency. These persons are referred to as "representatives" even though they obviously participate in an observer capacity in order to take into account the relevant provisions of relationship agreements between the United Nations on the one hand and specialized agencies and IAEA on the other. In the light of the foregoing, we see no reason for any change in the practice that has been followed up to now by UNIDO, in reports of the Trade and Development Board and in invitations to sessions of the Board, which is consistent with the practice followed by the United Nations generally.

23 February 1982

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2. STATUS OF THE PALESTINE LIBERATION ORGANIZATION IN THE UNITED NATIONS—SUMMARY OF THE PRINCIPAL DEVELOPMENTS IN THE EVOLUTION OF THE STATUS OF THE PLO WITH THE GENERAL ASSEMBLY, THE SECURITY COUNCIL, THE ECONOMIC AND SOCIAL COUNCIL, OTHER UNITED NATIONS AGENCIES AND INTERGOVERNMENTAL ORGANIZATIONS

Letter to a private counsellor-at-law

I refer to your inquiry on the status of the Palestine Liberation Organization (hereafter referred to as "the PLO") in the United Nations.

As you are doubtless aware, membership in the United Nations is governed by Articles 3 and 4 of the United Nations Charter. Pursuant to these provisions the Members of the Organization are those States which signed and ratified the United Nations Charter and those States which were subsequently admitted to membership in the Organization by the General Assembly on the recommendation of the Security Council.

The Charter makes no provision for full participation except in respect of sovereign States. However, degrees of participation in the Organization short of membership have been evolved

over the years for certain recognized entities which for one reason or another were not in a position to seek or attain full membership at a particular time. This has been the case, for instance, for representatives of dependent and trust or mandated Territories evolving towards independence, which have been described as "proto-States".[1]

The status of the PLO has generally evolved within the framework described in the preceding paragraph to the point where it has been granted a unique position in the United Nations. Without attempting in any way to summarize the long history of the Palestine question as such in the United Nations, the paragraphs which follow list the principal developments in the evolution of that unique status.

I. GENERAL ASSEMBLY

The General Assembly of the United Nations in 1969[2] recognized and reaffirmed "the inalienable rights of the people of Palestine" and a 1970 resolution[3] declared that the Assembly:

> "*Recognizes* that the people of Palestine are entitled to equal rights and self-determination, in accordance with the Charter of the United Nations"

In 1973, the PLO requested and was granted a hearing as a petitioner in the Special Political Committee when the Committee took up agenda item 43 (United Nations Relief and Works Agency for Palestine Refugees in the Near East).[4] The PLO was subsequently invited to and participated in a number of major United Nations conferences such as the World Population Conference and the Third United Nations Conference on the Law of the Sea as a national liberation movement recognized by the League of Arab States. For instance, the resolution adopted by the Economic and Social Council on the basis of which the invitation to the World Population Conference was issued, requested the Secretary-General "to invite representatives of liberation movements now recognized by the Organization of African Unity and/or by the League of Arab States, to participate in the Conference without the right to vote".[5]

In October 1974, the Summit Meeting of Arab Heads of State recognized the PLO as the sole legitimate representative of the Palestinian people. Immediately thereafter, on 14 October 1974, the General Assembly, by resolution 3210 (XXIX), similarly recognized the PLO as the representative of the Palestinian people and invited it to participate in the deliberations of the General Assembly on the question of Palestine in plenary meetings. Subsequently, by resolution 3237 (XXIX) of 22 November 1974, the General Assembly granted observer status to the PLO. In that resolution the General Assembly, *inter alia:*

> "1. *Invites* the Palestine Liberation Organization to participate in the sessions and the work of the General Assembly in the capacity of observer;
>
> "2. *Invites* the Palestine Liberation Organization to participate in the sessions and the work of all international conferences convened under the auspices of the General Assembly in the capacity of observer;
>
> "3. *Considers* that the Palestine Liberation Organization is entitled to participate as an observer in the sessions and the work of all international conferences convened under the auspices of other organs of the United Nations."

Generally, observers in the General Assembly have the right to attend meetings and to make oral statements on matters within their competence. However, over the years, the PLO has been accorded more extensive rights of participation than other entities participating in an observer capacity. Thus, for instance, the PLO enjoys the right to participate in the plenary meetings of the General Assembly, where its observer can make statements on any matter which is considered to have a bearing upon the situation in the Middle East and speak in exercise of the right of reply. In Main Committees of the Assembly, the observer may speak on any matter of concern to the PLO. Further, by virtue of the *sui generis* terms of resolution 3237 (XXIX), the PLO has a standing invitation to participate in all United Nations conferences and meetings whereas most organizations and entities require a specific invitation by the competent intergovernmental organ for each conference or meeting which they are to attend in

an observer capacity. The PLO has also established a Permanent Observer Office at United Nations Headquarters in New York and one in Geneva.

II. SECURITY COUNCIL

The Security Council of the United Nations, at its 2041st meeting, on 27 October 1977, decided by a vote that an invitation should be accorded to the PLO to participate in the debate on the situation in the Middle East and that that invitation would confer upon it the same rights of participation as those conferred on a Member State when it was invited to participate under rule 37 of the provisional rules of procedure. This invitation has been repeated on numerous occasions since that time.

Rule 37 of the provisional rules of procedure of the Security Council reads as follows:

> "Any Member of the United Nations which is not a member of the Security Council may be invited, as the result of a decision of the Security Council, to participate, without a vote, in the discussion of any question brought before the Security Council when the Security Council considers that the interests of that Member are specially affected, or when a Member brings a matter to the attention of the Security Council in accordance with Article 35 (1) of the Charter."

In all other cases, invitations to representatives of entities other than States have been issued under rule 39, which reads:

> "The Security Council may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in remaining matters within its competence."

III. ECONOMIC AND SOCIAL COUNCIL

Purusant to a 1975 Economic and Social Council decision,[6] the PLO participates in an observer capacity in the deliberations of the Council where it has rights of participation similar to those it enjoys in the General Assembly and its subsidiary organs.

In the Economic Commission for Western Asia, a regional intergovernmental organ of the Council, it is a full member on an equal footing with Member States. Paragraph 2 of the terms of reference of the Commission reads as amended[7] as follows:

> "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 upon the recommendation of the Commission."

As a full member, the PLO votes and makes proposals—rights not exercised by entities other than States anywhere within the United Nations.

IV. UNITED NATIONS AGENCIES AND INTERGOVERNMENTAL ORGANIZATIONS

Most United Nations specialized agencies, such as the United Nations Educational, Scientific and Cultural Organization, the World Health Organization and the Food and Agriculture Organization of the United Nations, have granted the PLO observer status. Other international bodies, such as the Conference of Heads of State or Government of the Non-aligned Countries, the Group of 77, the Islamic Conference and the League of Arab States, have admitted the PLO as a full member.

* * *

While initially, the PLO was invited to United Nations meetings as a petitioner, it then participated as a liberation movement until it won United Nations recognition as the sole legiti-

mate representative of the Palestinian people. As indicated above, a review of the procedural practice of the United Nations shows that the PLO now has a unique status in the United Nations with extensive and continuing rights of participation. Even outside the United Nations framework, the overwhelming majority of States formally recognize the PLO as the representative of the Palestinian people and have established direct links with it on a bilateral basis, sometimes even granting it full diplomatic status.

. . .

23 September 1982

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3. MAJORITY REQUIRED FOR ADOPTION BY THE GENERAL ASSEMBLY OF A DRAFT RESOLUTION BEFORE IT

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. You have requested legal advice on the question of the majority required for adoption by the General Assembly, at the current ninth emergency special session, of a draft resolution before it. Our comments on this question appear below.

2. The current session of the General Assembly is an emergency special session convened pursuant to rule 8 (*b*) of the General Assembly's rules of procedure which is based on General Assembly resolution 377 (V) of 3 November 1950, entitled "Uniting for peace". Operative paragraph 1 of that resolution reads as follows:

> "1. *Resolves* that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor. Such emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations."

3. The foregoing provisions establish clearly that emergency special sessions are convened for the purpose of consideration by the General Assembly of important questions relating to the maintenance of international peace and security.

4. The ninth emergency special session was convened at the request of the Security Council, which in its resolution 500 (1982) clearly indicated that the basis for its decision to call for an emergency session was the fact that the lack of unanimity of its permanent members prevented it from exercising its primary responsibility for the maintenance of international peace and security. The substantive item on the agenda of the ninth emergency special session of the General Assembly is identical with that on the agenda of the Security Council and it must therefore be considered as having the same character, i.e., a matter relating to the maintenance of international peace and security.

5. The draft resolution to which you refer is the only one before the Assembly on the substantive item for which the emergency special session was convened. By operative paragraph 2 of the draft resolution the General Assembly would determine the existence of "an act of aggression under the provisions of Article 39 of the Charter of the United Nations". Article 39 of the United Nations Charter is the first article in Chapter VII of the Charter which relates to action with respect to threats to the peace, breaches of the peace and acts of aggression. Paragraph 6 of the draft resolution determines the existence of "a continuing threat to interna-

tional peace and security" and paragraph 12 contains provisions analogous to the measures which the Security Council may decide upon under Article 41 of the Charter, including interruption or severance of economic and diplomatic relations, both of which are measures enumerated in Article 41. The draft resolution thus falls clearly and unequivocally within the category of questions relating to the maintenance of international peace and security within the terms of Article 18, paragraph 2, of the Charter, and thus requires a two-thirds majority for adoption.

6. Article 18, paragraph 3, of the Charter provides that decisions on questions other than those enumerated in paragraph 2 of the same article including determinations of additional categories of important questions shall be made by a majority of the members present and voting. On occasion the General Assembly has used this procedure where a genuine doubt appeared to exist to determine whether a draft resolution was to be considered as coming within the ambit of paragraph 2 of Article 18. However, in a case as clear as the present one application of this procedure would not be proper.

5 February 1982

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4. Practice of the General Assembly and its Main Committees regarding statements by observers

Opinion prepared at the request of the Chairman of the Sixth Committee

As a rule, in the practice of the General Assembly and its Main Committees, as well as that of other United Nations organs and conferences, observers are given the floor to make statements *after* representatives of Member States that have indicated a desire to speak have made their statements. This practice is based on the principle that Member States, as full participants, are entitled to priority over observers who have only limited rights of participation and are normally permitted to make statements upon invitation of the Chairman and with the consent of the body concerned. Occasionally, however, there have been cases where the representative of a State spoke after a statement was made by an observer. This does not necessarily mean that the general rule was not observed. It could be that the representatives that spoke after the observer requested the floor during or after the observer's statement. It could also be that the representatives of the States that had requested the floor were not in the meeting room when called upon to make their statement but returned later and made their statement after the observer had spoken. It is also possible that an observer was permitted to make a statement before the representatives of Member States with the consent of the Member States concerned.

9 December 1982

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5. Practice of the General Assembly relating to statements made in the exercise of the right of reply

Opinion prepared at the request of the Chairman of the Fifth Committee

1. In response to your request, we have investigated further the practice of the General Assembly in respect of statements made in the exercise of the right of reply.

2. As you know, the General Assembly has approved two recommendations submitted to it in connection with the exercise of the right of reply. These recommendations are contained in annex V and annex VI to the rules of procedure of the General Assembly.

3. The first of these recommendations states:

"Statements made in the exercise of the rights of reply should be delivered, as a general rule, at the end of meetings."

The practice followed by the Fifth Committee at its recent meetings is consistent with that recommendation.

4. The second recommendation referred to above states:

"Delegations should exercise their right of reply at the end of the day whenever two meetings have been scheduled for that day and whenever such meetings are devoted to the consideration of the same item."

This recommendation was approved by the General Assembly at a later date than the recommendation reproduced in annex V to the rules of procedure already referred to above. This second recommendation appears to be limited to situations in which only a single item is before the body concerned on a particular day, in which case rights of reply are to be deferred to the end of the day rather than the end of a particular meeting. It does not expressly address itself to the situation where a number of items may be on the agenda of the body concerned on a particular day. The second recommendation could therefore be argued to be supplementary to the first one, and not incompatible with it, both recommendations being designed to enable the body concerned to perform its substantive work without undue interruptions in the manner best suited to it.

5. Whatever the correct legal interpretation of the two recommendations is, the practice of the General Assembly in implementing them is obviously an important factor to be taken into account. An examination of the practice that has been followed since the approval of these recommendations by the General Assembly has revealed that when more than one item is considered by the Assembly in the course of a particular day, statements in the exercise of the right of reply have been made at the conclusion of the consideration of the relevant agenda item before the next agenda item is considered rather than at the end of the day. Although the practice that has been followed in recent days by the Fifth Committee is not an unreasonable one in the light of the particular procedure followed in that Committee where several items are considered on a recurring basis many times during a session of the General Assembly, it is not strictly consistent with the practice of the plenary for statements in the exercise of the right of reply. The Chairman may thus wish to consult the Committee whether it prefers to conform to Assembly practice or to proceed as it has so far this session on this matter.

19 October 1982

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6. Competence of Main Committees of the General Assembly to make recommendations concerning the venue of meetings which they recommend to the Assembly to convene

Opinion prepared at the request of the Chairman of the Sixth Committee

1. The question has been raised whether the Sixth Committee is competent to make a recommendation to the General Assembly concerning the venue of a committee or conference, as proposed for instance in paragraph 6 of the draft resolution on the report of the *Ad Hoc* Committee on the Drafting of an International Convention Against the Recruitment, Use, Financing and Training of Mercenaries,[8] in view of the decision of the General Assembly to entrust the Committee on Conferences with the task of reviewing all proposals affecting the schedule of conferences and meetings made at sessions of the General Assembly.[9]

2. The Committee on Conferences itself agreed on the following procedure in implementing this assignment by the Assembly:

"(*a*) Draft resolutions and draft decisions affecting the schedule of conferences and meetings will be reviewed in such a manner that the recommendations by the Committee on Conferences may reach a Main Committee other than the Fifth Committee prior to its adopting a particular draft resolution or draft decision, affecting the schedule of conferences and meetings."[10]

3. Consequently, it is clear that the role of the Committee on Conferences is understood to be a purely advisory one, in the first instance to the Main Committee concerned. Thus, when a Main Committee (other than the Fifth) considers a draft resolution calling for the session of an organ or of a conference, or affecting the venue of such a session, it should await the comments of the Committee on Conferences on such a draft, in the same way as it must, under rule 153 of the rules of procedure, await a financial implications statement from the Secretary-General. And, in the same way as it takes into account such a financial implications statement, it also must take into account the views of the Committee on Conferences—without of course being bound thereby. In any event, whatever the subsequent decision of the substantive Main Committee may be, both the Fifth Committee and the Assembly itself can take account of the recommendation of the Committee on the Conferences and the plenary may ultimately treat such a recommendation otherwise than did the substantive Main Committee. This procedure enables the competent Main Committee to formulate a recommendation as to the venue of a meeting on the basis of considerations with which it is most familiar (e.g., the schedule and venue of other meetings in which the same persons might participate), while allowing the Committee on Conferences and the Fifth Committee to examine the issue from other points of view. It is, of course, ultimately for the plenary to reconcile any differences between the various points of view, but it can only do so if each of the competent organs (substantive Main Committee, Committee on Conferences, Fifth Committee) is given an opportunity to examine the question from its own vantage.

4. It is in this sense that other substantive Main Committees and the Committee on Conferences itself have considered, at the current session of the General Assembly, venue-related and other proposals affecting the calendar of conferences. For example, in connection with the venue of the Second World Conference to Combat Racism and Racial Discrimination, the Third Committee approved a draft resolution containing a recommendation concerning venue.[11] That recommendation, on which the Committee on Conferences has submitted its negative views,[12] is at present being considered in the Fifth Committee, which will make an appropriate recommendation to the plenary.

24 November 1982

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7. Question whether Main Committees of the General Assembly, other than the Fifth Committee, have any competence to consider the financial implications of the draft resolutions they recommend for adoption by the Assembly

Opinions prepared at the request of the Chairman of the Sixth Committee

I

1. You requested a legal opinion of whether Main Committees of the General Assembly, aside from the Administrative and Budgetary one (Fifth Committee), have any competence to consider the financial implications of the draft resolutions they recommend for adoption by the General Assembly and, in particular, to include in such drafts any specifically financial provisions.

2. The constant practice in implementing rules 153 and 154 of the rules of procedure of the General Assembly has been that when a substantive Main Committee is considering a draft resolution to be proposed for adoption to the plenary, the Secretary-General submits a financial

implications statement to the Committee; the latter then takes its action in the light of that statement, and might even make some consequential changes in the draft. Thereupon the Secretary-General prepares another financial implications statement (which is substantially identical to the first, but is generally more detailed and includes modalities of budgetary arrangements) for use of the Fifth Committee; that Committee considers the statement and the recommendations thereon of ACABQ, and thereupon formulates its own report to the plenary. The plenary then acts on the resolution in the light of the Fifth Committee's report, generally adopting the draft proposed by the substantive Main Committee without any change. Consequently the actual financial implications of the definitive resolution are usually those flowing from the draft prepared by the substantive Main Committee, normally without any subsequent modification reflecting the consideration in the Fifth Committee.

3. It follows from the above description of prevailing procedures that substantive Main Committees are expected to and do consider the financial implications of the resolution they recommend to the plenary, and indeed are deliberately given an opportunity to modify these drafts in the light of the Secretary-General's statement of the financial implications of the proposed draft. It is, however, not expected and would indeed not be proper for such a Committee to consider the budgetary implication of resolutions, or the budgetary arrangements that should be made in connection therewith.

18 November 1982

II

Further to our opinion on the subject set out in our memorandum of 18 November 1982 and with specific reference to an amendment to a draft resolution before the Sixth Committee which seeks to authorize the Secretary-General to implement the activities approved under the present resolution "only to the extent that they can be financed without exceeding the level of resources approved in the programme budget for the biennium 1982 1983", it should be clarified that that amendment is not one that requires the consideration of budgetary implications within the meaning of the last sentence of the previous memorandum. Rather, the proposed amendment is one essentially addressed to the priority to be assigned to the proposed activity—a matter to which the Sixth Committee may of course address itself. The fact that, in practice, the proposed amendment could only be implemented by taking certain budgetary measures does not, however, make that proposal itself a budgetary one; rather, as indicated in the previous memorandum, if the Sixth Committee should incorporate the proposed amendment in the resolution it proposes to the General Assembly, the Fifth Committee would have to consider what the budgetary implications of the proposed authorization would be, or what budgetary measures would have to be taken to enable the Secretary-General to implement it.

24 November 1982

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8. QUESTION OF THE PARTICIPATION OF NON-GOVERNMENTAL ORGANIZATIONS IN THE WORK OF THE GENERAL ASSEMBLY IN THE FIELD OF DISARMAMENT

Memorandum to the Principal Officer, Office of the Under-Secretary-General for Political and General Assembly Affairs

You have requested our views and comments on a proposal which calls for granting non-governmental organizations the same rights and facilities in participating in the work of the General Assembly on disarmament as are accorded to them in the economic and social field. In this connection, it should be noted that elaborate arrangements for participation of such organizations in the work of the Economic and Social Council have been established by the Council

pursuant to Article 71 of the Charter. These arrangements are set out in Council resolution 1296 (XLIV) of 23 May 1968 and specific provisions on the scope of participation of the organizations in question are also contained in the rules of procedure of the Council. Under these arrangements, a committee on non-governmental organizations has been established by the Council to select and classify the organizations that are entitled to have consultative status with the Council. These organizations have the right to have statements circulated as documents of the Council, to make oral or written statements on matters before the Council in which they have a special competence and to propose items for inclusion in the agenda of the Council. Should the General Assembly decide to grant non-governmental organizations the right to participate in its work related to disarmanent in the same way as they participate in the work of the Economic and Social Council in the economic and social field, it would in the first instance be necessary for the Assembly to establish procedures for the screening and selection of the non-governmental organizations concerned. This would require the establishment of an intergovernmental Committee by the General Assembly. Moreover, if non-governmental organizations participate in the Assembly's work on disarmament with rights similar to those they are entitled to in the economic and social field, the Assembly will have to consider changes that would be required in its rules of procedure. Although attendance by representatives of non-governmental organizations in meetings of the General Assembly and its subsidiary bodies would present no particular difficulties if the General Assembly provided the necessary guidelines for the selection, classification and invitation of the organizations concerned, granting such organizations the right to have statements circulated as documents of the General Assembly, a right hitherto limited exclusively to Member States, and the right to include items in the Assembly's provisional agenda would have major implications going far beyond the scope of the present memorandum, which is limited to a general indication of what the procedural consequences would be should the proposal under consideration be adopted.

9 July 1982

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9. Legal status of the United Nations Council for Namibia—Question of its legal personality for purposes of private law and/or international law

Memorandum to the Representative of the Director General of the International Atomic Energy Agency to the United Nations

1. Reference is made to the cable from IAEA Vienna in which inquiry is made regarding the legal personality for purposes of private law and/or international law of the United Nations Council for Namibia, specifically its capacity to contract and its capacity to negotiate and conclude agreements.

2. The Council for Namibia was established as a subsidiary organ of the General Assembly by resolution 2248 (S-V) of 19 May 1967. As a subsidiary organ, it is responsible to, and under the authority of, the General Assembly in the same way as any other subsidiary organ. Unlike other subsidiary organs, however, the Council functions in a dual capacity: as a policy-making organ of the General Assembly and as the legal Administering Authority of a Territory. This latter characteristic of the Council distinguishes it from other United Nations subsidiary organs and it may, therefore, be considered an organ *sui generis* for certain purposes.

3. As regards the capacity to contract with private entities, the Council for Namibia, as a subsidiary organ of the General Assembly, derives its juridical personality from the United Nations which itself has the capacity to contract, to acquire and dispose of immovable and movable property and to institute legal proceedings in accordance with Article 104 of the Charter and article I of the Convention on the Privileges and Immunities of the United Nations. From the point of view of the United Nations, the question of whether the Council may contract in its own name, as distinct from the United Nations, is immaterial since the Council is a

subsidiary organ of the latter. From a practical point of view, however, private contracts would normally be entered into by the United Nations and are subject to the contract procedures of the Organization.

4. The foregoing considerations apply generally to the capacity of the Council to negotiate and conclude agreements. It is here, however, that the dual capacity of the Council for Namibia becomes relevant. When the Council functions as a subsidiary organ properly speaking, that is to say as a policy-making organ of the General Assembly, its treaty-making power derives from and is exercised by the United Nations. Thus, conference and seminar agreements are routinely entered into by the United Nations on behalf of the Council for Namibia.

5. As the legal Administering Authority over Namibia, however, the Council has been expressly endowed by the General Assembly with certain competencies and functions of a representational character which are exercised by the Council on behalf of Namibia. It is in this representational capacity that the Council must be considered as possessing the capacity to negotiate and conclude agreements on behalf of Namibia. This has been widely recognized *inter alia* through full membership of the Council in a number of specialized agencies, including ILO, and participation in such major legislative conferences as the Third United Nations Conference on the Law of the Sea.

14 April 1982

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10. Legal status of the United Nations Council for Namibia in regard to the United Nations Convention on the Law of the Sea

Memorandum to the Under-Secretary-General, Special Representative of the Secretary-General to the Third United Nations Conference on the Law of the Sea

I wish to refer to your memorandum dated 14 April 1982 transmitting to me an informal request by the President of the Third United Nations Conference on the Law of the Sea for an opinion on the legal status of the United Nations Council for Namibia. The opinions of this office on the three principal issues raised by the President of the Conference are set out below.

I. Whether the United Nations Council for Namibia can, like the government of a sovereign State, sign and ratify or otherwise adhere to the United Nations Convention on the Law of the Sea

(a) *The United Nations Council for Namibia is a subsidiary organ of the General Assembly responsible for the administration of Namibia, a Territory having international status and coming under the direct responsibility of the United Nations.*

By resolution 2145 (XXI) of 27 October 1966 the General Assembly decided that South West Africa (Namibia) "henceforth . . . comes under the direct responsibility of the United Nations" and resolved "that in these circumstances the United Nations must discharge those responsibilities". Subsequently, by resolution 2248 (S-V) of 19 May 1967, the Assembly established a United Nations Council for South West Africa (subsequently renamed United Nations Council for Namibia) entrusted *inter alia* with the following powers and functions:

"(*a*) To administer South West Africa until independence, with the maximum possible participation of the people of the Territory;

"(*b*) To promulgate such laws, decrees and administrative regulations as are necessary for the administration of the Territory until a legislative assembly is established following elections conducted on the basis of universal adult suffrage".

In the exercise of its powers and in the discharge of its functions the Council is responsible to the General Assembly. From the point of view of the constitutional law of the United

Nations, the United Nations Council for Namibia, is, therefore, a subsidiary organ of the Assembly.

It is distinguishable from other subsidiary organs, however, because by virtue of resolutions 2145 (XXI) and 2248 (S-V) it functions in a dual capacity: as a policy-making organ of the General Assembly and as the legal administering authority of a Territory. In this latter capacity the United Nations Council for Namibia is unique and it is this character which serves to set it apart from all other United Nations organs.

(b) *The United Nations Council for Namibia is not a Government of a sovereign State but an organ of the United Nations responsible for the administration of a Territory having international status and entrusted with certain powers and functions of a governmental character.*

It is clear from both the language and intent of resolutions 2145 (XXI) and 2248 (S-V) that the General Assembly has placed the United Nations Council for Namibia substantially in the position of the Administering Authority of Namibia with full powers of legislation and administration until the Territory achieves independence. Operative paragraphs 4 and 5 of resolution 2145 (XXI) substitute United Nations direct responsibility for that of South Africa, the former Mandatory Power, while part II of resolution 2248 (S-V) defines the powers and functions of the United Nations Council for Namibia, the organ through which the direct responsibility shall be carried out, in terms comparable to that of a Government including, specifically, the power to promulgate laws, decrees and administrative regulations (resolution 2248 (S-V), sect. II, para. 1 (*b*)). The powers and functions of the United Nations Council for Namibia are thus indistinguishable from those of the former Mandatory Power which in accordance with article 2 of the Mandate for German South-West Africa of 17 December 1920 had "full power of administration and legislation over the territory."

(c) *In exercising its authority on behalf of Namibia the United Nations Council for Namibia is exercising a function previously engaged in by the former Mandatory Power.*

The former Mandatory Power, South Africa, entered into a number of treaties which were made applicable to the Territory of Namibia either by virtue of express reference in their texts or by extension to the Territory pursuant to their territorial clauses. A number of other treaties to which South Africa became a party might also be considered to apply to the Territory.[13] Since, as already indicated, the United Nations Council for Namibia has been placed substantially in the position of the former Mandatory Power for purposes of administration of the Territory of Namibia, the Council must be deemed to have both the competence and the capacity to enter into agreements on behalf of Namibia previously enjoyed by the Mandatory Power.

(d) *There is no entity other than the United Nations Council for Namibia which is competent to represent the interests of Namibia in the international community.*

By operative paragraph 4 of resolution 2145 (XXI) the General Assembly decided that the Mandate exercised by South Africa over Namibia was terminated. In its advisory opinion of 21 June 1971, the International Court of Justice declared *inter alia* that the continued presence of South Africa in Namibia was illegal and that States Members of the United Nations were under an obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia.[14] The Court specifically stated that "Member States are under obligation to abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purports to act on behalf of or concerning Namibia".[15] Since South Africa's Mandate had been terminated and its continued presence in Namibia has been declared illegal by the International Court of Justice, it follows that the United Nations Council for Namibia is the sole entity recognized by the international community with the competence to administer the territory and represent it internationally until

independence is achieved. If the United Nations Council for Namibia were denied the right to represent the interests of Namibia internationally, the Territory would be deprived of any representation in the international community, which would run counter to the expressed intentions of the international community over a period of more than 60 years. It is inconceivable that the interests of the people of a Territory placed under the sacred trust of civilization by the League of Nations, over which the General Assembly exercised a supervisory role for 21 years and which has ultimately been brought under the direct responsibility of the United Nations, should now be delivered into a juridical vacuum.

(e) *The United Nations Council for Namibia's competence to represent Namibia internationally has been widely recognized and accepted.*

The United Nations Council for Namibia represents Namibia as a full member in FAO, ILO and UNESCO and as an associate member in WHO. For purposes of the present opinion, admission to full membership in ILO is particularly relevant in the light of that organization's constitutional requirements for admission. Article I of the ILO Constitution provides that the members of ILO "shall be the States which were members of the Organization on 1 November 1945, and such other States as may become members". Furthermore, as in the case of many of the specialized agencies, the ILO Constitution contains a number of provisions which presuppose the ability of a member to perform certain acts as representation (article 3, para. 1) and to implement treaties and international agreements within its territory (article 19). The practice of ILO in this regard has always been to require that members should have the full capacity to exercise the rights and discharge the obligations of membership as laid down in the Constitution. After examining the application of Namibia for membership, the Selection Committee of the ILO Conference recommended the admission of Namibia, as represented by the Council, which, until the illegal occupation of Namibia was terminated, was to "be regarded as the Government of Namibia for the purpose of the application of the Constitution of the Organization".[16] The ILO Conference voted by 368 to 0 with 50 abstentions to admit Namibia as a full member of ILO. Since the establishment of the United Nations Council for Namibia in 1967 there has been a growing recognition of the special characteristics of the Council and of the unique status of Namibia as a territory under international administration. This has been reflected not only in the admission to full membership in certain specialized agencies but also in the participation of Namibia in international conferences of a plenipotentiary nature. The Third United Nations Conference on the Law of the Sea itself is no exception. The United Nations Council for Namibia originally participated as an observer under rule 62 of the rules of procedure. Since 1979, however, pursuant to operative paragraph 5 of General Assembly resolution 34/92 C of 12 December 1979, Namibia, represented by the United Nations Council for Namibia as the legal Administering Authority for Namibia, has participated as a full member in the Conference. As such, Namibia is to be regarded in the same way as any other full member in the Conference for purposes of signing and ratifying or otherwise adhering to the Convention even though it is not yet a fully independent sovereign State.

(f) *The United Nations Council for Namibia has legal and administrative competence over the matters falling within the scope of the Convention and sufficient legal personality to enter into international agreements, on behalf of Namibia, with respect to such matters.*

It is clear from the foregoing and from the language of resolutions 2145 (XXI) and 2248 (S-V) that the legal and administrative competence of the United Nations Council for Namibia extends to the territory formerly known as South West Africa, now Namibia. The concept of territory in international law comprises all land areas, including subterranean areas, waters, including national rivers, lakes and the territorial sea. To the extent that the Convention on the Law of the Sea extends and delimits areas of State territory over the sea, the United Nations Council for Namibia as the legal Administering Authority of the territory of Namibia is competent both legally and administratively to exercise its functions with respect to the matters

dealt with in the Convention. Furthermore, as the legal Administering Authority over Namibia, the United Nations Council for Namibia has been expressing endowed by the General Assembly with certain competences and functions of a representational character which are exercised by the Council on behalf of Namibia. When acting in this representational capacity, the Council must be deemed to possess the capacity to negotiate and conclude agreements on behalf of Namibia.

II. WHAT EFFECT WOULD ADHERENCE TO THE CONVENTION BY THE COUNCIL FOR NAMIBIA, ACTING ON BEHALF OF NAMIBIA, HAVE ON THE RIGHTS AND CORRESPONDING OBLIGATIONS IMPOSED BY SUCH ADHERENCE?

As the legal Administering Authority of Namibia, the United Nations Council for Namibia is empowered by resolution 2248 (S-V) to promulgate such laws, decrees and administrative regulations as are necessary for the administration of the Territory. The Council, therefore, has the competence to give effect *de jure* to the rights and obligations which would stem from Namibia's adherence to the Convention. As is well known, however, South Africa's refusal to vacate the Territory and the perpetuation of its illegal presence in Namibia despite decisions of the General Assembly and the advisory opinion of the International Court of Justice have prevented the United Nations Council for Namibia from exercising *de facto* control and administration of the Territory. Consequently, although the United Nations Council for Namibia may enact the necessary laws, decrees and administrative regulations, it does not, at the present time, possess the means of enforcing these measures. The inability of the United Nations Council for Namibia to enforce the measures taken by it to implement the Convention is not, however, a bar to its adherence. The essential element is that the United Nations Council for Namibia has the *de jure* competence to enact the necessary laws and regulations. As pointed out above, the United Nations Council for Namibia is the sole authority which is recognized and competent to do so. There is no other authority, South Africa's Mandate having been terminated and its continued presence in Namibia having been declared illegal.

III. WHAT WOULD BE THE STATUS OF THE SOUTH WEST AFRICA PEOPLE'S ORGANIZATION WHICH IS PERMITTED TO SIGN THE FINAL ACT AS REPRESENTING THE NAMIBIAN PEOPLE?

In operative paragraph 3 of resolution 31/146 of 20 December 1976 the General Assembly recognized "that the national liberation movement of Namibia, the South West Africa People's Organization, is the sole and authentic representative of the Namibian people". By resolution 31/152 of 20 December 1976 the General Assembly accorded observer status to SWAPO, inviting it to participate in the sessions and the work of the General Assembly and all international conferences convened under the auspices of the General Assembly or other organs of the United Nations in the capacity of observer. From the point of view of the constitutional law and practice of the United Nations, SWAPO is a national liberation movement having observer status. The signature of the Final Act of the Third United Nations Conference on the Law of the Sea by SWAPO would not, in any way, modify the status of SWAPO as a national liberation movement and would signify nothing more than that it had participated in the Conference as an observer.

CONCLUSION

For the foregoing reasons, it is the opinion of the Office of Legal Affairs that the United Nations Council for Namibia can, in its capacity as the internationally recognized legal Administering Authority of Namibia, sign and ratify or otherwise adhere to the United Nations Convention on the Law of the Sea. In expressing this opinion the Office of Legal Affairs wishes to underline the unique status of Namibia as the only Territory under the direct responsibility of the United Nations and the *sui generis* character of the United Nations Council for Namibia as

a subsidiary organ of the General Assembly endowed with powers and functions of a governmental nature.

20 April 1982

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11. QUESTION OF THE RIGHT TO VOTE OF NAMIBIA, AS REPRESENTED BY THE UNITED NATIONS COUNCIL FOR NAMIBIA, AT THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

Memorandum to the Under-Secretary-General, Special Representative of the Secretary-General to the Third United Nations Conference on the Law of the Sea

By operative paragraph 5 of resolution 34/92 C of 12 December 1979, the General Assembly decided to "grant full membership in the Conference to Namibia, represented by the United Nations Council for Namibia as the legal Administering Authority for Namibia". This decision is without any qualification whatsoever. As a full member in the Third United Nations Conference on the Law of the Sea, Namibia, as represented by the Council, is therefore entitled to all the rights of a member of the Conference including the right to vote.

22 April 1982

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12. IMPLICATIONS AND CONSEQUENCES FOR THE UNITED NATIONS OF THE INSTITUTION OF LEGAL PROCEEDINGS IN DOMESTIC COURTS BY THE UNITED NATIONS COUNCIL FOR NAMIBIA OR THE COMMISSIONER ACTING ON BEHALF OF THE COUNCIL

Memorandum to the Secretary of the United Nations Council for Namibia

1. I wish to refer to your memorandum of 16 August 1982 and paragraph 3 of document A/AC.131/L.254 of 2 August 1982 which requests the opinion of the Legal Counsel regarding the implications and consequences for the United Nations of the institution of legal proceedings in domestic courts by the United Nations Council for Namibia, or the Commissioner acting on behalf of the Council, particularly with a view to determining their legal standing and responsibilities.

2. To institute the type of proceedings contemplated by the Council for Namibia, it will be necessary to establish that the Council has the necessary legal capacity and that its action relates to the enforcement of a juridical right within the particular jurisdiction. Since the objective of the Council is to bring an action for the enforcement of Decree No. 1 for the Protection of the Natural Resources of Namibia,[17] the question of legal standing requires the consideration of two inseparable elements: legal capacity; and the status, in domestic law, of Decree No. 1.

3. In my memorandum on the legal status of the United Nations Council for Namibia which was addressed to the Special Representative of the Secretary-General to the Third United Nations Conference on the Law of the Sea on 20 April 1982,[18] it was pointed out that the Council is not a Government of a sovereign State but an organ of the United Nations responsible for the administration of a Territory having international status and entrusted with certain powers and functions of a governmental character. There is no question that, in international law, the Council is a properly constituted organ of the United Nations and that as such it falls within the purview of Article 104 of the United Nations Charter. Article 104 provides that "the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes".

Article I, section 1, of the Convention on the Privileges and Immunities of the United Nations of 1946[19] elaborates further on the meaning of Article 104 of the Charter, as follows:

"The United Nations shall possess juridical personality. It shall have the capacity:

"(*a*) To contract;

"(*b*) To acquire and dispose of immovable and movable property;

"(*c*) *To institute legal proceedings.*"

All the countries referred to in paragraph 6 of document A/AC.131/L.254 are parties to that Convention.

4. The capacity of the United Nations and its organs to institute legal proceedings in domestic courts has been widely recognized although in practice it has been limited to the enforcement of commercial and non-commercial contracts. It is important to point out, however, that the United Nations does not have an absolute or unlimited capacity but only *such* capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes. It would, therefore, be open to a domestic tribunal to distinguish precedents on the ground that the United Nations has a limited capacity and one which does not extend beyond contractual relations. In the view of this office, however, an action to enforce Decree No. 1 would, as far as the question of capacity is concerned, be consistent with the meaning of Article 104 of the Charter and section 1 of the Convention on the Privileges and Immunities of the United Nations.

5. As pointed out in paragraph 2 above, however, for purposes of a determination of legal standing, it would not be sufficient merely to show that the Council for Namibia possesses legal capacity. It would also be necessary to show that its action related to the enforcement of a right under the laws of the country in which the suit was filed, in other words that Decree No. 1 was recognized and had the force of law within that jurisdiction. In enacting Decree No. 1, the Council declared that it was acting in accordance with the powers conferred upon it by the General Assembly under resolution 2248(S-V), specifically operative paragraph II.1(*b*), which entrusted to the Council the power to promulgate laws, decrees and administrative regulations necessary for the administration of the Territory. It may be recalled that the vote on that resolution was 85 in favour, 2 against and 30 abstentions. All of the countries referred to in paragraph 6 of document A/AC.131/L.254, except one which was not at that time a Member of the United Nations, abstained. The views expressed by Member States in the course of the adoption of resolution 2248 (S-V) and the reports of the numerous missions of the Council for Namibia indicate considerable divergencies of views among States regarding the nature and scope of the authority of the Council and, by extension, Decree No. 1. A systematic analysis of the views of Member States is not necessary for present purposes. Suffice it to say that it would appear that the countries referred to above are among those Member States which have expressed the strongest reservations regarding resolution 2248 (S-V), have expressly or implicitly withheld recognition of the Council for Namibia as either the *de jure* or *de facto* Administering Authority or do not recognize the Council's authority to create direct duties or obligations for Member States.

6. It may be seen, therefore, that the recognition by domestic courts of Decree No. 1, which for the reasons set out above is an integral element of legal standing, will depend largely on the position adopted by individual Member States regarding the Council. National courts will invariably seek and follow the advice of the executive branch of government since this is a matter which falls under the conduct of foreign relations. The proposed country studies will be extremely useful in clarifying the legal issues that arise in domestic law and in the light of these studies it will then be possible for the Council to make a final determination as to whether to go forward with the institution of legal proceedings. At such a time careful consideration will have to be given to the administrative policy and financial implications of such a decision.

28 September 1982

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13. ESTABLISHMENT, FINANCING AND SERVICING OF THE PREPARATORY COMMISSION FOR THE INTERNATIONAL SEA-BED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Memorandum to the Under-Secretary-General, Department of Administration, Finance and Management

In response to your memorandum of 25 May 1982, which concerns the issues raised in the aide-mémoire of the Ministry of Foreign Affairs of Jamaica of 24 May 1982, we would like to make the following comments.

1. The provisions of the establishment of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea are contained in resolution I adopted by the Third United Nations Conference on the Law of the Sea on 30 April 1982. The resolution envisages that the Commission shall establish two special sub-commissions (paras. 8 and 9) and will have the right to establish such subsidiary bodies as are necessary for the exercise of its functions (para. 7). These functions are set out in paragraph 5. As pointed out in paragraph 12 of the resolution, the Commission "shall meet as often as necessary for the expeditious exercise of its functions" and, according to paragraph 13, it "shall remain in existence until the conclusion of the first session of the Assembly [of the International Sea-bed Authority] at which time its property and records shall be transferred to the Authority."

2. It is clear from the above-mentioned provisions of resolution I that implementation of it will require substantial financial resources, conference facilities and secretariat services.

3. It appears from paragraph 14 of the resolution that the Preparatory Commission is not to have its own separate budget, financed by States signatories to the Convention, but that its expenses "shall be met from the regular budget of the United Nations, subject to the approval of the General Assembly of the United Nations". Moreover, according to paragraph 15 of the resolution, the secretariat services as may be required for the Commission shall also be provided by the United Nations.

4. The Conference, being a plenipotentiary one, had the authority to establish a Preparatory Commission entirely outside the United Nations framework as a separate treaty organ, serviced and financed from resources provided by States participating in the Conference. However, the Conference, while setting up a Preparatory Commission which is not itself a United Nations subsidiary organ, chose to maintain a link with the United Nations by requesting the General Assembly to provide for the financing and servicing of the Commission and, in this respect, asking the Secretary-General, in paragraph 16 of resolution I, to bring it, in particular paragraphs 14 and 15, to the attention of the Assembly for necessary action.

5. As the resources to finance and service the Preparatory Commission are to be provided by the United Nations, such financing and servicing is subject to the usual United Nations regulations and rules, except to the extent that the General Assembly may direct otherwise. The Assembly thus has the discretion to determine what conditions are to be met in order for it to finance and service meetings of the Commission at a particular place.

6. As resolution I was adopted by the Law of the Sea Conference by an overwhelming majority of the nations participating in the Conference, it would seem to be certain that the General Assembly will give the greatest weight to the provisions of the resolution, including paragraph 12, in which it is provided that the Commission shall meet at the seat of the International Sea-Bed Authority, namely Jamaica, if facilities are available. Nevertheless, the Assembly may make its own independent assessment on whether the scale and level of facilities (e.g., meeting rooms, document reproduction facilities, interpretation and communications facilities, etc.) available at any given time in Jamaica are such that the Assembly is prepared to vote the funds and staffing for holding meetings in Jamaica. It is also for the Assembly to determine

where the secretariat services for the Commission should be located, taking into account the various financial and technical considerations involved. The General Assembly thus has considerable latitude in these respects.

7. There is another issue raised in the aide-mémoire of Jamaica. That is whether paragraph 5 of General Assembly resolution 31/140 of 17 December 1976, "Pattern of conferences", which provides that a Government issuing an invitation for a session of a United Nations body to be held within its territory must agree to defray additional costs directly or indirectly involved, is applicable to the concrete situation of convening a meeting of the Preparatory Commission in Jamaica. We share the view expressed in the aide-mémoire that in the present case that resolution is not applicable because the Third Law of the Sea Conference decided to hold the meetings of the Preparatory Commission at the seat of the International Sea-Bed Authority, if facilities were available, and the Assembly itself will in fact so decide if it votes the financing and servicing of the Commission in Jamaica. That is clearly why Jamaica has not issued and is not required to issue any invitation to the Preparatory Commission within the meaning of resolution 31/140 (para. 5).

10 June 1982

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14. QUESTIONS ARISING FROM THE PROPOSED INCLUSION IN DRAFT RESOLUTION II OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA IN THE DEFINITION OF "PIONEER INVESTORS" OF PRIVATE ENTERPRISES WHICH HAVE BEEN INVESTING FUNDS IN THE DEVELOPMENT OF SEA-BED MINING TECHNOLOGY

Memoranda to the Under-Secretary-General, Special Representative of the Secretary-General to the Third United Nations Conference on the Law of the Sea[20]

I

I have received the request for a legal opinion contained in your memorandum of 20 April 1982. The request relates to draft resolution II governing preparatory investment in pioneer activities relating to polymetallic nodules, in particular to paragraph 1 (*a*) (ii) thereof, which contains a definition of a "pioneer investor". As presently drafted, that term is defined to cover, *inter alia,* State enterprises and private enterprises. These latter enterprises are said to be entities "comprising natural or juridical persons which possess the nationality of, or are effectively controlled by," certain specified States. While the definition does not list the "juridical persons" comprising the private enterprises concerned, it contains a footnote reference, directing attention to document ST/ESA/107 "for their identity and composition."[21] The request for an opinion concerns the competence of the Conference on the Law of the Sea to include the private enterprises involved in its definition of pioneer investors.

In response to the question you have put, it would seem useful to take into account the following points:

1. The Third United Nations Conference on the Law of the Sea is a plenipotentiary conference and, as such, it is competent to make decisions and to adopt resolutions in accordance with the rules of procedure of the Conference.

2. The rationale for making provisions for investments made by States and other entities is expressed by the co-ordinators of the working group of 21 in paragraph 15 of their report recommending draft resolution II:

> "It is a demonstrable reality that six consortia and one State have been investing funds in the development of sea-bed mining technology, equipment and expertise. The programme of their research and development has arrived at a point when they must invest substantial amounts of funds in site-specific activities. The industrialized countries

representing these consortia have been demanding that the Conference and the convention on the law of the sea should recognize these preparatory investments. We feel that this is a legitimate request provided that the preparatory investments of these pioneers will be brought within the framework of the convention and provided that the interim arrangement is transitory in character."[22]

3. Article 153 and annex III, article 4, of the draft convention on the law of the sea envisage the carrying out of "activities in the Area" by, *inter alia,* private entities. It is therefore not inconsistent with the convention to make provisions for the participation of private entities or groupings thereof.

4. We understand that various methods have been tried with a view to finding a satisfactory way to define the term "pioneer investor" so as to meet the divergent policy objectives of the different interest groups. The present approach appears to enjoy substantial support.

5. The draft resolution does not seek to confer any immediate rights or benefits on a private enterprise without State action and consent, such rights and benefits only arising after certification of that enterprise by a State or States signatory to the convention, an application on behalf of that entity by a State to the Preparatory Commission for the International Sea-Bed Authority and registration by the Commission after it is satisfied that the enterprise meets certain conditions. Consequently, the action and responsibility of the States directly concerned is involved. In this connection, the certifying State or States stand in the same relation to a pioneer investor as would be a sponsoring State to an applicant pursuant to annex III, article 4, of the convention (see para. 1 (*c*), "certifying State").

6. In the circumstances just described, which engage State responsibility and consent throughout, the status of an entity or its components under the national law of the State or States in which it is established (i.e., whether it or its components are State- or privately owned) is in our view irrelevant to the competence of the Conference to define the term "pioneer investor".[23]

7. It is not uncommon for agreements or arrangements between States to confer rights and benefits on both State and private commercial enterprises, one entire category being comprised of airline agreements which permit a State party to designate the enterprises to operate air routes specified in the agreement (the purpose of such designation is achieved in the draft resolution under consideration by certification by a signatory State and application by a State to the Preparatory Commission). World Bank Loan Agreements constitute another category of a similar nature.

On the basis of the above reasoning, I am of the opinion that the approach adopted in paragraph 1 (*a*) (ii) of draft resolution II is legally permissible and consistent with the practice of the United Nations. Consequently, the question which was put to us should be answered in the affirmative.

21 April 1982

II

1. In a memorandum dated 20 April 1982, you had requested the Legal Counsel to provide a legal opinion concerning the competence of the Third United Nations Conference on the Law of the Sea to include the private enterprises referred to in its definition of pioneer investors in paragraph 1 (*a*) (ii) of draft resolution II governing preparatory investment in pioneer activities relating to polymetallic nodules.[24] On the basis of the reasons given in a memorandum dated 21 April 1982,[25] we concluded that the approach adopted in draft resolution II was legally permissible and consistent with the practice of the United Nations

2. In a letter from a delegation, it is stated that it did not agree with the conclusion of the 21 April 1982 memorandum and considered that the inclusion in the resolution of the provisions had no legal basis. That letter raises several questions and invites the Secretariat to respond to them.

3. As will be seen, the questions raised are far broader in scope and in substance than the technical question posed and addressed in the previous opinion. The present questions in addition involve many policy issues which only the Conference itself is competent to decide. This reply is therefore based on the relevant documents of the Conference and on the discussions that took place during the consideration of the subject. The opinion of the Office of Legal Affairs on the questions posed are set out below.

A. WHETHER THE CONFERENCE WOULD GO TOO FAR IN DESIGNATING PRIVATE COMPANIES, GRANTING THEM THE STATUS OF PIONEER INVESTOR AND PLACING THEM ON THE SAME FOOTING AS STATES. THESE ISSUES INVOLVE SUBSTANTIVE QUESTIONS ABOUT THE APPLICATION OF THE PROPOSED CONVENTION, WHICH WILL BE MATTERS PRIMARILY OF CONCERN TO THE STATES PARTIES TO THE FUTURE CONVENTION.

4. It may be noted that during the past eight years the Conference has been engaged in the preparation of a comprehensive, generally acceptable convention on the law of the sea. It has now reached the final, decision-making stage. Since the Conference has competence to draft provisions for the convention, it is also competent to propose how certain provisions should be applied, as well as the form and manner in which such competence is to be exercised.

5. It may be recalled that the decision to use resolutions of the Conference to establish the Preparatory Commission and to make provisions for the preparatory investment enjoy wide support. All the draft proposals on the first subject and two of the three draft proposals on the latter subject (TPIC/3 and TPIC/5) favoured the use of resolutions. Most members rejected the protocol approach proposed on preparatory investment by the four-Power draft (TPIC/2). It should also be noted that during the discussions on the subject no other form was suggested.

6. The proposed approach, of incorporating in a Conference resolution the decision regarding preparatory investment in pioneer activities, is legally acceptable and is consistent with past practice. However, since it is important that the consequences of the proposed resolution should also bind the future Authority, it is necessary that provision be made in the convention to recognize such consequences. In this connection, it may be noted that, in proposing draft resolutions I and II, respectively establishing the Preparatory Commission and providing for the treatment of preparatory investments, the co-ordinators of the working group of 21, and subsequently the Collegium, recommended that consequential provisions should be made in article 308, in order to ensure that the registration of pioneers, the allocation of pioneer areas and the priority given to them should be binding on the Authority upon entry into force of the convention.[26] Paragraph 13 of draft resolution II further makes the intention clear that the Authority and its organs are to recognize and honour the rights and obligations arising from this resolution and the decisions of the Preparatory Commission taken pursuant to it.[27] Consequently, it would seem that the combination of a Conference resolution, together with the inclusion of a provision in the convention recognizing decisions taken thereunder, would represent a valid and effective approach to this question.

7. As already mentioned in the previous opinion, the rationale for making provisions to deal with investments made by States and other entities was expressed by the co-ordinators of the working group of 21 in their report recommending draft resolution II.[28] That rationale appears to have wide support in the Conference. It is also relevant to point out that article 153 and annex III, article 4, of the draft convention envisage the carrying out of "activities in the Area" by, *inter alia*, States Parties or State entities as well as by private companies. It is, therefore, not inconsistent with the convention to make provisions in draft resolution II for the participation of private entities or groupings thereof.

B. WHAT WOULD BE THE LEGAL EFFECT OF SUCH A DECISION IF EXPLICIT OBJECTIONS WERE RAISED OR OPPOSING VOTES WERE CAST?

8. This question must be viewed in the light of the relevant rules of procedure of the Conference.[29] Thereunder, such a decision will have the legal effect normally attributed to a Conference resolution adopted in accordance with its rules of procedure. In so far as draft resolution II is concerned, it is to be noted that, according to the decision of the Collegium, this resolution together with the other draft resolutions and the draft convention "form an integral whole" to be adopted by the Conference at the same time with the understanding that the resolutions will be embodied in the final act.[30] In this connection, the decisions of the Conference taken at its 175th plenary meeting should be borne in mind. It is understood, however, that the Conference would prefer to adopt the convention and the relevant resolutions by consensus.

C. SHOULD THOSE PRIVATE COMPANIES BE ALLOWED TO CONTINUE TO ENJOY SUCH STATUS IF THE STATES OF WHICH THEY ARE NATIONALS SHOULD FAIL TO RATIFY THE CONVENTION? IS NOT THE WHOLE PURPOSE OF ENUMERATING THE COMPANIES IN A DECISION OF THE CONFERENCE TO MAKE IT POSSIBLE FOR THE STATES CONCERNED TO REFUSE TO RATIFY THE CONVENTION AS SOON AS THE COMPANIES RECEIVE THE BENEFITS?

9. These questions involve basically political issues. According to paragraph 8 (*a*) of draft resolution II, the pioneer investors are to be required to apply to the Authority, within six months of the entry into force of the convention, for a plan of work for exploration and exploitation. A certifying State is to be deemed to be a sponsoring State for the purposes of annex III, article 4, of the convention, and must, upon the entry into force of the convention, assume the obligations as such. No plan of work for exploration and exploitation may be approved unless the certifying State is a party to the convention. It is further specified that, in respect of the entities referred to in paragraph 1 (*a*) (ii) of the draft resolution (i.e., the four consortia), the plan of work for exploration and exploitation "shall not be approved" unless all the States at present whose natural or juridical persons comprise those entities are parties to the convention (draft resolution II, para. 8 (*c*)). If any such State fails to ratify the convention within a period of six months after it has been notified that an application is pending, its status as a pioneer investor or certifying State, as the case may be, "shall terminate", unless the Council, by a majority of three fourths of its members, decides to postpone the termination date (draft resolution II, para. 8 (*c*)). The termination of the status as a certifying State will in turn terminate any right acquired by any pioneer investors it had certified (draft resolution II, para. 10 (*a*)).

10. Explicit provisions are also made in subparagraph 10 (*b*) and (*c*) of draft resolution II, permitting the pioneer investors to change their nationalities. This reflects another political decision that the Conference has made. A registered pioneer investor may alter its nationality and sponsorship from that prevailing at the time of its registration to that of any State Party to the convention which has "effective control" over it. Such change in nationality is not to affect any right or priority conferred on a pioneer investor. Thus, even though changing nationality and sponsorship is permitted, the requirement of "effective control" must be maintained. So long as there is a requirement of "effective control", "flag of convenience" abuses cannot occur.

11. It is understood that these consequences were presented as political compromises between the proposals of the different interest groups. Certain States had insisted earlier that, in the case of the entities referred to in paragraph 1 (*a*) (ii) of draft resolution II, all the States whose natural or juridical persons comprise these entities must be signatories to the convention at the time the entities apply for pioneer investor status; other States strongly objected to this. The present compromise is to require all those States to become parties to the convention when the entities apply for a plan of work.

D. WHY MUST A DECISION OF THE CONFERENCE ESTABLISH AN INEQUITABLE SYSTEM FOR THE GRANTING OF THE STATUS OF "PIONEER INVESTOR" TO JURIDICAL PERSONS OF STATES ENUMERATED IN PARAGRAPH 1 (*a*) (i) AND TO JURIDICAL PERSONS OF STATES ENUMERATED IN PARAGRAPH 1 (*a*) (ii) IN DRAFT RESOLUTION II? WHY SHOULD THE COMPANIES OF THE LATTER STATES BE ACCORDED AN ESSENTIALLY PRIVILEGED POSITION?

12. These also are political questions on which the Conference will have to make a decision. It is true that under subparagraph 1 (*a*) (i) of draft resolution II, as presently drafted, the States therein must sign the Convention from the outset, while not all the States referred to in subparagraph 1 (*a*) (ii) must do so. There is also the third category, subparagraph 1 (*a*) (iii), where the States referred to must also be signatories at the outset. The requirement is therefore somewhat different from the three categories of pioneer investors. It may be relevant to point out that, if paragraph 5 of the draft resolution is interpreted to mean that only certifying States which are also signatory States may participate in the conflict resolution envisaged therein, the States mentioned in paragraph 1 (*a*) (ii) may need to become signatories in order to participate effectively in resolving conflicting claims.

27 April 1982

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15. IMPLICATION OF A PROVISION IN A DRAFT RESOLUTION URGING THE SECRETARY-GENERAL TO ASSUME UNDER THE 1949 GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR RESPONSIBILITY FOR ENSURING HUMAN AND OTHER RIGHTS WITHIN OCCUPIED TERRITORIES ATTACHED TO THE OCCUPYING POWER.

Statement by the Legal Counsel at the 44th meeting of the Special Political Committee

I should like to say a few words about paragraph 1 of draft resolution A/SPC/37/L.24 on the "Protection of Palestinian refugees". That paragraph would urge the Secretary-General, in consultation with UNRWA, "to undertake effective measures to guarantee the safety and security and legal and human rights of the Palestinian refugees" in the territories occupied by a Member State.

In this connection, I feel it important to draw the attention of the Committee to the provisions and spirit of the fourth of the 1949 Geneva Conventions, which governs the protection of civilian persons in time of war.[31] In numerous resolutions, such as 2727 (XXV) of 15 December 1970 and 36/147A of 16 December 1981, the General Assembly has specifically held that Convention to be applicable to the situation in the territories in question. That Convention, *inter alia,* reiterates a general principle of international law, that responsibility for ensuring human and other rights within such territories attaches to the occupying Power. Any attempt by another authority, or by an international organization, to assume part of that responsibility would seem to weaken or at least obscure this duty of the occupying Power.

Further, it is difficult to see how the Secretary-General could "undertake effective measures to guarantee the safety and security and legal and human rights of the Palestinian refugees" without in effect exercising certain sovereign powers, including police power, in the occupied territories, or else exerting authority and control over the occupying Power itself. When international organizations carry out any activity within a given territory, they must do so with the consent and, as necessary, the co-operation of the authorities in effective control of such territory. If such consent and/or co-operation were not forthcoming, the Secretary-General would be unable to undertake the measures required to give effect to the objectives set out in this draft resolution.

3 December 1982

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16. QUESTION WHETHER WITHIN THE TRADE AND DEVELOPMENT BOARD A DELEGATION CAN INTRODUCE RESERVATIONS TO A CONSENSUS RESOLUTION AFTER THE CLOSURE OF THE SESSION DURING WHICH THAT RESOLUTION WAS ADOPTED

Memorandum to the Senior Legal Liaison Officer, United Nations Conference on Trade and Development

You have requested a legal opinion on the question "whether a delegation can introduce reservations to a consensus resolution after the closure of the session during which that resolution was adopted". The legal opinion was requested after a statement was made by the representative of a Member State at the twenty-fourth session of the Trade and Development Board notifying the Board that the Member State in question had formally reserved its position on part B of resolution 222 (XXI) adopted by the Board at its twenty-first session by consensus.

From a legal standpoint it is clear that a delegation can only effectively register a reservation to a consensus resolution at the time of adoption of the resolution in question. Consensus is generally understood to mean the adoption of a resolution or a decision without a vote in the absence of any formal objection or opposition, and therefore even a reservation made formally at the time of adoption of the text, while indicative of a qualified assent, does not prevent the adoption of the consensus text in question. In our view the statement made by the representative of the Member State concerned in respect of resolution 222 (XXI) during the twenty-first session of the Board cannot be characterized as a reservation to a resolution adopted by consensus at a previous session of the Board. The statement must be regarded as reflecting the position of the State concerned with regard to the consensus resolution at the time that the statement was made in the light of its interpretation of relevant developments in the period subsequent to the adoption of the resolution. While it is the sovereign right of every State to make its position known and even to change its position on a particular subject at any time, such an act cannot affect the validity of the earlier adoption by consensus of a resolution on that same subject. It should be borne in mind that while resolutions of General Assembly and its organs are of a recommendatory character, there may be situations where a State enters into a commitment to carry out the provisions of a resolution in good faith. If it is argued that such commitments have been made in the case under review, it would appear to be the position of the State concerned that such commitments are no longer binding in view of a breach of undertakings of sufficient gravity by certain parties which releases other parties from their earlier commitments. Underlying this argument is a general principle of law, its application in the circumstances of this case not being a matter on which the Secretariat is competent to give an opinion.

4 May 1982

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17. PROCEDURE TO FOLLOW IN SECURING PATENT PROTECTION FOR SOME EQUIPMENT AND SOFTWARE DEVELOPED IN THE FRAMEWORK OF A PROJECT SPONSORED BY THE UNITED NATIONS DEVELOPMENT PROGRAMME

Memorandum to the Senior Director, Office for Projects Execution, United Nations Development Programme

1. I refer to your memorandum of 3 February 1982 requesting our advice on the proper procedure to follow in security patent protection for some equipment and software relating to geophysics exploration developed in the project under reference, as well as on the question of royalties which might derive therefrom.

2. It appears that UNDP has proprietary rights in those inventions, which have been developed as part of and arising from a UNDP-sponsored project.

3. The general policy of UNDP regarding patent rights and copyright rights to any discoveries, inventions or works resulting from UNDP-sponsored projects is to claim the rights for itself, giving at the same time the recipient Government a royalty-free licence to exploit the invention or reproduce the work within the country without charges. This policy is reflected in article III, paragraph 8, of the UNDP Standard Basic Assistance Agreement (SBAA)[32] and has been generally accepted by Governments. The rationale behind this policy is to secure the widest possible dissemination and use of the inventions or works resulting from projects financed by UNDP for the common interest of developing countries and with a view to preventing possible pre-emption of those inventions by individuals or entities to the detriment of the public sector. The policy, therefore, is not primarily directed towards acquiring a source of revenue in the form of royalties deriving from the use of patent rights although this is not precluded for UNDP or for the developing country within whose project the invention was made.

4. There are instances in which the public interest in wide dissemination is better protected by making those inventions available to science and industry throughout the world by publication or disclosure. This method of publishing or disclosing an invention, rather than patenting it, generally provides adequate protection of the public interest and avoids the complicated and onerous procedure involved in a patent application.

5. Patent, unlike copyright, must be taken out in each country where patent protection is sought, whereas copyright, under the Universal Copyright Convention,[33] is acquired simultaneously in all the States which are parties to the Convention. No similar provision exists in the Convention for the Protection of Industrial Property,[34] which deals with patents. Under the latter Convention, the filing of an application for a patent in one country party to the Convention affords no more than a right of priority to apply within a certain period for the same patent in another Convention country. The priority period is 12 months for patents and utility models and six months for industrial designs and models and for trade marks.

6. We note that the State where the UNDP-sponsored project is being executed is not a party to the Convention for the Protection of Industrial Property and that, consequently, the filing of a patent application in that State would not entitle UNDP to claim priority for a further application in another country.

7. In the light of the importance and potential market of the patentable equipment, and taking into consideration the aforementioned UNDP policy in this matter, we believe that you should determine whether the public interest, particularly of developing countries, would be better protected if the inventions in question were to be published and disclosed.

8. However, if you are of the view that it is in the general interest to seek patent protection of the equipment of geophysics exploration, there are several alternative courses open to UNDP: (1) UNDP may file the application in its name in the State concerned. UNDP would then grant the competent national entity royalty-free licence to exploit and market the instruments and software in the State concerned; (2) UNDP may transfer its patent rights to the Government or the competent national entity which could themselves file the application, should this be found necessary and appropriate in encouraging development and exploitation of the work; (3) UNDP may file the application jointly with the Government concerned. We would have no legal objection to any of the above alternatives. However, should UNDP choose alternative two or three, it should retain and reserve the rights outside of [name of Member State].

26 April 1987

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18. STATUS OF THE INTERNATIONAL CRIMINAL POLICE ORGANIZATION (INTERPOL) WITH THE UNITED NATIONS

Letter to the Secretary-General of the International Criminal Police Organization (INTERPOL)

The Office of Legal Affairs has carried out an in-depth analysis of the status of the International Criminal Police Organization with the United Nations, a copy of which is annexed to this letter.

ANNEX

Status of INTERPOL with the United Nations

1. The present status of INTERPOL for the purpose of its relations with the United Nations, in particular with the Economic and Social Council, is governed by decision 109 (LIX) of the Council, entitled "Participation of intergovernmental organizations in the work of the Council". The Council thereby decided, among other things, "to designate the International Criminal Police Organization, which had been participating in the work of the Council in accordance with Council resolution 1579 (L), to participate, on a continuing basis, in the work of the Council, under rule 79 of the rules of procedure". Rule 79, adopted by the Council by resolution 1949 (LVIII) of 8 May 1975, sets out the conditions for participation in the work of the Economic and Social Council by intergovernmental organizations other than the specialized agencies. Under this arrangement it is clear that at present, in its relations with the Economic and Social Council (and consequently with any other organs or subsidiary organs of the United Nations), INTERPOL is considered to be an intergovernmental organization. The report of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, convened by the General Assembly at Caracas from 25 August to 5 September 1980,[35] e.g., lists INTERPOL among the intergovernmental organizations which attended as observers, together with such other intergovernmental organizations as the Council of Europe, the League of Arab States, the Organization of African Unity and the Organization of American States.

2. In the early days of its relationship with the Economic and Social Council, INTERPOL was classified, first in category B, and subsequently in category II of the non-governmental organizations which, under Article 71 of the Charter, have a consultative status with the Council. The change in status at the United Nations was consequential upon the amendment in 1956 of the constitution of INTERPOL which evidenced the intergovernmental character of the organization. The change in the relationship of INTERPOL with the United Nations took several years to materialize, partly, it would seem, as a result of the somewhat *ad hoc* character, prior to 1975, of the arrangements for relations between the Economic and Social Council and intergovernmental organizations other than the specialized agencies, and partly because of the uncertainties which seem to have persisted with regard to INTERPOL's intergovernmental character in the absence of a formal international agreement establishing the organization.

3. In 1969, the Economic and Social Council requested its Committee on Non-Governmental Organizations to study a special arrangement to govern the relations between the Council and INTERPOL. The draft special arrangement which was subsequently prepared, at the request of the Council, by the Secretariat, in consultation with INTERPOL, was described by the Secretary-General as "based on the rights and privileges granted to a non-governmental organization in category I under [Council] resolution 1296 (XLIV)", and as taking into account "the other special arrangements in existence between the Council and other governmental organizations".[36] The approval of the special arrangement by the Economic and Social Council in resolution 1579 (L) was generally considered as officially upgrading INTERPOL in its relationship with the Council from the level of non-governmental to that of intergovernmental organization.[37] When the Council, further to the adoption of rule 79 of the rules of procedure, formalized its relations with intergovernmental organizations other than specialized agencies, its Bureau logically recommended that INTERPOL be invited to participate on a continuing basis in the work of the Council, as an intergovernmental organization, under the new rule 79.[38] This resulted in the above-mentioned Council decision 109 (LIX).

4. The available official records documenting the history of INTERPOL's relationship with the United Nations do not indicate on what basis the Council eventually had come to the conclusion that INTERPOL qualified as an intergovernmental organization. From the beginning, the United Nations seems to have relied

very heavily on the existence of a formal intergovernmental agreement as the main criterion for a determination as to the intergovernmental character of an international organization. This view was supported by the provision in Economic and Social Council resolution no. 2/3 of 21 June 1946 (reiterated in Council resolution 1296 (XLIV) of 23 May 1968) according to which "any international organization which is not established by intergovernmental agreement shall be considered as a non-governmental international organization." This negative definition was derived from Article 57 of the Charter, which in turn was formulated on the basis of the opinion of the Advisory Committee of Jurists at the San Francisco Conference according to which "the term intergovernmental should be interpreted to mean agencies which have been set up by agreement between Governments". There is thus far, however, no authoritative definition in international law of the term "intergovernmental organization". Indeed, the definition proposed by the Rapporteur of the International Law Commission during the elaboration of the Vienna Convention on the Law of Treaties, which included, among others, the requirement of a constituting treaty, was not retained because this criterion was not always met in practice. It had gradually been recognized that the substance of the constitution or statute of an organization may be more relevant to the determination of the intergovernmental character of the organization than the form in which it is cast. Even if its constitution does not qualify as a formal international treaty, an international organization may well be called intergovernmental as a result of the role which that constitution ascribes to Governments with regard to such matters as membership, representation, financing, etc. A non-governmental organization may thus change its status to intergovernmental without a change to the non-treaty form of its statute, but as a result of appropriate amendments to the relevant provisions of the statute. This possibility of conversion to intergovernmental status has been pointed out and elaborated upon by the Secretary-General of the United Nations in a report on the constitutional, organizational and financial implications of the establishment of an intergovernmental tourism organization, submitted to the Economic and Social Council in 1969.[39] The acceptance of this possibility also seems to be implied in a letter, dated 8 August 1955, through which the Secretariat of the United Nations informed the Secretary-General of the International Criminal Police Commission (as INTERPOL was named before 1956) that "if participation in the Commission [INTERPOL] becomes exclusively governmental, as envisaged in article 3 of the draft statute, it will obviously no longer be possible for the new organization to be included in the list of non-governmental organizations recognized by the Economic and Social Council".

5. In the light of this possibility of an international organization acquiring intergovernmental status through changes to its existing constitution (which, incidentally, may be considered an international agreement in simplified form), it may be considered that the present constitutional provisions of INTERPOL fully justify the decisions of the Economic and Social Council to consider INTERPOL as an intergovernmental, rather than a non-governmental, organization. It may also be noted that, prior to the Council's decision, the Government of France explicitly recognized the intergovernmental character of INTERPOL by concluding a headquarters Agreement with that organization (now superseded by a new Agreement of 3 November 1982).

14 December 1982

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19. Question whether the Executive Committee of the programme of the High Commissioner for Refugees has the competence to expel or suspend a member of the Executive Committee

Memorandum to the Regional Representative a.i. of the United Nations High Commissioner for Refugees

. . .

2. You indicated in your memorandum that the question of expulsion or suspension of a member of the UNHCR Executive Committee might be raised at the Committee's forthcoming session. Should such a situation arise, the Committee should be advised that it does not have the competence to expel or suspend any of its members. The Executive Committee was established by the Economic and Social Council,[40] which also elects its members. Consequently, it is exclusively within the competence of the Council to determine any questions relating to membership of the Executive Committee. The Executive Committee may, if it so wishes, submit recommendations on such questions to the Economic and Social Council but in this case any such recommendation would only become effective if and when it is approved by the Council.

3. Rule 8 of the rules of procedure of the Executive Committee[41] requires that credentials of representatives of members of the Committee and names of alternate representatives and advisers be submitted to the Chairman who must report thereon to the Committee. It is possible that on the basis of this provision a proposal may be made for the Committee to reject the credentials of a particular member's representative with a view to preventing that member from participating further in the work of the Committee. In that event the Chairman should inform the Committee of the General Assembly's attitude (as expressed in the latest action it has taken on credentials) regarding the credentials of the State concerned. Furthermore, the Chairman should advise the Committee that its competence in regard to credentials is limited to examining whether the technical requirements associated with the issuance of credentials (i.e., whether the credentials have been issued by a competent governmental authority) have been met and that where questions regarding the representation of a State are concerned all United Nations organs are required to follow the relevant decisions of the General Assembly, the principal deliberative organ in which all Members are represented. In this connection, the Committee's attention could be drawn to General Assembly resolution 396 (V) which applies expressly to questions of representation where more than one authority claims to be the government entitled to represent a Member State in the United Nations but which established practice has applied by analogy also to other questions involving the representation of States.

28 September 1982

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20. PRESENTATION OF STATISTICAL INFORMATION FOR WESTERN SAHARA AND ITS CLASSIFICATION AS A "DEVELOPING COUNTRY OR TERRITORY" IN REPORTS OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT—GENERAL ASSEMBLY RESOLUTION 36/46 OF 24 NOVEMBER 1981

Cable to the Legal Liaison Officer, United Nations Conference on Trade and Development

Your cable concerning presentation of statistical information for Western Sahara and its classification as a "developing country or Territory" in UNCTAD reports.

As we understand its objections have been raised to classification and presentation of statistics for Western Sahara as a separate Territory rather than as an integral part of a specific State.

1. Statistical office on basis of our legal advice lists Western Sahara under heading "country or area" and presents separate statistical information for the Territory.

2. Basis for above practice is that the General Assembly has not taken any decision to date which recognizes partition of Western Sahara or its absorption by any State. Territory therefore remains on list of Territories to which Declaration on granting of independence to colonial countries and peoples applies.

3. Latest General Assembly resolution, which takes into account organization of African Unity position, regarding question of Western Sahara is resolution 36/46 of 24 November 1981. In first three operative paragraphs of that resolution General Assembly:

"1. *Reaffirms* the inalienable right of the people of Western Sahara to self-determination and independence in accordance with the Charter of the United Nations, the Charter of the Organization of African Unity and the objectives of General Assembly resolution 1514 (XV), as well as the relevant resolutions of the General Assembly and the Organization of African Unity;

"2. *Welcomes* the efforts made by the Organization of African Unity and its Implementation Committee on Western Sahara with a view to promoting a just and definitive solution to the question of Western Sahara;

"3. *Takes note* of the decision of the Assembly of Heads of State and Government of the Organization of African Unity at its eighteenth ordinary session to organize

throughout the Territory of Western Sahara a general and free referendum of the people of Western Sahara on self-determination."

4. In light of above it is clear that the objections are not legally justified and that treatment of Western Sahara in UNCTAD reports in question is consistent with current United Nations practice based on decisions of the General Assembly and the Organization of African Unity Governing Body.

12 January 1982

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21. INTERPRETATION OF GENERAL ASSEMBLY RESOLUTION 36/231 A OF 18 DECEMBER 1981 ON THE SCALE OF ASSESSMENTS—QUESTION WHETHER THE COMMITTEE ON CONTRIBUTIONS MUST CONSIDER ITSELF BOUND BY THE FOUR CRITERIA SET OUT IN SUBPARAGRAPHS 4 (*a*)-(*d*) OF THE RESOLUTION

Memorandum to the Secretary of the Committee on Contributions

The following is a written summary of the legal advice we gave to the Committee on Contributions in two statements this morning, as to whether it must consider itself bound by the four criteria set out in subparagraphs 4 (*a*)-(*d*) of General Assembly resolution 36/231 A of 18 December 1981.

1. The Committee, as a subsidiary organ of the General Assembly (established and assigned functions by rules 158-160 of the rules of procedure of the General Assembly)[42] required to assist the Assembly in carrying out functions assigned to the latter by Articles 17 (2) and 19 of the Charter, is bound to carry out its tasks in accordance with any directives addressed to it by the Assembly.

2. Although such directives as the General Assembly has from time to time addressed to the Committee (those preceding the thirty-sixth session being listed in document A/36/11, annex I) have often been formulated by the Assembly on the advice of the Committee, there is no requirement that this be so, and the Assembly is consequently entirely free to promulgate directives without first receiving the comments of the Committee thereon.

3. The four criteria in question appear to have been intended as temporary (subject to the conditions set out in the introductory sentence of paragraph 4) but binding directives for the Committee. This appears from the following:

(*a*) The use of the term "will be observed" ("seront utilisés" in French) indicates that the criteria set out in the following subparagraphs are meant to be binding. While the use of the word "shall" in English ("devront être" in French) would have been even more imperative, the word "will" sufficiently conveys the same meaning and certainly does not suggest any flexibility for the Committee as to whether or not to apply the criteria.

(*b*) The fact that three of the four subparagraphs in which the criteria are set out use the word "should" ("devrait") does not change the conclusion following from the above subparagraph, since it is the introductory part of paragraph 4 that indicates the extent to which the following criteria are to be binding. While again it might have been preferable to use more imperative expressions in the subparagraphs, experience indicates that General Assembly resolutions are not drafted with such degree of care and uniformity that is applied, for instance, to the formulation of treaty instruments. However, it should be noted that while subparagraphs (*a*), (*b*) and (*d*) appear to state absolute criteria, subparagraph (*c*) is, of necessity, formulated more flexibly in terms of "efforts to be made" and "special measures to be taken", so that, even if binding, this subparagraph is certainly not rigid.

(*c*) The debate on the draft resolution in the Fifth Committee, which is summarized in the report of the latter to the General Assembly,[43] suggests that the participants therein, who for the most part concentrated on paragraph 4, were interested in influencing their colleagues in the Fifth Committee and the plenary as to the desirability of adopting the criteria rather than seeking to influence the Committee on Contributions as to whether or not to apply these criteria. In

other words, it seems to have been assumed by the participants in the Fifth Committee debate that whatever criteria were to be included in paragraph 4 of the resolution would be binding on the Committee on Contributions.

9 June 1982

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22. QUESTION WHETHER UNDER THE FINANCIAL REGULATIONS AND RULES OF THE UNITED NATIONS A VOLUNTARY CONTRIBUTION MAY BE ACCEPTED WITH A CONDITION THAT PURCHASES FUNDED FROM THE CONTRIBUTION BE MADE IN THE DONOR COUNTRY

Letter to the Legal Liaison Officer, United Nations Industrial Development Organization

. . .

The matter you raise in your letter of 31 August 1982 concerns the question whether under the Financial Regulations and Rules of the United Nations a voluntary contribution may be accepted if it is a condition of the contribution that purchases funded from the contribution be made in the donor country.

This is a subject that has arisen from time to time over the years and, most recently, in the context of UNDP examination of how its resources might be augmented; and, in that connection, whether UNDP contracts could be placed in donor countries to a degree more commensurate with contributions to UNDP.

In the light of the Financial Regulations and Rules of the United Nations, it would not be correct for those bodies to which those Regulations and Rules apply, and this includes UNIDO and UNIDF, to do otherwise than continue the usual practice of international competitive bidding for procurement, the scope of which is supposed to be established solely in the Organization's interest and in accordance with its policies.

As to your inquiry on the use of rule 114.2 of the Financial Regulations and Rules of the United Nations, it has been our view that rule 114.2 enables the United Nations to perform a "service" for a Government and to be reimbursed for the "service" performed. It is necessary to remember, however, when that rule is being applied that there is a distinction between monies which the United Nations may receive as *payment* for the rendering of the "service", and monies which are in fact "channelled" through the United Nations for supplies or services which the United Nations may procure from third parties. Even reimbursable procurement is done consistently with United Nations rules on competitive bidding; a service fee is also typically charged. Accordingly, rule 114.2 ought *not* to be used to circumvent the international competitive bidding requirement for United Nations contracts.

18 October 1982

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23. IMPLEMENTATION OF ARTICLE 43 OF THE CHARTER OF THE UNITED NATIONS REGARDING THE PROVISION OF ARMED FORCES, ASSISTANCE AND FACILITIES TO THE SECURITY COUNCIL FOR THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

Memorandum to the Under-Secretary-General for Political Affairs

With reference to your memorandum to the Legal Counsel on the above-mentioned subject, dated 24 September, please find annexed a note on Article 43 of the Charter of the United Nations prepared by our Office.

21 October 1982

ANNEX

Note on Article 43 of the Charter

OUTLINE OF ARTICLE 43

1. Paragraph 1 states the general obligation of Member States to make available to the Security Council, on its call, armed forces, assistance and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security. It provides that such forces, assistance and facilities shall be made available "in accordance with a special agreement or agreements".

2. Paragraph 2 specifies the contents of the special agreement or agreements: such instruments shall govern the numbers and types of forces, their degree of readiness and general location and the nature of the facilities and assistance to be provided.

3. Paragraph 3 describes the procedure for the conclusion of the agreement or agreements: they shall be negotiated as soon a possible on the initiative of the Security Council and shall be concluded between the Council and Members or groups of Members, subject to ratification by the signatory States.

PURPOSE OF THE FORCES ENVISAGED IN ARTICLE 43

4. The purpose explicitly stated in Article 43 is "maintaining international peace and security". The legislative history of the Charter and the location of Article 43 in Chapter VII indicate that the forces made available under Article 43 are intended to assist the Council in any military enforcement action it may decide upon. This intent is confirmed in Article 44, which provides Members not represented on the Council with the possibility of participating in certain decisions of the Council when the latter has decided to use force and intends to call upon those Members to provide armed forces in fulfilment of the obligations assumed under Article 43. It also follows from Article 106, which provides for transitional security arrangements "pending the coming into force of such special agreements referred to in Article 43 as, in the opinion of the Security Council, enable it to begin the exercise of its responsibilities under Article 42". Also worth mentioning is the fact that articles 1 and 18 of the "General Principles" proposed by the Military Staff Committee in 1947 in an attempt to implement Article 43, reiterated that the forces made available under this Article are intended to assist the Council in the tasks envisaged in Article 42 of the Charter.[44]

5. The fact that the forces envisaged by Article 43 are limited to enforcement action by the Security Council has been confirmed by the International Court of Justice in its Advisory Opinion of 20 July 1962 on Certain Expenses of the United Nations as follows: ". . . the Court will state at the outset that . . . the operations known as UNEF and ONUC [United Nations operations in the Congo and the United Nations Emergency Force in the Middle East] were not enforcement actions within the compass of Chapter VII of the Charter and that, therefore, Article 43 could not have any applicability to the cases with which the Court is here concerned".[45] The Court thus excluded the peace-keeping operations of the United Nations from the applicability of Article 43. It further confirmed that the United Nations is not precluded from the use of military forces through procedures other than those envisaged in Article 43 of the Charter for purposes other than enforcement action. It could also be argued, however, as some Member States have done, that, although implementation of Article 43 is not a prerequisite for the establishment of peace-keeping operations, nothing in the text of Article 43 prevents the Security Council from including references to the possible use of forces in peace-keeping operations in the agreements to be concluded under that Article.

IMPLEMENTATION OF ARTICLE 43

6. The use of the forces envisaged by Article 43 presupposes the conclusion of a "special agreement or agreements" between the Security Council and Members or groups of Members of the United Nations. Article 43 thus provides for the possibility of concluding one all-inclusive agreement, a series of limited agreements, or some combination of the two, the contracting parties being the Council and individual Member States or the Council and groups of States which, for example, have entered into mutual agreements on joint security and defence arrangements. The drafters of the Charter also wanted to cover the possibility of an agreement with the permanent members of the Council, which, at that time, were expected to provide the bulk of the forces. Under Article 43, the Security Council is to take the initiative to start the necessary negotiations. Although that Article 43 provides that this should be done "as soon as possible", it does not set any time limit for its implementation.

7. The implementation of Article 43 implies a role for the Military Staff Committee at the stage of the negotiation of the agreements as well as of their implementation in view of the Staff Committee's mandate "to advise and assist the Security Council on all questions relating to the Security Council's military

requirements for the maintenance of international peace and security", as well as to "the employment and command of forces placed at its disposal" (Article 47). The Staff Committee's role under Article 43 is also elaborated upon in Article 45. The Security Council accordingly directed the Military Staff Committee in 1946 to examine Article 43 from a military point of view and report on the Council thereon. In 1947, the Committee submitted a report on the basic principles which should govern the organization of the United Nations' forces (referred to above). The report and subsequent discussions reflected major disagreements on certain of the principles and the efforts of the Staff Committee and the Council in this respect were discontinued in 1948.

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24. MODALITIES TO BE FOLLOWED BY THE ECONOMIC AND SOCIAL COUNCIL IN CONNECTION WITH THE REQUEST BY THE GENERAL ASSEMBLY THAT THE COUNCIL CONSIDER GRANTING MEMBERSHIP IN ONE OF ITS SUBSIDIARY BODIES TO NAMIBIA, REPRESENTED BY THE UNITED NATIONS COUNCIL FOR NAMIBIA

Memorandum to the Secretary of the Economic and Social Council

1. You have asked for advice on the modalities to be followed by the Economic and Social Council in connection with the request addressed to it by the General Assembly in paragraph 7 of its resolution 36/121 D of 10 December 1981:

> "to consider granting membership in the Executive Committee of the Programme of the United Nations High Commissioner for Refugees to Namibia, represented by the United Nations Council for Namibia."

2. We have reviewed the relevant resolutions of the General Assembly and the Economic and Social Council relating to the establishment of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, its original composition and changes subsequently made thereto. We have noted that the Committee was established by the Economic and Social Council with an original membership of 25 States pursuant to a request to that effect by the General Assembly in its resolution 1166 (XII), and that the General Assembly provided for subsequent increases in the membership of the Executive Committee in its resolutions 1958 (XVIII) of 12 December 1963, 2294 (XXII) of 11 December 1967 and 33/25 of 29 November 1978. By resolution 1958 (XVIII) the General Assembly itself decided to enlarge the membership of the Executive Committee from 25 to 30 members and requested the Economic and Social Council to elect the 5 additional members. By its resolution 2294 (XXII) the General Assembly requested the Council "to consider as soon as possible the advisability of enlarging the membership of the Executive Committee of the High Commissioner's Programme, in order to give at least one additional country the possibility of participating in the work of the Committee". Acting in response to that request the Council by its resolution 1288 (XLIII) of 18 December 1967, "mindful of the exhortation to the Council included in paragraph 7 of General Assembly resolution 2294 (XXII) of 11 December 1967", decided to enlarge the membership of the Executive Committee by one African State. By its resolution 33/25 the General Assembly again decided to enlarge the membership of the Executive Committee by up to nine additional members and requested the Economic and Social Council to elect the additional members in consultation with the regional groups.

3. In our view the request contained in General Assembly resolution 36/121 D is to some extent analogous to the one contained in resolution 2294 (XXII). As indicated above, the Council responded to that request by itself deciding to enlarge the membership of the Executive Committee by adding one African State. There would be no legal obstacle to the Council following the same procedure in the current situation.

27 January 1982

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25. Question of the signature by the Trust Territory of the Pacific Islands of the Final Act of the Third Conference on the Law of the Sea and of the United Nations Convention on the Law of the Sea

Memorandum to the Under-Secretary-General, Special Representative of the Secretary-General to the Third United Nations Conference on the Law of the Sea

1. This is in response to your memorandum of 30 November 1982 on this subject, with particular reference to the letter of the Federated States of Micronesia of 22 October 1982. Our opinion also takes into account the views expressed by representatives of the United States Government in informal consultations held at their request as well as the note verbale on this subject delivered to you by the United States Mission on 2 December.

2. It should be noted at the outset that the Trust Territory of the Pacific Islands currently consists of four separate constitutional components: the Federated States of Micronesia, the Marshall Islands, Palau and the Northern Marianas Islands. The question raised in the Micronesia letter mentioned above concerns the first three of these components.

A. SIGNATURE OF THE FINAL ACT

3. Normally, the final act of a diplomatic conference is in the nature of a procès-verbal and is signed by those concerned according to the capacity in which they participated in the conference. However, in the case of the Third Conference on the Law of the Sea, signature of the Final Act also entitles those signatories that have not signed or acceded to the Convention itself to participate in the work of the Preparatory Commission as observers (resolution I of the Conference, para. 2). This right is therefore of great importance to those entities mentioned in article 305, paragraph 1, of the Convention, particularly to those which are not qualified at the present time to sign the Convention (see part B below). Otherwise, signature of the Final Act is not, as implied in the second paragraph of the Micronesian letter, legally related to article 305, paragraph 1, of the Convention.

4. The Trust Territory of the Pacific Islands was invited, as a single entity, to attend the sessions of the Conference as an observer (General Assembly resolution 3334 (XXIX), para. 3 (*c*)). On that basis and taking into account the position of the Conference as reflected in the approved draft Final Act, as well as the expressed interest of three component parts of the Territory in becoming parties to the Convention and in participating in the work of the Preparatory Commission, the Trust Territory is, in our view, entitled to sign the Final Act of the Conference under the heading of "observers".

5. As the Territory was invited as a single entity, there should be only one signature block for that entity on the relevant signature page. However, the question arises of how to take into account the fact that the Territory now comprises four component entities. Strictly speaking, it is for the Administering Authority to designate representatives to sign on behalf of the Territory. In this respect, the United States note verbale indicates that the United States would have no objection if each representative of the Territory were to indicate after his signature the component entity whose authorities have authorized the signature.

6. This raises the question of which authorities of the component territories should be recognized for the purpose of signing or authorizing a signature. There appears to be no international custom or established practice in this regard, because territories are seldom permitted to act on the international plane. In the circumstances, it is necessary to proceed by analogy taking into account the relevant constitutional provisions; thus, in the case of the Federated States of Micronesia, the President or a representative designated by him could sign the Final Act. In any event, the secretariat of the Conference may have to act with flexibility.

7. In this connection, we understand from the United States note verbale that delegations of both the Marshall Islands and the Federated States of Micronesia will be in Montego Bay for the signing of the Final Act.

B. SIGNATURE OF THE CONVENTION

8. The question here is whether, under article 305, paragraph 1, of the Convention, the Trust Territory of the Pacific Islands (or any of its component entities) is entitled to sign that instrument.

9. Clearly, for the time being, neither the Trust Territory nor any of its component parts, including the Federated States of Micronesia, qualify under either subparagraph 1 (*c*) or subparagraph 1 (*d*) of article 305, because they are not associated States having the required competence. We recognize, nevertheless, that three of the component parts may attain that status in the near future, although such a development will certainly not occur by 10 December 1982.

10. Article 305, subparagraph 1 (*e*), refers to "all territories which enjoy full internal self-government, recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters". Whether the Territory or any of its component entities, such as the Federated States of Micronesia, could sign the Convention on the basis of subparagraph (*e*) depends on whether all its conditions are fulfilled. The following observations are called for in this respect:

(*a*) The current status of the Pacific Islands is governed by a trusteeship agreement between the United Nations and the United States, as the Administering Authority. Under that agreement, the Administering Authority is given, *inter alia*, "full powers of administration, legislation and jurisdiction" over the Territory (article 3). The official view of the Trusteeship Council is that each of the political components of the Territory has achieved "full functional self-government" under the Trusteeship Agreement.[46] The Council recognized that Secretariat Order 3039, issued by the Administering Authority on 30 April 1979, applying to the Marshall Islands, the Federated States of Micronesia and the Republic of Palau, does stop short of self-government and that the Administering Authority still holds reserve powers;[47] the High Commissioner of the Trust Territory still maintains power to suspend certain legislation.[48]

(*b*) Additionally, we have been officially notified by the United States note verbale that the Administering Authority does not consider that any component of the Territory has competence to sign at this time.

In the light of the above, we are of the opinion that neither the Territory nor any of its component entities can be regarded at present as having met the requirements of article 305, subparagraph 1 (*e*).

C. CONCLUSIONS

11. On the basis of the foregoing our conclusions may be summarized as follows:

(i) The Trust Territory of the Pacific Islands should be allowed to sign the Final Act in its capacity as an observer, and it would be acceptable for the signatories to add next to their names an indication such as "(Federated States of Micronesia)";

(ii) The Trust Territory should not at present be permitted to sign the Convention.

12. As the Conference will be reconvened in Jamaica from 6 to 10 December 1982, any questions that lie within the power of the Conference to resolve (e.g., as to the signature of the Final Act) or on which it can give an authoritative interpretation (e.g., the meaning of article 305, paragraph 1, of the Convention) could be decided at that session. In such event, the United States note verbale might be published as a Conference document, though only after consulting the United States delegation (as has been informally requested).

6 December 1982

26. Observation by the United Nations of elections to be held in a Member State

Memorandum to the Under-Secretary-General for Special Political Affairs

1. During our meeting in your office, you mentioned the possibility of the Secretary-General being requested to send representatives to observe the elections to be held shortly in the territory of a Member State. The views of the Office of Legal Affairs on the matter are contained in the present memorandum.

2. The question of the United Nations observing the elections in question will of course only arise if the Secretary-General receives an official request to that effect from the Government concerned.

3. Since its establishment, the United Nations has on numerous occasions sent visiting missions to observe or supervise plebiscites or elections in Trust and Non-Self-Governing Territories. A list compiled by the Dag Hammarskjöld Library in September 1981 contains useful information and references concerning those missions.[49] In reviewing the practice of the United Nations in this regard, you will note that on each occasion the United Nations involvement was in the context of a self-determination process and invariably with the specific authorization of the competent principal deliberation organ of the Organization. The terms of reference of those missions were either to "observe", "supervise", or "control" the election or plebiscite in question. A recent prominent example relates to the elections preceding the independence of Zimbabwe where, in response to an invitation by the United Kingdom, the Secretary-General sent a team to observe the elections. Before doing so he informed the members of the Security Council at an informal meeting; the Council acquiesced in a United Nations team being sent. In no instance were such functions undertaken in connection with elections in an independent State Member of the United Nations.

4. There has been, in addition, one recent instance where the Secretary-General sent representatives to witness a referendum in the territory of a sovereign Member State. That was in response to an invitation to the Secretary-General from the Government of Panama to the effect that he or his representatives "see the people of Panama freely decide on 23 December 1977 whether or not to approve the Panama Canal Treaties between Panama and the United States of America". On that occasion what was involved was a referendum regarding a bilateral international instrument and it is important to mention that the other interested party, the United States of America, was consulted and appeared to welcome the invitation. There were no obstacles either of a legal or of a political nature to prevent the Secretary-General from sending a personal representative to Panama to witness the referendum. The role of the United Nations mission that visited Panama was limited to watching the polling activities in designated areas of the country as an independent and objective "spectator".

5. The forthcoming elections to which you refer bear no similarity to any of the situations referred to above. The elections are a matter which is essentially within the domestic jurisdiction of a Member State within the terms of Article 2, paragraph 7, of the United Nations Charter. Moreover, the elections are a controversial political issue internally and internationally which has been at the centre of world attention for the past several years. Member States have held strongly opposing views on the matter.

6. In a situation where the United Nations is not in a position to control the polling activities, the registration of voters, the electoral boundaries, etc., it would, in our view, be extremely dangerous for it to become involved even as a witness to the voting process. Any such involvement could be interpreted in various ways by the different factions concerned and this would certainly not be in the interests of the United Nations. Furthermore, if the Secretary-General were to accede to a request of this nature it would set a precedent which could encourage States to request the United Nations to participate in an observer capacity in all types of electoral processes held in their territories. The Secretary-General would not wish to place himself in a situation where, entirely on his own initiative, he either endorses or repudiates election procedures in a Member State.

7. It is our considered opinion that, in the case of an election or a plebiscite in a Member State, or in any other sovereign independent State, which concerns only that State, the United Nations should only become involved as a witness to the voting process if authority for such involvement is granted by the competent principal deliberative organ of the United Nations. In our view, therefore, if the Secretary-General receives an invitation from the Government concerned to send representatives of the United Nations to observe the elections he should decline, indicating that he is not in a position to do so without prior authorization of the General Assembly or the Security Council.

10 February 1982

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27. THE ROLE OF THE SECRETARY-GENERAL AS CHIEF ADMINISTRATIVE OFFICER OF THE UNITED NATIONS

Study prepared for the Secretary-General

I. INTRODUCTION—GENERAL CONSIDERATIONS

A. *Summary*

1. There are few legal signposts in the Charter, or in general constitutional theory, indicating with any precision what functions the Secretary-General is to exercise as chief executive officer under Article 97 of the United Nations Charter and as the head of one of the principal organs of the Organization, or how these functions are to be delimited against those of the other principal organs, particularly the General Assembly. Substantially the only guide that can be found is the actual practice of the Organization, which on the one hand constitutes a valid basis for interpreting the Charter[50] and on the other must constitute the point of departure for any change in the relationship between the organs.

2. The present paper will therefore examine the principal clearly administrative functions of the Secretary-General, leaving out those that are substantially political (i.e., those under Article 99 of the Charter), those that merely involve the carrying out of specially entrusted functions (under Article 98) or purely technical ones, so that principally the personnel, budgetary and co-ordination functions will be considered. Attention will be concentrated on the extent to which those functions are impinged on by decisions of the General Assembly, with special reference to the history and legality of any encroachments. Only peripheral consideration will be given to delimitation *vis-à-vis* the other principal organs such as the Security Council in connection with peace-keeping operations, with respect to which a *modus vivendi* involving extensive consultations before the introduction of any substantive initiative by the Secretary-General appears to have evolved).

B. *Definition*

3. Article 97 of the Charter specifies, *inter alia*, that "[The Secretary-General] shall be the chief administrative officer of the Organization".[51]

4. In addition, functions are specified for the Secretary-General in other provisions of the Charter: in Articles 98 and 101 in rather general terms and in Articles 12 (2), 20, 73 (*e*) and 99, as well as in several provisions of the Statute of the International Court of Justice, for very specific transactions. This raises the question whether all these functions can be subsumed under those of a "chief administrative officer" (CAO) or whether the Secretary-General is CAO plus also something else; for example, Goodrich, Hambro and Simons classify the functions and powers of the Secretary-General as those of "chief executive", "chief administrator" and "chief co-ordinator".[52] On analysing the various functions, either as explicitly specified in the Charter or as exercised in practice, and taking into account all powers that might be implied in the office, it becomes apparent that it is not possible to specify that certain functions are purely those of a CAO and others are not, but still less that all functions are those of a CAO and must be interpreted in that light.

5. Finally, it is also useful to note that neither of two significant listings of the functions of the Secretary-General specify "administrator" or "CAO" as a distinct category. Thus the Preparatory Commission listed[53] six functions:

(*a*) General administrative and executive;

(*b*) Technical;

(*c*) Financial;

(*d*) Organization and administration of the international Secretariat;

(*e*) Political;

(*f*) Representational.

The *Repertory of Practice of United Nations Organs* and its *Supplements* deliberately follows essentially the same scheme in the analytical summary of practice under Article 97, except that function (*d*) is treated under Article 101. Incidentally, function (*a*) is subdivided into seven sub-categories:

(i) In connection with meetings of United Nations organs;

(ii) Transmission of documents;

(iii) Integration of activities;

(iv) Co-ordination with specialized agencies and other intergovernmental organizations;

(v) Preparation of work and implementation of decisions;

(vi) In connection with international treaties, conventions and agreements;

(vii) Submission of an annual report.

C. *Delimitation of functions* vis-à-vis *the General Assembly*

6. The delimitation of the respective powers of the General Assembly and of the Secretary-General obviously has analogies in the delimitation (or separation of powers) in any democratic governmental system between the legislative and the executive. Although these analogies should not be pressed too far, since the United Nations is not a government and its principal organs do not perform governmental functions *strictu sensu*, the basic considerations that define the relationship between certain types of national organs would also seem to apply to intergovernmental ones; these considerations are summarized in paragraphs 7-9 below. Before reaching them it should, however, be noted that both the General Assembly and the Secretariat are defined as "principal organs" by Article 7 (1) of the Charter, and that the Secretary-General is, under Articles 97 and 98, in effect the personification of the Secretariat.[54] On the other hand, the pre-eminence of the General Assembly as the most significant of the principal organs flows from its power of the purse (Article 17) and its power to discuss "any matters . . . relating to the powers and functions of any organ" (Article 10), and specifically *vis-à-vis* the Secretary-General from its power of election (Article 97), its power to entrust functions to him (Article 98) and its power to establish regulations for one of his main functions, the governance of the Secretariat (Article 101 (1)).

7. A functional approach to defining the respective roles of any legislative and executive organ (or even quasi-legislative and quasi-executive) would take account of the following interplay:

(*a*) The legislature decides on programmes, whether or not on a proposal of the executive;

(*b*) The executive indicates the specific resources (funds, personnel, legal régimes) required to carry out those programmes;

(*c*) The legislature authorizes resources, not necessarily precisely as requested, and perhaps after reconsidering the programme in the light of the resource requirements;

(*d*) The executive carries out the authorized programmes with the resources made available to him.

8. A descriptive distinction would, on the other hand, emphasize that a legislature lays down general rules while the executive applies them to specific cases. The problem is that there is no absolute border between general and specific, and thus between the domain of the two types of organs.

9. Finally, it should be recognized that in practice the boundary between the functions of several organs is constantly shifting in any living system, and that the dynamics of this movement depend on factors such as the relative interest, at any given time, of the organs concerned in asserting their respective competences (e.g., the extent to which the executive organ expresses an interest in administration); the extent to which the executive organ has the confidence of the legislative in carrying out that tasks assigned to the former without detailed directions; and the extent to which the executive may invite political direction, and thus also secure backing, in respect to administrative matters.

II. PERSONNEL FUNCTIONS

A. *General*

10. Article 101 (1) of the Charter provides that "the staff shall be appointed by the Secretary-General under regulations established by the General Assembly". It is understood that the reference to appointment does not mean that the regulations relate only to that aspect of the personnel process, but to the entire régime under which staff serve.

11. The general distinction between the functions here stated is that the General Assembly lays down regulations that govern the staff as a whole or significant components thereof, while the Secretary-General takes decisions in respect of the appointment, assignment, promotion, disciplining and termination of individual staff members. To the extent that the General Assembly takes or attempts to take decisions in respect of individual staff members, it is violating this Charter-mandated distribution of functions.[55] Similarly, it would appear to have been a violation of the Charter for the Assembly to have assigned the power to appoint (or to govern) part of the staff directly to some other person (whether or not himself a staff member) or authority. On the other hand, there would appear to be no constitutional objection to the Assembly either delegating some of its rule-making power to the Secretary-General or, having once done so, to later withdrawing or reducing his assigned normative powers.

B. *Appointment of staff members*

12. With respect to the making of individual appointments of staff members, the Staff Regulations (4.1) ostensibly preserve the Charter power of the Secretary-General, and with respect to most staff members he indeed exercises (directly or through delegation) this function. However, there is a steadily increasing number of exceptions, which are discussed in paragraphs 13-15.

13. With respect to certain special organs, such as those listed in part A of the annex to the present paper (e.g., joint inter-organizational units like the United Nations Joint Staff Pension Fund (UNJSPF), the Joint Inspection Unit (JIU) and ICSC, the Secretary-General's power to appoint has been completely eliminated or substantially circumscribed. However, these exceptions all relate to special organs of quite limited size that are either not subsidiary to the General Assembly or as to which some special treaty provision, or agreements with other intergovernmental organizations, made or make a special arrangement necessary.

14. More serious is that the General Assembly has, almost from the beginning of the Organization but with somewhat increasing frequency, provided that the appointment of the executive heads of certain organs, such as those listed in part B of the annex to the present paper, be subject to special conditions (e.g., election of the Executive Director of UNEP by the General Assembly on nomination by the Secretary-General, or the requirement that the appointment of the UNIDO Executive Director be confirmed by the General Assembly), detracting

from the sole power that the Secretary-General would seem to enjoy under Article 101 (l) of the Charter to make appointments to the staff. A point that never seems to have been tested yet in this connection is whether the Secretary-General may dismiss, on his sole authority, any of the officials so appointed; certainly as to those "elected" by the General Assembly (e.g., the UNEP Executive Director) this would seem to be doubtful; in that case it may, however, also be doubted whether he can discipline or effectively control such an official, except by the threat to refuse renomination.

15. In several instances in relation to some of the semi-autonomous organs referred to in the previous paragraph (see examples in part C of the annex to the present paper), the appointing authority of the Secretary-General is even more markedly restricted, in that the General Assembly provided that the staff of the organ should be appointed by the executive head thereof, or that the Secretary-General would have to make appointments in consultation or in association with such executive head.

16. In an opinion by the Legal Counsel, delivered on 14 August 1953, the Legal Counsel found the power of appointment conferred on the United Nations High Commissioner for Refugees difficult to reconcile with Article 101 (1) of the Charter, the same view would presumably also apply to the other situations described in paragraphs 14 and 15 above, in particular where the Secretary-General has been entirely deprived of his appointing authority.[56] However, after the General Assembly had on several further occasions strained this principle, the Legal Counsel, in an opinion delivered to the Economic and Social Council in 1975, merely stated that the General Assembly not having placed any restrictions on the Secretary-General's power to appoint at the level of Assistant Secretary-General an Executive Director of the proposed Information and Research Centre for Transnational Corporations, it was not for the Economic and Social Council to establish a requirement of consultation with the Commission for Transnational Corporations.[57] In any event, in the view of the Office of Legal Affairs these various encroachments on the Secretary-General's appointing authority are at best of doubtful legality (aside from the policy considerations that can be advanced for and against such procedures), and each further encroachment should be resisted, in particular to the extent it may not be said to be covered precisely by one of the precedents cited above. This view was shared by the previous Secretary-General, when he succeeded in persuading the General Assembly not to authorize still greater autonomy for UNIDO (which, unlike the organs referred to in paragraph 15 above, is financed from the regular budget),[58] by arguing that:

> "To relieve the Secretary-General totally of his responsibilities for the appointment and promotion of UNIDO personnel, as well as for other aspects of UNIDO's personnel administration, would in effect result in UNIDO personnel ceasing to be an integral part of the United Nations Secretariat."[59]

C. *Recruitment procedures*

17. A quite different question is raised by the increasingly detailed directives issued by the General Assembly during the past years concerning various aspects of the recruitment procedures, culminating in the adoption of the "Recruitment procedures for posts subject to geographical distribution in the United Nations Secretariat" (set out in the annex to General Assembly resolution 35/210 of 17 December 1980, by section III of which the Secretary-General was requested to apply them). These directives resulted from the increasing frustration of the General Assembly at the failure to achieve the goals set in its earlier, more general guidelines of the staff, guidelines which the responsible Secretariat officials on the one hand neither rejected as being impractical or undesirable, and on the other did not implement at a speed the Assembly considered satisfactory.

18. From a legal vantage these directives can be viewed in two different ways:

(*a*) As exercises by the General Assembly of its undisputed regulatory power under Article 101 (1) of the Charter;

(*b*) As mere recommendations (the operative paragraphs of the relevant Assembly resolutions and decisions usually "*Request* the Secretary-General . . .") made under Article 10 of the

Charter, and therefore not legally binding on him (unlike, for example, a budget resolution made under Article 17 of the Charter and the Financial Regulations).

Whether viewed in one way or another, it is difficult to raise any constitutional legal objections against these detailed directives, though from a political or administrative point of view it might be pointed out that hampering the CAO by rigid rules is apt to be counter-productive and not conducive to the smooth functioning of the Organization or to its efficient administration.

D. *Administration of the staff*

19. Aside from the field of staff recruitment, which appears to have recently preoccupied the Fifth Committee to an inordinate degree, there are other areas relating to the management of the staff as to which the proper delimitations of the functions of the General Assembly and the Secretary-General have been or might be raised.

20. As to the Secretary-General's otherwise unrestrained right to decide questions relating to the individual staff members, subject to the Staff Regulations adopted by the General Assembly, the latter has over the years established or called for various types of recourse mechanisms which have the effect of circumscribing the powers of the executive head:

(*a*) The establishment of the Administrative Tribunal—which the International Court of Justice explicitly held did not constitude an improper interference with the powers of the Secretary-General;[60]

(*b*) The devising of a procedure whereby, in addition to the Secretary-General and the Applicant, a Member State can request the Committee on Applications for Review of Administrative Tribunal Judgements to refer a judgement to the International Court of Justice for an advisory opinion;[61]

(*c*) The request to the Secretary-General to establish a Discriminat on Panel;[62] it would seem difficult to find any legal objection to this proposal, either because i merely constitutes a recommendation (see para. 18 (*b*) above), or because it could be upheld o n the same ground as the establishment of the United Nations Administrative Tribunal (see (*a*) at ove).

The Office of Legal Affairs agrees that, as these recourse mechanisms correspond to those existing in many countries, no fundamental legal objection can be raised against them.

21. As pointed out above (para. 11), the General Assembly has from time to time, especially in the Staff Regulations (12.2), delegated to the Secretary-General some of its own normative powers under Article 101 (1) of the Charter, by authorizing him to promulgate Staff Rules; occasionally it has also modified or reduced such delegation, either by deciding certain questions itself (e.g., General Assembly resolution 34/165, sect. II, para. 3, relating to the repatriation grant) or by assigning it to some other body, such as the International Civil Service Commission (e.g., ICSC statute, art. 11). Whether these steps were undertaken because of some perceived dissatisfaction by the Assembly with the way in which he Secretary-General has been executing a part of his mandate or, more frequently, because of the desire to make possible coherent inter-organizational decisions in furtherance of the "common system", no legal (as distinct from policy or practical) objection can be raised against the diminution of a voluntary delegation of powers by the General Assembly. The same would be true if the Assembly were to adopt a decision specifying General Service salary scales at a given point, in spite of its general delegation to the Secretary-General of the power to set such scales,[63] except to the extent such a decision might diminish any contractual or acquired rights of the staff concerned.

22. On the other hand, the direct assignment by the General Assembly of the power to administer the staffs of certain subsidiary organs financed from voluntary contributions (e.g., UNDP, UNITAR, UNU) rather than from the regular budget, to the executive heads of these organs, does raise serious administrative and even legal problems. The Office of Legal Affairs (in an opinion of 10 April 1978) has therefore taken the view that:

> "[W]hatever may be the subsidiary organ heads' responsibility and authority for the administration of their respective staffs, the Secretary-General, as chief administrative officer of the United Nations, retains his Charter responsibility for overall compliance with

General Assembly directives and for a consistent interpretation of the Staff Regulations and Rules. It is his task to seek to minimize differences in staff members' rights arising from distinct appointing and administering and even rule-making authority."

III. FINANCIAL AND RELATED FUNCTIONS

A. *General budgetary*

23. Unlike in respect of personnel administration, as to which the Charter specifically assigns a function to the Secretary-General, the Charter is silent as to any explicit financial or budgetary functions—except to the extent implied by his designation as CAO. Nevertheless, under the Financial Regulations and by other decisions (in particular the periodic budget and related resolutions), the General Assembly (whose competence derives primarily from Article 17 of the Charter), has assigned substantial functions in this area to the Secretary-General: he collects, holds in custody and disburses or commits the funds of the Organization, and similarly administers numerous trust funds according to procedures he establishes (subject to any decisions by the General Assembly; financial regulations 6.6 and 6.7).

24. Possibly the most important of these functions is the Secretary-General's task of preparing the proposed programme budget for each financial period (financial regulation 3.1), and while it is for the General Assembly to decide on his proposals, there can be no doubt that these proposals largely shape the approved budget. The last Secretary-General's appreciation of the importance of this function is indicated by the following reaction to a proposal that UNIDO prepare and submit its own budget to the General Assembly:

> "Under the Charter and the Financial and Staff Regulations approved by the General Assembly, it is the Secretary-General who is responsible and accountable for all aspects of the work of the Organization, including its financial and personnel management. So long as the Secretary-General continues to be held responsible and accountable he needs to retain that degree of authority which is necessary to maintain the financial integrity of the Organization and to safeguard the concept of a single unified United Nations Secretariat."[64]

He added:

> ". . . that the Secretary-General must determine, within his constitutional prerogatives as chief administrative officer of the Organization, not only the overall size of the budget that he intends to submit but the amounts which he considers that he is justified in asking the General Assembly to appropriate for each of the numerous organizational units included in the Organization's regular budget."[65]

25. Except for the above-mentioned attempt to achieve fiscal (and other) autonomy for a subsidiary organ financed primarily from the regular budget, there have been relatively few major inroads made or even attempted in respect of the central core of the Secretary-General's fiscal and budgetary functions. However, it should be mentioned, and this is a significant factor, that the Secretary-General's control over a number of trust and special funds, through which are financed more and more significant operations carried out by semi-autonomous organs, is often slight and at most indirect, and his control of the Organization as a whole is to that extent diminished. Only if a centralized control over the collection and use of such funds is maintained can be the significant centrifugal forces acting on the United Nations be contained.

26. As already mentioned, the Secretary-General's authority to originate the proposed regular budget is clear and undisputed. However, two aspects of the budget-adoption process, which tend to diminish the effectiveness of that authority, deserve attention:

(*a*) The formal action that the Fifth Committee takes on the first reading of the budget is not on the Secretary-General's proposals, but on those proposals as modified by any recommendations of the Advisory Committee on Administrative and Budgetary Questions (ACABQ). Consequently, if the Advisory Committee has suggested the reduction of an item, its restoration to the amount requested by the Secretary-General requires the adoption (by general consent or by a vote) of an amendment. In other words, while the Secretary-General's estimates are the

starting point of the budgetary process, they are not the starting point for the Fifth Committee, to the extent that ACABQ has advised otherwise. This aspect of the Fifth Committee's procedure is not embodied in any rule, but represents well-established practice, which it may be difficult to change;

(*b*) In recent years it has from time to time been asserted in the Fifth Committee that it is improper for the Secretariat, that is, for the Secretary-General's representatives, to intervene in the debate for the purpose of urging the restoration of any items whose deletion or reduction has been recommended by ACABQ. Though the Secretariat has sometimes resisted these suggestions, it appears that it is still considered somewhat improper for the Secretary-General to mount too vigorous a defence of his budget proposals. It would, however, seem entirely proper for the Secretary-General to indicate, clearly, to what extent any proposed diminution of the resources he has requested is likely to result in a corresponding diminution in the programmes he has been asked to carry out.

B. *Structure of the Secretariat*

27. The structure of the Secretariat is in effect determined by the budget, which is, as discussed in the previous section, proposed by the Secretary-General but adopted by the General Assembly. Thus any significant changes in that structure in effect require the approval of the Assembly.

28. In connection with the above, several qualifications are useful:

(*a*) The Preparatory Commission stated that:

> "Paragraph 2 of Article 101 of the Charter is interpreted to mean that the Secretary-General has full authority to move staff at his discretion within the Secretariat but must always provide the Economic and Social Council, the Trusteeship Council and other organs with adequate permanent specialized staffs forming part of the Secretariat."[66]

(*b*) For many years the budget resolutions have restricted the Secretary-General's power to transfer credits (and thus presumably posts) to those within budget sections (of which at present there are 32), while inter-sectional transfers require the concurrence of ACABQ.[67]

(*c*) In an opinion to the Controller on 30 September 1975 on whether the General Assembly, in approving the regular budget, thereby approves the number of established posts at the various levels or only the global sums expressed in the resolutions, the Legal Counsel pointed out that:

> "3. . . . the Advisory Committee on Administrative and Budgetary Questions examines proposals for an increased number of posts or for changes in the level of the posts, and its recommendations as to expenditures are based on decisions in this respect. The distribution of posts at various levels affects the growth rate of the Secretariat and thus the financial requirements for future budgets. It is thus a policy matter of concern to the General Assembly in its approval of the budget.
>
> "4. In the light of these factors and the practice of the Assembly in this regard, it must be concluded that the General Assembly does in fact approve the number of established posts at the various levels as indicated in the reports of the Fifth Committee."

From the above it follows that, while the Secretary-General has a certain degree of freedom in moving posts horizontally (intra-sectionally on his own authority, inter-sectionally with the concurrence of ACABQ), from one office or department to another, he can only do so within the total number of posts indicated in the budget document whose totals were approved by the General Assembly; he cannot on his own authority create or upgrade posts.

29. At its thirty-fifth session, the General Assembly established a Committee of Governmental Experts to Evaluate the Present Structure of the Secretariat in the Administrative, Finance and Personnel Areas.[68] While this action might be considered as an intrusion by the Assembly on the administrative functions of the Secretary-General, it should be recalled that the latter had in effect invited the Assembly to take action.[69] The first report of that Committee[70]

having been inconclusive, the Assembly has directed it to continue and conclude its work in time for the thirty-seventh session of the Assembly.[71]

C. *Overall structure of the Organization*

30. In connection with the increasing tendency to establish more or less autonomous organs to carry out certain functions of the Organization, i.e., organs over whose executive heads or staffs the Secretary-General does not have complete control (see paras. 14-16 above), which are completely or largely financed outside of the regular budget and thus can evade some of the normal administrative controls of the Secretary-General (see para. 25 above) and even the legislative control of the General Assembly, and which, incidentally, are also increasingly dispersed geographically, the Secretary-General cautioned the General Assembly as follows in his foreword to the budget estimate submitted to the twenty-first session:

> "Finally, I would like to refer to the more recent phenomenon of creating autonomous organizational units within the Secretariat. While I am aware of the considerations which prompt Member States to adopt this course, I feel obliged to draw attention to the administrative consequences which are likely to follow. The creation of autonomous units within the Secretariat, and therefore under my jurisdiction as Chief Administrative Officer, raises serious questions of organizational authority and responsibility. Moreover, such a trend is not altogether consistent with the concept of a unified secretariat working as a team towards the accomplishment of the main goals of the Organization."[72]

31. From a legal point of view it might merely be added that the creation of semi-autonomous units with distinct staffs would seem to run counter at least to the spirit of Article 101 (2) of the Charter, which appears to foresee only a single Secretariat for the Organization.

D. *Trustee of funds*

32. In his capacity as CAO, the Secretary-General has been entrusted with custody of the funds and other resources of the Organization, including those it holds in trust for others. In connection with at least one such arrangement an area of potential conflict with the General Assembly has been apparent for some years, as a result of the latter's urgent requests that resources of the Pension Fund no longer be invested in shares of transnational corporations, but be reinvested in developing countries to the greatest extent practicable. In a legal opinion of 6 May 1977,[73] which was issued in part to allay the concern of participants in the Pension Fund, it was pointed out that under article 19 (*a*) of the UNJSPF regulations (which, though adopted by the General Assembly, in effect also constitute an agreement with the other participating organizations, as well as a contractual instrument on which the individual staff members of all these organizations can rely) it was the Secretary-General who made the investment decisions after consultation with an Investments Committee and in the light of comments from the UNJSP Board, and that while he could follow suggestions made by the Assembly he could only do so, as trustee, if he considered them to be in the best interest of the Fund. Though the opinion pointed out that the Assembly's resolutions so far had not "failed to respect the ultimate authority of the Secretary-General over the investments of the Pension Fund", there is always a risk of confrontation should the Assembly decide to take stronger measures as a result of impatience with the Secretariat's progress in this area (cf. para. 17 above).

IV. CO-ORDINATION AND MISCELLANEOUS FUNCTIONS

A. *Schedule of conferences*

33. The structuring of the calendar of conferences reflects how, over the years, as the activities of the Organization grew, a particular function became established, was eventually recognized as such, was then assigned to the Secretary-General and later, in effect, removed from him. Originally, with relatively few meetings of organs and conferences, there was no

genuine scheduling problem or function: meetings could largely take place when convenient to the participants; consequently, the function of scheduling was not explicitly assigned to any organ, though in effect whatever scheduling took place was accomplished through the Secretariat. As the number of meetings increased, this work became more formalized, and at the twenty-first session of the General Assembly the situation was summarized as follows in the fifth preambular paragraph of resolution 2239 (XXI) of 22 December 1966:

> "*Noting* that, under the Charter of the United Nations, the Financial Regulations of the Organization and the rules of procedure of the General Assembly, final approval of the annual calendar of meetings and conferences rests with the General Assembly, and responsibility for the organization of the calendar rests with the Secretary-General in his capacity as chief administrative officer of the Organization."

34. However, by that resolution, the General Assembly first created a Committee on Conferences, with substantial functions to monitor the work of the Secretary-General in proposing a schedule of United Nations meetings and in co-ordinating, through the Administrative Committee on Co-ordination, meetings throughout the United Nations system. Though that Committee [on Conferences] was later temporarily abolished, it was revived some years later with more substantial powers, both to advise the Assembly on the calendar of conferences and to approve inter-sessional departures from the approved calendar.[74] Though of course it is still the Secretary-General who prepares the ground for the work of the Committee on Conferences by proposing schedules of meetings to it, it is the Committee on Conferences that decides on the draft calendar to be forwarded to the General Assembly.

35. Although it might appear that the Secretary-General was thereby deprived of a significant function, or rather that a significant function of his was noticeably reduced, it is likely that this was a not quite unwelcome development, by shifting to a political organ the increasingly serious conflicts resulting from the steadily rising demand for meetings imposed on conferences resources (premises, staff, funds) that were not growing nearly as rapidly.

B. *Representation of the United Nations at meetings of other organizations*

36. The *Repertory*, which reflects the practice of the initial eight years of the Organization, records that it is "The Secretary-General, or a member of the Secretariat authorized by him, [who] represents the United Nations at international conferences and at meetings of other [organizations]" and that it was generally the Secretary-General who decided at what conferences and meetings the Organization should be represented.[75] The first four *Supplements*, covering the period until 1969, were unable to add anything to this account.

37. However, during the past decade, a significant change has occurred in this state of affairs. Several subsidiary organs of the General Assembly, in particular the United Nations Council for Namibia, the Special Committee against *Apartheid* and the Committee on the Exercise of the Inalienable Rights of the Palestinian People, routinely send their officers or members to attend meetings of intergovernmental or non-governmental organizations; though usually accompanied by members of the Secretariat, these are generally not official members of, and certainly not leaders of, such delegations. Presumably the justification for these arrangements is that the very purpose of sending the representatives of these United Nations organs is political, and that the task of these delegations can thus better be performed by the representatives of committed States than by neutral Secretariat officials. This argument should not, however, hold for the Council for Namibia, which in effect represents that quasi-State in those organizations or meetings in which it may participate as a member or observer; the representatives of States participating in such meetings are not members of the national legislatures but rather officials of the Foreign or some other Ministry; by analogy, the representative for Namibia should be the Commissioner or a member of his staff, i.e., a Secretariat official.

38. It would appear that relatively little thought has been given to this question, because rarely has much of an issue been made of it by anyone concerned. On one occasion when the matter was explicitly considered, in a working group of the Special Political Committee at the

thirty-fourth session of the General Assembly, both the Secretary-General and the UNESCO Director-General resisted a proposal that members of the Committee on Information of the United Nations be sent to UNESCO's 1980 Intergovernmental Planning Conference on Communication Development, resulting in a resolution merely calling for "consultations concerning the participation of the Committee on Information in the work of that Conference"[76]—which was understood to mean that members of the Committee might participate in a delegation to be headed by a Secretariat official. It would appear worthwhile to continue monitoring proposals and practices of this sort carefully, so that the Secretary-General might maintain a consistent and defensible attitude as to his primacy as the official representative of the Organization.

C. *Conclusion of agreements*

39. Although not explicitly spelt out in the Charter, it is implicit in the designation "CAO" that the Secretary-General has the function and authority to enter into agreements with Governments, with organizations and with individuals. Except in respect of contracts and certain operational agreements with Governments that the General Assembly has authorized some of its subsidiary organs to conclude (e.g., the UNU Charter, article XI.3, approved by General Assembly resolution 3081 (XXVIII) of 6 December 1973), the General Assembly has not significantly diluted this authority of the Secretary-General. Nevertheless, it is becoming increasingly frequent for the executive heads of both Assembly and Economic and Social Council subsidiary organs (such as the regional economic commissions) to execute agreements with Governments—purportedly merely on behalf of their particular organs but actually committing the Organization as a whole—without specific authorization from the General Assembly or delegation from the Secretary-General.

D. *Annual report on the work of the Organization*

40. Article 98 of the Charter requires the Secretary-General to make an annual report to the General Assembly on the work of the Organization. Until 1976, that Report had consisted of a reasonably detailed narrative account of all the principal activities of the Organization, supplemented by an introduction setting out the Secretary-General's personal reflections on a year in the life of the Organization.[77] Thereupon, after a year of transition during which the former main report was replaced by a mere list of documents,[78] that part of the report was abandoned entirely, leaving solely the former introduction as constituting the entire Article 98 "report".[79] Aside from whether the present diminished report complies with the spirit of Article 98 of the Charter, it certainly does not constitute the timely and therefore especially valuable legal research and reference tool that the former reports did, which have not been replaced by any comparably useful and timely documentation.

V. CONCLUSION

41. It is not feasible to define precisely, from a legal point of view, what the functions of a chief executive officer should be in general or those of the Secretary-General in particular. In any event, such functions include numerous responsibilities relating to the personnel, finances and co-ordination of the Organization, some of which flow from the Charter, some from specific dispositions of the General Assembly or of agreements to which the United Nations is a party. While it may be said that the functions of the Secretary-General, whether as CAO or flowing from any other source, are to implement through particular actions the general decisions of the political organs and in particular those of the General Assembly, there is in most areas no specific boundary that would define the responsibility *vis-à-vis* the executive heads and the staffs of the semi-autonomous subsidiary organs clearly or consistently defined. Thus the Secretary-General's functions and boundaries between his authority and that of other principal and of subsidiary organs have not been susceptible of codification, but rather have been estab-

lished dynamically in response to political and financial pressures, as moderated by tradition and precedent.

26 February 1982

ANNEX

Restrictions on the Appointing Authority of the Secretary-General in Respect of Certain Organs*

A. *Certain miscellaneous organs*

1. Though the International Court of Justice is a principal organ of the United Nations, its staff, i.e., the Registry, is appointed under the authority of the Court pursuant to Article 2 (2) of its Statute, which in effect constitutes an exception to Article 101 (1) of the Charter.

2. The secretariat of the Military Staff Committee was originally subject entirely to the five Secretaries designated respectively by the members of the Security Council. Only after extensive efforts by the Secretary-General[80] did the General Assembly decide in 1957 to request him 'subject to any objection which may be received from the Security Council, to take appropriate steps to effect the integration of the civilian staff of the Military Staff Committee with the Secretariat of the United Nations".[81] (NB: This is an instance in which a unit of the Secretariat not originally subject to the full control of the Secretary-General was later placed under his authority.)

3. Under article 20 of the International Opium Convention of 1925, as amended by the 1946 Protocol (both now superseded by the 1961 Single Convention on Narcotic Drugs), the Secretary and staff (who were members of the United Nations Secretariat) of the former Permanent Central Opium Board were to be appointed on the nomination of the Board and subject to the approval of the Economic and Social Council.

4. Various requirements to consult particular bodies apply to certain appointments to the secretariats of certain interorganizational bodies established by the General Assembly:

(*a*) The Secretary of UNJSPF, his Deputy and "other officers empowered to act in the absence of the Secretary" are appointed by the Secretary-General "on the recommendation of the UNJSP Board";[82]

(*b*) The staff of ICSC is to be appointed by the Secretary-General "after consultation with the Chairman of the Commission and, as regards senior staff, with the Administrative Committee on Co-ordination";[83]

(*c*) The staff of JIU is to be appointed by the Secretary-General "after consultation with the Unit and, as regards the appointment of the Executive Secretary, after consultation with the Unit and the Administrative Committee on Co-ordination".[84]

B. *Executive heads of semi-autonomous organs and other senior officials*

1. The Commissioner (formerly Director) of UNRWA is appointed by the Secretary-General in consultation with the Governments represented on the Advisory Commission of the Agency;[85]

2. The High Commissioner for Refugees is elected by the General Assembly, on the nomination of the Secretary-General;[86]

3. The Executive Director of UNITAR is appointed by the Secretary-General after consultation with the Board of Trustees[87] (NB: This might be considered as an instance of self-limitation by the Secretary-General);

4. The Secretary-General of UNCTAD is appointed by the Secretary-General and confirmed by the General Assembly;[88]

5. The Executive Director of UNIDO is appointed by the Secretary-General subject to confirmation by the General Assembly;[89]

* The following lists are meant to be illustrative rather than exhaustive.

6. The Executive Director of UNEP is elected by the General Assembly on the nomination of the Secretary-General;[90]

7. The chief executive officer of the United Nations Special Fund was appointed by the Secretary-General, subject to confirmation by the General Assembly;[91]

8. The Rector of UNU is appointed by the Secretary-General, after consultation with the Director-General of UNESCO and following an elaborate nominating procedure specified in detail in article V (1) of the Charter of the University;[92]

9. The Executive Director of the World Food Council is appointed by the Secretary-General, in consultation with the members of the Council and with the Director-General of FAO;[93]

10. The Director-General for Development and International Economic Co-operation should be appointed "in full consultation with Member States".[94]

C. *Staff of certain semi-autonomous organs*

1. The Commissioner of UNRWA (who is responsible to the General Assembly for the operation of his programme) selects and appoints his staff "in accordance with general arrangements made in agreement with the Secretary-General";[95]

2. The Agent General selected and appointed the staff of the United Nations Korean Reconstruction Agency "in accordance with general arrangements made in agreement with the Secretary-General";[96]

3. The High Commissioner for Refugees appoints his deputy and other staff;[97]

4. The staff of the former Technical Assistance Board was appointed by the Executive Chairman of the Board, who had to have the agreement of the Board to appoint resident representatives (resolution No. 3 of the Technical Assistance Committee of the Economic and Social Council); the staff of the former United Nations Special Fund was appointed by the Managing Director of the Fund. This power is now vested in the UNDP Administrator.[98]

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28. QUESTION OF FINANCIAL LIABILITY OF THE UNITED NATIONS IN A CLAIM FOR COMPENSATION IN RESPECT OF A DECEASED HOLDER OF A SPECIAL SERVICE AGREEMENT

Memorandum to the Assistant Director for Peace-keeping Matters and Special Assignments, Office of Financial Services

1. Please refer to your memorandum of 31 August 1982 in which our advice was requested as to the existence of financial liability in the case of a special service agreement holder and our views as to the method by which the amount of compensation would be determined if the United Nations was legally liable. After a review of the facts and an analysis of the issues, as described in the following paragraphs, we have concluded that the United Nations is legally liable to pay compensation for the death of the above-mentioned person and we would recommend that compensation be paid to his mother in an amount to be determined in consultation with the Secretary of the Advisory Board on Compensation Claims.

2. It appears from the documentation which you have provided that the person in question was killed instantly by a mortar shell between 1500 and 1530 hours on 17 September 1980 while he was on his way home from work. It further appears that he had left his place of work approximately 30 minutes before the normal quitting time (1530 hours), but he proceeded homeward on his normal route and was in his own village when he was killed.

3. It also appears that the person in question held an appointment which provided, *inter alia*, as follows:

"10. *Service-incurred death, injury and disability*

"A service-incurred death, injury or disability within the meaning of these conditions of service shall include the death, injury or disability of an employee which is determined

to be directly attributable to the performance of official duties as assigned to him. Any death, injury or illness occasioned by the wilful misconduct of an employee or by his wilful intent to bring about the death, injury or illness to himself or another shall not be deemed to be attributable to service.

"Reasonable medical, hospital and directly related expenses arising out of the service-incurred injury will be reimbursed.

"Compensation for the death, incapacity or permanent partia incapacity resulting from service will be determined by the United Nations, New York based on scales and conditions of compensation as provided for in the area of employment and in force at the time of such death, incapacity or permanent partial disability."

The letter of appointment of the person in question did not make provision for the payment of dependency allowance and therefore he did not have an opportunity to claim his mother as a dependant.

4. It further appears that the local Board of Inquiry found that:

(1) The person in question died as a result of shelling at a time between 1515 and 1525 hrs on 17 September 1980 on his way home from work at UNIFIL headquarters;

(2) He left his place of employment at headquarters before the completion of his working day at 1530 hrs;

(3) This may have constituted "wilful misconduct" on his part. There is no evidence that he left his place of employment without permission, but it appears to be a reasonable supposition, as he left in the company of others. It is doubtful if all had permission to leave early.

The Board drew no conclusions "as the question of compensation was not for it to decide" and made no recommendations in the matter.

5. It finally appears that the case was presented to the Advisory Board on Compensation Claims, but the Board did not consider the question of attributability. Although the deceased had a mother (whom he was unable to claim as a dependant), the Board rejected the case because he had no dependants within the meaning of article 2, paragraph (*d*), of appendix D. However, the Board authorized its Secretary to prepare a notional calculation of the death benefits payable to a dependent parent under article 10.2 (*d*) (i) of appendix D.

6. The following issues emerged from our review of the foregoing facts:

(*a*) Is death of the person concerned "directly attributable to the performance of official duties as assigned to him" under paragraph 10 of the special service agreement?

(i) What effect is to be given to the findings of the Board of Inquiry, especially with regard to the sub-issue of "wilful misconduct"?

(*b*) If death is "directly attributable to the performance of official duties", what procedure is to be followed to provide the compensation which is to be "determined by the United Nations, New York, based on scales and conditions of compensation as provided for in the area of employment and in force at the time of such death, incapacity or permanent partial disability" under paragraph 10 of the special service agreement?

(i) What effect is to be given to rejection of the case by the Advisory Board on Compensation Claims on the issue of dependants?

(ii) What effect is to be given to the Board's agreement to a notional calculation of the benefits payable to a dependent parent under article 10.2 (*d*) (i of appendix D?

7. With respect to issue (*a*), we are of the opinion that the victim's death is "directly attributable to the performance of official duties as assigned to him". We base our opinion on the fact that he was in attendance at his place of work until he left for home via his normal route, and that he was killed en route to his home from his place of work. With respect to the Board of Inquiry's finding on sub-issue (*a*) (i), we do not consider that a 15- to 30-minute absence from work constitutes "wilful misconduct" as that term is normally used in compensation practice. Our view is supported by paragraph 12 of the victim's letter of appointment which clearly indicates that an absence from work of less than two days without notification to

the head of the office is not regarded as wilful misconduct. In the circumstances we conclude that the United Nations is legally liable to pay compensation in accordance with paragraph 10 of the special service agreement.

8. With respect to issue (*b*), a determination of the "scales and conditions of compensation as provided for in the area" would normally require consultation with local authorities. However, such consultation would be difficult, if not impossible, given the conditions in the area at this time; it would therefore seem preferable to substitute a determination based on the information at hand. Although the victim's letter of appointment made no provision at all for his claiming or even identifying his dependants, it seems reasonable to conclude from the documentation which you provided that his mother would be regarded as his dependant under local law and that she would be the rightful recipient of death benefits in this case. We appreciate the willingness of the Advisory Board on Compensation Claims to make a notional calculation (though we find it difficult to accept the basis for the Advisory Board's rejection of the case on the dependency issue) and we believe that such a calculation would produce a result which could be assumed to be consonant with local scales and conditions. In our view, the Organization would discharge its legal liability by paying a sum measured against article 10.2 (*d*) (i) of appendix D to the victim's mother, on the assumption that such payment would equal or exceed the scales and conditions of compensation in the area.

14 September 1982

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29. Question of whether staff members of the United Nations may accept any honour, decoration, favour, gift or remuneration accorded by a Government

Memorandum to the Executive Assistant to the Secretary-General

1. You have requested the views of the Office of Legal Affairs in connection with a request from a staff member for authorization to accept a decoration from the Government of a Member State.

2. Regulation 1.6 of the Staff Regulations of the United Nations[99] lays down a categorical injunction against acceptance by a staff member of any honour, decoration, favour, gift or remuneration accorded by a Government. It leaves absolutely no discretion on the part of the Secretary-General for approval of such acceptance.

3. It is well established that staff members, as international civil servants, are called upon to work not in their own name but anonymously. As a consequence, any honours or decorations should be conferred on the Organization and not upon individual members of the staff. Staff members may therefore be authorized to accept honours or decorations in the name of the Organization, in which case the articles concerned (e.g., medals, certificates) will be transferred to the custody of the Organization. Such authorization and acceptance is not possible, however, where the decoration concerned is clearly of a personal nature and is habitually bestowed on an individual in recognition of services rendered.

4. You will find annexed a paper prepared by the Office of Legal Affairs containing commentaries on regulation 1.6 of the United Nations Staff Regulations. The views expressed above are based on those commentaries which reflect the clear United Nations policy and rules on the matter under consideration.

5. In conclusion, it should be mentioned that there have been cases where awards, honours or decorations have been accepted by former staff members after leaving the United Nations and the Organization has apparently not interposed any formal objection to such acceptance.

ANNEX

Commentaries on regulation 1.6 of the United Nations Staff Regulations

1. Staff regulation 1.6 was adopted by General Assembly resolution 882 (IX) of 14 December 1954 and came into effect on 1 January 1955. It superseded the previous text, which read as follows:

> "No member of the Secretariat shall accept any honour, decoration, favour, gift or fee from any Government or from any other source external to the Organization during the period of his appointment, except for war service."

2. Regulation 1.6 lays down a categorical injunction against acceptance by a staff member of any honour, decoration, favour, gift or remuneration accorded by a Government. It leaves no discretion on the part of the Secretary-General for approval of such acceptance. The General Assembly has on two occasions refrained from endorsing a recommendation made by the Advisory Committee on Administrative and Budgetary Questions that the Secretary-General be authorized, in the application of regulation 1.6, to be guided by an interpretative comment offered by the Committee, according to which the Secretary-General would concur in any derogation from its provisions only in very exceptional cases [100] Instead, the General Assembly at its ninth session decided to adopt separate provisions concerning honours, decorations, favours, gifts and remuneration accorded by a Government and those accorded by some other source external to the Organization, and took the position that, in the first case, the prohibition should be absolute and, in the second case, acceptance should be made subject to the Secretary-General's consent.[101]

3. With regard to any governmental rewards, the only exceptions permitted are:

(i) As provided for in regulation 1.6 itself, acceptance of decorations for war service earned before the appointment to the Secretariat;

(ii) In accordance with regulation 3.4 (*c*), acceptance of dependency benefits to which a staff member may be entitled under the applicable laws of his country, provided the amount of such benefits is deducted from the dependency allowances payable to him by the United Nations; and

(iii) In the case of a staff member serving on a technical co-operation project in a particular country, acceptance of accommodation provided by the Government of that country free of charge or at a reduced rent for the duration of his assignment. In accordance with inter-agency practice, such accommodation is taken into account through an appropriate deduction in the staff member's emoluments.

4. Staff members who are on secondment from their national civil service may not accept any remuneration from their Government, whether for services performed or otherwise, during the period of their secondment to the United Nations. This does not preclude the seconded officials from retaining certain rights in the national administrations, notably the right to revert to employment in them, the right to retirement benefits and rights accrued on the basis of seniority, such as higher increments in the grade and credits towards promotion. Any other rights they may have as government officials are suspended for the duration of their secondment to the United Nations, where they are subject to the Staff Regulations and Staff Rules.

5. *As staff members are called upon to work not in their own name but anonymously, any honours* or decorations should be conferred upon the Organization and not upon individual members of the staff. Staff members are obliged to decline any governmental awards in recognition of their individual services. They may, however, be authorized to accept such awards in the name of the Organization, in which case the articles will be transferred to the custody of the Organization.

6. The hope has been expressed by the International Civil Service Advisory Board that member Governments will respect the principle laid down in regulation 1.6 and refrain from placing staff members in the embarrassment of refusing the offers of any honour, decoration, gift or other marks of favour.[102]

7. As distinguished from the categorical injunction in respect of rewards by Governments, regulation 1.6 lays down the conditional requirements that staff members may not accept any honour, decoration, favour, gift or remuneration from other external sources without first obtaining the approval of the Secretary-General. Such approval may be granted only in exceptional cases and where such acceptance is not incompatible with the terms of regulation 1.2 and with the individual's status as an international civil servant.

8. The provisions of regulation 1.6, whether in respect of a Government or any other source external to the Organization, do not preclude a staff member from accepting: (*a*) academic awards; (*b*) reimburse-

ment of travel and subsistence expenses for activities otherwise authorized; (*c*) tokens of commemorative or honorary character, such as scrolls, trophies or other like articles; (*d*) courtesies which constitute part of normal social functions.

7 June 1982

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30. NATIONALITY STATUS OF A STAFF MEMBER CLAIMING *DE FACTO* STATELESSNESS

Memorandum to the Chief, Staff Service, Office of Personnel Services

1. Please refer to your memorandum of 14 July 1982 in which you requested us to "determine whether, for the purposes of the Staff Rules and Regulations of the United Nations, the staff member is to be considered as a national of the country he comes from or whether he has to be considered as stateless".

2. We have noted that the staff member takes the position that he "lost" his nationality and that he does not consider himself a national of the country from which he comes. In effect, he claims statelessness *de facto* on the basis of his repudiation of the assistance and protection of the country in question. However, the Convention relating to the Status of Stateless Persons of 28 September 1954[103] only defines statelessness *de jure* in terms of persons who are not considered as nationals of any State "under the operation of its laws". The drafters of this and other conventions dealing with the question of statelessness limit the scope of the conventions in question to the solution of problems relating to *de jure* stateless persons mainly because of the difficulty in providing objective criteria for the definition of *de facto* stateless persons.

3. Although a sympathetic reaction to the staff member's case would be entirely understandable, it should be borne in mind that Governments sometimes use similar arguments with respect to persons whom they regard as stateless *de facto*. In such cases Governments attempt to avoid the operation of their own laws on nationality by arguing that a person has placed himself outside the Government's protection and assistance and thus has rendered himself stateless *de facto*. Such arguments whether from a Government or from an individual are difficult to accept from a legal point of view and even more untenable from a moral point of view. The best course, and the only consistently justifiable one, is to adhere to the definition of statelessness *de jure*.

4. We have also noted that the Immigration and Naturalization Service of the host country has issued a re-entry permit to the staff member which contains the word "STATELESS" in the box entitled "Country of *Claimed* Nationality". We would point out that this mention does not constitute a finding of statelessness but rather reflects the staff member's own position in the matter. Even if there had in fact been such a finding, it could not have the effect of superseding the applicable law on nationality under the Convention relating to the Status of Stateless Persons.

5. In view of the foregoing, we are of the opinion that the Office of Personnel Services should treat the staff member concerned as a national of his country of origin.

9 August 1982

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31. SCOPE OF THE EXPRESSION "ACCREDITED STAFF OF PERMANENT MISSIONS" AS CONTAINED IN GENERAL ASSEMBLY RESOLUTION 36/235 OF 18 DECEMBER 1981

Memorandum to the Chief of Protocol, Protocol and Liaison Service

1. I wish to refer to your memorandum of 9 February 1982, in which you requested the Office of Legal Affairs to provide you with a definition of the term "accredited" as used in General Assembly resolution 36/235, section XVII.

2. The expression "accredited staff of permanent missions" is not one which is used as a particular term of art in international law. The Vienna Convention on Diplomatic Relations[104] and the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character[105] employ a number of other expressions which are defined in those treaties. These include "members of the mission" and "members of the staff". Members of the staff of a mission are divided into three categories: members of the diplomatic staff; members of the administrative and technical staff; and members of the service staff.

3. In the absence of an existing definition of the term "accredited staff", we have endeavoured to seek guidance as to the intent of the Fifth Committee from the background documentation and from the summary records of the discussion. The main background documentation appears to be a note by the Budget Division[106] setting out the financial implications of the proposals. Unfortunately, although the term "accredited staff" is used in this paper, no definition is provided. Similarly, no definition is to be found in the summary records. However, the remarks of a number of delegations appear to lead to the conclusion that what was intended by the term "accredited staff" was the diplomatic staff as distinct from the administrative and technical staff and the service staff.

4. It is the view of this Office that this narrow definition of the term "accredited staff" would be in keeping with both the ordinary meaning of the term "accredited" in diplomatic parlance and the intent of the Fifth Committee.

18 February 1982

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32. Scope of privileges and immunities of a permanent observer mission to the United Nations

Statement made by the Legal Counsel at the 92nd meeting of the Committee on Relations with the Host Country

1. *The institution of permanent observer missions.* Although the Charter of the United Nations makes no provision for observers of non-member States, the institution of permanent observers of non-member States in United Nations practice may be traced to the designation of Switzerland in 1946 as a permanent observer. This practice, which from a formal point of view is based on an exchange of letters between the non-member State and the Secretary-General, was subsequently followed by many other non-member States and the institution of permanent observer missions has developed correspondingly. The need to codify this practice led to a study of the matter by the International Law Commission, the outcome of which is reflected in the 1975 United Nations Convention on the Representation of States in Their Relations with International Organizations of a Universal Character.[105]

2. *The evolution of the legal basis of the institution of permanent observer missions.* Because the institution of permanent observer missions is one which has developed essentially through practice, the legal status, privileges and immunities of such missions has evolved gradually. Despite the fact that there are no specific provisions relating to permanent observer missions in the Charter, the Headquarters Agreement[107] or the Convention on the Privileges and Immunities of the United Nations,[108] as long as the non-member States concerned enjoyed bilateral diplomatic or consular relations with the host country no particular problems arose. The permanent observer missions and their individual members were accorded diplomatic or consular privileges and immunities on a reciprocal basis. As early as 1962 the Office of Legal Affairs stated in a legal opinion that, while permanent observers are not entitled to diplomatic privileges in the host State, those among them who form part of the diplomatic missions of their Governments to the Government of the United States might enjoy immunities in the United States for that reason.[109]

The development and broadening of the institution, which by the early 1970s included a number of intergovernmental organizations such as the European Economic Community (EEC)

and the Council for Mutual Economic Assistance (CMEA), led the Office of Legal Affairs to elaborate further on the legal status of such missions, resulting in the conclusion that permanent observer missions were entitled to functional privileges and immunities.

3. *The basis for the functional privileges and immunities of permanent observer missions.* In January 1975 the Legal Counsel was requested to set out his view concerning the privileges and immunities to which representatives of CMEA would be entitled in the United States, as host State to the Headquarters of the United Nations, in the light of General Assembly resolution 3209 (XXIX) of 11 October 1974, which requested the Secretary-General to invite CMEA to participate in the sessions and work of the General Assembly in the capacity of observer. After pointing out that the representatives of CMEA would benefit from certain provisions of the Headquarters Agreement, namely, sections 11, 12 and 13, the Legal Counsel went on to say:

> "In addition to the foregoing privileges and immunities, it is my belief that it necessarily follows from the obligations imposed by Article 105 of the Charter of the United Nations that a CMEA delegation would enjoy immunity from legal process in respect of words spoken or written and all acts performed by members of the delegation in their official capacity before relevant United Nations organs."[110]

In 1976 the Legal Counsel was called upon once again to state his position with regard to the privileges and immunities of a permanent observer of an intergovernmental organization. In this case the Legal Counsel stated that:

> "The permanent observer, as an invitee to meetings of certain United Nations organs, enjoys in this capacity, in the Secretary-General's view, functional immunities necessary for the performanance of his functions. While these immunities are not spelt out in detail in the Headquarters Agreement, or the Convention on the Privileges and Immunities of the United Nations, they flow by necessary intendment from Article 105 of the Charter. It can be argued with considerable cogency that such functional immunities, to have any real substance, should include inviolability for official papers and documents relating to an observer's relations with the United Nations."[111]

The foregoing legal opinions represented the views held by the Office of Legal Affairs in the light of the practice which had developed since 1946 and taking into account the provisions of the Charter of the United Nations and the Headquarters Agreement. In the meantime, however, the United Nations Conference on the Representation of States in Their Relations with International Organizations had considered and adopted a convention codifying the law regarding the representation of States in their relations with international organizations. The Vienna Convention of 1975 contains provisions dealing with missions to international organizations, delegations to organs and to conferences and observer delegations to organs and to conferences. Part II of the Convention incorporates provisions dealing with permanent missions of both Member States and non-member States. Article 5, paragraph 2, provides that non-member States may, if the rules of the organization so permit, establish permanent observer missions for the performance of the functions of the permanent observer mission. For all practical purposes the status, privileges and immunities of permanent observer missions, as well as their diplomatic staff, are assimilated to that of permanent missions of Member States, including the inviolability of the premises of the mission and the personal inviolability of the members of the diplomatic staff of the mission. The 1975 Convention is not yet in force and in view of the fact that a number of States, mainly host countries of international organizations, either abstained or voted against the Convention, it would not be correct to rely on the Convention as a statement of the accepted customary international law in the matter. Nevertheless, it may be pointed out that a very large number of States voted in favour of the Convention, which goes well beyond the functional view which has been espoused by the Office of Legal Affairs.

4. *The necessity for and scope of the functional immunity of permanent observer missions.* The foundation of the functional view consistently advanced by the Office of Legal Affairs is Article 105 of the United Nations Charter. This provision establishes in general terms the principle that the representatives of Members shall enjoy the privileges and immunities

necessary for the independent exercise of their functions. The Charter as a constituent instrument did not, of course, spell out these privileges and immunities but left it to the General Assembly to determine the specific details of the application of the principle. The principle is clear and, as emphasized in the legal opinions cited above, it flows by necessary intendment from Article 105 that regardless of the detailed application of Article 105 by the General Assembly, certain minimum privileges and immunities are inherent to the Organization and its Members without which it would be unable to function independently. Such functional privileges and immunities clearly extend to the institution of permanent observer missions which, as we have seen, has developed in practice and which has been codified in the 1975 Vienna Convention. The Charter of the United Nations, while making no express reference to permanent observer missions of non-member States, nevertheless contains a number of provisions creating rights or obligations for non-member States. It was, therefore, contemplated that such States might be brought into relationship with the Organization and that appropriate legal arrangements governing such relationship would be made.

Furthermore, non-member States of the United Nations are sovereign States and they generally are members of other intergovernmental organizations within the United Nations system. In their capacity as members of these agencies, they enjoy *de lege lata* in the corresponding host countries the privileges and immunities which are set out in the relevant constituent instruments as well as the relevant host country agreements.

If, as has been argued in the 1975 and 1976 legal opinions, intergovernmental observers enjoy functional immunity, then *a fortiori* such immunity must also be enjoyed by the States. Such immunity must extend to immunity from legal process in respect of words spoken or written and all acts performed by members of the mission in their official capacity before relevant United Nations organs as well as inviolability for official papers and documents relating to an observer's relations with the United Nations. If such inviolability is to have any meaning, it necessarily extends to the premises of the mission and the residences of its diplomatic staff.

14 October 1982

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33. PRIVILEGES AND IMMUNITIES ACCORDED TO THE REPRESENTATIVES OF INTERGOVERNMENTAL ORGANIZATIONS WHICH HAVE ACQUIRED OBSERVER STATUS AT THE UNITED NATIONS ON THE BASIS OF A STANDARD INVITATION ISSUED TO THEM BY THE GENERAL ASSEMBLY

Note verbale to the Permanent Observer of an intergovernmental organization

Information has been requested with respect to the privileges and immunities accorded to the representatives of intergovernmental organizations which have acquired observer status at the United Nations on the basis of a standing invitation issued to them by the General Assembly.

In the view of the Legal Counsel, it necessarily follows from the obligations imposed by Article 105 of the Charter of the United Nations that a permanent observer delegation, being an invitee of the General Assembly, enjoys immunity from legal process in respect of words spoken or written and all acts performed by members of the delegation in their official capacity before relevant United Nations organs.

In addition, a permanent observer delegation benefits from the following provisions of the Headquarters Agreement:

(i) Section 11, which provides that the federal, state or local authorities of the United States "shall not impose any impediments to transit to or from the headquarters district of . . . persons invited to the headquarters district by the United Nations" and that "the appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the headquarters district",

(ii) Section 12, which provides that section 11 is applicable irrespective of relations between the Governments of the persons referred to in the latter section and the host State, and

(iii) Section 13, which provides that the host State shall grant visas "without charge and as promptly as possible" to persons referred to in section 11 and also exempts such persons from being required to leave the United States on account of any activities performed by them in their official capacity.

The above-mentioned provisions represent, in the view of the Legal Counsel, the scope of privileges and immunities which the host State is obliged under existing international instruments to accord to a permanent observer delegation.

Permanent observers of intergovernmental organizations are not entitled to diplomatic privileges and immunities under the Headquarters Agreement between the United Nations and the United States or under statutory provisions of the host State. At the same time, those permanent observers who form a part of the diplomatic missions of their Governments to the United Nations may enjoy immunities provided by the host State for such missions.

The host State may, of course, as a matter of courtesy, extend a wider variety of privileges and immunities to the delegation. However, this is a matter for negotiation between the host State and the intergovernmental organization concerned. It may be noted, in this connection, that the same privileges and immunities as are enjoyed by diplomatic missions in the United States were extended to the Mission of the Commission of European Communities. The Senate and House of Representatives of the United States enacted on 18 October 1972 Public Law 92-499, which provides that:

> "Under such terms and conditions as he shall determine and consonant with the purposes of this Act, the President is authorized to extend, or to enter into an agreement extending, to the Mission to the United States of America of the Commission on the European Communities, and to members thereof, the same privileges and immunities subject to corresponding conditions and obligations as are enjoyed by diplomatic missions accredited to the United States and by members thereof."

Pursuant to this Act, the President of the United States, on 5 December 1972, issued Executive Order No. 11689, which provides that:

> "By virtue of the authority vested in me by the Act of October 18, 1972 (Public Law 92-499) [this section], and as President of the United States, I hereby extend to the Mission to the United States of America of the Commission of the European Communities, and to the officers of that Mission assigned to Washington to represent the Commission to the Government of the United States and duly notified to and accepted by the Secretary of State, and to their families, the same privileges and immunities, subject to corresponding conditions and obligations, as are enjoyed by diplomatic missions accredited to the United States and by members of the diplomatic staffs thereof."

The Organization of African Unity was granted on the territory of the United States the same privileges and immunities as are accorded to a public international organization to which the United States is a party. The Senate and House of Representatives of the United States, by their decision of 27 November 1973 (Public Law 93-161), approved an amendment to the International Organizations Immunities Act (Public Law 79-291, 29 December 1945)[112] by adding at the end thereof the following new section:

> "Sec. 12. The provisions of this title may be extended to the Organization of African Unity in the same manner, to the same extent, and subject to the same conditions, as they may be extended to a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation."

By executive order of the President of the United States, the Organization of African Unity was then designated as a public international organization entitled to enjoy the privileges, exemptions and immunities conferred by the International Immunities Act.

As to the privileges and immunities enjoyed in the United States by the Organization of American States, it should be noted that the United States is a member of that organization and

that by virtue of Executive Order No. 10533 of 3 June 1954, issued by the President of the United States, the Organization of American States was also designated as a public international organization entitled to enjoy the privileges, exemptions and immunities provided by the International Immunities Act.

5 August 1982

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34. QUESTION OF WHAT CONSTITUTES UNDER THE AGREEMENT BETWEEN THE UNITED NATIONS AND THE UNITED STATES OF AMERICA REGARDING THE HEADQUARTERS OF THE UNITED NATIONS, AN INVITATION TO THE HEADQUARTERS OF THE UNITED NATIONS REQUIRING THE HOST STATE TO GRANT ADMISSION TO THE INVITEES

Statement submitted at a press briefing

The Office of Legal Affairs has never had the occasion to seek a general definition of what constitutes under the Headquarters Agreement[107] an invitation to the Headquarters of the United Nations requiring the host State to grant admission to the invitee. Nor is this a matter which has been considered by the General Assembly, although immigration procedures are on the agenda of the Committee on Relations with the Host Country and it is open to any member of that Committee to raise at any time with the Committee a particular case or cases or the question of a general definition. No member of the Committee has asked for a meeting in connection with admission to the United States for the present special session on disarmament.

This is a matter which it has been found best to deal with on a pragmatic basis in the context of the particular meeting concerned, and there would appear to be no reason to believe that a general definition would necessarily obviate difficulties. In the past, since the conclusion of the Headquarters Agreement in 1947, there have been very few occasions where differences over admission between the United Nations and the United States have arisen which could not be resolved. Such occasions have in the past not turned on the issue of what constitutes an invitation but on assertions by the host State that the invitee would abuse or had previously abused the privilege of admission by engaging in activities other than those for which admission was ostensibly sought.

Without seeking to be comprehensive in any way, and in the present context relating to non-governmental organizations, the Office of Legal Affairs considers that an invitation under the Headquarters Agreement to the special session on disarmament is clearly involved where a non-governmental organization has been invited by name by the General Assembly. This applies to the organizations listed in annex III to the Report of the Preparatory Committee. The Preparatory Committee further refers in paragraph 28 of its report in a general way to other "non-governmental organizations concerned with diarmament" without naming them. Obviously, interpretations of this phrase can differ. In the view of the Office of Legal Affairs, to qualify for an invitation in terms of the Headquarters Agreement, these other organizations would have to be recognized by the United Nations, for instance under the procedures for consultative status with the Economic and Social Council, or with the Centre for Disarmament and the Department of Public Information.

When an organization is entitled to participate in a United Nations meeting, its participation is necessarily through a reasonable number of representatives of the organization concerned, and not all of its members. It is manifestly unreasonable to expect the host State to accept that it was under an obligation to grant admission to the entire populations of States because the Assembly has asked "all States" to attend a meeting, or that all members of organizations and liberation movements having invitations to participate in the Assembly have a right of admission to the host State. It is within the discretion of the host State to what extent it is prepared to grant visas to large numbers of members of an invited group, although the United Nations would insist that a reasonable number of representatives of the group should be admit-

ted to follow the proceedings and, if so invited, to address the meetings concerned. So far, in connection with the present special session, there have been no instances of which the Office of Legal Affairs is aware where a particular representative of a non-governmental organization whose name has been communicated by the Secretariat as invited has been denied a visa, although there have been delays in granting visas.

11 June 1982

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35. QUESTION OF THE TAXATION, UNDER THE LEGISLATION OF A MEMBER STATE, OF THE SALARIES AND EMOLUMENTS RECEIVED FROM THE UNITED NATIONS BY NATIONALS OF THAT STATE WORKING ABROAD FOR THE UNITED NATIONS OR LOCALLY RECRUITED BY THE ORGANIZATION IN THE TERRITORY OF THAT SAME STATE

Note verbale to the permanent representative of a Member State

The Legal Counsel's attention has been drawn to the fact that the nationals of [name of Member State] who work abroad for the United Nations or are locally recruited by the Organization on the territory of that State are obliged to pay taxes on their United Nations salaries and emoluments, notwithstanding the provisions of the Convention on the Privileges and Immunities of the United Nations[108] to which the State concerned is a party. In this respect, the Legal Counsel wishes to take the opportunity to clarify that, according to the provisions of section 18 (*b*), article V, of the above-mentioned Convention, "officials of the United Nations shall be exempt from taxation on salaries and emoluments paid to them by the United Nations".

The definition of the term "officials", for the purpose of section 18 (*b*) of the Convention, was established by the General Assembly in resolution 76 (I) of 7 December 1946. In that resolution, the General Assembly approved "the granting of the privileges and immunities referred to in articles V and VII of the Convention . . . to all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates". This definition allows for no distinction among staff members of the United Nations on the basis of nationality or residence, or according to whether they are internationally or locally recruited.

The rationale for the exemption of United Nations officials from taxation on salaries and emoluments paid to them by the United Nations is that equality in conditions of service, irrespective of nationality, is essential in the international civil service. In place of national taxation, the General Assembly, in 1948, adopted a Staff Assessment Plan designed "to impose a direct assessment on United Nations staff members which is comparable to national income taxes". The assessment made under this Plan is credited to the staff member's country and offset against that country's contribution to the regular budget of the United Nations.

Since the Member State concerned has consented to the provisions contained in section 18 (*b*), article V, by adhering to the Convention on the Privileges and Immunities of the United Nations, it is the view of the United Nations that the taxation of the salaries and emoluments of nationals of that State employed as United Nations officials both locally and abroad is wrong in law and would not be compatible with the said Convention.

The Legal Counsel would be most grateful if this matter could be brought to the attention of the Government of [name of Member State] and if, in the light of the foregoing explanations, the necessary measures were taken with a view to exempting staff members, whether internationally or locally recruited, from income tax and refunding those staff members from whom such tax has already been collected.

8 March 1982

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36. CONDITIONS UNDER WHICH MOTOR VEHICLES BELONGING TO OFFIC ALS OF THE UNITED NATIONS MAY BE ADMITTED FREE OF DUTY IN THE TERRITORY OF T IE HOST STATE

Memorandum to the Chief of the Transportation Section, Pu chase and Transportation Service, Office of General Services

. . .

2. According to the provisions of section 148.87 (*a*) of subpart I, title 19, of the United States Code of Federal Regulations, baggage and effects of United Nati ns employees shall be admitted to the United States free of duty. It has always been an unde standing supported by the actions of the United States Government that motor vehicles are reg rded as a part of personal effects. Section 148.81 (*b*) of the same title provides that the tern "effects" includes all articles which *were in the possession of* a person abroad, and are being mported in connection with his arrival, and which are intended for his *bona fide* personal use. It would appear from this paragraph that "possession" of a motor vehicle abroad before it transportation to the United States is one of the crucial conditions in the determination wh ether or not a United Nations employee is entitled in a concrete case to exemption from Jnited States customs duties.

3. "Possession" is a term of ambiguous meaning. Its legal sens does not necessarily require physical possession or effective control. The above-mentioned t tle does not contain a definition of this term applicable to an importation of motor vehicles. Therefore the Office of Legal Affairs requested the United States Mission to the United Nations to provide elucidation of how the term "possession", appearing in paragraph 148.81 (*b*) of t ie said Title, is interpreted and applied by the competent authorities of the United States and what procedures a United Nations employee should follow to avail himself of the right t duty-free entry of a motor vehicle under the pertinent regulations. Noting that at the present time it is very difficult to purchase, for example in Europe, a motor vehicle which would immediately be available for delivery to the United States, as European manufacturers do not produce in advance vehicles complying with United States safety and emission regulations, the Office of Legal Affairs expressed the desire to receive clear answers to the following questions:

(*a*) Whether a down payment or full payment for a motor vehicle not ready for immediate delivery can be considered as "possession" of a car and can serve as a sufficient ground for duty-free importation to the United States;

(*b*) Whether actual possession of a motor vehicle, in the sense of having received physical delivery, is an obligatory condition for duty-free importation to the U ited States.

4. To this request the United States Mission to the United Nations on 29 October 1982 gave a self-explanatory reply, a copy of which is annexed.

10 November 1982

ANNEX

Note dated 29 October 1982 from the United States Mission to the U nited Nations

The United States Mission to the United Nations presents its compliments and has the honour to communicate, on behalf of its Government, the following information requested by the United Nations Legal Counsel concerning the customs-free entry of automobiles.

As the United Nations Legal Counsel noted, under the International Orgar izations Immunities Act, P.L. 291, the "baggage and effects of alien officers and employees of internationa organizations . . . or of the families, suites, and servants of such officers, (or) employees . . . shall be admitted (when imported in connection with the arrival of the owner) free of customs duties and free of Internal Revenue taxes imposed upon or by reason of importation".

Section 148.81 (*b*) of title 19 of the United States Code of Federal Regulatic ns explains that the term "includes all articles which were in the possession of (an entitled) person abroad and are being imported in connection with his arrival and are intended for his bonafide personal or household use".

Pursuant to these provisions, the United States Customs Service has, in practice, maintained that in order to satisfy this "possession" requirement the entitled person must have been able to take actual possession abroad. This means that the article must in fact be in existence or ready for immediate delivery abroad to the purchaser; accordingly, the purchaser must have been physically present abroad, and the item must not be one which is ordered to be made for the purchaser and therefore not ready for foreign delivery. So long as the item could have been brought back to the United States with the purchaser, the United States Customs Service has not required that actual delivery be taken abroad or that the shipment accompany the returning purchaser, but has required that the shipment be in close conjunction with an arrival in the United States.

Responding to the United Nations Legal Counsel's specific questions, the United States Mission to the United Nations notes that, in view of the above, partial or full payment for a vehicle not ready for immediate delivery will not be considered to qualify the transaction for duty-free importation benefits. Further, as noted above, actual physical delivery abroad is not required so long as it is possible.

While sympathetic to the potential difficulties of purchasing abroad and taking foreign delivery of a vehicle meeting United States specifications, the United States Mission notes that such transactions are nevertheless possible.

. . .

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

1. INTERNATIONAL LABOUR ORGANISATION

The following memoranda, dealing with the interpretation of international labour Conventions, were drawn up by the International Labour Office at the request of the Government of the United States:

(*a*) Memorandum on Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). Document GB. 223/14/3, 223rd session of the Government Body, May 1983.

(*b*) Memorandum on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Document GB. 223/14/3, 223rd session of the Governing Body, May 1983.

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2. INTERNATIONAL MONETARY FUND

BORROWING AGREEMENTS BETWEEN INTERNATIONAL MONETARY FUND AND ITS MEMBERS

Memorandum attached to the International Monetary Fund's loan agreement with the Saudi Arabian Monetary Agency[113]

1. Like any other subject of international law, be it a State or an international organization, the Fund is legally bound to perform in good faith the obligations it has assumed under agreements that it has concluded in accordance with its constitutional requirements, and it may not invoke actions or omissions by any of its organs in order to avoid the performance of such obligations. This statement is elaborated below.

2. The Fund is an international, intergovernmental organization which, in accordance with applicable principles of general international law and express provisions of its Articles of Agreement, possesses full juridical personality and the capacity to contract. With regard to bor-

rowing, the Articles of Agreement specifically provide that the Fund may borrow, on such terms and conditions as may be agreed with the lender, the currencies of members, if it finds it appropriate to replenish its holdings of such currencies.

3. Under the provisions of the Fund's Articles and decisions of its Board of Governors, the authority and responsibility to enter into borrowing agreements for the replenishment of the Fund's holdings of currencies lies with the Executive Board. Therefore, a borrowing agreement concluded under or pursuant to the authority of the Executive Board is a legally binding agreement of the Fund.

4. It is a fundamental principle of international, as well as of domestic, law that an agreement in force is binding upon the parties to it and must be performed by them in good faith. All parties to the agreement are entitled to expect that the contractual undertakings under the agreement will be fully carried out in accordance with the terms of the agreement. It has been recognized that this basic rule of law applies with equal force to international organizations.[114] Thus the Fund, having duly concluded an agreement with another party, be it one of its members or another entity, is legally obliged to perform in good faith its undertakings under the agreement.

5. Another basic principle of domestic and international law that flows from the one already referred to is that, once the terms of an agreement have been fixed and the agreement has been brought into force, it is not open to either of the parties to amend, transform or terminate the agreement unilaterally, i.e., without the consent of the other party. In the case of a party which is a State, this means that the party may not invoke its internal law or decisions of its national authorities or institutions in order to modify or abrogate its obligations under an agreement to which it is a party. In the case of a party which is an international organization, it means that a party to the agreement may not invoke its internal rules and procedures, or the actions or omissions of its organs, in order to change, nullify or evade its obligations under the agreement. This basic principle has been formulated as follows in the codification of the law on the subject of treaties among international organizations, or between them and States, that was prepared by the International Law Commission of the United Nations.[114]

> "An international organization party to a treaty may not invoke the rules of the organization as justification for its failure to perform the treaty, unless performance of the treaty, according to the intention of the parties, is subject to the exercise of the functions and powers of the organization."[46]

The Commission made it clear that "rules of the organization" means, in particular, "the constituent instruments, relevant decisions and resolutions, and established practice of the organization.[114] Thus, the Fund would be prevented from varying its contractual commitments under an agreement to which it is a party by relying on decisions taken, or practices developed, after the conclusion of the agreement. Changes in the Fund's law and practice would be taken into account in the interpretation and application of terms of an agreement to which the Fund is a party only to the extent that their applicability was expressly stated in, or implied from, the provisions of the agreement. It is clear therefore that neither the Board of Governors nor the Executive Board of the Fund may change, nullify or evade the obligations of the Fund under bilateral agreements.

6. Questions of interpretation of the provisions of an agreement between the Fund and another party must be resolved in accordance with the rules and procedures prescribed for this purpose by that agreement. The organs of the Fund have no authority to resolve any questions of interpretation of such an agreement even if the other party to the agreement is a member of the Fund. The Executive Board and the Board of Governors have the responsibility to resolve questions of interpretation of the provisions of the Fund's Articles and the resolutions and decisions adopted under them, but that authority does not extend to questions of interpretation of the provisions of contractual arrangements of the Fund. As already explained, interpretations or other decisions adopted by the Board of Governors or the Executive Board would affect the interpretation or application of the provisions of an agreement between the Fund and another party only if this was expressly stated in, or implied by, the provisions of that agreement.

3. INTERNATIONAL TELECOMMUNICATION UNION

EXCLUSION OF A MEMBER FROM THE PLENIPOTENTIARY CONFERENCE AND FROM ALL OTHER CONFERENCES AND MEETINGS OF THE INTERNATIONAL TELECOMMUNICATION UNION

Opinion given by the Legal Adviser to the Plenipotentiary Conference of the International Telecommunication Union on 18 October 1982

[The International Telecommunication Union (hereinafter referred to as "the Union") held its Plenipotentiary Conference (hereinafter referred to as "the Conference")[115] from 28 September to 6 November 1982 in Nairobi, Kenya. During the Conference, a draft resolution seeking the exclusion of a Member State from the Plenipotentiary Conference and from all other conferences and meetings of the Union[116] and sponsored by a number of delegations,[117] was submitted. Thereafter, some other delegations[118] submitted "Amendments to document No. 120".

The Conference started its deliberations on the subject in question on the basis of the aforementioned documents[119] on 18 October 1982, at its fifteenth plenary meeting.[120] During that meeting, the delegates of the Netherlands[121] and of Norway,[122] questioning the legality of the exclusion of a member of the Union, sought the opinion of the Union's Legal Adviser.[123] The Chairman invited the Legal Adviser to present his legal opinion to the Conference,[124] which he did as follows:[125]]

Permit me to start off with a quick consideration of document 120 (Rev.2) itself, in order to reply to the request for legal advice, which will be limited to strictly legal issues.

With regard to that document, which, during the preceding discussions, has been considered as "illegal" by one delegation,[126] I should like to point out that certainly, from a strictly formal point of view, document 120 (Rev.2) itself is not "illegal" in the sense that it has been properly presented and sponsored during the present Conference. The question of the formal legality of the document itself is thus not at stake. On the other hand—and I turn now to the contents of document 120 (Rev.2)—the question arises whether its *adoption* by this Conference could be considered as legal or illegal.

I do not intend to go through the whole document 120 (Rev.2). I shall only present you my legal opinion thereon with regard to two legal issues involved therein. The first one concerns the second preambular paragraph of the draft resolution, which reads:

> "*Considering* that the fundamental principles of the International Telecommunication Convention are designed to strengthen peace and security in the world by developing international co-operation and better understanding among peoples".

In this respect, I submit to this august Conference that "the fundamental principles", in the wording referred to in the above preambular paragraph, can be found neither in any of the provisions nor in the preamble[127] to the Convention. This is in particular true for the part stating that those principles "are designed to strengthen peace and security in the world".

Having given this clarification, I shall now take up the second and, in my opinion, fundamental legal issue involved in the draft resolution under consideration. It concerns the third and last operative paragraph "resolves" thereof. I note that it has been pointed out during the preceding debate that this operative paragraph indeed does not provide for the exclusion of the Member State in question from the Union.[128] I submit, however, that its contents aim at suspension from the exercise of the rights and privileges of membership in the Union and thus touch the fundamental rights of a member in respect of its participation in the conferences, meetings and consultations of the Union, as they are stipulated in paragraph 2 (Nos. 8 to 10) of article 2 of the Convention.[129] It is precisely on the latter aspect that I shall have to make legal comments and give to the Conference my legal opinion, as requested.

Before going into the details of the Convention in this respect, I simply need to come back to what has been quoted before,[130] namely, the here-applicable, pertinent principles of international law. They have been summed up—in very short words, actually in two sentences—by the International Court of Justice in its advisory opinion, given in 1948, in a case concerning the admission of a State to membership in the United Nations. In the case brought before it, the Court was asked whether a Member of the United Nations, which is called upon to pronounce itself by its vote either in the Security Council or in the General Assembly on the admission of a State to membership in the United Nations, juridically is entitled to make its consent to the admission dependent on conditions not expressly provided for in the pertinent provisions of the United Nations Charter. By a majority of 9 votes to 6, the Court answered this question in the negative. The Court, with regard to the highest political organs of the United Nations, i.e., the General Assembly and the Security Council, stated in that advisory opinion:

> "The political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment. To ascertain whether an organ has freedom of choice for its decisions, reference must be made to the terms of its constitution."[131]

Why do I insist on these principles of international law? It is because of two schools of thought, which, as I have observed by listening to the debates during the preceding three weeks of this Conference, exist, with almost equal strength, within this Conference. One school of thought apparently considers this Conference, the supreme organ of the Union,[115] as a political organ. For those doing so, the above principles pronounced by the International Court of Justice certainly apply in the sense that even an organ of a political character can only act within the framework of its Constitution, i.e., the Convention in the case of the Union, and the provisions thereof. The other school of thought claims and stresses that this Conference is not a political organ. For this school of thought the above principles apply equally and, one may argue, even more in the sense that a non-political organ is even more bound to stay within the provisions of its Constitution or Convention in respect of what it is authorized to do. This is the first reason why I cited this advisory opinion of the International Court of Justice. The second reason is that, during the preceding debates, some delegates stated rather frequently that they consider this Conference as sovereign to the extent that it can go beyond what the Contracting States in the basic instrument of the Union, namely the Convention, have agreed upon and provided for. I submit to this Conference, with my utmost respect, that this is simply not the case. The Contracting States, by ratifying, or acceding to, the Convention and depositing the respective instrument with the Secretary-General of the Union, have agreed upon, and stipulated, the complete framework within which and under which alone even a plenipotentiary conference of the Union, as the latter's supreme organ, is allowed to act.

In the light of the foregoing principles of international law, I now return to the draft resolution in document 120 (Rev.2). Its last operative paragraph provides, as I said, for suspension from the exercise of the rights and privileges of membership to the extent that, if adopted, it will not allow the member State in question any more to participate in future in the conference and meetings of the Union, including the present Conference, and thus touches one of the fundamental rights provided for in No. 8 (i.e., para. 2 (*a*)) of article 2 of the Convention.[129]

It is clearly the intention of the draft resolution to sanction one member of the Union. The legal question thus arises: does the Convention provide for sanctions against members of the Union, and, if so, for what types of sanction?

Looking at the Convention, everyone in this august Conference realizes that there are sanctions provided for in the Convention, namely, in its Nos. 97 and 156.

I shall deal first with No. 156.[132] This is an automatic sanction, without any action needed by any of the organs of the Union, imposed upon any "signatory Government", which, "from the end of a period of two years from the date of entry into force of the Convention", has not "deposited an instrument of ratification" of the Convention. Such member of the Union will automatically lose its right to vote at any of the conferences and meetings of the Union in

which it participates. Such loss of the right to vote in case of non-ratification of the Convention is not to be found in the Atlantic City Convention of 1947.[133] It was for the first time incorporated into the Buenos Aires Convention of 1952,[134] and was maintained in the Geneva Convention of 1959,[135] but without the last sentence figuring now in No. 156 of the Convention, where it is expressly stated that "its rights, other than voting rights, shall not be affected".[132] This last sentence was introduced only in the Montreux Convention, 1965,[136] and was taken over in the Malaga-Torremolinos Convention of 1973, currently in force.[137]

The second, equally automatic sanction is the loss of the right to vote, as provided for in No. 97 of the Convention.[138] This provision and the sanction stipulated therein are well known to all delegates, as you have dealt with that matter during the second week of the Conference. I therefore refer to an earlier reply, which I gave to the distinguished delegate of Mexico, when he asked whether the countries deprived of their right to vote, e.g., because of non-payment of arrears, were eligible for posts of responsibility in the Union.[139] I quoted on that occasion the pertinent document of the last Plenipotentiary Conference (Malaga-Torremolinos, 1973), which had rejected the idea of temporary suspension of any member's eligibility to the permanent organs of the Union.[140] I submit to the Conference the conclusion that its predecessor, the Malaga-Torremolinos Conference of 1973, thus considered indeed the possibility of introducing sanctions other than only the loss of the right to vote, but that it rejected this idea when it adopted the text of the Convention at present in force, which, consequently, provides only for one sanction against a member of the Union, i.e., the loss of the right to vote, as stipulated in Nos. 97 and 156 of the Convention.

Taking fully into account the legal background and the development with regard to sanctions through the legal history of the Union, as outlined immediately above, as well as the present legal situation by virtue of the provisions of the Convention in force, the following questions have to be put and replied to, from the legal point of view: What does it mean, in legal terms, that the Convention does not contain any other provisions foreseeing any other sanction against a member? Does it mean that the Convention—or in other, perhaps better, words, the predecessor Plenipotentiary Conferences and, after them and even more important, the Contracting States—remained deliberately silent, because it was intended to leave free way for the imposition upon a member of the Union of any other, further sanctions? Or does it mean that it was not intended to provide a possibility for the imposition of any such other sanctions, e.g., like the one now envisaged in the last operative paragraph of the draft resolution in document 120 (Rev.2)?

The last sentence I quoted from No. 156 of the Convention, i.e., that all other rights shall not be affected,[132] is in my opinion already a clear indication and a convincing argument in favour of the second interpretation. In addition, I also submit for consideration by the present Conference the argument that the Malaga-Torremolinos Conference of 1973, which adopted the Convention at present in force, was very well aware of other possible sanctions against members of the Union, such as suspension from the exercise of certain rights and privileges of membership or expulsion. Both types of sanction have existed since 1946 in Articles 5 and 6 respectively of the Charter of the United Nations,[141] with very specified and strict conditions, requiring even a two-thirds majority for any adoption of such measures, because of their being considered as "important questions".[142] It is difficult, or, more correctly, impossible, to pretend that the last Plenipotentiary Conference of 1973 was not aware of the existence of those sanctions within the United Nations itself, as expressly provided for in the two aforementioned articles of the Charter of the United Nations. During the debates on the "exclusion" or "temporary exclusion" of two other members "from the Plenipotentiary Conference and from all other conferences and meetings" of the Union, which led to the adoption by that Conference of its resolutions Nos. 30[143] and 31,[144] articles 5 and 6 of the United Nations Charter have been expressly referred to.[145] Nevertheless, that Conference did not change the Convention at all in this respect, as it could have done by inserting therein provisions similar to those contained in Articles 5 and 6 of the United Nations Charter. Therefore, the absence of other sanctions in the provisions of the Convention in force can, in legal analysis and according to my opinion, only mean that the Contracting States, first through their Plenipotentiaries in 1973, and thereafter

through the deposit of their instruments of ratification of, or accession to, the Convention, did not intend to give the power to any of the organs of the Union, including the latter's supreme organ itself, i.e., the Plenipotentiary Conference, to impose upon a member of the Union any other additional sanction not expressly provided for in the Convention.

The preceding arguments which, following the request for legal advice, I had to submit to this Conference for its consideration and appreciation, are, with regard to their results, reinforced and strengthened by the fact that for the first time the Malaga-Torremolinos Conference of 1973 included "the principle of universality"—already so frequently invoked during the present Conference—in paragraph 1 of article 1 of the Convention, dealing with the composition of the Union. This principle has always, during the Union's long history, been a fundamental and guiding principle, without ever having been spelt out in precise words in any Conventions prior to 1973. It is now explicitly contained in No. 2 of the Convention in the following terms: "The International Telecommunication Union shall comprise members which, having regard to the principle of universality and the desirability of universal participation in the Union, shall be: . . .". Consequently, the adoption by this Conference of the last operative paragraph "resolves" of the draft resolution contained in document 120 (Rev.2) would, in my legal opinion, also run counter to this principle now enshrined in the Convention.

I hereby submit to the Conference my final conclusion that, in the light of all the preceding arguments I presented, I cannot see, from a strictly legal point of view, how that last operative paragraph "resolves" of the draft resolution contained in document 120 (Rev.2) could, in conformity with the Convention, be adopted by this august Conference. The adoption of this very paragraph would, in my considered opinion, not be in conformity with the Convention and could, with good justification, be considered as illegal by any Contracting State Party to the Convention.

[After further debate on the issue during the 16th and 17th plenary meetings,[146] the Conference, at its 18th plenary meeting,[147] decided, by a secret ballot, with 62 votes in favour, 58 votes against and 9 abstentions, that document No. 205[118] "be considered as a single package amending" the draft resolution contained in document 120 (Rev.2).[118] By a further secret ballot, the Conference decided, with 61 votes in favour, 57 votes against and 9 abstentions, that document No. 205 be "incorporated as a single package" in the draft resolution contained in document 120 (Rev.2).[149] In a final secret ballot, the Conference approved, with 85 votes in favour, 41 votes against and 13 abstentions, the draft resolution contained in document 120 (Rev.2) as amended by document No. 205,[150] which thus became Resolution No. 74 of the Union's Plenipotentiary Conference, Nairobi, 1982, entitled "Resolution adopted by the Plenipotentiary Conference regarding Israel and assistance to Lebanon".[151]]

NOTES

[1] See E. Suy, "Status of Observers in International Organizations", *Recueil des cours*, 1978, II, pp. 79-160.

[2] General Assembly resolution 2535 B (XXIV).

[3] General Assembly resolution 2672 C (XXV).

[4] *Official Records of the General Assembly, Twenty-eighth Session, Special Political Committee*, 882nd meeting, 12 November 1973.

[5] Economic and Social Council resolution 1835 (LVI).

[6] Economic and Social Council decision 129 (LIX).

[7] The original terms of reference of the Commission are contained in Economic and Social Council resolution 1818 (LV). Subsequently they were amended by Council resolution 2089 (LXIII).

[8] A/C.6/37/L.9.

[9] General Assembly resolution 35/10 A, para. 6.

[10] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 32* (A/36/32), para. 36 (*a*).

[11] A/C.3/37/L.4.

[12] A/C.5/37/32/Add.1.

[13] See Review of multilateral treaties to which South Africa became a party and which either by direct reference or on the basis of relevant provisions of international law might be considered to apply to Namibia, Report of the Secretary-General, part II. Multilateral treaties registered with the Secretariat of the League of Nations, document S/10288.

[14] *Legal consequences for States of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970), Advisory Opinion of 21 June 1971: I.C.J. Reports 1971*, p. 58.

[15] *Ibid.*, p. 55.

[16] *Official Records of the General Assembly, Thirty-third Session, Supplement No. 24* (A/33/24), p. 101.

[17] United Nations, *Namibia Gazette* No. 1 (ST PSCA(05)N21).

[18] See above, p. 165.

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

[20] Subsequently reproduced in *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVI (United Nations publication, Sales No. E.84.V.2), documents A/CONF.62/L.133, annex, and A/CONF.62/L.139.

[21] See *Sea-Bed Mineral Resource Development: Recent Activities of the International Consortia* (United Nations publication, Sales No. E.80.II.A.9 and Corr.1) and addenda. This document was issued in 1980 for the purpose of public information. On the basis of available information, this document reported on activities conducted by, *inter alia*, "four commercially-oriented consortia": the Kennecott Group, Ocean Mining Associates, Ocean Management Inc. and the Ocean Minerals Company.

[22] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVI (United Nations publication, Sales No. E.84.V.2), document A/CONF.62/C.1/L.30.

[23] To avoid misunderstanding, in view of the complex procedures contemplated, it might be more logical to refer to the entities listed in paragraph 1 (*a*) as "prospective pioneer investor".

[24] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVI (United Nations publication, Sales No. E.84.V.2), document A/CONF.62/L.132/Add.1, annex IV.

[25] *Ibid.*, document A/CONF.62/L.133, annex.

[26] *Ibid.*, documents A/CONF.62/L.30, para. 30, and A/CONF.62/L.93, para. 5 (*c*) (iv).

[27] *Ibid.*, document A/CONF.62/L.132, annex IV.

[28] *Ibid.*, document A/CONF.62/C.1/L.30.

[29] A/CONF.62/C.1/L.30 (United Nations publication, Sales No. E.81.I.5).

[30] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVI (United Nations publication, Sales No. E.84.V.2), document A/CONF.62/L.93, para. 6.

[31] United Nations, *Treaty Series*, vol. 75, p. 287.

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

[33] United Nations, *Treaty Series*, vol. 216, p. 133.

[34] *Nouveau recueil général de traités*, deuxième série, tome X, p. 133.

[35] United Nations publication, Sales No. E.81.IV.4.

[36] E/4945, para. 7.

[37] See, e.g., E/4961, para. 7.

[38] See E/5719, para. 4.

[39] E/4750.

[40] General Assembly resolution 672 (XXV).

[41] A/AC.96/187/Rev.1.

[42] United Nations publication, Sales No. E.79.I.11.

[43] A/36/833, chap. III.A.

[44] *Official Records of the Security Council, Second Year, Special Supplement No. 1*, Report of the Military Staff Committee, pp. 1 and 3.

[45] *ICJ Reports 1962*, p. 166.

[46] T/L.1229, annex, para. 95.

[47] T/PV.1539.

[48] See Secretariat Order 3039, sect. 4.

[49] RBS/BIBL/SER.A/3.

[50] Article 31 (3) (*b*) of the 1969 Vienna Convention on the Law of Treaties specifies that in interpreting a treaty there shall, *inter alia*, be taken into account "any subsequent practice in the application of the treaty which establishes the agreement of the parties [i.e., of the Member States] regarding its interpretation".

[51] No similar expression appears in the Covenant of the League of Nations, Article 6 of which otherwise substantially covered the same ground as Articles 97, 98 and 101 (1) of the United Nations Charter.

However, in imitation of the latter, the constitutional instruments of a number of specialized and related agencies incorporate the above-quoted phrase (e.g., UNESCO, article IV.2; IMO, article 43; IAEA, article VII.4; UNIDO, article 11.3); on the other hand, some such instruments use similar but possibly deliberately different phrases: IBRD, "The President shall be chief of the operating staff of the Bank . . ."; WIPO, "The Director General shall be the chief executive of the Organization."

[52] *Charter of the United Nations* 3rd rev. ed. (New York and London, Columbia University Press, 1969), pp. 574-579.

[53] PC/20, chap. VIII, sect. 2, para. 8.

[54] Indeed, Kelsen argues that it really is the Secretary-General who is the principal organ; *The Law of the United Nations* (London, Stevens, 1950), pp. 136 and 137.

[55] This view was upheld by the International Court of Justice, which in its advisory opinion on *Effects of Awards of Compensation made by the United Nations Administrative Tribunal* (*I.C.J. Reports 1954*, p. 47, at p. 61) held that "In regard to the Secretariat, the General Assembly is given by the Charter a power to make regulations, but not a power to adjudicate upon, *or otherwise deal with particular instances*". (Emphasis added.)

[56] This view appears to be shared by T. Meron, in "The Staff of the United Nations Secretariat", *American Journal of International Law*, vol. 70, No. 4, p. 660 (1976).

[57] E/SR.744.

[58] This distinction between the Secretary-General's authority in respect to organs financed from the regular budget and those financed from voluntary contributions or other sources has no constitutional basis, but is becoming more and more established in practice.

[59] A/C.5/1616, para. 28.

[60] *Effect of Awards of Compensation made by the United Nations Administrative Tribunal* (*I.C.J. Reports 1954*, p. 47, at p. 60).

[61] Statute of the United Nations Administrative Tribunal (as amended in 1955), article 11 (1); the propriety of this aspect of the procedure is at present being challenged, *inter alia* on the ground that this constitutes improper interference with the prerogatives of the Secretary-General in the *Mortished* case now pending before the International Court of Justice *(Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal).*

[62] General Assembly resolution 31/26, para. 7.

[63] Staff Regulations of the United Nations, annex I, para. 7.

[64] A/C.5/1616, para. 15.

[65] A/C.5/1616, para. 19.

[66] PC/20, chap. VIII, sect. 2, para. 30.

[67] E.g., General Assembly resolution 36/240 A, para. 2.

[68] Resolution 35/211, para. 1.

[69] A/C.5/35/48.

[70] A/36/44.

[71] Resolution 36/238.

[72] *Official Records of the General Assembly, Twenty-first Session, Supplement No. 5* (A/6305), Foreword by the Secretary-General, para. 20.

[73] See *Juridical Yearbook, 1977*, p. 200.

[74] General Assembly resolution 32/72, paras. 3 (*a*) and (*b*).

[75] *Repertory of Practice of United Nations Organs* (United Nations publication, Sales No. 55.V.2(I)), Article 98, para. 142.

[76] General Assembly resolution 34/182, sect. I, para. 7.

[77] E.g., *Official Records of the General Assembly, Thirty-first Session, Supplement Nos. 1 and 1A* (A/31/1 and Add.1).

[78] *Official Records of the General Assembly, Thirty-second Session, Supplement No. 1* (A/32/1/Add.1).

[79] E.g., *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 1* (A/36/1).

[80] See, in particular, his report as contained in document A/C.5/705.

[81] General Assembly resolution 1235 (XII).

[82] UNJSPF regulations, article 7 (*a*).

[83] ICSC statute, General Assembly resolution 3357 (XXIX), annex, article 20 (2).

[84] JIU statute, General Assembly resolution 31/192, annex, article 19 (2).

[85] General Assembly resolution 302 (IV), para. 9.

[86] General Assembly resolution 428 (V), annex, para. 13, reproducing a provision in resolution 319 (IV) A, annex, para. 9.

[87] UNITAR statute, article IV.1, promulgated by the Secretary-General pursuant to General Assembly resolution 1934 (XVIII).

[88] General Assembly resolution 1995 (XIX), sect. II, para. 27.

[89] General Assembly resolution 2152 (XXI), sect. II, para. 18.

[90] General Assembly resolution 2297 (XXVII), sect. II, para. 2.

[91] General Assembly resolution 3356 (XXIX), article V (1).

[92] Approved by General Assembly resolution 3081 (XXVIII).

[93] General Assembly resolution 31/120, para. 1.

[94] General Assembly resolution 32/197, annex, para. 64.

[95] General Assembly resolution 302 (IV), para. 9 (*b*).

[96] General Assembly resolution 410 A (V), para. A (5) (*e*) (1).

[97] General Assembly resolution 428 (V), annex, paras. 14 and 15 (*a*).

[98] General Assembly resolution 2688 (XXV), annex, para. 61.

[99] The regulation reads as follows: "No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government excepting for war service; nor shall a staff member accept any honour, decoration, favour, gift or remuneration from any source external to the Organization, without first obtaining the approval of the Secretary-General. Approval shall be granted only in exceptional cases and where such acceptance is not incompatible with the terms of regulation 1.2 of the Staff Regulations and with the individual's status as an international civil servant."

[100] *Official Records of the General Assembly, Sixth Session, Annexes*, agenda item 45, documents A/1855 and A/2108, para. 12; *ibid., Ninth Session, Annexes*, agenda item 54, documents A/2788 and A/2862.

[101] *Ibid.*, document A/2862, paras. 3-11.

[102] United Nations Civil Service Advisory Report, Coord/Civil service/5, para. 43.

[103] United Nations, *Treaty Series*, vol. 360, p. 130.

[104] *Ibid.*, vol. 500, p. 95.

[105] *The Work of the International Law Commission*, 4th ed. (United Nations publication, Sales No. E.88.V.1).

[106] A/C.5/36/109.

[107] United Nations, *Treaty Series*, vol. 11, p. 11.

[108] *Ibid.*, vol. 1, p. 15.

[109] Memorandum to the Acting Secretary-General from the Office of Legal Affairs of 22 August 1962; reproduced in *Juridical Yearbook, 1962*, chap. VI, sect. A.1, p. 236.

[110] *Juridical Yearbook, 1975*, p. 157.

[111] *Juridical Yearbook, 1976*, p. 229.

[112] United Nations Legislative Series, Legislative texts and treaty provisions concerning the legal status, privileges and immunities of international organizations (ST/LEG/SER.B/10) (United Nations publication, Sales No. 60.V.2), p. 128.

[113] Annex D to letter of the Managing Director authorized by Decision No. 6843 (81/75), adopted May 6, 1981; *Selected Decisions of the International Monetary Fund and Selected Documents*, Ninth Issue, pp. 169-171.

[114] *Yearbook of the International Law Commission 1977*, vol. II (Part Two) (United Nations publication, Sales No. E.78.V.2 (Part II), p. 118.

[115] In accordance with No. 22 (i.e., paragraph 1 of article 5) of the International Telecommunication Convention, Malaga-Torremolinos, 1973 (hereinafter referred to as "the Convention", which, in accordance with its No. 1 (i.e., preamble), is "the basic instrument" of the Union), the Plenipotentiary Conference "is the supreme organ of the Union".

[116] See document No. 120 (Rev.2), of 4 October 1982, of the Conference.

[117] *Ibid.* and corrigendum No. 1, of 15 October 1982, to document No. 120 (Rev.2) of the Conference.

[118] See document No. 205, of 18 October 1982, of the Conference.

[119] See notes 50 to 52 above and document No. 123 of the Conference.

[120] See the minutes thereof in document No. 456 of the Conference, contained in "Minutes of the Plenipotentiary Conference of the International Telecommunication Union, Nairobi, 1982", published by the General Secretariat of the Union, Geneva, 1983.

[121] *Ibid.*, para. 1.5.

[122] *Ibid.*, para. 1.9.

[123] The Union's Legal Adviser, in that capacity, formed part of the Conference secretariat (see document No. 75 of the Conference), as approved by the Conference at its first plenary meeting (see the minutes thereof in document No. 193 of the Conference, para. 7, subpara. 7(1), contained in the publication referred to in note 54 above.

[124] See document No. 456 of the Conference (see note 54 above), para. 1.13.

[125] The opinion of the Legal Adviser, given orally at the Conference, is presented in direct speech. The text has been transcribed from the tape and edited; explanatory footnotes have been added for clarification.

[126] See document No. 456 of the Conference (see note 54 above), para. 1.2.

[127] The text of the preamble to the Convention reads as follows:

"While fully recognizing the sovereign right of each country to regulate its telecommunication, the plenipotentiaries of the Contracting Governments, with the object of facilitating relations and co-operation between the peoples by means of efficient telecommunication services have agreed to establish this Convention which is the basic instrument of the International Telecommunication Union."

[128] See document No. 456 of the Conference (see note 54 above), para. 1.8.

[129] Paragraph 2 of article 2 of the Convention reads as follows:

"8 2. Rights of Members in respect of their participation in the conferences, meetings and consultations of the Union are:

"(*a*) all Members shall be entitled to participate in conferences of the Union, shall be eligible for election to the Administrative Council and shall have the right to nominate candidates for election to any of the permanent organs of the Union;

"9 (*b*) each Member shall have one vote at all conferences of the Union, at all meetings of the International Consultative Committees and, if it is a Member of the Administrative Council, at all sessions of that Council;

"10 (*c*) each Member shall also have one vote in all consultations carried out by correspondence."

[130] See document No. 456 of the Conference (see note 54 above), para. 1.3.

[131] *I.C.J. Reports 1948*, pp. 57-66, esp. p. 64.

[132] The text of No. 156 (i.e., subpara. (2) of para. 2 of art. 45) of the Convention reads as follows:

"156 (2) From the end of a period of two years from the date of entry into force of this Convention, a signatory Government which has not deposited an instrument of ratification in accordance with 154 shall not be entitled to vote at any conference of the Union, or at any session of the Administrative Council, or at any meeting of any of the permanent organs of the Union, or during consultation by correspondence conducted in accordance with the provisions of the Convention until it has so deposited such an instrument. *Its rights, other than voting rights, shall not be affected.*" (Emphasis added.)

[133] The International Telecommunication Convention, Atlantic City, 1947, was the first Convention of the Union after the Second World War.

[134] See subparagraph (2) of paragraph 2 of article 15 of the International Telecommunication Convention, Buenos Aires, 1952, which replaced the Atlantic City Convention of 1947.

[135] See No. 233 (i.e., subpara. (2) of para. 2 of art. 17) of the International Telecommunication Convention, Geneva, 1959, which replaced the Buenos Aires Convention of 1952.

[136] See No. 251 (i.e., subpara. (2) of para. 2 of art. 18) of the International Telecommunication Convention, Montreux, 1965, which replaced the Geneva Convention of 1959.

[137] Replacing the Montreux Convention of 1965.

[138] The text of No. 97 (i.e., para. 7 of art. 15) of the Convention reads as follows:

"97. 7. A Member which is in arrears in its payments to the Union shall lose its right to vote as defined in 9 and 10 for so long as the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding two years."

With regard to Nos. 9 and 10 referred to therein, see note 63 above.

[139] See document No. 228 of the Conference (containing the minutes of the seventh plenary meeting), paragraph 3.6, contained in the publication referred to in note 54 above.

[140] *Ibid.*, paragraph 3.7, which reads as follows:

"At the *Chairman's* request, the *Legal Adviser*, in responding to the question put by the delegate of Mexico, referred to document No. 236 of the Malaga-Torremolinos Conference. From paragraph 3.24 of that document it was clear that in Committee 4 (Budgetary Questions) several administrative measures of a 'sanction' character had been considered and that the Committee, after extensive debate, had come to the following conclusion: Members in arrears in the payments of their contributions due to the Union should temporarily lose their voting rights; temporary suspension of their eligibility to the permanent organs of the Union was, however, regarded as inadvisable. In the light of those conclusions and in the absence of any provision in the Convention to the contrary, the Legal Adviser was of the opinion that members, though deprived of their right to vote, in accordance with Nos. 97 and 156 of the Convention remained eligible for posts within the Union's organs."

[141] The texts of those Articles read as follows:

"*Article 5*

"A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of member-

ship by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

"Article 6

"A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council."

[142] See paragraph 2 of Article 18 of the Charter of the United Nations.

[143] See resolution No. 30 of the Union's Plenipotentiary Conference, Malaga-Torremolinos, 1973, entitled "Exclusion of the Government of Portugal from the Plenipotentiary Conference and from all other conferences and meetings of the Union".

[144] See resolution No. 31 of the Union's Plenipotentiary Conference, Malaga-Torremolinos, 1973, entitled "Exclusion of the Government of the Republic of South Africa from the Plenipotentiary Conference and from all other conferences and meetings of the Union".

[145] See "Minutes of the Plenipotentiary Conference of the International Telecommunication Union, Malaga-Torremolinos, 1973", published by the General Secretariat of the Union, Geneva, 1974, p. 207; document No. 158 of the Conference, para. 1.23, at p. 25.

[146] See documents Nos. 457 and 458, contained in the publication referred to in note 54 above.

[147] See document No. 459, contained in the publication referred to in note 54 above.

[148] See document No. 459 (see note 85), paras. 1.16 and 1.17 above.

[149] See document No. 459 (see note 85), paras. 1.22 and 1.23.

[150] See document No. 459 (see note 85), paras. 1.25 and 1.26.

[151] See "International Telecommunication Convention—Final Protocol, Additional Protocols, Optional Additional Protocol, Resolutions, Recommendation and Opinions, Nairobi, 1982", published by the General Secretariat of the Union, Geneva, pp. 338 and 339.

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

International Court of Justice

Application for review of Judgement No. 273[1] of the United Nations Administrative Tribunal (request for an advisory opinion)[2]

Request for an advisory opinion by the Committee on Applications for Review of Administrative Tribunal Judgements—Article 11 of the statute of the Tribunal—Competence of the Court—Discretion of the Court and propriety of giving an opinion—Objection to the judgement on the grounds of error on a question of law relating to the provisions of the Charter of the United Nations and of excess of jurisdiction or competence

On 13 July the Committee on Applications for Review of Administrative Tribunal Judgements, to which an application was presented by the Government of the United States of America, decided to request an advisory opinion of the International Court of Justice on the following question:

> "Is the judgement of the United Nations Administrative Tribunal in Judgement No. 273, *Mortished* v. *the Secretary-General of the United Nations*, warranted in determining that General Assembly resolution 34/165 of 17 December 1979 could not be given immediate effect in requiring, for the payment of repatriation grants, evidence of relocation to a country other than the country of the staff member's last duty station?"

On 20 July 1982 the Court delivered at a public sitting the advisory opinion[3] of which a summary outline and the complete text of the operative paragraph are given below:[4]

Summary of facts (paras. 1-15)

After outlining the successive stages of the proceedings before it (paras. 1-9), the Court gave a summary of the facts of the case (paras. 10-15). The principal facts were as follows.

Mr. Mortished, an Irish national, entered the service of the International Civil Aviation Organization in 1949. In 1958 he was transferred to the United Nations in New York, and in 1967 to the United Nations Office at Geneva. On attaining the age of 60 he retired on 30 April 1980.

A benefit known as the "repatriation grant" was payable in certain circumstances to staff members at the time of their separation from service, under United Nations staff regulation 9.4 and annex IV of the Regulations; the conditions for payment of this grant were determined by the Secretary-General in staff rule 109.5.

At the time of Mr. Mortished's retirement, the General Assembly had recently adopted two successive resolutions relating to (*inter alia*) the repatriation grant. By resolution 33/119 of 19 December 1978, the General Assembly had decided

> "that payment of the repatriation grant to entitled staff members [should] be made conditional upon the presentation by the staff member of evidence of actual relocation, subject to the terms to be established by the [International Civil Service] Commission;" (sect. IV, para. 4).

To give effect, from 1 July 1979, to the terms established by the Commission for the payment of the repatriation grant, for which there had previously been no requirement of presentation of evidence, the Secretary-General had amended staff rule 109.5 to make payment of the repatriation grant subject to provision of evidence that "the former staff member has established residence in a country other than that of the last duty station" (para. (*d*)). However, paragraph (*f*) of the rule was worded to read:

> "(*f*) Notwithstanding paragraph (*d*) above, staff members already in service before 1 July 1979 shall retain the entitlement to repatriation grant proportionate to the years and months of service qualifying for the grant which they already had accrued at that date without the necessity of production of evidence of relocation with respect to such qualifying service."

Since Mr. Mortished had accumulated the maximum qualifying service (12 years) well before 1 July 1979, paragraph (*f*) would have totally exempted him from the requirement to present evidence of relocation.

On 17 December 1979 the General Assembly adopted resolution 34/165, by which it decided, *inter alia*, that

> "effective 1 January 1980 no staff member shall be entitled to any part of the relocation grant unless evidence of relocation away from the country of the last duty station is provided" (sect. II, para. 3).

The Secretary-General accordingly issued an administrative instruction abolishing rule 109.5 (*f*) with effect from 1 January 1980, followed by a revision of the Staff Rules deleting paragraph (*f*).

On Mr. Mortished's retirement, the Secretariat refused to pay him the repatriation grant without evidence of relocation, and on 10 October 1980 Mr. Mortished seized the Administrative Tribunal of an appeal.

The Administrative Tribunal, in its Judgement No. 273 of 15 May 1981, found *inter alia* that the Secretary-General had

> "failed to recognize the Applicant's acquired right, which he held by virtue of the transitional system in force from 1 July to 31 December 1979 and set forth in staff rule 109.5 (*f*)".

It concluded that Mr. Mortished

> "was entitled to receive that grant on the terms defined in staff rule 109.5 (*f*), despite the fact that that rule was no longer in force on the date of that Applicant's separation from the United Nations",

and was therefore entitled to compensation for the injury sustained "as the result of a disregard of staff regulation 12.1 and staff rule 112.2 (*a*)", which read:

> "*Regulation 12.1:* These regulations may be supplemented or amended by the General Assembly, without prejudice to the acquired rights of staff members."

"Rule 112.2

"AMENDMENT OF . . . STAFF RULES

> "(*a*) These rules may be amended by the Secretary-General in a manner consistent with the Staff Regulations."

The compensation was assessed by the Tribunal at the amount of the repatriation grant of which payment had been refused.

The United States did not accept the Tribunal's judgement and therefore applied to the Committee on Applications for Review of Administrative Tribunal Judgements (hereinafter called "the Committee"), asking the Committee to request an advisory opinion of the Court. That application was made pursuant to article 11, paragraph 1, of the Tribunal's statute, which

empowered Member States, the Secretary-General or the person in respect of whom the judgement had been rendered to object to the judgement. If the Committee decides that there is a substantial basis for the application, it requests an advisory opinion of the Court. In the case in question, after examining the application at two meetings, the Committee decided that there was a substantial basis for it, on the grounds both that the Administrative Tribunal had erred on a question of law relating to the provisions of the Charter and that the Tribunal had exceeded its jurisdiction or competence.

Competence to give an advisory opinion (paras. 16-21)

The Court began by considering whether it had competence to comply with the request for an advisory opinion submitted by the Committee. It recalled that the request was the second made to it under article 11, paragraphs 1 and 2, of the statute of the Administrative Tribunal (the first concerned an *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal*); it was however the first to arise from the Committee's consideration of an application by a Member State, the previous case having resulted from the application of a staff member. When in 1973 the Court had agreed to give an advisory opinion in the case mentioned, it had recognized that it would be incumbent upon it to examine the features characteristic of any request for an advisory opinion submitted on the application of a Member State and had indicated that the Court should then bear in mind not only the considerations applying to the review procedure in general but also the additional considerations proper to the specific situation created by the interposition of a Member State in the review process. The Court found that the special features of the proceedings leading up to the present request did not afford any grounds for the Court to depart from its previous position.

Discretion of the Court and propriety of giving an opinion (paras. 22-45)

The Court then considered whether, although it had found that it had competence, certain aspects of the procedure should not lead it to decline to give an advisory opinion, having regard to the requirements of its judicial character and the principles of the due administration of justice, to which it must remain faithful in the exercise of its functions, as much in advisory as in contentious proceedings.

The Court first disposed of a number of objections, concerning the following points:

(*a*) Whether an application for review made by a Member State constituted an intervention by an entity not a party to the original proceedings;

(*b*) Whether the conclusive effect of the advisory opinion to be given by the Court would found an objection to the exercise by the Court of its advisory jurisdiction;

(*c*) Whether a refusal by the Court to give the opinion would put in question the status of Judgement No. 273 of the Administrative Tribunal;

(*d*) Whether an application for review by a Member State was in contradiction with certain articles of the Charter or impinged upon the authority of the Secretary-General under other articles.

With reference to the proceedings before the Court, great importance was attached by the Court to the question whether real equality was ensured between the parties, notwithstanding any seeming or nominal absence of equality resulting from Article 66 of the Court's Statute, which confined to States and international organizations the power to submit written or oral statements. In that respect, it noted that the views of the staff member concerned had been transmitted to it through the Secretary-General without any control over the contents being exercised by the latter, and that the Court had decided to dispense with oral proceedings in order to ensure actual equality. With regard to the stage of the proceedings involving the Committee, the Court noted that it was no more than an organ of the party which had been unsuccessful before the Tribunal, that is to say, the United Nations. Thus that party was able to

decide the fate of the application for review made by the other party, the staff member, through the will of a political organ. That fundamental inequality entailed for the Court a careful examination of what the Committee had actually done when seized of the application of the United States.

The Court referred to the question of the composition of the Administrative Tribunal in the case before it and posed the question why, when the three regular members of the Tribunal had been available to sit and had sat, it had been thought appropriate to allow an alternate member to sit, who in fact appended a dissenting opinion to the judgement. His participation seemed to require an explanation, but the Court noted that it had not been asked to consider whether the Tribunal might have committed a fundamental error in procedure having occasioned a failure of justice. Accordingly, further consideration of the point did not seem to be called for.

With regard to the discussions in the Committee, the Court pointed out that they involved a number of notable irregularities showing the lack of rigour with which the Committee had conducted its proceedings. Those irregularities related to its composition at its twentieth session; the application submitted to it by the United States; and the conduct of its meetings.

Despite those irregularities and the failure of the Committee to show the concern for equality appropriate to a body discharging quasi-judicial functions, the Court considered that it should comply with the request for an advisory opinion. The irregularities which featured throughout the proceedings could of course be regarded as "compelling reasons" for refusal by the Court to entertain the request; but the stability and efficiency of the international organizations were of such paramount importance to world order that the Court should not fail to assist a subsidiary body of the United Nations General Assembly in putting its operation upon a firm and secure foundation. Furthermore, such a refusal would leave in suspense a very serious allegation against the Administrative Tribunal: that it had in effect challenged the authority of the General Assembly.

Scope of the question submitted to the Court (paras. 46-56)

The Court then turned to the actual question on which its opinion had been requested and considered first whether, in the form in which it had been submitted, it was one which the Court could properly answer. Finding that it had been badly drafted and did not appear to correspond to the intentions of the Committee, the Court, in the light of the discussions in the Committee, interpreted the question as requiring it to determine whether, with respect to the matters mentioned in the question, the Administrative Tribunal had "erred on a question of law relating to the provisions of the Charter" or "exceeded its jurisdiction or competence" (para. 48).

The Court recalled the nature of the claim submitted to the Administrative Tribunal, what in fact it had decided, and the reasons it had given for its decision. The Court found that, far from saying that resolution 34/165 could not be given immediate effect, the Tribunal had held that the Applicant had sustained injury precisely by reason of the resolution's having been given immediate effect by the Secretary-General in the new version of the Staff Rules which omitted rule 109.5 (*f*), the injury, for which compensation was due, being assessed at the amount of the grant of which payment had been refused. The Tribunal had in no way sought to call into question the validity of resolution 34/165 or the Staff Rules referred to, but had drawn what in the Tribunal's view had been the necessary consequences of the fact that the adoption and application of those measures had infringed what it considered to have been an acquired right, which was protected by staff regulation 12.1. While the question submitted by the Committee produced that answer, it appeared that it left another question, as it were, secreted between the lines of the question as laid before the Court, namely, whether the Tribunal had denied the full effect of decisions of the General Assembly and so erred on a question of law relating to the provisions of the Charter or exceeded its jurisdiction or competence. This seemed in the Court's view to be the question which was the gravamen of the objection to the Tribunal's judgement, and the one which the Committee had intended to raise.

Did the United Nations Administrative Tribunal err on a question of law relating to the provisions of the Charter? (paras. 57-76)

In order to reply, the Court first examined what was its proper role when asked for an advisory opinion in respect of the ground of objection based on an alleged error "on a question of law relating to the provisions of the Charter". That its proper role was not to retry the case already dealt with by the Tribunal, and to attempt to substitute its own opinion on the merits for that of the Tribunal, was apparent from the fact that the question on which the Court had been asked its opinion was different from that which the Tribunal had had to decide. There were however other reasons. One was the difficulty of using the advisory jurisdiction of the Court for the task of trying a contentious case, since it was not certain that the requirements of the equality of the parties would be met if the Court were called upon to function as an appeal court and not by way of advisory proceedings. Likewise, the interposition of the Committee, an essentially political body, between the proceedings before the Tribunal and those before the Court would be unacceptable if the advisory opinion were to be assimilated to a decision on appeal. That difficulty was especially serious if, as in the present case, the Committee had excluded from its proceedings a party to the case before the Tribunal, while the applicant State had been able to advance its own arguments. Furthermore, the fact that by article 11 of the Tribunal's statute the review procedure could be set in train by Member States—that is to say, third parties—was only explicable on the assumption that the advisory opinion was to deal with a different question from that dealt with by the Tribunal.

Since the Court could not be asked to review the merits in the case of *Mortished* v. *the Secretary-General of the United Nations,* the first question for the Court was the scope of the inquiry to be conducted in order that it might decide whether the Tribunal had erred on a question of law relating to the provisions of the Charter. Clearly the Court could not decide whether a judgement about the interpretation of Staff Regulations or Rules had so erred without looking at that judgement. To that extent, the Court had to examine the decision of the Tribunal on the merits. But it did not have to get involved in the question of the proper interpretation of the Staff Regulations and Rules further than was strictly necessary in order to judge whether the interpretation adopted by the Tribunal was in contradiction with the requirements of the provisions of the Charter. It would be mistaken to suppose that an objection to any interpretation by the Tribunal of Staff Rules or Regulations was a matter for an advisory opinion of the Court.

The Court then examined the applicable texts concerning the repatriation grant. The relations of the United Nations with its staff were governed primarily by the Staff Regulations established by the General Assembly according to Article 101, paragraph 1, of the Charter. Those Regulations were themselves elaborated and applied in the Staff Rules, drawn up by the Secretary-General, who necessarily had a measure of discretion in the matter. There was no doubt that the General Assembly itself had the power to make detailed regulations, as for example in annex IV to the Staff Regulations which set out the rates of repatriation grant; but in resolutions 33/119 and 34/165 it had not done so; instead, it had laid down a principle to which it had left the Secretary-General to give effect. There could be no doubt that in doing so the Secretary-General spoke for and committed the United Nations in its relations with staff members.

The Tribunal, faced with Mr. Mortished's claim, had had to take account of the whole body of regulations and rules applicable to Mr. Mortished's claim. The Tribunal had also relied on staff regulation 12.1, in which the General Assembly had affirmed the fundamental principle of respect for "acquired rights", and staff rule 112.2 (*a*), which provided for amendment of the Staff Rules only in a manner consistent with the Staff Regulations. It had therefore decided that Mr. Mortished had indeed an acquired right, in the sense of regulation 12.1, and that he had accordingly suffered injury by being deprived of his entitlement as a result of resolution 34/165 and of the texts which put it into effect. The Tribunal's judgement had not anywhere suggested that there could be a contradiction between staff regulation 12.1 and the relevant provision of resolution 34/165.

There might be room for more than one view on the question as to what amounted to an acquired right, and the United States had contested in its written statement that Mr. Mortished had any right under paragraph (*f*) of rule 109.5. But to enter upon that question would, in the Court's view, be precisely to retry the case, which was not the business of the Court. The Tribunal had found that Mr. Mortished had an acquired right. It had had to interpret and apply two sets of rules, both of which had been applicable to Mr. Mortished's situation. As the Tribunal had attempted only to apply to his case what it had found to be relevant Staff Regulations and Staff Rules made under the authority of the General Assembly, it clearly had not erred on a question of law relating to the provisions of the Charter.

Did the United Nations Administrative Tribunal exceed its jurisdiction or competence? (paras. 77 and 78)

With regard to the second ground of objection, that the Tribunal had allegedly exceeded its jurisdiction or competence, it appeared that that had not been put forward as a ground entirely independent of that concerning error on a question of law relating to the provisions of the Charter, but rather as another way of expressing the allegation that the Tribunal had attempted to exercise a competence of judicial review over a General Assembly resolution, a matter already dealt with. However, it was clear that the Tribunal's jurisdiction, under article 2 of its statute, included not only the terms of Mr. Mortished's contract of employment and terms of appointment but also the meaning and effect of Staff Regulations and Rules in force at the material time. It was impossible to say that the Tribunal—which had sought to apply the terms of Mr. Mortished's instruments of appointment and the relevant Staff Regulations and Rules made in pursuance of General Assembly resolutions—had anywhere strayed into an area lying beyond the limits of its jurisdiction as defined in article 2 of its statute. Whether or not it was right in its decision was not pertinent to the issue of jurisdiction.

Operative paragraph (para. 80)

"The Court,

"1. By nine votes to six,

"*Decides* to comply with the request for an advisory opinion:

"In favour: *President* Elias; *Vice-President* Sette-Camara; *Judges* Nagendra Singh, Mosler, Ago, Schwebel, Sir Robert Jennings, de Lacharrière and Mbaye;

"Against: *Judges* Lachs, Morozov, Ruda, Oda, El-Khani and Bedjaoui.

"2. With respect to the question as formulated in paragraph 48 above, *is of the opinion:*

"A. By ten votes to five,

"*That* the Administrative Tribunal of the United Nations in Judgement No. 273 did not err on a question of law relating to the provisions of the Charter of the United Nations;

"In favour: *President* Elias; *Vice-President* Sette-Camara; *Judges* Nagendra Singh, Ruda, Mosler, Oda, Sir Robert Jennings, de Lacharrière and Mbaye;

"Against: *Judges* Lachs, Morozov, El-Khani, Schwebel and Bedjaoui.

"B. By twelve votes to three,

"*That* the Administrative Tribunal of the United Nations in Judgement No. 273 did not commit any excess of the jurisdiction or competence vested in it;

"In favour: *President* Elias; *Vice-President* Sette-Camara; *Judges* Lachs, Nagendra Singh, Ruda, Mosler, Oda, Ago, Sir Robert Jennings, de Lacharrière, Mbaye and Bedjaoui;

"Against: *Judges* Morozov, El-Khami and Schwebel."

Judges Nagendra Singh, Ruda, Mosler and Oda appended separate opinions to the advisory opinion.[5]

Judges Lachs, Morozov, El-Khani and Schwebel appended dissenting opinions.[6]

NOTES

[1] For a summary of the judgement, see *Juridical Yearbook, 1981*, p. 115.
[2] *Ibid.*, p. 71.
[3] *I.C.J. Reports 1982*, p. 325.
[4] The summary is taken from the *I.C.J. Yearbook 1981-1982*, No. 36, p. 132.
[5] *I.C.J. Reports 1982*, p. 368.
[6] *Ibid.*, p. 411.

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. Australia

HIGH COURT OF AUSTRALIA

(*a*) Simsek v. Minister for Immigration and Ethnic Affairs and Another: Decision of 10 March 1982[1]

Applicant sought an order designed to ensure that he was not deported from Australia before his status as a refugee had been determined—1951 Convention relating to the Status of Refugees and the 1967 Protocol to it—Interpretation of article 32 of the Convention.

The applicant, a Turkish national, claimed that he was entitled to status as a refugee under the 1951 Geneva Convention relating to the Status of Refugees and the associated Protocol of 1967. Australia is a party to both the Convention and the Protocol. The applicant only made the claim after overstaying the period specified in an entry permit and being arrested as a prohibited immigrant.

His application for refugee status was, at the time of the judgement, being considered by the Committee for Determination of Refugee Status. The committee had been set up by the Australian Government to make recommendations to the Minister for Immigration and Ethnic Affairs concerning the implementation of the Convention and Protocol.

The applicant sought an order designed to ensure that he was not deported from Australia before his status as a refugee under the Convention and Protocol had been determined. During the course of his judgement Justice Stephen relied upon the interpretation given to article 32 of the Convention by the United Nations High Commissioner for Refugees. He observed:

> "The operation of Article 32 of the Convention, which alone contains that reference to representation upon which the applicant relies, is confined to the case where a person who has been recognized as a refugee by a contracting State is threatened with expulsion from its territory. Its provisions do not bear at all upon the determination of refugee status. Moreover, article 32 speaks only of refugees 'lawfully' in the territory of contracting States. The applicant made no application for refugee status during the initial three months, when his presence in Australia was lawful; it was only after his arrest as a prohibited immigrant that his application was made. It would appear from an article by Frank in *International Lawyer*, vol. 11, p. 291, "Effect of the 1967 United Nations Protocol on the Status of Refugees in the United States", that the United Nations High Commissioner for Refugees treats article 32 as applicable only to persons whose presence in the territory of a contracting State is lawful, those who overstay a period of temporary lawful presence in the territory being regarded as thereafter unlawfully present (*ibid.*, at p. 298). Courts in the United States have regarded article 32 in the same light (*ibid.*, at pp. 302-304). Thus even were he to be accorded refugee status he could not rely upon that article as according him any rights. It is article 31 which provides for those cases where a

refugee is unlawfully in the country of refuge and it bestows no right of representation" (*ibid.*, at pp. 68 and 69).

(*b*) Koowarta v. Bjelke-Petersen and Others
Queensland v. Commonwealth: Decision of 11 May 1982[a]

Racial discrimination Act of 1975—Obligations of States Members of the United Nations with respect to racial discrimination

The plaintiff, an Aboriginal, alleged that the Government of the State of Queensland was in breach of sections 9 and 12 of the Racial Discrimination Act of 1975 in refusing to consent to the transfer of a lease of land to the Aboriginal Land Fund Commission. The Racial Discrimination Act had been passed by the Australian Parliament to give effect to the Convention on the Elimination of All Forms of Racial Discrimination.

Queensland filed a defence and demurrer and commenced an action against the Commonwealth of Australia challenging the validity of the Racial Discrimination Act. The High Court (in a majority decision) upheld the validity of the Act. The following comments on the obligations of Members of the United Nations with respect to racial discrimination were made during the course of the judgements:

GIBBS, C. J.

> The Charter of the United Nations reveals the importance which the Members of that body attach to respect for and observance of human rights and fundamental freedoms, without distinction as to race, language or religion. The Members of the United Nations pledge themselves to take joint and separate action to achieve that purpose amongst others: see especially Articles 1 (3), 13, 55 (c), 56 and 62 of the Charter . . . The preponderance of opinion appears to favour the view that the obligation upon Members of the United Nations to protect human rights and fundamental freedoms is of a legal character, although the machinery for enforcement is imperfect and the rights and freedoms protected are not clearly defined.
>
> ". . . Professor Brownlie, in *Principles of Public International Law* (3rd ed., 1979), at pages 596 and 597, stated the position as follows: 'There is indeed a considerable support for the view that there is in international law today a legal principle of nondiscrimination which at the least applies in matters of race. This principle is based, in part, upon the United Nations Charter, especially Articles 55 and 56, the practice of organs of the United Nations, in particular resolutions of the General Assembly condemning *apartheid*, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the European Convention on Human Rights. An alternative view is that there is no legal principle of racial non-discrimination as such but the international practice supports instead such a standard or criterion as an aid to interpretation of treaties including the Mandate agreement in issue in the *South West Africa* cases.'
>
> "The acceptance of the view first mentioned by Professor Brownlie does not mean that at international law a Member of the United Nations is under a legal duty to prevent any act of racial discrimination, however trivial it may be, and whether or not it was done mistakenly or even with good intentions (as, for example, in the case of what is called reverse discrimination). It can readily be understood that international law should treat a violation of human rights as not merely a matter of domestic jurisdiction but as a breach of international obligation, if the violation 'threatens the international peace and security' . . . or if there are 'gross violations or consistent patterns of violations' . . . Genocide, torture, imprisonment without trial and wholesale deprivations of the right to vote, to work or to be educated provide examples of violations of that kind. The act of discrimination alleged in the present case—the exercise, in a discriminatory way, of a discretionary power to refuse consent to the transfer of a Crown lease—stands on an entirely different

plane. It could not, in my opinion, be said that the refusal of the Minister to grant his consent was a gross violation of a human right or fundamental freedom."

STEPHEN, J.

"This growth reflects the new global concern for human rights and the international acknowledgement of the need for universally recognized norms of conduct, particularly in relation to the suppression of racial discrimination.

"The post-war history of this new concern is illuminating. The present international régime for the protection of human rights finds its origin in the Charter of the United Nations. Prominent in the opening recitals of the Charter is a reaffirmation of 'faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women'. One of the purposes of the United Nations expressed in its Charter is the achieving of international co-operation in promoting and encouraging 'respect for human rights and for fundamental freedoms for all without distinction as to race . . .' (Chapter I, Article 1 (3); see also Chapter IX, Article 55 (*c*)). By Chapter IX, Article 56, all Member nations pledge themselves to take action with the Organization to achieve its purposes. The emphasis which the Charter thus places upon international recognition of human rights and fundamental freedoms is in striking contrast to the terms of the Covenant of the League of Nations, which was silent on these subjects.

"The effect of these provisions has in international law been seen as restricting the right of Member States of the United Nations to treat due observance of human rights as an exclusively domestic matter. Instead the human rights obligations of Member States have become a 'legitimate subject of international concern' . . .

"These matters having, by virtue of the Charter of the United Nations, become in international law a proper subject for international action, there followed, in 1958, the Universal Declaration of Human Rights and thereafter many General Assembly resolutions on human rights and racial discrimination. A full catalogue of the various international instruments in this area can be found in the United Nations publication *Human Rights: A Compilation of International Instruments (1978).*"[3]

2. Italy

(*a*) The Supreme Court of Cassation

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS *v.* ISTITUTO NAZIONALE DI PREVIDENZE PER I DIRIGENTI DI AZIENDE INDUSTRIALI (INPDAI): JUDGEMENT NO. 5399 OF 18 OCTOBER 1982

Legal actions brought against FAO by the landlords of certain premises that the organization had rented—FAO pleaded its immunity from legal process—Decision of the Tribunale Civile di Roma holding that FAO did not enjoy immunity from the jurisdiction of the Italian courts in that particular case—FAO's application to the Supreme Court of Cassation for a determination on the issue of its immunity

By contract dated 14 February 1969, FAO, which has its headquarters seat in Rome, at Via delle Terme di Caracalla, leased premises situated in Rome at Via Cristoforo Colombo No. 402, for use as offices for itself and other organizations associated with it and for related services.

In addition to the usual clauses, it was stipulated that nothing in the contract or relating thereto could be construed as constituting a waiver of any privilege or immunity enjoyed by FAO or as conferring any privilege or immunity on the lessor. Provision was further made for the settlement of any dispute by arbitration in accordance with the rules of the International Chamber of Commerce.

On 18 July 1978, the lessor (INPDAI) brought an action against FAO before the Pretore di Roma claiming entitlement to certain rent increases on the basis of a clause in the contract which provided for amendments in the rent as a result of changes in increases in the cost of living as shown by the official Italian Government consumer index.

Having put in an appearance, FAO entered an objection to the effect that on the basis of the Treaty of Washington of 31 October 1950, ratified by Law No. 11 of 9 January 1951, the Italian courts lacked jurisdiction. FAO therefore moved that the question of jurisdiction be decided.

In its action for a determination on the question of jurisdiction, FAO asserted that, pursuant to article XV (now XVI) of the Quebec Convention, ratified by Italy by Law No. 546 of 16 May 1947 (containing the instrument establishing FAO and the latter's Constitution), the organization had the legal capacity to perform any act appropriate to its purpose which was not beyond the powers granted to it by its Constitution; and that each member nation undertook to accord to the organization all the immunities and facilities which it accorded to diplomatic missions, including inviolability of premises and archives, immunity from suit and exemptions from taxation. FAO further contended that, pursuant to article VIII of the Washington Agreement of 31 October 1950, ratified by Italy by Law No. 11 of 9 January 1951, the organization and its property, wherever located and by whomsoever held, should enjoy immunity from every form of legal process except in so far as in any particular case FAO should have expressly waived its immunity, no such waiver of immunity extending to any measure of execution. The organization also pointed out that, in accordance with the Convention on the Privileges and Immunities of the Specialized Agencies, to which Italy had subscribed, the lease provided for arbitration, which condition was accepted by both parties.

Summary of reasons for the decisions as set out by the Court

The Court held that FAO's case was not well founded and observed that:

(*a*) Article XV of the Quebec Convention, which contains the FAO Constitution, defines the legal status of the organization as that of a legal person with the capacity to perform any act appropriate to its purpose which is not beyond the powers granted to it by the Constitution and, in respect of such legal status, requires that each member nation undertake, in so far as it may be possible under its own constitutional procedure, to accord to the organization the immunities which it accords to diplomatic missions, including inviolability of premises and archives, immunity from suit and exemptions from taxation. In the case of the Italian State, its Constitution is in line with generally accepted provisions of international law (Constitution, article 10, first paragraph), but requires that such immunity from jurisdiction as may be granted to States or international organizations should take into account the principle laid down in article 24 of the Constitution that the legitimate interests of citizens should be afforded judicial protection;

(*b*) FAO could not derive a general immunity from legal process from article VIII of the Agreement concluded between the Government of the Italian Republic and FAO, done at Washington on 31 October 1950 and ratified by Law No. 11 of 9 January 1951, since the subject-matter of the said Agreement was the seat of FAO with respect to which the scope of its immunity from the jurisdiction of the Italian courts cannot be extended beyond the limits of the usual diplomatic immunity which, precisely, applies to the seat and to the persons who perform diplomatic and consular functions therein. This is confirmed by article VII, section 14, of the same Agreement in which the Italian Government recognizes the legal personality of FAO and, in particular, its capacity (i) to contract, (ii) to acquire and dispose of movable and immovable property and (iii) to institute legal proceedings ("di stare in giudizio"); the last-mentioned provision *ex hypothesi* affirming the possibility of FAO being subject to the jurisdiction of the Italian courts and negating any general and unlimited immunity;

(*c*) FAO cannot maintain that the possibility of being subject to jurisdiction is precluded by the Convention on the Privileges and Immunities of the Specialized Agencies which, according to the text, would require the latter to provide for modes of settling disputes of a private law nature, since, as we have seen, FAO made sure that its capacity to institute legal proceedings was recognized by the Italian State.

With respect to the problem of the extent of the immunity from legal process enjoyed by FAO, the Court recalled that in a considerable number of decisions it had held that, irrespective of their public or private character, whenever they acted in the private law domain, they placed themselves on the same footing as private persons with whom they had entered into contracts, and thus forewent the right to act as sovereign bodies that were not subject to the sovereignty of others. It recalled that on other occasions it had upheld the immunity of foreign States (and their public agencies) in connection with activities designed to achieve their public aims, while such immunity had been denied with respect to activities of a merely private law nature. Rather than underlining the nature (public or private) of the activity itself, the Court had placed emphasis on the nature of the aims that such activities were destined to achieve, and whether or not they were directly related to the institutional aims pursued by the foreign entity.

The Court in its deliberations posed the question of jurisdiction in the traditional terms of the dichotomy of sovereign acts and private law transactions and, considering the private nature of the contract, concluded that there could be no doubt as to the jurisdiction of the Italian courts. In this respect, it rejected FAO's argument which it considers was based on the existence in every instance of a nexus between any of its activities and the aims of the organization. This could lead one to accept an unrestricted concept of immunity. It concluded, however, that that concept would be inconsistent with the clauses of the International Conventions which provide for FAO's immunity.

(*b*) Pretore di Roma, Sezione Controversie di Lavoro

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS *v.* ENTE NAZIONALE DI PREVIDENZA E DI ASSISTENZA PER I LAVORATORI DELLO SPETTACOLO (ENPALS): JUDGEMENT OF 20 OCTOBER 1982

ENPALS claimed that social security contributions were due to it by FAO on behalf of a person who had provided services to FAO as a film editor—Services of the person in question were carried out under a series of contracts which established a relationship of employment, thus obliging FAO to provide for social security insurance—Question of receivability of the complaint under the Headquarters Agreement

Having been advised on 12 June 1979 by one of its subscribers to the effect that he worked for FAO as a film editor receiving a specific compensation for carrying out various detailed duties, ENPALS, by a complaint of 30 March 1981, summoned FAO to appear before the Pretore di Roma with respect to ENPALS' right to obtain contributions for a total amount of 2,416,140 Italian lire together with interest for disability and old-age benefits on the basis of earnings received by the person in question during the period from 17 May 1971 to 31 December 1974. FAO did not appear and the sentence was issued in default.

The court ruled that the complaint was receivable in that article III, section 6, subparagraph (*b*), of the agreement between the Government of Italy and FAO provides that in the absence of any provision to the contrary the laws of the Republic of Italy are in force within the FAO headquarters. The court further noted that none of the recognized privileges and exemptions provide for the exclusion of employees from social security coverage for disability and old age and the payment of the contributions for the same. The court noted that from the documentation presented it was clear from the various fixed-term contracts, including the terms and conditions of the contract including work-hours, the amount of compensation and other modalities which would establish a relationship of employment and oblige FAO to provide for social security insurance for the person in question which on the basis of the category of the

work carried out by him and the applicable laws requires the employer to make payment of contribution for such social security. The court concluded that an amount of Lit 2,416,140, together with legal interest, was due to ENPALS by FAO.

3. United States of America

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

DECISION IN THE MATTER OF THE ARBITRATION BETWEEN MARITIME INTERNATIONAL NOMINEES ESTABLISHMENT *v.* THE REPUBLIC OF GUINEA AND THE UNITED STATES OF AMERICA OF 12 NOVEMBER 1982[4]

Appellant's immunity under the Foreign Sovereign Immunities Act—Arbitration of the International Centre for Settlement of Investment Disputes—Appellant claimed that the District Court lacked subject-matter jurisdiction to confirm the arbitration award

Maritime International Nominees Establishment (MINE) v. *Republic of Guinea*[5] involved an action brought in the United States courts by MINE (a Liechtenstein company considered by the parties for the purpose of the ICSID clause as being a Swiss company) against Guinea. MINE and Guinea had agreed to submit investment disputes to ICSID arbitration. Notwithstanding their submission to ICSID, the District Court for the District of Columbia (Washington, D.C.) had held that consent to ICSID arbitration constituted a waiver of immunity for the purposes of the United States Foreign Sovereign Immunities Act (FSIA)[6] on the basis of which jurisdiction could be retained. This decision was reversed on appeal on 12 November 1982. However, the decision of the Court of Appeals simply holds that consent to ICSID does not constitute a waiver of immunity within the meaning of the Foreign Sovereign Immunities Act. Because of this, the Court did not consider it necessary (as it was urged by the United States Government in an *amicus curiae* brief) to rule on the question whether a court should, when an alleged ICSID clause is brought to the attention of the court, stay the proceedings and refer the parties to ICSID so that the Secretary-General or an ICSID arbitral tribunal can determine whether the clause satisfies the requirements of the Convention on the Settlement of Investment Disputes between States and Nationals of other States of 18 March 1965.[7] Clearly, the answer to this question must be in the affirmative. Since ICSID arbitration is exclusive of any other remedy (article 26 of the Convention), the courts in Contracting Staes must refrain from taking any action which might interfere with ICSID arbitration. If a court becomes aware of the fact that a claim before it might call for adjudication under ICSID, the court ought to stay the proceedings pending proper determination of the issue by ICSID.

NOTES

[1] Reprinted in *Australian Law Report*, vol. 40, p. 61.

[2] Reprinted in *Australian Law Report*, vol. 33, p. 417.

[3] First rev. ed. (United Nations publication, Sales No. 78.XIV.2); the third rev. ed. was published in 1988 (Sales No. 88.XIV.2).

[4] *International Legal Materials*, vol. 21, p. 1355 (1982).

[5] *Ibid.*, vol. 20, p. 666 (1981).

[6] Public Law No. 94-583, 90 Stat. 2891.

[7] United Nations, *Treaty Series*, vol. 575, p. 159.

Part Four
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MAIN HEADINGS

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A. INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW IN GENERAL
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МЕЖДУНАРОДНЫЕ ОРГАНИЗАЦИИ И МЕЖДУНАРОДНОЕ ПРАВО В ЦЕЛОМ
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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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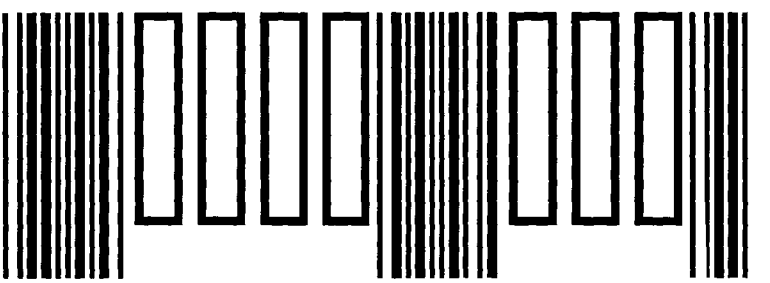

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