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UNITED NATIONS JURIDICAL YEARBOOK 1983

UNITED NATIONS

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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 twenty-first 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 1983. Decisions given in 1983 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 1983.

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

ABBREVIATIONS

ACABQ	Advisory Committee on Administrative and Budgetary Questions
CDCC	Caribbean Development and Co-operation Committee
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
ECA	Economic Commission for Africa
ECE	Economic Commission for Europe
ECLA	Economic Commission for Latin America
ECWA	Economic Commission for Western Asia
ESCAP	Economic and Social Commission for Asia and the Pacific
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
ICJ	International Court of Justice
ICSC	International Civil Service Commission
ICSID	International Centre for the Settlement of Investment Disputes
IFAD	International Fund for Agricultural Development
IMF	International Monetary Fund
IMO	International Maritime Organization
INSTRAW	International Research and Training Institute for the Advancement of Women
ITU	International Telecommunication Union
JAC	Joint Advisory Committee
JIU	Joint Inspection Unit
OAU	Organization of African Unity
PAHO	Pan-American 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
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner 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
UNJSPF	United Nations Joint Staff Pension Fund
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNTSO	United Nations Troop Supervision Organization in Palestine
UPU	Universal Postal Union
WHO	World Health Organization
WMO	World Meteorological Organization

Part One

LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter I

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

1. Botswana

DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT

(CAP. 39:01)

(*a*) DIPLOMATIC IMMUNITIES AND PRIVILEGES (CONFERMENT OF PERSONAL IMMUNITIES AND PRIVILEGES) ORDER, 1983[1]*

(Published on 15th July, 1983)

ARRANGEMENT OF PARAGRAPHS

Paragraph

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

1. This Order may be cited as the Diplomatic Immunities and Privileges (Conferment of Personal Immunities and Privileges) Order, 1983, and shall be deemed to have come into operation on 1st July, 1973.

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

(2) Each officer belonging to a class of officers designated in Part II of the Schedule shall have all the immunities and privileges set out in Part III of the Second Schedule to the Act.[3]

(3) Each officer belonging to a class of officers designated in Part III of the Schedule shall have the privilege set out in paragraph 11 of Part III of the Second Schedule to the Act alone, namely, exemption from income tax in respect of emoluments received as an officer of the organization in question.

3. The Diplomatic Immunities and Privileges (Conferment of Personal Immunities and Privileges) Order is hereby revoked.

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

SCHEDULE

PART I

European Economic Community

Resident Representative

Deputy Resident Representative

International Red Locust Control Organisation for Central and Southern Africa

Director

United Nations specialized agency or other organ

Resident Representative

Deputy Resident Representative

PART II

International Red Locust Control Organisation for Central and Southern Africa

Chief Administrative Officers

Chief Pilots

Senior Staff Pilots

Chief Aircraft Engineers

Aircraft Engineers

Chief Scientific Officers

Senior Scientific Officers

PART III

United Nations specialized agency or other organ

Officers subordinate to the Deputy Resident Representative

MADE this 7th day of July, 1983.

Q. K. J. MASIRE,
President

(*b*) DIPLOMATIC IMMUNITIES AND PRIVILEGES (CONFERMENT OF IMMUNITIES AND PRIVILEGES ON CERTAIN ORGANIZATIONS) ORDER, 1983[4]

(Published on 15th July, 1983)

ARRANGEMENT OF PARAGRAPHS

Paragraph

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

1. This Order may be cited as the Diplomatic Immunities and Privileges (Conferment of Immunities and Privileges on Certain Organizations) Order, 1983, and shall be deemed to have come into operation on 1st July, 1973.

2. The organizations specified in the Schedule (hereinafter referred to as "the scheduled organizations") are hereby designated for the purposes of section 4 of the Act or that section is otherwise hereby applied thereto.

3. Each of the scheduled organizations shall have all the immunties and privileges set out in Part I of the Second Schedule to the Act[5] and shall also have the legal capacities of a body corporate.

4. The Diplomatic Immunities and Privileges (Designation of Organizations and Conferment of Immunities and Privileges) Order is hereby revoked.

SCHEDULE

European Economic Community
International Committee of the Red Cross
International Red Locust Control Organisation for Central and Southern Africa
Organization of African Unity
United Nations and every specialized agency or other organ thereof

MADE this 7th day of July, 1983.

Q. K. J. MASIRE,
President

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2. Cameroon

NOTE DATED 15 JUNE 1984 FROM THE PERMANENT MISSION OF CAMEROON TO THE UNITED NATIONS[6]

The Permanent Mission of the Republic of Cameroon . . . has the honour to communicate the following information:

(1) As regards the legal status of the privileges and immunities accorded to the United Nations and its specialized agencies, the Republic of Cameroon applies the Convention on the Privileges and Immunities of the United Nations[7] in conformity with the headquarters agreements signed with certain specialized agencies, such as the United Nations Development Programme (UNDP).

Thus, United Nations officials in Cameroon acting in their official capacity enjoy the privileges and immunities provided for in articles V and VII of the aforesaid Convention. Experts on mission for the United Nations and members of the Governing Council and the Advisory Committee appointed by the Organization who are not staff members enjoy the privileges and immunities provided for in article VI of the same Convention.

. . .

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3. Ireland

INTERNATIONAL JUTE ORGANISATION (DESIGNATION) ORDER, 1983[8]

WHEREAS it is enacted by section 40 (1) of the Diplomatic Relations and Immunities Act, 1967 (No. 8 of 1967),[9] that the Government may by order designate an international organisation of which the State or Government is or intends to become a member to be an organisation to which Part VIII of that Act applies:

AND WHEREAS the International Jute Organisation 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 International Organisation (Designation) Order, 1983.

2. The International Jute Organisation is hereby designated as an Organisation to which Part VIII of the Diplomatic Relations and Immunities Act, 1967 (No. 8 of 1967), applies.

GIVEN under the Official Seal of the Government, this 28th day of June, 1983.

GARRET FITZGERALD,
Taoiseach

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4. New Zealand

THE DIPLOMATIC PRIVILEGES (COMMON FUND FOR COMMODITIES) ORDER 1983

David Beattie, Governor-General

Order in Council

At the Government House at Wellington this 26th day of September 1983

Present:

His Excellency the Governor-General in Council

Pursuant to section 9 of the Diplomatic Privileges and Immunities Act 1968, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and, in respect of clause 11 of this order, at the request and with the consent of the Cabinet of Ministers of Niue, hereby makes the following order.

ORDER

1. *Title and commencement*—(1) This order may be cited as the Diplomatic Privileges (Common Fund for Commodities) Order 1983.

(2) This order shall come into force on the 14th day after the date of its notification in the *Gazette*.[10]

2. *Declaration as to organisation*—The Common Fund for Commodities (in this order called the Common Fund), established by the Agreement Establishing the Common Fund for Commodities done at Geneva on the 27th day of June 1980, is hereby declared to be an organisation of which the Governments of two or more States are members.

Privileges and Immunities of the Common Fund

3. *Body corporate*—The Common Fund shall have the legal capacities of a body corporate.

4. *Immunity from suit*—Except in so far as in any particular case it has expressly waived its immunity, the Common Fund shall have immunity from suit and legal process.

5. *Inviolability of premises and archives*—The Common Fund shall have the like inviolability of official premises and official archives as is accorded in respect of official premises and official archives of a diplomatic mission.

6. *Immunity of property*—The Common Fund shall have immunity in relation to its property and assets from search, requisition, confiscation, expropriation, or any other form of interference.

7. *Exemption from taxes and rates*—The Common Fund shall have 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.

8. *Exemption from taxes on importation of goods*—The Common Fund shall have exemption from taxes on the importation of goods directly imported by the Common Fund for its official use in New Zealand or for exportation, or on the importation of any publications of the Common Fund directly imported by it, subject to compliance with such conditions as the Minister of Customs may determine for the protection of the revenue.

9. *Exemption from restrictions on importation or exportation of goods for official use*—The Common Fund shall have exemption from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the Common Fund for its official use and in the case of any publications of the Common Fund directly imported or exported by it, subject to compliance with such conditions as the Minister of Customs may determine for the protection of the public health, the prevention of diseases in plants and animals, and otherwise in the public interest.

Privileges and Immunities of Staff

10. *Privileges and immunities of certain office holders and staff*—Except in so far as in any particular case any immunity or privilege is waived by the Common Fund, all Governors, Executive Directors, and their alternates, the Managing Director, all members of the Consultative Committee, all members of the staff of the Common Fund other than persons in the domestic service of the Common Fund, and all experts employed on missions on behalf of the Common Fund shall be accorded—

(*a*) Immunity from suit and legal process in respect of things done or omitted to be done by them in the course of the performance of their official duties;

(*b*) Exemption from income tax in respect of endowments, stipends, or allowances received for services in respect of their duties.

11. *Application to Niue*—This order shall be in force in Niue.

P. G. MILLEN,
Clerk of the Executive Council

NOTES

[1] Statutory Instrument No. 76 of 1983.
[2] Text reproduced in *Juridical Yearbook, 1978*, p. 4, footnote 4.
[3] *Ibid.*, footnote 5.
[4] Statutory Instrument No. 77 of 1983.
[5] Text reproduced in *Juridical Yearbook, 1978*, p. 3, footnote 2.
[6] Translation prepared by the Secretariat of the United Nations on the basis of a French version provided by the Permanent Mission.
[7] United Nations, *Treaty Series*, vol. 1, p. 15.
[8] Statutory Instrument No. 184 of 1983.
[9] Text reproduced in the *Juridical Yearbook, 1967*, p. 37.
[10] Date of notification in the *Gazette*: 29 September 1983.

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 1983.[2] As of 31 December 1983, 119 States were party to the Convention.[3]

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2. AGREEMENTS RELATING TO INSTALLATIONS AND MEETINGS

(*a*) Agreement between the United Nations and Austria regarding the arrangements for the 1983 United Nations Conference on Succession of States in respect of State Property, Archives and Debts, to be held at Vienna from 1 March to 8 April 1983.[4] Signed at Vienna on 3 February 1983

Article XIII

PRIVILEGES AND IMMUNITIES

1. The provisions relating to privileges and immunities in the Agreement between the United Nations and the Republic of Austria regarding the Headquarters of UNIDO[5] shall be applicable with regard to the Conference. The Convention on the Privileges and Immunities of the United Nations is hereby not affected.

2. All representatives of States and of the United Nations Council for Namibia participating in the Conference in accordance with article II, 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.

3. Observers referred to in article II, 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.

4. Personnel provided by the Government under article XI 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.

Article XIV

LIABILITY

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

(*a*) Injury or damage to person or property in the premises referred to in articles III, IV and V above;

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

(*c*) The employment for the Conference of the personnel referred to in article XI above.

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

(*b*) Exchange of letters constituting an agreement between the United Nations and Indonesia concerning the arrangement for the United Nations Seminar on the Question of Palestine, to be held at Jakarta from 9 to 13 May 1983.[6] New York, 9 and 22 February 1983

I

LETTER FROM THE UNITED NATIONS

9 February 1983

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 Convention. 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;[7]

(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 Indonesia. Visas and entry permits, where required, shall be granted promptly upon application and free of charge;

(v) 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 Indonesia and the United Nations concerning the arrangements for the Seminar.

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

II

LETTER FROM THE PERMANENT MISSION OF INDONESIA TO THE UNITED NATIONS

22 February 1983

I have the honour to refer to your letter of 9 February 1983 regarding the United Nations Seminar on the "Question of Palestine" to be convened in Jakarta, Indonesia, from 9 May to 13 May 1983.

I have been instructed by my Government to inform you that my Government accepts the proposal contained in your letter concerning the arrangements and terms for the Seminar.

(*Signed*) Ali ALATAS
Ambassador
Permanent Representative

(*c*) Agreement between the United Nations and Jamaica relating to the establishment in Jamaica of a United Nations Office of the Special Representative of the Secretary-General for the Law of the Sea for the servicing of the Preparatory Commission of the International Sea-Bed Authority and the International Tribunal for the Law of the Sea.[8] Signed at New York on 7 March 1983

The United Nations and the Government of Jamaica,

Desiring to conclude an agreement for the purpose of regulating questions arising as a result of General Assembly resolution 37/66 of 3 December 1982 *inter alia* authorizing the Secretary-General to station 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,

Whereas the Government of Jamaica agrees to ensure the availability of all the necessary facilities to enable the Kingston Office to perform its functions, including its scheduled programmes of work and any related activities,

Considering that the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which Jamaica is a party, applies by definition to the United Nations Office of the Special Representative of the Secretary-General for the Law of the Sea in Kingston,

Desiring to conclude an agreement supplementing the Convention on the Privileges and Immunities of the United Nations in order to regulate matters not covered therein resulting from the establishment in Kingston of a United Nations Office of the Special Representative of the Secretary-General for the Law of the Sea,

Have agreed as follows:

Article 1

DEFINITIONS

In this Agreement,

(*a*) The expression "Office" means the Kingston Office of the Special Representative of the Secretary-General for the Law of the Sea;

(*b*) The expression "Preparatory Commission" means the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea referred to in resolution I of annex I of the Final Act of the Third United Nations Conference on the Law of the Sea;

(*c*) The expression "Government" means the Government of Jamaica;

(*d*) The expression "Special Representative" means the Special Representative of the Secretary-General for the Law of the Sea or his authorized representative;

(*e*) The expression "headquarters" means the office or the premises occupied by the Office as well as any other offices or premises occupied by the Office in accordance with the provisions set forth from time to time in the supplementary agreements;

(*f*) The expression "officials of the Office" means the Special Representative and all members of his staff whether stationed in Jamaica or elsewhere and who are assigned to Jamaica for any period of time for the purposes of the Office, irrespective of nationality, with the exception of officials or employees who are locally recruited and assigned to hourly rates;

(*g*) The expression "Convention" means the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946.

Article 2

JURIDICAL PERSONALITY AND CAPACITY

The United Nations acting through the Office shall have the capacity:

(*a*) To contract;

(*b*) To acquire and dispose of immovable and movable property;

(*c*) To institute legal proceedings.

Article 3

HEADQUARTERS

1. The headquarters shall be under the authority and control of the Office as provided in this agreement.

2. Except as otherwise provided in this Agreement or in the Convention, and subject to any regulations enacted under paragraph 4 hereof, the laws of Jamaica shall apply in the headquarters.

3. Except as otherwise provided in this Agreement or in the Convention, the courts or other appropriate organs of Jamaica shall have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the headquarters.

4. The Office shall have the power to make regulations operative throughout the headquarters for the purpose of establishing therein the conditions in all respects necessary for the full execution of its functions. No law of Jamaica which is inconsistent with a regulation of the Office authorized by this paragraph shall, to the extent of such inconsistency, be applicable within the headquarters. Any dispute between the Office and Jamaica as to whether a regulation of the Office is authorized by this paragraph, or as to whether a law of Jamaica is inconsistent with any regulation of the Office

authorized by this paragraph, shall be promptly settled by the procedure set out in article 11. Pending such settlement, the regulation of the Office shall apply and the law of Jamaica shall be inapplicable in the headquarters to the extent that the Office claims it to be inconsistent with the regulation of the Office.

5. The headquarters shall be inviolable. Government officers and officials shall not enter the headquarters to perform their official duties except upon the agreement of or at the request of the Special Representative and under conditions agreed to by him.

6. Judicial actions, including the impounding of private property, cannot be enforced in the headquarters except with the consent and under the conditions approved by the Special Representative.

7. Without prejudice to the provisions of the Convention or of this Agreement, the Office shall prevent the headquarters from being used as a refuge by persons who are avoiding arrest under any law of Jamaica or who are required by the Government for extradition to another country, or who are endeavouring to avoid service of legal process.

8. (*a*) The appropriate Jamaican authorities shall exercise due diligence to ensure that the tranquillity of the headquarters is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity;

(*b*) If so requested by the Special Representative, the appropriate Jamaican authorities shall provide a sufficient number of police for the preservation of law and order in the headquarters and for the removal therefrom of persons as requested under the authority of the Office.

9. The competent Jamaican governmental authorities shall secure, on fair conditions and upon the request of the Special Representative, the public services needed by the Office such as postal, telephone and telegraph services, power, water and fire protection services.

10. With due regard to article 5, paragraph 1, the Office shall avail itself, in respect of the services maintained by the Government or by the agencies subject to governmental supervision, of the reduced tariffs, if any, granted to other Governments including their diplomatic missions and to the Government offices.

11. In case of *force majeure*, resulting in a complete or partial interrruption of the aforesaid services, the Office shall for the performance of its functions be accorded the priority, if any, given to national public departments.

Article 4

FREEDOM OF ACCESS TO THE HEADQUARTERS

1. The competent Jamaican authorities shall not impede the transit to or from the headquarters of persons holding official posts therein or of persons invited thereto in connection with the official work and activities of the Office upon their arrival in or departure from Jamaica.

2. The Government undertakes, for this purpose, to allow the entry into and residence in Jamaica of the persons listed hereunder during their assignment or during the performance of their duties for the Office without charging visa fees and without delay, as well as exemption from any requirement of exit visa formalities upon departure from Jamaica of:

(*a*) Representatives of the members of the Preparatory Commission and of observers, as provided for in operative paragraph 2 of resolution I of annex I of the Final Act of the Third United Nations Conference on the Law of the Sea, including alternate representatives, advisers, experts and staff, as well as their spouses and dependent members of their families;

(*b*) Officials of the Office and experts, as well as their spouses and dependent members of their families;

(*c*) Officials of the United Nations or any of its specialized agencies or the International Atomic Energy Agency who are assigned to work for the Office, as well as their spouses and dependent members of their families;

(*d*) Persons on mission for the Office but who are not officials of the Office, as well as their spouses and dependent members of their families;

(*e*) All persons invited to the headquarters on official business.

3. Without prejudice to the special immunities which they may enjoy, persons referred to in paragraph 2 above may not be forced by the Jamaican authorities to leave Jamaican territory unless they abuse their recognized residence privileges by exercising an activity outside their official capacity with the Office, and subject to the provisions mentioned hereunder:

(*a*) No action to force the persons referred to in paragraph 2 above to leave Jamaican territory may be taken without the consent of the Minister for Foreign Affairs who shall consult with the appropriate member or observer State in the case of a representative of a member or an observer (or a member of his family) or with the Special Representative in the case of any other person referred to in paragraph 2 of this article, prior to giving such consent;

(*b*) Persons enjoying diplomatic privileges and immunities under this Agreement may not be requested to leave Jamaican territory except in accordance with the practices and procedures applicable to diplomats accredited to the Government;

(*c*) It is understood that persons referred to in paragraph 2 above shall not be exempt from the reasonable application of quarantine or other health regulations.

Article 5

COMMUNICATION FACILITIES

1. For postal, telephone, telegraph, radio, television and telephoto communications the Government shall accord to the Office a treatment equivalent to that accorded to all other Governments including their diplomatic missions, or to other intergovernmental organizations in regard to any priorities, tariffs and charges on mail, cablegram, telephotos, telephone calls and other communications, as well as rates for news reported to the press and radio as may be accorded.

2. The Government shall secure the inviolability of the official communications and correspondence of the Office and shall not apply any censorship to such communications and correspondence. Such inviolability shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound or videotape recordings dispatched to or by the Office.

3. The Office shall have the right to use codes and to dispatch and receive its correspondence and other materials by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

4. (*a*) The United Nations is authorized to operate at the headquarters of the Office one point-to-point telecommunications circuit in a generally easterly direction and one point-to-point circuit in a generally western direction between the headquarters and other United Nations radio stations;

(*b*) Subject to the necessary authorization from the General Assembly and with the agreement of the Government as may be included in a supplementary agreement, the United Nations may also establish and operate at the headquarters of the Office:

(i) Its own short-wave sending and receiving radio broadcasting facilities (including emergency link equipment) which may be used on the same frequencies (within the tolerance prescribed for the broadcasting service by applicable Jamaican regulations) for radiograph, radiotelephone and similar services;

(ii) Such other radio facilities as may be specified by supplementary agreement between the United Nations and the appropriate Jamaican authorities;

(*c*) The United Nations shall make arrangements for the operation of the services referred to in this article with the International Telecommunication Union, the appropriate agencies of the Government and the appropriate agencies of other affected Governments with regard to all frequencies and similar matters;

(*d*) The facilities provided for in this article may, to the extent necessary for efficient operation, be established and operated outside the headquarters of the Office with the consent of the Government.

Article 6

PROPERTY, FUNDS AND ASSETS

The Government shall apply, *mutatis mutandis*, to the property, funds and assets of the Office wherever they are and by whomsoever held the provisions of the Convention especially with regard to the following:

(*a*) Immunity from legal process except where the Office may have expressly waived immunity in a certain case, it being understood that this waiver shall not extend to any measure of execution of legal actions;

(*b*) Immunity from search, confiscation, seizure or expropriation in any form of executive, administrative or legislative enforcement action;

(*c*) Holding of funds and currencies of any kind and opening of accounts in any currency it desires;

(*d*) Transfer of its funds and currencies with complete freedom inside Jamaica and from Jamaica to any other country and vice versa;

(*e*) Exemption from all taxes and levies; it being understood, however, that the Office shall not request exemption from taxes, which are, in fact, no more than charges for public utility services;

(*f*) Exemption from customs charges as well as limitations and restrictions on the import or export of materials imported or exported by the Office for its official business, subject to the Jamaican laws and regulations relating to security and public health, it being understood that tax-free imports cannot be sold in Jamaican territory except under conditions agreed to by the Government;

(*g*) Exemption from all limitations and restrictions on the import or export of publications, still and moving pictures, films, sound and television recordings imported, exported or published by the Office within the framework of its official activities.

Article 7

DIPLOMATIC FACILITIES, PRIVILEGES AND IMMUNITIES

1. Representatives of the members and observers of the Preparatory Commission referred to in article 4, 2 (*a*), above, participating in the conferences and meetings convened by it, shall enjoy during their residence in Jamaica for the purpose of exercising their functions the diplomatic facilities, privileges and immunities granted to diplomats of comparable rank of foreign diplomatic missions accredited to the Government.

2. Without prejudice to the provisions of article 8, paragraphs 1 and 3, the Special Representative or his authorized representative shall enjoy during their residence in Jamaica the facilities, privileges and immunities granted to heads of diplomatic missions accredited to the Government.

3. Without prejudice to the provisions of article 8, paragraphs 1 and 3, officials of the Office at the P-4 level and above, regardless of their nationality, shall enjoy during their residence in Jamaica and their service with the Office the facilities, privileges and immunities granted by the Government to diplomats of comparable rank of the diplomatic missions accredited to the Government. Such facilities, privileges and immunities shall also be enjoyed by other categories of officials of the Office as determined by the Special Representative in consultation with the Secretary-General of the United Nations and in agreement with the Government.

4. The facilities, privileges and immunities granted to the representatives of the members of the Preparatory Commission and to the officials mentioned in paragraphs 2 and 3 above shall extend to their spouses and dependent members of their families.

5. The immunities accorded by paragraphs 1, 2 and 3 of this article are granted in the interests of the Office and not for the personal benefit of the individuals themselves. The immunities may be waived by the member concerned in respect of its representatives and their families, by the Secretary-General of the United Nations in respect of the Special Representative and his deputy and members of their families and by the Special Representative in respect of all other officials of the Office and their families.

6. The Office shall communicate to the Government in due time the names of persons referred to in this article.

Article 8

OFFICIALS AND EXPERTS OF THE OFFICE

1. The officials of the Office regardless of their nationality shall enjoy in Jamaican territory the following privileges and immunities:

(*a*) Immunity from legal process in respect of words spoken and written and all acts performed by them in their official capacity;

(*b*) Immunity from personal detention and from seizure of their personal and official effects and baggage except in cases of *flagrante delicto* and, in such cases, the competent Jamaican authorities shall immediately inform the Special Representative of the detention or the seizure;

(*c*) Exemption from any direct tax on the salaries and all other remuneration paid to them by the United Nations;

(*d*) With due regard to the provisions of paragraph 2 of this article, exemption from any military service obligations or any other obligatory service in Jamaica;

(*e*) Exemption, for themselves and for their spouses and dependent members of their families, from immigration restrictions or alien registration procedures;

(*f*) Exemption for themselves for the purpose of official business from any restrictions on movements and travel inside Jamaica and a similar exemption for themselves and for their spouses and dependent members of their families for recreation in accordance with arrangements agreed upon between the Special Representative and the Government;

(*g*) In regard to foreign exchange, including holding accounts in foreign currencies, enjoyment of the same facilities as are accorded to members of diplomatic missions accredited to the Government;

(*h*) Enjoyment, for themselves and for their spouses and dependent members of their families, of the same repatriation facilities as are accorded to members of diplomatic missions accredited to the Government in time of international crisis;

(*i*) If they have been previously residing abroad, the right to import their furniture, personal effects and all household appliances intended for personal use free of duty when they come to reside in Jamaica, which privilege shall be valid for a period of one year from the date of arrival in Jamaica;

(*j*) The personal right to import, in accordance with the relevant regulations of the Jamaican import system, a car free of duty once every three years in accordance with the established diplomatic practice in Jamaica during his or her assignment.

2. Jamaican officials of the Office shall not be exempt from military service obligations or any other obligatory service in Jamaica. However, those who, by virtue of their functions, are put on a nominal list drawn up by the Special Representative and approved by the competent Jamaican authorities shall, in the event of mobilization, be given special assignments in accordance with Jamaican legislation. Also such authorities shall grant, upon the request of the Office and in the event of other Jamaican officials of the Office being called up for national service, the waivers which might be necessary to avoid the interruption of a basic service.

3. These privileges and immunities are granted in the interests of the Office and not for the personal benefit of the officials themselves. The Special Representative shall waive the immunity granted to any official whenever, in his opinion, such immunity would impede the course of justice and can be waived without prejudice to the interests of the Office.

4. All officials of the Office shall be provided with a special identity card certifying that they are officials of the Office enjoying the privileges and immunities specified in this Agreement.

5. The terms and conditions of employment for locally recruited personnel shall be in accordance with the relevant United Nations Regulations and Rules.

6. Experts, other than the officials referred to in paragraph 1 above, shall enjoy the facilities, privileges and immunities mentioned hereunder while exercising their functions or duties assigned to them by the Office or in the course of their travel to take up these functions or perform these duties inasmuch as such facilities, privileges and immunities are necessary for the performance of their duties:

(*a*) Immunity from personal detention and from seizure of personal and official effects and baggage except in cases of *flagrante delicto* and, in such cases, the competent Jamaican authorities shall immediately inform the Special Representative of the detention or the seizure;

(*b*) Immunity from legal process in respect of words spoken and written and all acts performed by them in their official capacity, which immunity shall continue notwithstanding the fact that the persons concerned may have ceased to exercise their functions with the Office or their missions for the Office may have terminated;

(*c*) Exemption from any direct tax on the salaries and other emoluments paid to them by the Office;

(*d*) The same facilities in respect of foreign exchange as officials of foreign Governments on a temporary official mission.

7. These facilities, privileges and immunities are granted to experts in the interests of the Office and not for their own personal benefit. The Special Representative shall waive the immunity granted to an expert whenever, in his opinion, such immunity would impede the course of justice and can be waived without prejudice to the interests of the Office.

8. The Office shall in due time communicate to the Government the names of persons to whom this article refers.

Article 9

CO-OPERATION WITH THE APPROPRIATE JAMAICAN AUTHORITIES

The Office shall co-operate at all times with the appropriate authorities to facilitate the proper administration of justice, secure the observance of police regulations and avoid the occurrence of any abuse in connection with the facilities, privileges and immunities mentioned in this Agreement.

Article 10

LAISSEZ-PASSER

1. The Government shall recognize and accept the United Nations laissez-passer issued to officials of the Office as a valid travel document equivalent to a passport.

2. In accordance with the provisions of section 26 of the Convention, the Government shall recognize and accept the United Nations certificate issued to experts and other persons travelling on the business of the United Nations. The Government agrees to issue any required visas on such certificates.

Article 11

SETTLEMENT OF DISPUTES

1. The Special Representative shall take the measures necessary for ensuring the proper settlement of:

(*a*) Disputes resulting from contracts, or all disputes relating to individual rights to which the Office is a party;

(*b*) Disputes to which an official of the Office is a party, provided that he enjoys immunity by reason of his official post and such immunity has not been waived by the Special Representative.

2. Any dispute between the Government and the Office concerning the interpretation or implementation of this Agreement which is not settled by direct negotiations or other mutually accepted method shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Government, one to be named by the Secretary-General of the United Nations and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice. The decision of the tribunal shall be final.

Article 12

FINAL PROVISIONS

1. Without prejudice to the performance by the Office of its functions in a normal and unrestricted manner, the Government may take every precautionary measure to preserve national security, after consultations with the Special Representative.

2. The provisions of this Agreement shall be considered supplementary to the provisions of the Convention on the Privileges and Immunities of the United Nations. When a provision of this Agreement and a provision of the Convention deal with the same subject, both provisions shall be considered complementary whenever possible; both of them shall be applied and neither shall restrict the force of the other.

3. Consultations with respect to amendments to this Agreement shall be entered into at the request of either party and such amendments shall be made by mutual consent.

4. This Agreement shall enter into force upon signature.

DONE at New York, on the seventh day of March 1983 in two original copies, one of which will be deposited with the United Nations and the other with the Government of Jamaica.

For the United Nations
(*Signed*) Bernardo ZULETA
Special Representative of the
Secretary-General for the
Law of the Sea

For the Government of Jamaica
(*Signed*) K. O. RATTRAY
Ambassador Extraordinary and
Plenipotentiary

(*d*) Agreement between the United Nations and Brazil on a United Nations Regional Seminar on Space Applications focusing on the implementation of the recommendation of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE 82) to be held at São José dos Campos, São Paulo, from 2 to 6 May 1983.[9] Signed at New York on 22 March 1983

Article V

FACILITIES, PRIVILEGES AND IMMUNITIES

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

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

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

4. Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and all persons performing functions in 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.

5. All participants and all persons performing functions in connection with the Seminar shall have the right of unimpeded entry into and exit from Brazil. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Seminar, visas shall be granted not later than two weeks before the opening of the Seminar. 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.

Article VI

LIABILITY

The Government shall be responsible for dealing with any actions, claims or other demands arising out of (*a*) injury or damage to persons or property in the premises referred to in paragraphs 3 (*a*) and (*b*) of article IV above; (*b*) injury or damage to persons or property occurring during use of the transportation referred to in paragraphs 3 (*h*), (*i*) and (*j*) of article IV; (*c*) the employment for the Seminar of the personnel referred to in paragraphs 2, and 3 (*d*), (*e*) and (*f*) of article IV; and the Government shall hold the United Nations and its personnel harmless in respect of any actions, claims and other demands.

(*e*) Agreement between the United Nations and Denmark relating to the headquarters in Copenhagen of the Integrated Supply Centre of the United Nations Children's Fund (with exchange of notes).[10] Signed at Copenhagen on 12 April 1983

The United Nations and the Government of Denmark,

Considering that the United Nations Children's Fund has accepted the offer of the Government of Denmark to provide expanded facilities in Copenhagen for the Integrated Supply Centre of the United Nations Children's Fund;

Considering that the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, to which Denmark became a party on 10 June 1948, is *ipso facto* applicable to the Integrated Supply Centre;

Considering that it is desirable to conclude an agreement, complementary to the Convention on the Privileges and Immunities of the United Nations, to regulate questions not envisaged in that Convention arising as a result of the establishment of the Integrated Supply Centre in Copenhagen;

Have agreed as follows:

Article I

DEFINITIONS

In the present Agreement,

(*a*) The expression "UNICEF" means the United Nations Children's Fund;

(*b*) The expression "UNICEF, Copenhagen" means UNICEF's Integrated Supply Centre in Copenhagen;

(*c*) The expression "the Government" means the Government of Denmark;

(*d*) The expression "headquarters" means the premises occupied by UNICEF, Copenhagen in accordance with the provisions set forth from time to time in supplementary agreements;

(*e*) The expression "Executive Director" means the Executive Director of UNICEF or his authorized representative;

(*f*) The expression "officials of UNICEF" means the Executive Director and all members of the staff of UNICEF, with the exception of officials or employees who are locally recruited and assigned to hourly rates;

(*g*) The expression "Director of UNICEF, Copenhagen" means the senior official in charge of UNICEF, Copenhagen;

(*h*) The expression "officials of UNICEF, Copenhagen" means the Director and all members of the staff of UNICEF, Copenhagen, with the exception of officials or employees who are locally recruited and assigned to hourly rates;

(*i*) The expression "Convention" means the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946.

Article II

JURIDICAL PERSONALITY AND CAPACITY

The United Nations acting through UNICEF or UNICEF, Copenhagen shall have the capacity:

(*a*) To contract;

(*b*) To acquire and dispose of immovable and movable property;

(*c*) To institute legal proceedings.

Article III

HEADQUARTERS

1. The Government recognizes the extraterritoriality of the headquarters seat, which shall be under the control and authority of UNICEF, Copenhagen as provided in this Agreement.

2. Except as otherwise provided in this Agreement or in the General Convention, and subject to any regulation enacted under paragraph 5, the laws of Denmark shall apply within the headquarters seat.

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

4. The headquarters shall be inviolable. No official of the Government shall enter the headquarters to perform any duties except upon the consent of or at the request of the Director of UNICEF, Copenhagen and under conditions approved by him.

5. UNICEF, Copenhagen shall have the power to make regulations, operative within the headquarters seat, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No law of Denmark which is inconsistent with a regulation of UNICEF authorized by this paragraph shall, to the extent of such inconsistency, be enforceable within the headquarters seat. Any dispute between UNICEF, Copenhagen and Denmark as to whether a regulation of UNICEF is authorized by this section or as to whether a law of Denmark is inconsistent with any regulation of UNICEF authorized by this paragraph shall promptly be settled by the procedure set out in article XII.

6. Judicial actions, including service of legal process and the seizure of private property, shall not take place within the headquarters, except with the consent of, and under conditions approved by, the Director of UNICEF, Copenhagen.

7. Without prejudice to the provisions of the Convention or this Agreement, UNICEF, Copenhagen shall prevent the headquarters from being used as a refuge by persons who are avoiding arrest under any law of Denmark, who are required by the Government for extradition to another country or who are endeavouring to avoid service of legal process.

8. (*a*) The appropriate Danish authorities shall exercise due diligence to ensure that the tranquillity of the headquarters is not disturbed by any person or group of persons from attempting unauthorized entry into or creating disturbances in the immediate vicinity of the headquarters seat.

(*b*) If so requested by the Director of UNICEF, Copenhagen, the appropriate Danish authorities shall provide necessary assistance for the preservation of law and order in the headquarters and for the removal therefrom of persons as requested by the Director of UNICEF, Copenhagen.

9. The appropriate Danish authorities shall make every possible effort to secure upon the request of the Director of UNICEF, Copenhagen, the public services needed by UNICEF, Copenhagen, including, without limitation by reason of this enumeration, postal, telephone and telegraph services and power, water and fire protection services. Such public services shall be supplied on equitable terms.

10. In case of any interruption or threatened interruption of the aforesaid services, the appropriate Danish authorities shall consider the needs of UNICEF as being of equal importance with those of essential agencies of the Government, and shall take steps accordingly to ensure that the work of UNICEF is not prejudiced.

Article IV

FREEDOM OF ACCESS TO THE HEADQUARTERS

1. The competent Danish authorities shall not impede the transit to or from the headquarters of persons holding official posts therein or of persons invited thereto in connection with the official work and activities of UNICEF upon their arrival in or departure from Denmark.

2. The Government undertakes, for this purpose, to allow the entry into and residence in Denmark of the persons listed hereunder during their assignment or during the performance of their duties for UNICEF, without charging visa fees and without delay, as well as exemption from any requirements of exit visa formalities upon departure from Denmark of:

(*a*) Representatives of States, representatives of United Nations organs, specialized or related agencies and observers from intergovernmental, non-governmental and other organizations, with which UNICEF has established official relations, invited or entitled to participate in conferences or meetings convened in Denmark by UNICEF, including alternate representatives or observers, advisers, experts and assistants, as well as their spouses and dependent members of their families;

(*b*) UNICEF officials and experts on missions for UNICEF, as well as their spouses and dependent members of their families;

(*c*) Officials of the United Nations or any of its specialized or related agencies who are assigned to work for UNICEF and those who have official duties with UNICEF, Copenhagen, as well as their spouses and dependent members of their families;

(*d*) All persons invited to the headquarters on official business.

3. Without prejudice to the special immunities which they may enjoy, persons referred to in paragraph 2 above may not be forced by Danish authorities to leave Danish territory unless they abuse their recognized residence privileges by exercising an activity outside their official capacity, and subject to the provisions mentioned hereunder:

(*a*) No action to force the persons referred to in paragraph 2 above to leave Danish territory may be taken except with the prior approval of the Ministry of Foreign Affairs. Such approval shall be given only after consultation with the Executive Director;

(*b*) Persons enjoying diplomatic privileges and immunities under this Agreement may not be requested to leave Danish territory except in accordance with the practices and procedures applicable to diplomats accredited to the Government;

(*c*) It is understood that persons referred to in paragraph 2 above shall not be exempt from application of quarantine or other health regulations.

Article V

COMMUNICATIONS FACILITIES

1. For all official postal, telephone, telegraph, telephoto and electronic communications, the Government shall accord to UNICEF, Copenhagen, a treatment equivalent to that accorded to all other Governments including their diplomatic missions, or to other intergovernmental organizations in regard to any priorities, tariffs and charges on mail, cablegrams, telephotos, telephone calls and other communications, as well as such rates for news reported to the press and radio as may be accorded.

2. The Government shall secure the inviolability of the official correspondence of UNICEF, Copenhagen and shall not apply any censorship to such correspondence. Such inviolability shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound recordings dispatched to or by UNICEF, Copenhagen.

3. UNICEF, Copenhagen shall have the right to use codes and to dispatch and receive its correspondence and other materials by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

4. (*a*) The United Nations is authorized to establish and operate at the headquarters facilities for electronic, high-frequency radio and satellite communications including point-to-point dedicated telecommunications circuits as and when needed for the purpose of communicating with other United Nations offices all over the world;

(*b*) Subject to the necessary authorization from the General Assembly and with the agreement of the Government as may be included in a supplementary agreement, the United Nations may also establish and operate at the headquarters:

(i) Its own short-wave sending and receiving radio broadcasting facilities (including emergency link equipment) which may be used on the same frequencies (within the tolerances prescribed for the broadcasting service by applicable Danish regulations) as radiograph, radiotelephone and similar services;

(ii) Such other radio facilities as may be specified by supplementary agreement between the United Nations and the appropriate Danish authorities;

(*c*) The United Nations shall make arrangements for the operation of the services referred to in this article with the International Telecommunication Union, the appropriate agencies of the Government and the appropriate agencies of other affected Governments with regard to all frequencies and similar matters;

(*d*) The facilities provided for in this article may, to the extent necessary for efficient operation, be established and operated outside the headquarters with the consent of the Government.

Article VI

PROPERTY, FUNDS AND ASSETS

The Government shall apply to the property, funds and assets of UNICEF, Copenhagen, wherever they are and by whomsoever held the provisions of the Convention.

Article VII

DIPLOMATIC FACILITIES, PRIVILEGES AND IMMUNITIES

1. Representatives of States participating in conferences and meetings convened by UNICEF, Copenhagen in Denmark shall, while exercising their functions and during their journey to and from Denmark, enjoy the privileges and immunities provided in article IV of the General Convention.

2. Without prejudice to the provisions of article VIII, paragraphs 1 and 3, the Executive Director and the Director of UNICEF, Copenhagen shall enjoy during their residence in Denmark the facilities, privileges and immunities granted to heads of diplomatic missions accredited in Denmark.

3. Other officials having the professional grade of P-5 and above, and such additional categories of officials as may be designated, in agreement with the Government and the Executive Director, in consultation with the Secretary-General of the United Nations on the ground of the responsibilities of their positions in UNICEF, Copenhagen, shall be accorded the same privileges and immunities, exemptions and facilities as the Government accords to members, having comparable rank, of the staffs of heads of diplomatic missions accredited to Denmark.

4. The facilities, privileges and immunities granted to the representatives of States mentioned in paragraph 1 above and to the officials mentioned in paragraphs 2 and 3 above shall extend to their spouses and dependent members of their families.

Article VIII

OFFICIALS OF UNICEF, COPENHAGEN

1. Officials of UNICEF, Copenhagen shall enjoy in Denmark the following privileges and immunities:

(*a*) Immunity from legal process in respect of words spoken and written and all acts performed by them in their official capacity;

(*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 paragraph 2 or 3 of article VII, immunity from inspection of personal baggage;

(*d*) Exemption from taxation on the salaries and all other remuneration paid to them by the United Nations;

(*e*) Exemption from military service obligations provided that, with respect to Danish 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;

(*f*) Exemption for themselves and for their spouses and dependent members of their families, from immigration restrictions or alien registration procedures;

(*g*) In regard to foreign exchange, including holding accounts in foreign currencies, enjoyment of the same facilities as are accorded to members of comparable rank of diplomatic missions accredited to the Government;

(*h*) 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 crises to members, having comparable rank, of the staffs of heads of diplomatic missions accredited to Denmark;

(*i*) If they have been previously residing abroad, the right to import their furniture, personal effects and all household appliances, including one automobile, intended for personal use free of duty when they come to reside in Denmark, which privilege shall be valid for a period of one year from the date of arrival in Denmark;

(*j*) Officials of UNICEF, Copenhagen, except those who are locally recruited staff in the General Service or related categories, shall have the right to import free of custom and excise duties, limited

quantities of certain articles for personal consumption (food products, beverages, etc.) in accordance with a list to be approved by the Government of Denmark;

(*k*) Officials of UNICEF, Copenhagen, except those who are locally recruited staff in the General Service or related categories, shall have the right, once every three years, to import one motor vehicle free of customs and excise duties, including value added taxes, it being understood that permission to sell or dispose of the vehicle in the open market will normally be granted two years after its importation only. It is further understood that customs and excise duties will become payable in the event of the sale or disposal of such motor vehicle within three years after its importation to a person not entitled to this exemption.

2. The Government shall furnish persons within the scope of this article with an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to Danish authorities.

3. The terms and conditions of employment for locally recruited personnel shall be in accordance with the relevant United Nations Regulations and Rules.

Article IX

EXPERTS ON MISSION FOR UNICEF, COPENHAGEN

1. Experts, on missions for UNICEF, other than the officials referred to in article VIII above, performing missions authorized by, serving on boards, committees or other organs of, or consulting at its request in any way with UNICEF shall enjoy, within and with respect to Denmark, the following privileges and immunities so far as may be necessary for the effective exercise of their functions:

(*a*) Immunity in respect of themselves, their spouses and their dependent children 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 UNICEF, or may no longer be present at the headquarters attending meetings convened by UNICEF;

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

(*d*) The right, for the purpose of all communications with UNICEF, 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, alien registration and national service obligations;

(*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 crises to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to Denmark;

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

(*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 Denmark.

2. UNICEF, Copenhagen,

(*a*) Shall communicate to the Government a list of persons within the scope of this article and shall revise such a list from time to time as may be necessary;

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

3. The privileges and immunities referred to in articles VIII and IX are granted in the interests of the United Nations and not for the personal benefit of the officials or experts themselves. The Secretary-General of the United Nations shall waive the immunity granted to any official or expert 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 X

CO-OPERATION WITH THE APPROPRIATE DANISH AUTHORITIES

UNICEF shall co-operate at all times with the appropriate authorities to facilitate the proper administration of justice, secure the observance of police regulations and avoid the occurrence of any abuse in connection with the facilities, privileges and immunities mentioned in this Agreement.

Article XI

LAISSEZ-PASSER

1. The Government shall recognize and accept the United Nations laissez-passer issued to officials of UNICEF as a valid travel document equivalent to a passport.

2. In accordance with the provisions of section 26 of the Convention, the Government shall recognize and accept the United Nations certificate issued to experts on mission for UNICEF and other persons travelling on the business of UNICEF. The Government further agrees to issue any required visas on such certificates.

Article XII

SETTLEMENT OF DISPUTES

1. Any dispute between UNICEF and the Government concerning the interpretation or application of this Agreement or of any supplemental agreement or arrangement or any question affecting the headquarters or the relationship between UNICEF, Copenhagen and the Government, which is not settled by negotiation or other agreed mode of settlement shall be referred for final decision to a tribunal of three arbitrators: one to be chosen by the Executive Director, one to be chosen by the Minister of Foreign Affairs of Denmark, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such third arbitrator shall be chosen by the President of the International Court of Justice at the request of the Secretary-General of the United Nations or the Government.

2. The Secretary-General of the United Nations or the Government may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court.

Article XIII

FINAL PROVISIONS

1. The provisions of this Agreement shall be considered supplementary to the provisions of the Convention. When a provision of this Agreement and a provision of the Convention deal with the same subject, both provisions shall be considered complementary whenever possible; both of them shall be applied and neither shall restrict the force of the other.

2. Consultations with respect to amendments to this Agreement shall be entered into at the request of either party and such amendments shall be made by mutual consent. If the consultations do not result in an understanding within one year, the present Agreement may be terminated by either party on giving two years' notice.

3. This Agreement shall enter into force upon signature.

DONE in duplicate at Copenhagen on the twelfth day of April 1983 in the English language.

For the United Nations
(*Signed*) Javier PÉREZ DE CUÉLLAR
The Secretary-General

For the Government of Denmark
(*Signed*) Uffe ELLEMANN-JENSEN
Minister for Foreign Affairs

RELATED EXCHANGE OF NOTES

I

Note from the Government of Denmark

12 April 1983

With reference to the Agreement between the United Nations and the Government of Denmark relating to the headquarters in Copenhagen of the Integrated Supply Centre of the United Nations Children's Fund, to which I have this day affixed my signature, I have the honour to propose that officials of UNICEF or other United Nations organs or experts on mission for the United Nations who are Danish nationals shall enjoy only those privileges and immunities provided in the Convention on the Privileges and Immunities of the United Nations.

If the United Nations agrees to this proposal, I have the honour to propose that this note and your note of confirmation shall constitute an Agreement between the United Nations and the Government of Denmark, entering into force on the same day as the Headquarters Agreement.

(*Signed*) Uffe ELLEMANN-JENSEN
Minister for Foreign Affairs

II

Note from the United Nations

12 April 1983

Sir,

I wish to refer to your note of 12 April 1983, which reads as follows:

[*See note I above*]

I have the honour to confirm that the United Nations agrees with the above proposal and that your note and this reply will constitute an Agreement between the United Nations and Denmark, entering into force on the same day as the Headquarters Agreement.

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

(*f*) Agreement between the United Nations and Finland regarding arrangements for the sixth session of the Commission on Human Settlements of the United Nations, to be held at Helsinki from 25 April to 6 May 1983.[11] Signed at Helsinki on 15 April 1983

Article X

LIABILITY

The Government shall be responsible for dealing with any actions, claims or other demands against the United Nations arising out of: (*a*) injury or damage to person or property in the premises referred to in article III above; (*b*) injury or damage to person or property caused by, or incurred in using, the transport services referred to in article VI above; (*c*) the employment for the session of the personnel provided by the Government to perform functions in 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 United Nations personnel.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946, to which the Government acceded on 31 July 1958, shall be applicable to the session.

2. Representatives of States participating in the session shall enjoy the privileges and immunities accorded to representatives of States by article IV of the Convention.

3. Officials of the United Nations performing official duties at the session shall enjoy the privileges and immunities provided by articles V and VII of the Convention.

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

5. Other participants in the session 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.

6. 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 necessary privileges, immunities and facilities in connection with their participation in the session.

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

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

9. The participants in the session, representatives of information media and officials of the secretariat of the session shall have the right to take out of Finland at the time of their departure, without any restriction, any unexpended portions of the funds they brought into Finland in connection with the session, or which they received during their presence at the session, at the United Nations operational rate of exchange.

Article XII

IMPORT DUTIES AND TAX

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

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

(*g*) Agreement between the United Nations and Peru regarding the arrangements for the United Nations Industrial Development Organization's meeting on Industrial Strategies and Policies for Developing Countries, to be held at Lima from 18 to 22 April 1983.[12] Signed at Vienna on 18 April 1983

Article IX

LIABILITY

1. The Government shall be responsible for dealing with any action, claim or other demand against UNIDO 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*) The employment for the Meeting of the personnel provided by the Government under article VII;

(*c*) Any transportation provided by the Government for the Meeting.

2. The Government shall indemnify and hold harmless UNIDO and its officials in respect of any such action, claim or other demand, except where such injury or damage was caused by imprudence, negligence or misconduct on the part of the personnel of UNIDO participating in the Meeting.

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, to which Peru is a party, shall be applicable in respect of the Meeting. In particular, the individual experts participating in the meeting and referred to in article II paragraph 1 (*a*) and (*b*) above, shall enjoy the privjleges and immunities provided under articles VI and VII of the Convention, and the officials of the United Nations performing functions in connection with the Meeting, referred to in article II, paragraphs 1 (*d*) and 2 above, shall enjoy the privileges and immunities provided under articles V and VII of the Convention.

2. The representatives of specialized agencies of the United Nations, referred to in article II, paragraph 1 (*c*) above, shall enjoy the privileges and immunities provided under article VI of the Convention on the Privileges and Immunities of the Specialized Agencies.

3. The personnel provided by the Government under article VII 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 Meeting.

4. Without prejudice to the preceding paragraphs of the present article, all persons performing functions in connection with the Meeting, including those referred to in article VII and all those participating in 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 shall have the right of entry into and exit from Peru 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 Meeting, provided the application for the visa is made at least three weeks before the opening of the Meeting; 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 Meeting are delivered at the airport to participants who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible and in any case not later than three days before the closing of the Meeting.

6. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the conference 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 Meeting, including the preparatory stage and the winding-up.

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.

(*h*) Agreement between the United Nations and Yugoslavia on the arrangements for the sixth session of the United Nations Conference on Trade and Development, to be held at Belgrade from 6 to 30 June 1983.[13] Signed at Geneva on 19 April 1983

Article XIII

LIABILITY

1. The Federal Executive Council 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 Conference premises referred to in article I that are provided by the Federal Executive Council;

(*b*) Injury to persons or damage to or loss of property caused by, or incurred in using, the transport services referred to in article X that are provided by the Federal Executive Council;

(*c*) The employment for the Conference of the local staff provided by the Federal Executive Council under article VIII.

2. The Federal Executive Council shall indemnify and hold harmless the United Nations and its officials in respect of any such action, claim or other demand.

3. The United Nations shall be liable for any damage to the Sava Center and its property caused by the gross negligence of its officials.

Article XIV

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 the Socialist Federal Republic of Yugoslavia is a party, shall be applicable in respect of the Conference. In particular, the representatives of States and of the United Nations Council for Namibia referred to in article II, paragraph 1 (*a*) and (*b*), 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, 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 or observers referred to in article II, paragraph 1 (*c*), (*d*), (*f*), (*g*) and (*h*), 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 representatives of the specialized and related agencies, referred to in article II, paragraph 1 (*e*), 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,[14] as appropriate.

4. The local staff provided by the Federal Executive Council under article VIII 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.

5. Without prejudice to the preceding paragraphs of this article, all 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 Yugoslavia, 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 Belgrade airport 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 closure of the Conference.

7. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the Conference premises referred to in article I shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention; they shall be inviolable and access thereto shall be subject to the authority and control of the United Nations from 30 May to 3 July 1983.

8. All persons referred to in article II shall have the right to take out of Yugoslavia at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into Yugoslavia and to reconvert at the daily exchange rate any unexpended amount of dinar cheques of the National Bank of Yugoslavia obtained by converting foreign currency in connection with the Conference.

9. The Federal Executive Council 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.

(*i*) Exchange of notes constituting an agreement between the United Nations and Yugoslavia on the abolition of visas for holders of the United Nations laissez-passer.[15] New York, 6 May 1983

I

LETTER FROM THE PERMANENT MISSION OF YUGOSLAVIA TO THE UNITED NATIONS

6 May 1983

The Permanent Representative of the Socialist Federal Republic of Yugoslavia to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the Federal Executive Council of the Assembly of the Socialist Federal Republic of Yugoslavia is prepared to permit holders of valid laissez-passer of the United Nations to enter the territory of the Socialist Federal Republic of Yugoslavia at any border crossing authorized for international traffic for the purpose of temporary stay up to 90 (ninety) days without being required to obtain a Yugoslav visa.

Holders of the above-mentioned laissez-passer entering the Socialist Federal Republic of Yugoslavia in the capacity of representatives or experts of the United Nations, specialized agencies of the United Nations or the International Atomic Energy Agency (IAEA) for a stay of more than 90 (ninety) days shall be required to obtain a Yugoslav visa.

Beneficiaries of these facilities during their stay in the territory of the Socialist Federal Republic of Yugoslavia shall be required to comply with the regulations in force concerning movement and stay of aliens in the Socialist Federal Republic of Yugoslavia.

The Federal Executive Council reserves the right to suspend the implementation of this Agreement for reasons of public health or public order.

If the above proposals are acceptable to His Excellency, I have the honour to suggest that this letter and His Excellency's reply to that effect be considered as constituting an agreement between the Federal Executive Council of the Assembly of the Socialist Federal Republic of Yugoslavia and the United Nations on the abolition of Yugoslav visas for holders of United Nations laissez-passer.

The present Agreement will enter into force 60 (sixty) days after the date of His Excellency's reply.

II

LETTER FROM THE UNITED NATIONS

6 May 1983

The Secretary-General of the United Nations presents his compliments to the Permanent Representative of the Socialist Federal Republic of Yugoslavia to the United Nations and has the honour to acknowledge receipt of his note of 6 May 1983 in the following terms:

[*See letter I above*]

These proposals are acceptable to the United Nations and the Permanent Representative's note and this reply shall be considered as constituting an Agreement between the United Nations and the Federal Executive Council of the Assembly of the Socialist Federal Republic of Yugoslavia on the abolition of Yugoslav visas for holders of the United Nations laissez-passer which shall enter into force 60 (sixty) days after the date of this reply.

(*j*) Agreement between the United Nations and Bulgaria concerning the arrangements for the European Regional Preparatory Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held at Sofia from 6 to 10 June 1983.[16] Signed at Vienna on 18 May 1983

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 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 V, paragraphs 2 to 4 above;

(*c*) The employment for the Meeting of the personnel provided by the Government under article IX 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 Meeting. In particular, the representatives of States referred to in article II (1) (*a*) and (*b*) of this Agreement shall enjoy the privileges and immunities provided under article IV, and 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 of the Convention. The representatives referred to in article II, paragraph 1 (*d*), of this Agreement shall enjoy the privileges and immunities provided under article VI of the Convention.

2. The observers referred to in article II (1) (*f*), (*g*), (*h*) and (*i*) of this Agreement 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 referred to in article II (1) (*c*) shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies.

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 and immunities to which they are entitled in accordance with the Charter of the United Nations and all 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 servicing 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 Bulgaria, 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 Meeting. If the application for the visa is not made at least two and a half weeks before the opening of the Meeting, the visa shall be granted not later than three days from the receipt of the application.

6. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the Meeting premises shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention. The premises shall be inviolable for the duration of the Meeting including the preparatory stage and the winding-up.

7. The participants in the Meeting and the representatives of information media, referred to in article II above, and officials of the United Nations servicing the Meeting and experts on mission for the United Nations in connection with the Meeting shall have the right to take out of Bulgaria at the time of their departure, without any restrictions, any unspent portions of the funds they brought into Bulgaria in connection with the Meeting at the rate at which they had originally been converted.

8. 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.

(*k*) Agreement between the United Nations (United Nations Industrial Development Organization) and Spain regarding the United Nations Industrial Development Organization's Meeting on the establishment of the International Centre for Genetic Engineering and Biotechnology, to be held at Madrid from 7 to 13 September 1983.[17] Signed at Vienna on 27 July 1983

Article IX

LIABILITY

1. The Government shall be responsible for dealing with any action, claim or other demand against UNIDO 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*) The employment for the Meeting of the personnel provided by the Government under article VII;

(*c*) Any transportation provided by the Government for the Meeting.

2. The Government shall indemnify and hold harmless UNIDO and its officials in respect of any such action, claim or other demand.

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, to which Spain is a party, shall be applicable in respect of the Meeting. In particular, the participants referred to in article II, paragraph 1 (*a*) above, shall enjoy

the privileges and immunities provided under article IV of the Convention, the officials of UNIDO performing functions in connection with the Meeting 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 Meeting shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

2. The representatives referred to in article II, paragraph 1 (*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 Meeting.

3. The personnel provided by the Government under article VII 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 Meeting.

4. The representatives of the specialized or related agencies, referred to in article II, paragraph 1 (*b*), above, shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies.

5. Without prejudice to the preceding paragraphs of the present article, all persons performing functions in connection with the Meeting, including those referred to in article VII, and all those participating in the Meeting shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the Meeting.

6. All persons referred to in article II shall have the right of entry into and exit from Spain, 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 Meeting provided the application for the visa is made at least three weeks before the opening of the Meeting; 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 Meeting are delivered at the airport to participants who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Meeting.

7. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the conference 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 UNIDO. The premises shall be inviolable for the duration of the Meeting, including the preparatory stage and the winding-up.

8. 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.

(*l*) Exchange of letters constituting an agreement between the United Nations and the Union of Soviet Socialist Republics covering general terms applicable to United Nations Seminars, Symposiums and Workshops to be held in the Union of Soviet Socialist Republics.[18] New York, 14 and 15 June 1983

I

LETTER FROM THE UNITED NATIONS

14 June 1983

I have the honour to refer to the arrangements for the Seminars/Symposiums/Workshops to be held by the United Nations in the USSR. With the present letter, I wish to obtain your Government's acceptance that the following general terms shall apply to such Seminars/Symposiums/Workshops organized by the United Nations in the USSR.

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Seminar/Symposium/Workshop. 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 Seminar/Symposium/Workshop shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the specialized agencies participating in the Seminar/Symposium/Workshop shall be accorded the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies.

(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/Symposium/Workshop shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Seminar/Symposium/Workshop.

(iii) Personnel provided by the Government of the USSR 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/Symposium/Workshop.

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

(*c*) The Government shall hold the United Nations and its personnel harmless in respect of any action, claim or other demand against the United Nations or its personnel arising out of (i) injury or damage to person or property, in conference or office premises provided for the Seminar/Symposium/Workshop; (ii) the transportation provided by your Government; and (iii) the employment for the Seminar/Symposium/Workshop of personnel provided or arranged by your Government.

(*d*) Any dispute concerning the interpretation or implementation of this Agreement shall be settled by negotiation or in accordance with an arbitration procedure which may be established by the parties.

Arrangements concerning the practical aspects relating to the organization of a specific Seminar/Symposium/Workshop including such matters as dates, place, premises, communications, conference services, office supplies, transportation arrangements, financial arrangements, including contributions by the United Nations and the USSR shall be agreed upon with regard to each Seminar/Symposium/Workshop in the light of the particular requirements of that Seminar/Symposium/Workshop.

Upon receipt of a letter expressing your Government's concurrence with the above, the present letter and your Government's reply shall constitute an agreement between the United Nations and the Government of the Union of Soviet Socialist Republics concerning holding of the Seminars/Symposiums/Workshops organized by the United Nations in the USSR.

(*Signed*) Carl-August FLEISCHHAUER
The Legal Counsel

MEMORANDUM OF UNDERSTANDING

In the course of negotiations between the United Nations and the USSR relating to the agreement regarding the Seminars/Symposiums/Workshops, understandings were reached between the parties concerning the interpretation and application of certain provisions of the agreement. Those understandings are set forth in the present memorandum.

In relation to paragraph (b)

The United Nations undertakes to provide the authorities of the USSR, at the earliest possible time, with a list of invited participants and of all other persons performing functions in connection with the Seminars/Symposiums/Workshops. The United Nations shall use its best endeavours to ensure that applications for visas are submitted at least four weeks prior to the opening of the Seminars/Symposiums/Workshops. Visas shall be granted as speedily as possible and in any event not later than three days before the opening of the Seminars/Symposiums/Workshops.

The provisions of paragraph (*b*) do not exclude the presentation by the host country of well-founded objections concerning a particular individual. Such objections, however, must relate to specific criminal or security-related matters and not to nationality, religion, professional or political affiliation.

In relation to paragraph (c)

It is the understanding of the United Nations that the Government of the USSR shall consider and deal with any such action, claim or other demand in accordance with the appropriate administrative and legal procedures in force in the USSR.

(*Signed*) Carl-August FLEISCHHAUER
The Legal Counsel

II

LETTER FROM THE PERMANENT MISSION OF THE UNION OF SOVIET SOCIALIST REPUBLICS TO THE UNITED NATIONS[19]

15 June 1983

I have the honour to inform you that the Government of the Union of Soviet Socialist Republics agrees with the understandings concerning United Nations Seminars (Symposiums, Workshops) to be held in the USSR, as set out in your letter of 14 June 1983 and in the Memorandum of Understanding appended thereto.

Your letter and the Memorandum of Understanding mentioned above are considered by the Soviet party as an agreement between the Government of the Union of Soviet Socialist Republics and the United Nations concerning general terms for United Nations Seminars (Symposiums, Workshops) to be held in the USSR.

(*Signed*) O. TROYANOWSKI
Permanent Representative of the Union of Soviet Socialist Republics to the United Nations

(*m*) Exchange of letters constituting an agreement between the United Nations and Romania concerning the arrangements for the European Regional Meeting for the International Youth Year, to be held at Costinesti from 5 to 9 September 1983 (with related letters).[20] Vienna, 11 August 1983

I

LETTER FROM THE UNITED NATIONS

11 August 1983

It is my understanding that the co-operation of your Government with the United Nations in carrying out the Meeting would be based on the following arrangements:

. . .

23. 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 persons or damage to or loss of property in the premises referred to in paragraph 5 above;

b. injury to persons or damage to or loss of property caused by, or incurred in using, the transport services referred to in paragraphs 12 and 20 (*a*) above;

c. the employment for the Meeting of the personnel provided by the Government under paragraph 17 above.

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

24. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which Romania is a party, shall be applicable in respect of the Meeting. In particular, the representatives of States and of inter-governmental organs of the United Nations 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 Meeting shall enjoy the privileges and immunities provided under article V and VII of the Convention, and any experts on mission for the United Nations in connection with this Meeting shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

25. The observers invited by the United Nations, referred to in paragraph 2 (*c*) above, shall enjoy immunity from legal process in respect of words spoken or written in connection with the Meeting.

26. The personnel provided by the Government 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 Meeting.

27. The representatives of the specialized or related agencies referred to in paragraph 2 (*b*) above shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies.

28. Without prejudice to the preceding paragraphs, all persons performing functions in connection with the Meeting shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the Meeting.

29. All persons referred to in paragraph 2 shall have the right of entry into and exit from Romania, 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 and not later than two weeks before the date of the opening of the Meeting, provided the application for the visa is made at least three weeks before the opening of the Meeting; 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 Meeting are delivered at Bucharest 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 Meeting.

30. For the purpose of the Convention on the privileges and immunities of the United Nations, the Meeting premises specified in paragraph 5 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 Meeting, including the preparatory stage and the winding up.

31. All persons referred to in paragraph 2 above shall have the right to take out of Romania at the time of their departure, without any restriction, any unexpended portion of the funds they brought into Romania in connection with the Meeting and to reconvert any such funds at the rate at which they had originally been converted, on the basis of the receipt.

32. 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.

. . .

I further propose that upon receipt of your confirmation in writing of the above this exchange of letters shall constitute an Agreement between the United Nations and the Government of Romania outlining the terms of co-operation for the Meeting.

(*Signed*) Gonzalo MARTNER
For Leticia R. SHAHANI
Assistant Secretary-General
for Social Development and
Humanitarian Affairs

II

LETTER FROM THE PERMANENT MISSION OF ROMANIA TO THE INTERNATIONAL ATOMIC ENERGY AGENCY AND THE UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

11 August 1983

I have the honour to refer to your letter dated 11 August 1983, concerning the arrangements for the European Regional Meeting (Costineşti, 5-9 September 1983) dedicated to the International Youth Year.

With the present letter I wish to convey the acceptance by the Government of Romania of the arrangements prepared in your letter, and I also wish to confirm that this exchange of letters shall constitute an agreement between the Government of the Socialist Republic of Romania and the United Nations regarding the arrangements for the Meeting.

(*Signed*) Nita CONSTANTIN
For Octavian GROZA
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Romania
to International Organizations in Vienna

RELATED EXCHANGE OF LETTERS

I

Letter from the Permanent Mission of Romania to the International Atomic Energy Agency and the United Nations Industrial Development Organization

11 August 1983

In connection with the exchange of letters concerning the European Regional Meeting for the International Youth Year (Costineşti, 5-9 September 1983), it is the understanding of the Romanian authorities that, without prejudice to the provisions of paragraphs 24-32 of the above exchange of letters, the representatives, the observers, the officers, the experts and all persons participating in the above-mentioned Meeting or performing functions relating to the Meeting shall observe the laws and regulations in force on the territory of the Socialist Republic of Romania.

(*Signed*) Nita CONSTANTIN
For Octavian GROZA
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Romania
to International Organizations in Vienna

II

LETTER FROM THE UNITED NATIONS

12 August 1983

With reference to your letter of 11 August 1983 concerning the agreement between the United Nations and the Government of the Socialist Republic of Romania, I am directed to inform you that the United Nations shares the view of the Government of the Socialist Republic of Romania concerning the observance of local laws.

(*Signed*) Gonzalo MARTNER
For Leticia R. SHAHANI
Assistant Secretary-General
for Social Development and
Humanitarian Affairs

(*n*) Exchange of letters constituting an agreement between the United Nations (United Nations Industrial Development Organization) and Hungary concerning the arrangements for the Second Consultation on the Pharmaceutical Industry, to be held at Budapest from 21 to 25 November.[21] Vienna, 27 July and 24 August 1983

I

LETTER FROM THE UNITED NATIONS

27 July 1983

. . .

With the present letter I wish to obtain your Government's formal acceptance of the following arrangements:

. . .

j) (i) The Government shall be responsible for dealing with any action, claim or other demand against UNIDO or its officials and arising out of:

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

(*b*) The employment for the Consultation of the personnel provided by the Government under point (*h*) above;

(*c*) Any transportation provided by the Government for the Consultation.

(ii) The Government shall indemnify and hold harmless UNIDO and its officials in respect of any such action, claim or other demand.

k) (i) The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which the People's Republic of Hungary is a party, shall be applicable in respect of the Consultation. In particular, the participants referred to under point *b*) (i) (*a*), 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 Consultation referred to under point *b*) (i) (*c*) and *b*) (ii), 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 Consultation shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

(ii) The representatives or observers referred to under point *b*) (i) (*b*), 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 Consultation.

(iii) The personnel provided by the Government under point *h*) 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 Consultation.

(iv) Without prejudice to the preceding paragraphs of the present article, all persons performing functions in connection with the Consultation, including those referred to under point *h*) and all those participating in the Consultation, shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the Consultation.

(v) All persons referred to under point *b*) shall have the rights of entry into and exit from Hungary 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 Consultation, provided the application for the visa is made at least three weeks before the opening of the Consultation; 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 Consultation are delivered at Budapest airport 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 Consultation.

(vi) For the purpose of the Convention on the Privileges and Immunities of the United Nations, the conference premises specified under point *c*) (i), 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 UNIDO. The premises shall be inviolable for the duration of the Consultation, including the preparatory stage and the winding up.

(vii) All persons referred to under point *b*) above shall have the right to take out of Hungary at the time of their departure, without any restriction, any unexpended portions of the funds they brought into Hungary in connection with the Consultation and to reconvert any such funds at the rate at which they had originally been converted.

(viii) 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 Consultation. It shall issue without delay any necessary import and export permits for this purpose.

. . .

I further have the honour to propose that upon receipt of your confirmation in writing of the above arrangements, this exchange of letters shall constitute an Agreement between the United Nations Industrial Development Organization and the Government of the People's Republic of Hungary regarding the provision of host facilities by the Government for the Second Consultation on the Pharmaceutical Industry.

(*Signed*) D. C. GANAO
Director
Division of Conference Services
Public Information and External Relations

II

LETTER FROM THE PERMANENT MISSION OF HUNGARY TO THE INTERNATIONAL ORGANIZATIONS AT VIENNA

24 August 1983

I have the honour to acknowledge receipt of your letter of 27 July 1983, concerned with the Second Consultation on the Pharmaceutical Industry, which reads as follows:

[*See letter I above*]

I have the honour to confirm that my Government fully agrees with the contents of the above letter.

(*Signed*) Gabor SZÜCS
Alternate Permanent Representative
of the Hungarian People's Republic to the
United Nations Industrial Development Organization

(*o*) Agreement between the United Nations and Jamaica regarding the headquarters of the Regional Co-ordinating Unit of the United Nations Environment Programme for the Caribbean Action Plan.[22] Signed at New York on 10 November 1983

The United Nations and Jamaica,

Considering that the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which Jamaica is a party, is *ipso facto* applicable to the United Nations Environment Programme;

Considering that it is desirable to conclude an agreement, complementary to the Convention on the Privileges and Immunities of the United Nations, to regulate questions not envisaged in that Convention arising as a result of the establishment of the headquarters of the Regional Co-ordinating Unit for the Caribbean Action Plan at Kingston, Jamaica;

Have agreed as follows:

Article I

DEFINITIONS

Section 1

In this Agreement,

(*a*) The expression "UNEP" means the institutional and financial arrangements for the United Nations Environment Programme established by the General Assembly of the United Nations in resolution 2997 (XXVII) of 15 December 1972, and such other institutional and financial arrangements as may from time to time be made for the United Nations Environment Programme. The United Nations Environment Programme shall, in particular, in accordance with resolution 2997 (XXVII), include the following:

(i) The Governing Council of the United Nations Environment Programme;

(ii) The Executive Director of the United Nations Environment Programme;

(iii) The Environment Secretariat; and

(iv) The Environment Fund;

(*b*) The expression "the Unit" means the headquarters of the Regional Co-ordinating Unit for the Caribbean Action Plan;

(*c*) The expression "Executive Director" means the Executive Director of UNEP or any officer designated to act on his behalf;

(*d*) The expression "Director" means the Director of the Unit;

(*e*) The expression "officials of the Unit" means the officials of the Environment Secretariat forming part of the Unit, namely, the Director and all members of the staff of the Unit, except those who are locally recruited and assigned to hourly rates;

(*f*) The expression "officials of the Environment Secretariat" means the Executive Director and all members of the staff of UNEP, including the officials of the Unit, except those who are locally recruited and assigned to hourly rates;

(*g*) The expression "the Government" means the Government of Jamaica;

(*h*) The expression "appropriate Jamaican authorities" means such Government, municipal or other authorities in Jamaica as may be appropriate in the context and in accordance with the laws and customs applicable in Jamaica;

(*i*) The expression "headquarters" means the office or the premises occupied by the Unit as well as any other offices or premises occupied by the Unit with the concurrence of the Government;

(*j*) The expression "Member State" means a State which is a Member of the United Nations, or a member of one of the specialized agencies, or a member of the International Atomic Energy Agency, or any other State designated by the General Assembly as eligible to participate in UNEP;

(*k*) The expression "General Convention" means the Convention on the Privileges and Immunities of the United Nations, approved by the General Assembly of the United Nations on 13 February 1946.

Article II

THE HEADQUARTERS

Section 2

(*a*) The Government grants to the United Nations, and the United Nations accepts from the Government, the permanent use and occupation of a headquarters, the location of which shall be defined in a supplemental agreement to be concluded between the United Nations and the Government;

(*b*) The headquarters shall not be removed unless the United Nations should so decide. Any transfer of the headquarters temporarily to another place shall not constitute a removal of the permanent headquarters unless there is an express decision by the United Nations to that effect;

(*c*) Any location in or outside of Kingston which is temporarily used with the concurrence of the Government for meetings convened by the Unit shall be included in the headquarters;

(*d*) The appropriate Jamaican authorities shall take whatever action may be necessary to ensure that the Unit shall not be dispossessed of all or any part of the headquarters without the express consent of the United Nations.

Section 3

(*a*) The United Nations shall for official purposes have the authority to install and operate a radio sending and receiving station or stations to connect at appropriate points and exchange traffic with the United Nations radio network. The United Nations as a telecommunications administration will operate its telecommunications services in accordance with the International Telecommunications Convention and the Regulations annexed thereto. The frequencies used by these stations will be communicated by the United Nations to the Government and to the International Frequency Registration Board;

(*b*) The Government shall, upon request, grant to the Unit for official purposes appropriate radio and other telecommunications facilities in conformity with the technical arrangements to be made with the International Telecommunications Union.

Section 4

The Unit may establish and operate research, documentation and other technical facilities. These facilities shall be subject to appropriate safeguards which, in the case of facilities which might create hazards to health or safety or interfere with property, shall be agreed with the appropriate Jamaican authorities.

Section 5

The facilities provided for in sections 3 and 4 may, to the extent necessary for efficient operation, be established and operated outside the headquarters area. The appropriate Jamaican authorities shall, at the request of the Unit, make arrangements, on such terms and in such manner as may be agreed upon by supplemental agreement, for the acquisition or use by the Unit of appropriate premises for such purposes and for the inclusion of such premises in the headquarters.

Article III

INVIOLABILITY OF THE HEADQUARTERS

Section 6

(*a*) The Government recognizes the inviolability of the headquarters, 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 and subject to any regulations enacted under paragraph (*d*) hereof, the laws of Jamaica shall apply within the headquarters;

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

(*d*) The Unit shall have the power to make regulations operative throughout the headquarters for the purpose of establishing therein the conditions in all respects necessary for the full execution of its functions. No provision of the laws of Jamaica which is inconsistent with a regulation of the Unit authorized by this paragraph shall, to the extent of such inconsistency, be applicable within the headquarters. Any dispute between the Unit and the Government as to whether a regulation

of the Unit is authorized by this paragraph, or as to whether a provision of the laws of Jamaica is inconsistent with any regulation of the Unit authorized by this paragraph shall be promptly settled by the procedure set out in section 24. Pending such settlement, the regulation of the Unit shall apply and the provision shall be inapplicable in the headquarters to the extent that the Unit claims it to be inconsistent with the regulation of the Unit.

Section 7

(*a*) The headquarters shall be inviolable. No officer or official of the Government shall enter the headquarters 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 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 from being used as a refuge by persons who are avoiding arrest under any law of Jamaica, who are required by the Government for extradition to another country, or who are endeavouring to avoid service of legal process.

Article IV

PROTECTION OF THE HEADQUARTERS

Section 8

(*a*) The appropriate Jamaican authorities shall exercise due diligence to ensure that the tranquillity of the headquarters is not disturbed by any person or group of persons attempting unauthorized entry into or creating disturbance in the immediate vicinity of the headquarters, and shall provide on the boundaries of the headquarters such police protection as may be required for these purposes;

(*b*) If so requested by the Director, the appropriate Jamaican authorities shall provide a sufficient number of police for the preservation of law and order in the headquarters.

Article V

PUBLIC SERVICES IN THE HEADQUARTERS

Section 9

(*a*) The appropriate Jamaican authorities shall exercise, to the extent requested by the Executive Director, their respective powers to ensure that the headquarters shall be supplied with the necessary public services, including, without limitation by reason of this enumeration, electricity, water, sewerage, gas, post, telephone, telegraph, local transportation, drainage, collection of refuse and fire protection, and that such public services shall be supplied on equitable terms;

(*b*) In the cases of *force majeure* resulting in a complete or partial interruption of aforesaid services, the Unit, in the performance of its functions, shall be accorded the priority, if any, given to essential agencies of the Government;

(*c*) The Director shall, upon request, make suitable arrangements to enable duly authorized representatives of the appropriate public services bodies to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the headquarters under conditions which shall not unreasonably disturb the carrying out of the functions of the Unit;

(*d*) In respect of the services maintained by the Government, or by the agencies subject to Government supervision, the Unit shall avail itself of the reduced tariffs, if any, granted to other Governments, including their diplomatic missions, and to the Government offices.

Article VI

COMMUNICATIONS AND PUBLICATIONS

Section 10

(*a*) All official communications directed to the Unit or to any official of the Environment Secretariat, at the headquarters of the 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 11

Subject to any relevant provisions of the laws of Jamaica, and any international conventions to which Jamaica is a party, the Unit shall have the right freely to publish and broadcast within Jamaica in fulfilment of its purpose.

Article VII

FREEDOM FROM TAXATION

Section 12

(*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 Jamaican governmental administrations or to chiefs of diplomatic missions accredited to Jamaica, whichever are the more favourable;

(*c*) In any transaction to which the Unit is a party, the Unit shall be exempt 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*) Articles imported in accordance with subsections (*d*) and (*e*) of this section may be sold by the Unit in Jamaica after their importation or acquisition, subject to the relevant laws of Jamaica.

Article VIII

FINANCIAL FACILITIES

Section 13

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

(i) Purchase any currencies through authorised 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;

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

(*b*) The Government shall employ its best endeavours to enable 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 AND PENSION FUND

Section 14

The United Nations Joint Staff Pension Fund shall enjoy legal capacity in Jamaica and shall enjoy the same exemptions, privileges and immunities as the Unit itself.

Section 15

The Unit shall be exempt from all compulsory contributions to, and officials of the Environment secretariat shall not be required by the Government to participate in, any social security scheme of Jamaica.

Article X

TRANSIT AND RESIDENCE

Section 16

(*a*) The Government shall take all necessary measures to facilitate the entry into and sojourn in Jamaican territory and shall place no impediment in the way of the departure from Jamaican 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 of 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, radio, 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 interruptions of transportation, which shall be dealt with as provided in section 9 (*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 this section, shall be granted without charge 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 Jamaica or for requiring him to leave such territory. In case of abuse of the privileges of residence by any such person in activities in Jamaica outside his official capacity, the privileges referred to in subsection (*a*) shall cease to apply, provided that:

(i) No proceeding shall be instituted to require any such person to leave Jamaica except with the prior approval of the Minister for the time being responsible for Foreign Affairs of Jamaica;

(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 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 23 shall not be required to leave Jamaica otherwise than in accordance with the customary procedure applicable to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to Jamaica;

(*e*) 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 17

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 Jamaica, enjoy the privileges and immunities provided in article IV of the General Convention.

Section 18

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 necessary.

Article XII

OFFICIALS AND EXPERTS OF THE ENVIRONMENT SECRETARIAT

Section 19

Officials of the Environment Secretariat shall enjoy within and with respect to Jamaica 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 inspection and seizure of personal and official baggage, except in cases of *flagrante delicto*. In such cases the appropriate Jamaican authorities shall immediately inform the Executive Director. Inspections shall in the case of personal baggage be conducted only in the presence of the official or his authorized representative, and in the case of official baggage, in the presence of an authorized representative of the Unit;

(*c*) 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;

(*d*) Exemptions from any form of taxation on income derived by them from sources outside Jamaica;

(*e*) Exemption from registration fees in respect of their automobiles;

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

(*g*) Exemption from national service obligations, provided that, with respect to Jamaican nationals, such exemptions 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 Jamaican 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;

(*h*) The right to purchase petrol free of duty for their vehicles on similar terms as accorded to members of diplomatic missions accredited to Jamaica;

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

(*j*) Freedom to purchase one dwelling house within Jamaican territory for strictly personal use and in the event of sale of such house, the right to take out of Jamaica, through authorized channels, the proceeds of the sale of such house in transferable currency provided that the procedural requirements obtaining in such transactions are observed;

(*k*) 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 Jamaica;

(*l*) 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) In accordance with the relevant laws of Jamaica, one automobile, every three years, and in cases where the official is accompanied by dependants, a second automobile on the basis of representations to the Government by the Director; however, where the Director and the Government agree, in particular cases, replacement may take place at an earlier date in the event 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;

(*m*) Automobiles imported in accordance with subsection (*l*) (ii) of this section may be sold in Jamaica after their importation, subject to the laws concerning the payment of customs duties;

(*n*) Officials of the Environment Secretariat other than officials of the Unit shall not enjoy the privileges, immunities and exemptions provided for in subsections (*d*), (*e*), (*g*), (*h*), (*j*), (*l*) and (*m*) 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;

(*o*) 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;

(*p*) The terms and conditions of employment for locally recruited personnel shall be in accordance with the relevant United Nations Regulations and Rules.

Section 20

Without prejudice to the privileges and immunities specified in section 19, 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 ground 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 Jamaica.

Section 21

Experts (other than officials coming within the scope of sections 19 and 20) 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 Jamaica, the following privileges and immunities so far as may be necessary for the effective exercise of their functions:

(*a*) Immunity in respect of themselves, their spouses and their dependent children from personal arrest or detention and from seizure of their personal and official baggage except in cases of *flagrante delicto.* In such cases the appropriate Jamaican authorities shall immediately inform the Executive Director. Inspection shall in the case of personal baggage be conducted only in the presence of the expert or his authorized representative, and in the case of official baggage, in the presence of an authorized representative of the Unit;

(*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 material by courier or in sealed bags;

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

(*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 Jamaica;

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

(*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 Jamaica;

(*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 Jamaica 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.

Section 22

(*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 Jamaican authorities.

Article XIII

SETTLEMENT OF DISPUTES

Section 23

The Director shall make provision for appropriate methods of settlement of:

(*a*) Disputes arising out of contracts and disputes of a private law character to which the Unit is a party and, in consultation with the Government;

(*b*) Disputes involving an official of the Environment Secretariat who, by reason of his official position, enjoys immunity, if such immunity has not been waived.

Section 24

Any dispute between the Unit and the Government concerning the interpretation or application of this Agreement or of any supplemental agreement, or any question affecting the headquarters or the relationship between the Unit and the Government, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators: one to be chosen by the Executive Director, one to be chosen by the Minister for the time being responsible for Foreign Affairs of Jamaica and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such third arbitrator shall be chosen by the President of the International Court of Justice at the request of the Secretary-General of the United Nations or the Government.

Article XIV

GENERAL PROVISIONS

Section 25

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 Jamaica. They also have a duty not to interfere in the internal affairs of Jamaica.

Section 26

(*a*) The facilities, privileges and immunities granted by this Agreement are granted in the interests of the Unit and not for personal benefit;

(*b*) The immunities granted by section 17 may be waived by the Member State concerned;

(*c*) The immunities granted by sections 19, 20 and 21 shall be waived by the Secretary-General of the United Nations whenever in his opinion such immunity would impede the course of justice and can be waived without prejudice to the interests of the Unit;

(*d*) 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 authorities to determine whether any such abuse has occurred.

Section 27

This Agreement shall be applicable irrespective of the relations existing between the Governments of the persons referred to in sections 16 (*a*) and 17 and the Government of Jamaica.

Section 28

Whenever this Agreement imposes obligations on the appropriate Jamaican authorities, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government.

Section 29

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, wherever possible, be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other.

Section 30

Without prejudice to the performance of its functions by the Unit in a normal and unrestricted manner, the Government may take every preventive measure to preserve the national security and the cultural heritage of Jamaica after consultation with the Executive Director.

Section 31

This Agreement shall be construed in the light of its context and its object and purpose of enabling the Unit at its headquarters in Kingston fully and efficiently to discharge its responsibilities and fulfil its purpose.

Section 32

Consultations with respect to modifications of this Agreement shall be entered into at the request of the United Nations or the Government. Any such notification shall be by mutual consent.

Section 33

The Unit and the Government may enter into such supplemental agreements as may be necessary.

Section 34

This Agreement shall cease to be in force:

(i) By mutual consent of the United Nations and the Government; or

(ii) If the permanent headquarters of the Unit is removed from the territory of Jamaica, except for such provisions as may be applicable in connection with the orderly termination of the operations of the Unit at its permanent headquarters in Jamaica and the disposal of its property therein.

Section 35

This Agreement shall enter into force upon signature by the United Nations and signature by Jamaica.

(*p*) Exchange of letters constituting an agreement between the United Nations (United Nations Conference on Trade and Development) and Bangladesh concerning the arrangements for the meeting required under article 40, paragraph 3, of the International Agreement on Jute and Jute Products, 1982, to be convened on 9 January 1984 at Dhaka.[23] Geneva, 5 and 8 December 1983

I

LETTER FROM THE UNITED NATIONS

5 December 1983

. . .

With the present letter I wish to obtain your Government's acceptance of the following arrangements for the Meeting:

. . .

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

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations, to which Bangladesh is a party, shall be applicable in respect of the Meeting. The representatives referred to in [the paragraph] above 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 representatives 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 spoken or written and of any act performed by them in their official capacity in connection with the Meeting.

(*b*) All representatives and all persons performing functions in connection with the Meeting shall have the right of unimpeded entry into and exit from Bangladesh. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Meeting, visas shall be granted not later than two weeks before the opening of the Meeting. 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 (i) injury or damage to persons or property in conference or office premises provided for the Meeting; (ii) the transportation provided by your Government; and (iii) the employment for the Meeting 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.

. . .

I further propose that upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute an Agreement between the United Nations and the Government of Bangladesh regarding the provision of host facilities by your Government for the Meeting.

(*Signed*) Gamani COREA
Secretary-General of the United Nations Conference on Trade and Development

II

LETTER FROM THE PERMANENT MISSION OF BANGLADESH TO THE UNITED NATIONS

8 December 1983

I am in receipt of your letter of 5 December 1983, the operative parts of which read as follows:

[*See letter I above*]

I have the honour to inform you that the Government of Bangladesh agrees that the arrangements and terms proposed by you as above be made applicable to the Meeting of parties to the Agreement convened by the Secretary-General of the United Nations in accordance with paragraph 40 (3) of the International Agreement on Jute and Jute Products 1982. Your letter and the present reply shall constitute an agreement between the United Nations and the Government of Bangladesh for the provision of host facilities for the Meeting.

(*Signed*) Syed Noor HOSSAIN
Acting Permanent Representative of Bangladesh to the United Nations

(*q*) Agreement between the United Nations (United Nations Industrial Development Organization) and France concerning the UNIDO service in Paris to strengthen industrial co-operation between France and the developing countries.[24, 25] Signed at Vienna on 31 January 1983

. . .

Article VI

The service shall enjoy the privileges and immunities accorded by the Convention on the Privileges and Immunities of the United Nations, subject to the provisions of article 21 of the UNIDO Constitution, when it enters into force.

. . . .

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3. AGREEMENTS RELATING TO THE UNITED NATIONS CHILDREN'S FUND: REVISED MODEL AGREEMENT CONCERNING THE ACTIVITIES OF UNICEF[26]

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 the Government of Haiti concerning the activities of UNICEF in Haiti.[27] Signed at Port-au-Prince on 21 July 1983.

This agreement contains articles similar to articles VI and VII of the Revised Model Agreement.

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4. AGREEMENTS RELATING TO THE UNITED NATIONS DEVELOPMENT PROGRAMME: STANDARD BASIC AGREEMENT CONCERNING ASSISTANCE BY THE UNITED NATIONS DEVELOPMENT PROGRAMME[28]

Article III

EXECUTION OF PROJECTS

. . .

5. [See *Juridical Yearbook, 1975*, p. 24.]

Article IX

PRIVILEGES AND IMMUNITIES

[See *Juridical Yearbook, 1975*, p. 25.]

Article X

FACILITIES FOR EXECUTION OF UNDP ASSISTANCE

[See *Juridical Yearbook, 1975*, pp. 25 and 26.]

Article XIII

GENERAL PROVISIONS

. . .

4. [See *Juridical Yearbook, 1975*, p. 26.]

Standard Basic Assistance Agreements between the United Nations (United Nations Development Programme) and the Governments of Saint Vincent and the Grenadines,[29] Antigua and Barbuda[30] and Zambia.[31] Signed respectively at Kingstown on 29 April 1983, at St. John (Antigua) on 26 August 1983 and at Lusaka on 14 October 1983.

These agreements contain provisions similar to articles II.5, IX, X and XIII.4 of the Standard Basic Agreement.

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5. 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 Haiti.[32] Signed at Port-au-Prince on 21 October 1982.

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, 1974*, pp. 35-37.

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6. AGREEMENTS RELATING TO THE UNITED NATIONS CAPITAL DEVELOPMENT FUND

Basic Agreements between the United Nations (United Nations Capital Development Fund) and Chad[33] and Sierra Leone[34] concerning assistance from the United Nations Capital Development Fund. Signed respectively at N'Djamena on 1 April 1983, at Freetown on 13 September 1983 and at New York on 14 October 1983.

These Agreements contain provisions similar to paragraphs 5, 6 and 7 of article III and article V of the Agreement between UNCDF and the Gambia reproduced in *Juridical Yearbook, 1982*, p. 50.

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

In 1983 the following States parties acceded to the Convention, or, if already parties, undertook by a subsequent notification to apply the provisions of the Convention, in respect of the specialized agencies indicated below:[36]

State		*Date of receipt of instrument of accession or notification*	*Specialized agencies*
Botswana	Accession	5 April 1983	FAO, IBRD, ICAO, ILO, IMF, ITU, UNESCO, UPU, WHO
Uganda	Accession	11 April 1983	FAO, IBRD, ICAO, IDA, IFAD, IFC, ILO, IMF, IMO, WHO, WIPO, WMO, UNESCO, UPU
Denmark	Notification	15 December 1983	WIPO

As of 31 December 1983, 90 States were parties to the Convention.[37]

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2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

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

In 1983 the organization concluded with Trinidad and Tobago an agreement for the establishment of an FAO Representative's Office. The agreement, *inter alia*, provides for privileges and immunities.

(*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[38] were concluded in 1983 with the Governments of the following countries acting as hosts to such sessions:

Argentina, Bangladesh, Barbados, Belgium,[39] Cameroon, Colombia,[39] Cyprus, Democratic Yemen, Denmark, Dominican Republic, Ecuador, Egypt, Ethiopia, France,[39] Hungary, Iceland, India,[39] Indonesia,[39] Israel, Italy,[39] Kenya,[39] Malaysia, Mauritius, Mexico,[39] Netherlands,[39] Nicaragua, Pakistan, Panama, Peru, Philippines, Saint Lucia, Spain,[39] Sri Lanka,[39] Sudan, Switzerland,[39] Thailand,[39] Tunisia, United Republic of Tanzania, United States of America,[39] Yugoslavia, Zimbabwe.

(*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[40], were concluded in 1983 with the Governments of the following countries acting as hosts to such training activities: Angola, Austria, Ecuador, Grenada, Hungary, Italy,[39] Ivory Coast, Kenya, Morocco, Nigeria, Philippines, Senegal, Sweden, Thailand, Trinidad and Tobago, United Republic of Tanzania, Zimbabwe.

(*d*) Exchange of letters between the Government of Sweden and the Food and Agriculture Organization of the United Nations regarding training activities to be held in 1972[41]

The agreement was extended on 5 January 1983 to cover training activities to be held in 1983.

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Agreements relating to conferences, seminars and other meetings

(*a*) Agreement between the Government of Colombia and the United Nations Educational, Scientific and Cultural Organization concerning the Third Meeting of the Working Group on Studies of "El Niño", signed at Paris on 24 January 1982.

"*Privileges and immunities*

The Government of Colombia shall apply in all matters relating to the meeting the Convention on the Privileges and Immunities of the Specialized Agencies and annex IV thereto relating to UNESCO, to which it has been a party since 19 May 1977. In particular, it shall ensure that no restriction is imposed upon the right of entry into, sojourn in and departure from Colombia of all persons entitled to participate in the meeting, without distinction of nationality.

"The Government of Colombia shall also apply *mutatis mutandis* to government representatives participating in the meeting the relevant provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961."[42]

(*b*) Agreements containing provisions similar to that referred to in the paragraph above were also concluded between UNESCO and the Governments of other Member States.

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4. INTERNATIONAL CIVIL AVIATION ORGANIZATION

Agreement between the Government of the Republic of Kenya and the International Civil Aviation Organization on the Eastern African Regional Office of ICAO in Namibia.[43] Signed at Nairobi on 6 July 1983

The Agreement relates to the status, privileges and immunities of the organization, of the representatives of States and of the officials of the organization in Kenya.

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5. WORLD HEALTH ORGANIZATION

(*a*) Basic Agreements on technical advisory co-operation

Basic Agreements on technical advisory co-operation were concluded in 1983 between the World Health Organization and the following States:

State	*Place of signature*	*Date of signature*
Bhutan	Thimphu/New Delhi	16 December 1982/3 January 1983
Nicaragua	Managua/Washington, D.C.	14 March 1983/28 February 1983

These agreements contain provisions similar to article I, paragraph 6, and article V of the Agreement between the World Health Organization and Guyana.[44]

(*b*) Basic Agreement between the Government of Antigua and Barbuda and the Pan American Health Organization represented by the Pan American Sanitary Bureau, Regional Office of the World Health Organization.[45] Signed at Washington on 24 May 1982 and at Antigua on 11 May 1983

Article V

ADMINISTRATIVE AND FINANCIAL OBLIGATIONS OF THE GOVERNMENT

. . .

6. The Government will be responsible for dealing with any claims brought by third parties against the Organization and its advisers, agents and employees, and shall hold the Organization, its advisers, agents and employees harmless from any claims or liabilities arising out of operations under this Basic Agreement or other agreements or subsidiary arrangements, except when the Government and the Organization agree that such claims and liabilities arise from the gross negligence or wilful misconduct of such advisers, agents and employees.

Article VI

EXEMPTIONS, PRIVILEGES AND IMMUNITIES

The Government shall grant to the Organization the following exemptions, privileges and immunities:

1. The Organization shall enjoy the legal capacity and the privileges and immunities required for the performance of its functions and accomplishment of its purposes as an international agency.

2. In the performance of its specific functions, the Organization and its Governing Bodies shall enjoy the independence and freedom of action that are proper to international agencies.

3. The Organization, and its goods, assets, premises and files, shall be immune from legal and administrative process, and exempt from all taxes and levies, whether national, regional or municipal, and may not be searched, embargoed or subject to any other executory measure save in particular cases in which this immunity is expressly waived by the Director.

4. The Organization shall be exempt from the charges, fees and rates for storage and port-handling services in connection with goods imported for its own use or for public institutions.

5. The Organization shall have the right to send and receive correspondence by mail and pouch, which shall enjoy the same privileges and immunities accorded to diplomatic mail and pouches.

6. The Government shall take all necessary measures to facilitate the entry, residence in the country and departure from it of persons having official business to transact with the Organization, as follows:

6.1 Staff members of the Organization.

6.2 Advisers of the Organization on mission in the country.

6.3 The members of the Governing Bodies of the Organization, regardless of the nature of the relations currently prevailing between their respective countries and Antigua and Barbuda.

6.4 Holders of fellowships and other persons selected in accordance with the regulations of the Organization to participate in international seminars and courses sponsored by the Organization in the country.

7. The Government shall recognize the United Nations "Laissez-Passer" issued to staff members of the Organization as a valid travel document.

8. The staff members of the Organization, including the advisers employed to fulfil this Basic Agreement and any other agreements or subsidiary arrangements, shall enjoy:

8.1 Immunity from arrest and detention of their persons and from administrative and judicial process in respect of their official acts and of their oral and written statements made in the performance of their duties, even after those duties have come to an end.

8.2 Inviolability of their luggage and documents and exemption from all taxes, levies, fees and charges on salaries, earnings and other emoluments received from the Organization.

9. The personnel of the Organization who are not nationals of Antigua and Barbuda:

9.1 May import free of import and other duties and of the required customs formalities and charges, the luggage, effects and furniture brought with them for their residence in the country. This exemption shall also apply to the effects which arrive as unaccompanied baggage in one or more shipments, provided they enter the country within six months following the arrival of the staff member.

9.2 Shall have the right to import duty-free one automobile or other vehicle for personal use and to transfer it under the conditions then prescribed in the country.

9.3 Shall be exempt from compliance with the current provisions on military service in the country.

9.4 May freely export the luggage, effects, furniture and vehicle of their property upon completion of their missions in the country and for up to three months following their final departure.

9.5 Shall enjoy at times of national or international crisis, together with their spouses and children, repatriation facilities similar to those provided for the staff of diplomatic missions.

10. The Director and the Representative of the Organization, or their deputies in their absence, together with their spouses and minor children, shall enjoy the privileges, immunities, exemptions and facilities accorded to diplomatic envoys under international law.

11. The Representative of the Organization shall provide to the Government a list of the staff members of the Organization entitled to the immunities and privileges under this Basic Agreement.

12. The said privileges and immunities are accorded to staff members not for their personal benefit but in the interest of the Organization. The Director shall have the right and the obligation to waive the immunity of any officer whenever, in his judgement, such immunity impedes the course of justice and may be waived without impairment to the interests of the Organization.

13. The Organization shall co-operate at all times with the competent national authorities in the administration of justice, and shall prevent any abuse of the privileges, immunities and facilities granted in this Basic Agreement.

6. WORLD METEOROLOGICAL ORGANIZATION

Agreement between the Government of the Republic of Paraguay and the World Meteorological Organization on the legal status and functioning of the Regional Office for the Americas of WMO in the Republic of Paraguay. Signed at Asunción on 5 December 1983

. . .

SCOPE OF THE AGREEMENT

Article 2

The Regional Office is an integral part of the secretariat of the Organization. It shall be located in the city of Asunción, capital of the Republic of Paraguay. Its responsibilities are defined by the Organization and its specific activities by the Secretary-General. The responsibilities include its dealing with the Members in Regions III (South America) and IV (North and Central America) of the Organization, with regional offices of the United Nations, of the United Nations Development Programme and of other subsidiary bodies of the United Nations, with regional offices of other specialized agencies, and with inter-governmental organizations of regional nature, in the fields of meteorology and operational hydrology.

Article 3

The Regional Office shall be placed under the responsibility of a Regional Director, acting on behalf of the Secretary-General.

Article 4

The provisions of the present Agreement shall apply to the functioning of the Regional Office in the Republic of Paraguay. Any other relations between the Organization and the Republic of Paraguay, including technical co-operation activities, are regulated by the established procedures between the Organization and its Members in accordance with the provisions of the Convention of the Organization.

Article 5

Without prejudice to the application of the provisions of the present Agreement, the Organization, in the Republic of Paraguay, shall have the necessary legal capacity for the functioning of the Regional Office. It shall also enjoy the privileges and immunities necessary for the functioning of the Regional Office. The representatives of Members as well as the officials of the Organization, shall enjoy the privileges and immunities necessary for the independent exercise of their functions within the framework of the Organization.

JURIDICAL PERSONALITY

Article 6

The Organization 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.

FREEDOM OF ACTION AND OF MEETING

Article 7

The Government shall guarantee to the Organization in the Republic of Paraguay the independence and freedom of action to which it is entitled as an international organization.

Article 8

The Organization and its Regional Office, as well as its Members and the representatives of Members in their relations with the activities of the Regional Office, shall enjoy, in the Republic of Paraguay, freedom of meeting, including freedom of discussion and decision, within the framework of the normal functions of the Organization.

PROPERTIES, FUNDS AND ASSETS

Article 9

The Organization and, in particular, its Regional Office, its property and assets, wherever located in the Republic of Paraguay, and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Article 10

The premises of the Organization and, in particular, of its Regional Office, shall be inviolable. The property and assets of the Organization and, in particular, of its Regional Office, wherever located in the Republic of Paraguay, and by whomsoever held, shall be immune from search,

requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Article 11

The archives of the Regional Office, and in general all documents belonging to it or held by it, shall be inviolable, wherever located.

Article 12

Without being restricted by financial controls, regulations or moratoria of any kind:

(*a*) The Organization and, in particular, its Regional Office, may hold funds, gold or currency of any kind and operate accounts in any currency;

(*b*) The Organization and, in particular, its Regional Office, may freely transfer its funds, gold or currency from the Republic of Paraguay to another country and vice versa, or within the Republic of Paraguay, and convert any currency held by it into any other currency.

Article 13

The Organization shall, in exercising its rights under article 12 above, pay due regard to any representation made by the Government in so far as this can be done without detriment to the interests of the Organization.

Article 14

The Organization and, in particular, its Regional Office, its assets, income and other property shall:

(*a*) Be exempt from all direct taxes; it is understood, however, that the Organization will not claim exemption from taxes which are, in fact, no more than charges for public services specifically provided other than those specified in this Agreement and its Plan of Execution;

(*b*) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Organization and, in particular, by its Regional Office, for its official use; it is understood, however, that articles imported under such exemption will not be sold in the Republic of Paraguay except under conditions agreed to with the Government;

(*c*) Be exempt from duties and prohibitions and restrictions on imports and exports in respect of its publications.

Article 15

The Organization will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid; nevertheless when the Organization and, in particular, its Regional Office, is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Government will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

COMMUNICATIONS

Article 16

The Organization and, in particular, its Regional Office, shall enjoy, in the territory of the Republic of Paraguay, for its official communications, treatment not less favourable than that accorded by the Government to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications, including digital data, and press rates for information to the press and radio.

Article 17

The Government shall also grant the Organization the postal, telegraphic and telephonic franchises* necessary for the fulfilment of its functions, as established in the Plan of Execution.

Article 18

The official correspondence, as well as the other official communications of the Organization, shall be inviolable. The Organization and, in particular, its Regional Office, shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags. Nothing in this article shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between the Government and the Organization.

REPRESENTATIVES OF THE MEMBERS

Article 19

Representatives of Members at meetings convened by the Organization in relation to the activities of its Regional Office, shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the following privileges and immunities:

(*a*) Immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;

(*b*) Inviolability for all papers and documents;

(*c*) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

(*d*) Exemption in respect of themselves and their spouses from immigration restrictions, aliens' registration or national service obligations in the Republic of Paraguay;

(*e*) The same facilities in respect of currency or exchange restrictions as are accorded by the Government to representatives of foreign Governments on temporary official missions;

(*f*) The same immunities and facilities in respect of their personal baggage as are accorded by the Government to members of comparable rank of diplomatic missions.

Article 20

In order to secure for the representatives of Members at meetings convened by the Organization, complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

Article 21

Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members of the Organization at meetings convened by it are present in the Republic of Paraguay for the discharge of their duties shall not be considered as periods of residence.

Article 22

Privileges and immunities are accorded to the representatives of Members, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Organization.

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*The word "franchises" is used in the sense of free services, as expressed by the Spanish word *franquicias*.

Article 23

The provisions of articles 19, 20 and 21 shall not be invoked against the authorities of the Republic of Paraguay in the case of a citizen or a person who is or has been a representative of the Republic of Paraguay.

FACILITIES

Article 24

The Government shall provide the Regional Office those facilities in respect to office space, furniture and office equipment, administrative personnel and other services established in the Plan of Execution.

OFFICIALS

Article 25

The Organization will specify the categories of officials to which the provisions of articles 26 through 29 and articles 34 through 38 shall apply. It shall communicate them to the Government. The names of the officials included in these categories shall from time to time be made known to the Government.

Article 26

All officials, regardless of nationality, shall:

(*a*) Be immune from legal process in respect of words spoken or written and all acts, as performed by them in their official capacity;

(*b*) Enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the Organization and on the same conditions as are enjoyed by officials of the United Nations.

Article 27

The officials who are not nationals of the Republic of Paraguay shall also:

(*a*) Be immune, together with their dependants, from immigration restrictions and alien registration, as well as from the payment of the corresponding fees and taxes;

(*b*) Enjoy complete freedom to transfer funds, and to negotiate, whatever the place and form may be, foreign currency, cheques, hard cash, foreign coins and bills received as salaries and emoluments from the Organization, free from currency exchange restrictions or limitations;

(*c*) Be given, together with their dependants, the same repatriation facilities in times of international crisis as officials of comparable rank of diplomatic missions;

(*d*) Be exempt, together with their dependants, from national service obligations in the Republic of Paraguay;

(*e*) Have the right to import free of duty their furniture and effects at the time of first taking up their assignment in the Republic of Paraguay. This provision shall also apply to furniture and effects shipped as unaccompanied luggage, in one or several shipments, provided that they enter the country within six months after the arrival of the official or the establishment of the family, whichever is the latest;

(*f*) Have the right to import free of duty, a motor vehicle for personal use, and to transfer it under the terms and conditions established by the Government. However, such terms and conditions for the transfer shall be waived in the case of motor vehicles that:

(i) Belonged to an official deceased during tenure of office;

(ii) Belong to an official being transferred to another country, provided that the said official served for a period longer than one year in the Republic of Paraguay;

(*g*) Have the right to import additionally free of duty items for personal use or home consumption or that of their dependants, during their stay in the Republic of Paraguay and up to six months following the end of their assignment. This right is subject to an annual quota established by the Government;

(*h*) Be allowed to export freely their furniture, effects and vehicles after their assignment in the Republic of Paraguay and up to six months following their final departure.

Article 28

In addition to the privileges and immunities specified in articles 26 and 27, the Secretary-General, including any official acting on his behalf during his absence from duty, the Deputy Secretary-General and the Regional Director, shall be accorded, in respect to themselves and their dependants, the privileges, immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law and practice.

Article 29

Officials who are nationals of the Republic of Paraguay shall also:

(*a*) Enjoy exemption from monetary and currency exchange restrictions whenever they must carry out official duties abroad;

(*b*) Be exempt from any obligation to provide services in the national Government or on the latter's request; nevertheless, such exemption shall be confined to officials whose names have, by reason of their duties, been placed upon a list compiled by the Secretary-General and approved by the Government. Should other officials be called up for national service, the Government shall, at the request of the Organization, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work.

Article 30

Privileges and immunities are granted to officials in the interest of the Organization only and not for the personal benefit of the individuals themselves. The Organization shall have the right and the duty to waive the immunity of any official in any case where, in its opinion, the immunity would impede the course of justice, and can be waived without prejudice to the interests of the Organization.

Article 31

The Organization shall co-operate at all times with the appropriate authorities of the Republic of Paraguay to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuses in connection with the privileges, immunities and facilities mentioned in articles 26 through 29 of the present Agreement.

ABUSES OF PRIVILEGE

Article 32

If the Government considers that there has been an abuse of a privilege or immunity conferred by the present Agreement, consultations shall be held between the Government and the Organization to determine whether such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the Government and the Organization, the question whether an abuse of a privilege or immunity has occurred shall be submitted to a Board of Arbitrators, in accordance with article 47. If the Board of Arbitrators finds that such an abuse has occurred, the Government shall have the right, after notification to the Organization, to withhold from the Organization the benefits of the privilege or immunity so abused.

Article 33

Representatives of Members at meetings convened by the Organization in relation to the activities of its Regional Office, while exercising their functions and during their journeys to and from the place

of meeting, and officials within the meaning of article 25, shall not be required by the territorial authorities to leave the Republic of Paraguay on account of any ácti vities by them in their official capacity. In the case, however, of abuse of privileges of residence committed by any such person in activities in the Republic of Paraguay outside his official functions, he may be required to leave by the Government provided that:

(*a*) Representatives of Members, or persons who are entitled to diplomatic immunity under article 28, shall not be required to leave the Republic of Paraguay otherwise than in accordance with the diplomatic procedure applicable to diplomatic envoys accredited to the Republic of Paraguay;

(*b*) In the case of an official to whom article 28 is not applicable, no order to leave the country shall be issued other than with the approval of the Foreign Minister of the Republic of Paraguay, which shall be simultaneously communicated to the Secretary-General; and, if expulsion proceedings are taken against an official, the Secretary-General shall have the right to appear in such proceedings on behalf of the person against whom they are instituted.

TRAVEL

Article 34

Subject to the provisions of article 39, the Government shall take all necessary measures to facilitate the entry into, residence in, and departure from the Republic of Paraguay and access to the premises of the Regional Office of all persons called upon to act in an official capacity for the Organization, namely:

(i) The representatives of Members,

(ii) The officials,

(iii) All other persons, regardless of nationality, summoned or invited by the Organization.

Police regulations intended to restrict the entry of foreigners into the Republic of Paraguay or to regulate the conditions of their residence shall not apply to persons covered by the present article. The persons referred to in this article shall not be exempt from observing the regulations in matters related to quarantine and public health. The provisions of the present article shall apply to the dependants of the person concerned if they live with him and do not exercise any independent profession or occupation.

Article 35

The Government shall recognize and accept as valid travel documents the United Nations laissez-passer issued to the officials of the Organization, as well as the family certificate of the United Nations issued to their dependants, both in accordance with the administrative provisions agreed upon between the Secretary-General of the Organization and the Secretary-General of the United Nations.

Article 36

Applications for visas, where required, from officials of the Organization holding United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of the Organization, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

Article 37

Similar facilities to those specified in article 36 shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate that they are travelling at the request of the Organization.

Article 38

The Secretary-General, the Deputy Secretary-General, heads of departments and other officials of a rank not lower than head of department of the Organization and, in particular, the Regional

Director, travelling on United Nations laissez-passer at the request of the Organization, shall be granted the same facilities for travel as are accorded to officials of comparable rank in diplomatic missions.

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7. INTERNATIONAL MARITIME ORGANIZATION

Agreement between the Government of Sweden and the International Maritime Organization regarding the World Maritime University.[46] Signed at London on 9 February 1983

. . .

PART I

DEFINITIONS AND INTERPRETATION

. . .

Article 2

. . .

2. To the extent that they deal with the same subject-matter, this Agreement and the Convention[47] or any treaty conferring immunities and privileges upon the Organization shall be complementary.

PART II

PREMISES AND PROPERTY OF THE UNIVERSITY

Article 3

1. For the purpose of article III of the Convention, but not as a condition of its application, the location of the premises and the archives of the University shall be made known to the appropriate authorities by the Secretary-General or the Rector who shall also inform the appropriate authorities of any change in the location or extent of such premises or archives and of any temporary occupation by the University of premises for the fulfilment of its official functions. Where premises are temporarily used or occupied by the University for the fulfilment of its official functions, these premises shall, with the agreement of the appropriate authorities, be accorded the status of premises of the University.

2. The inviolability conferred by article III, section 6, of the Convention extends to all archives, correspondence, documents, manuscripts, photographs, films and recordings belonging to or held by the University and to all information contained therein.

3. The immunity conferred by article III, section 5, of the Convention extends to the means of transport of the University. Means of transport which the University hires or borrows shall be immune from search, requisition, confiscation or expropriation. However, the immunity conferred by article III, section 5, of the Convention does not extend to administrative or police action which may be temporarily necessary in connection with the prevention and investigation of accidents involving a motor vehicle belonging to, or operated on behalf of, the University, nor in case of damage caused by a motor vehicle belonging to, or operated on behalf of, the University. The University shall identify as such, means of transport being used for official purposes.

4. The Government shall do their utmost to ensure that the premises of the University shall be supplied with necessary public services, including electricity, water, sewerage, gas, post, telephone, telegraph, drainage, collection of refuse and fire protection and that such public services shall be supplied on reasonable terms. In case of any interruption or threatened interruption to any such

services, the Government shall consider the needs of the University as being of equal importance with those of diplomatic missions and shall accordingly take all reasonable steps to ensure that the University is not prejudiced.

Article 4

The University shall be entitled to display its flag and emblem, or the flag and emblem of the Organization, on the premises and means of transport of the University.

Article 5

The Government are under a special duty to take all reasonable steps to protect the premises of the University against any intrusion or damage and to prevent any disturbance of the peace of the University or impairment of its dignity.

Article 6

1. The premises of the University shall be under the control and authority of the Board which may establish any regulations necessary for the execution therein of the functions of the University.

2. Except as otherwise provided in this Agreement, or in the Convention, the law of Sweden shall apply within the premises of the University, provided that the Organization or the University may establish any regulations necessary for the execution of the functions of the University including rules of international administrative law and the terms of contracts of employment governed by that law. These regulations shall be operative within the premises of the University and no law of Sweden which is inconsistent therewith shall be enforceable within those premises. Any dispute between the Organization and the Government as to whether a regulation of the former is authorized by this paragraph or as to whether a law of Sweden is inconsistent with any regulation authorized by this paragraph shall be promptly settled as provided in article 19 of this Agreement.

3. No official of the Government or person exercising any public authority, whether administrative, judicial, military or police, shall enter the premises of the University except with the express consent of and under conditions approved by the Secretary-General or the Rector. No service of execution of any legal process whatsoever, irrespective of whether the Organization is named as defendant, or any ancillary act such as the seizure of private property, shall take place within the premises of the University except with the express consent of and under conditions approved by the Secretary-General.

4. Notwithstanding the applicable terms of this Agreement, the University shall not permit its premises to become a refuge from justice for persons who are avoiding arrest or service of legal process or against whom an order of extradition or deportation has been issued by the appropriate authorities.

5. Nothing in this Agreement shall prevent the reasonable application by the appropriate authorities of measures for the protection of premises against fire.

PART III

ACCESS AND COMMUNICATIONS

Article 7

1. The appropriate authorities shall impose no impediment to the transit to and from the premises of the University of persons having official business at those premises.

2. The Government undertake to authorize the entry into Sweden without charge for visas of the following persons for the terms of their business with the University:

(*a*) Members of the Board;

(*b*) Officials designated by Member States to represent them on any official business of the University;

(*c*) Officials of the University;

(*d*) Experts within the meaning of article 1 (*o*) of this Agreement;

(*e*) Officials of the Organization or of the United Nations and its organs, the specialized agencies and the International Atomic Energy Agency who are on official business of the University;

(*f*) Members of the families of the above-mentioned persons forming part of their respective households;

(*g*) Persons admitted to the University to undertake courses of instruction or to participate in activities or events organized by the University in accordance with its Charter and related Regulations and Rules; and

(*h*) Persons invited to the University by the Secretary-General or by the Rector.

3. The provisions of the preceding paragraphs shall be applicable irrespective of the relations existing between the Government of the persons referred to and the Government of Sweden and are without prejudice to any special immunities to which such persons may be entitled. They shall not prevent the requirement of reasonable evidence to establish that persons claiming the aforementioned rights come within the classes described, nor the reasonable application of international quarantine and public health regulations.

4. The Secretary-General or the Rector shall as far as possible inform the Government, in advance of their arrival in Sweden, of the names of persons within the categories set out in paragraph 2 of this article to assist the Government to implement the provisions of this article as well as article 16 of this Agreement.

Article 8

1. The Government shall permit and protect unrestricted communication on the part of the University for all official purposes. The University may employ all appropriate means of communication, including couriers and messages in code or cypher. However, the University may install and use a wireless transmitter only with the consent of the appropriate authorities. Subject to these qualifications the University may employ the United Nations telecommunication network in accordance with limitations prescribed by the International Telecommunication Convention.

2. The University shall enjoy the treatment provided in article IV, section 11, of the Convention in respect of its official communications to the extent that such treatment is compatible with any other international conventions, regulations and arrangements to which the Government are a party.

3. Sealed bags containing documents or articles intended for official use and bearing external marks of their character shall in particular be accorded the immunity of article III of the Convention and shall not be detained.

4. A courier shall be provided with an official document indicating his status and the number of packages constituting the sealed bag. The appropriate authorities shall assist him in the performance of his functions, in which he shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

5. A sealed bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier. The University may send an official who shall be considered to be a courier to take possession of the bag directly from the captain of the aircraft.

PART IV

MEMBERS OF THE BOARD, OFFICIALS OF THE UNIVERSITY AND EXPERTS

Article 9

Members of the Board at meetings convened by the University shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the privileges and immunities specified in article V of the Convention with respect to representatives of members, subject to the terms specified in that article and in article VII, section 25, of the Convention.

Article 10

Article VI of the Convention does not extend immunity from jurisdiction to the Rector or the Vice Rector, if they are citizens of Sweden, or other officials of the University in case of a motor traffic offence committed by any of them, nor in case of damage caused by a motor vehicle belonging to or driven by any of them.

Article 11

Experts within the meaning of article 1 (*o*) of this Agreement shall be considered as experts defined in paragraph 2 of annex XII to the Convention. However, they shall not enjoy immunity from jurisdiction in case of a motor traffic offence committed by any of them, nor in case of damage caused by a motor vehicle belonging to or driven by any of them.

PART V

FINANCIAL

Article 12

1. Without prejudice to the exemptions accorded by article III, sections 9 and 10, of the Convention and without any limitation of these exemptions, the Organization shall, in respect of the University, be exempt from:

(*a*) Tax on income (*statlig inkomstskatt* and *kommunal inkomstskatt*);

(*b*) Value-added tax and other indirect taxes on articles purchased or services rendered for the official use of the University, to the extent accorded under the law of Sweden to foreign diplomatic missions in Sweden;

(*c*) Social security contributions.

2. The exemption conferred by article III, section 9 (*b*), of the Convention extends to customs duties and any taxes or charges imposed upon or by reason of importation and the procedures in connection therewith excepting charges for storage, cartage and similar services. At the request of the appropriate authorities the University shall provide written certification that any particular import or export is for its official use.

3. In the event of the introduction of taxes other than those referred to in this article, the Organization and the Government shall determine the applicability of the Convention to such taxes.

Article 13

1. The Rector and other officials of the University shall be exempt from income tax (*statlig inkomstskatt* and *kommunal inkomstskatt*) on their emoluments.

2. The Rector and other officials of the University and members of their families forming part of their respective households, provided that they are not citizens of Sweden, shall be exempt from customs duties and any taxes or charges (excepting charges for storage, cartage and similar services) imposed upon or by reason of the importation of articles (including one motor car each) in their ownership or possession or already ordered by them and intended for their personal use or for their establishment at the time of first taking up their post in Sweden. Such articles shall normally be imported within a reasonable period of first entry of such persons into Sweden.

Article 14

1. Officials of the University and members of their families forming part of their respective households shall be covered by appropriate social security arrangements made by the Organization and shall be exempt from any social security scheme established by the law of Sweden.

2. However, members of the family of an official shall be entitled to Swedish social security benefits, other than children's allowances, if such family members were resident in Sweden immediately prior to the employment of the official by the University.

3. The provisions of paragraph 1 of this article shall not apply to social security contributions and benefits related to income from gainful occupation in Sweden outside the University.

Article 15

1. In implementation of the financial provisions of article III, section 7, of the Convention to the University, the Organization shall be treated as non-resident for the purposes of exchange control and may accordingly hold funds in the form of gold or in any currency and in any country. Any of the gold or currency or bank balances held in Sweden by the Organization for the University may be freely transferred within Sweden or to any other country. The Organization shall not require exchange control consent to use funds for the purposes of investment for the University either in Sweden or elsewhere.

2. In accordance with article V, section 13 (*e*), of the Convention a Member of the Board shall be entitled to the treatment in matters of exchange control which is accorded to a diplomatic agent in Sweden of the State of which he is a national. Where diplomatic relations with such a State do not exist or have been broken off, the treatment shall be no less than that accorded to a diplomatic agent of any third State.

3. In accordance with article VI, section 19 (*d*), of the Convention, an official of the University shall be permitted by the appropriate authorities to receive and hold his emoluments in an account denominated in any currency and shall in addition be accorded the treatment in matters of exchange control which is accorded to a diplomatic agent in Sweden of the State of which he is a national. Where diplomatic relations with such a State do not exist or have been broken off, the treatment shall be no less than that accorded to a diplomatic agent of any third State.

4. The Government shall not levy estate duty on or in respect of movable property of officials of the University and members of their families forming part of their households, provided that in either case they were not citizens of Sweden at the time of death and provided that the presence of the property in Sweden was due solely to the presence of the deceased as an official of the University or as a member of the family of an official of the University. The Government shall impose no impediment to the repatriation of the movable property of a deceased official of the University or member of his family with the exception of property whose export was prohibited at the time of death.

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8. INTERNATIONAL ATOMIC ENERGY AGENCY

(*a*) Agreement on the Privileges and Immunities of the International Atomic Energy Agency.[14] Approved by the Board of Governors of the Agency on 1 July 1959.

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

State	*Date of deposit of instrument of acceptance*
Colombia	1 July 1983
Cyprus	27 July 1983
Mexico	19 October 1983[48]

This brought to 54 the number of States parties to the 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 the Ivory Coast 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 8 September 1983.

(2) Section 23 of the Agreement between the Government of the Republic of Cuba and the International Atomic Energy Agency for the application of safeguards in connection with the supply of a zero-power nuclear reactor from the Hungarian People's Republic; entry into force 7 October 1983.

(3) Article 10 of the Agreement between the Government of Papua New Guinea 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 13 October 1983.

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

The Austrian Federal Ministry of Foreign Affairs by a note verbale dated 17 January 1983 gave notice of an increase of the annual limit of value added tax reimbursement from AS 10,000.- to AS 20,000.- effective 1 January 1983.

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* (United Nations publication, Sales No. E.88.V.3).
[4] Came into force on the date of signature.
[5] United Nations, *Treaty Series*, vol. 1145, (forthcoming).
[6] Came into force on 22 February 1983.
[7] United Nations, *Treaty Series*, vol. 33, p. 261.
[8] Came into force on the date of signature.
[9] Came into force on the date of signature.
[10] Came into force on the date of signature.
[11] Came into force on the date of signature.
[12] Came into force on the date of signature.
[13] Came into force on the date of signature.
[14] United Nations, *Treaty Series*, vol. 374, p. 147.
[15] Came into force on 5 July 1983.
[16] Came into force on the date of signature.
[17] Came into force provisionally on the date of signature.
[18] Came into force on 15 June 1983.
[19] Translation prepared by the Secretariat of the United Nations on the basis of a Russian text of the original.
[20] Came into force on 11 August 1983.
[21] Came into force on 24 August 1983.
[22] Came into force on the date of signature.
[23] Came into force on 8 December 1983.
[24] Came into force on the date of signature, with retroactive effect from 1 January 1983.
[25] Translation prepared by the Secretariat of the United Nations on the basis of a French text of the original.
[26] UNICEF, Field Manual, vol. II, part IV-2, appendix A (1 October 1964).
[27] Came into force on the date of signature.
[28] Document UNDP/ADM/LEG.34 of 6 March 1973.
[29] Came into force on the date of signature.
[30] Came into force on the date of signature.
[31] Came into force on the date of signature.
[32] Came into force on 5 January 1983.
[33] Came into force on the date of signature.
[34] Came into force on 14 October 1983.
[35] United Nations, *Treaty Series*, vol. 33, p. 261.

[36] 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.

[37] For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publication, Sales No. E.88.V.3).

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

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

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

[41] *Ibid.*

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

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

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

[45] Came into force on 11 May 1983.

[46] Came into force on 1 May 1983.

[47] "The Convention" means the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations adopted by the General Assembly of the United Nations on 21 November 1947, including its annex XII.

[48] With the following reservations:

1. In acceding to the Agreement on the Privileges and Immunities of the Agency, which was adopted on 1 July 1959, the Mexican Government declares that the capacity to acquire and dispose of immovable property, mentioned in article II, section 2, of the Agreement, shall be subject to applicable national legislation.

2. Agency officials and experts of Mexican nationality, in the exercise of their functions in Mexican territory, shall enjoy only those privileges which are conferred, as appropriate, by subparagraphs (i), (iii), (v) and (vi) of section 18 and paragraphs (*a*), (*b*), (*c*), (*d*) and (*f*) of section 23, on the understanding that the inviolability mentioned in subparagraph (*c*) of section 23 shall be granted only for official papers and documents.

3. The provisions relating to the holding of funds, gold or currency of any kind and of accounts in any currency and to the transfer and convertibility of such currency in Mexican territory shall be subject to the relevant legal provisions in force.

Part Two

LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter III

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

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

1. DISARMAMENT AND RELATED MATTERS[1]

(*a*) Comprehensive approaches to disarmament

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

The general discussion relating to follow-up of the special sessions of the General Assembly devoted to disarmament was held in the Disarmament Commission and the Committee on Disarmament.

Furthermore, the General Assembly at its thirty-eighth session considered certain proposals submitted in that context dealing with broad or comprehensive questions, such as the review of the implementation of the Assembly's recommendations and decisions taken at one or the other of the special sessions, confidence-building measures, disarmament and international security, and the convening of a third special session of the Assembly devoted to disarmament. Two collective items dealing with the overall question of follow-up of its special session on disarmament were placed on its agenda. The first, which has appeared on the agenda since 1978, was entitled "Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session"; the second, which was added in 1982, was entitled "Review and implementation of the Concluding Document of the Twelfth Special Session of the General Assembly". Member States used the two items to cover many and varied proposals relating to matters which had been initiated at one or the other of the special sessions and submitted a large number of documents and draft resolutions in that context; this led to the adoption by the Assembly of 26 resolutions out of the overall total of 62 disarmament resolutions adopted at its thirty-eighth session. Apart from their consideration of the relevant individual questions put forward under the items, a number of participants in the general debates both in plenary and First Committee meetings[2] made observations about the importance of the follow-up of the General Assembly's recommendations and the urgent need to build upon the expectations which evolved from the agreement reached at the first special session on disarmament and reaffirmed at the second, in 1982.

No more than during any other year since 1978, when the first special session was held, was any significant beginning made in 1983 towards a process to curb, halt and reverse the arms race, on a comprehensive basis — what would have been meant by the effective implementation of the measures recognized as necessary at special sessions of the General Assembly devoted to disarmament. As to the items directly related to follow-up, except for some progress on the question of guidelines for confidence-building which was achieved by the Disarmament Commission, any other positive signs were reflected mainly in the administrative and procedural areas.

(ii) *General and complete disarmament*

Although general and complete disarmament under effective international control continued to be regarded as the ultimate object of all disarmament efforts, no substantive or tangible progress towards it was made in the various disarmament bodies in 1983. General and complete disarmament was also reaffirmed as an ultimate goal in a number of resolutions adopted by the General Assembly at its thirty-eighth session.

By resolution 38/188 F of 20 December 1983,[3] on curbing the naval arms race, the General Assembly, aware that the growing military presence and naval activities of some States in conflict areas or far from their own shores increased the tension in those regions and could adversely affect the security of international sea lanes through those areas and the exploitation of marine resources, and alarmed by the ever more frequent use of naval formations for the demonstration of force and as an instrument of pressure against sovereign States or of interference in their internal affairs, appealed to all Member States, in particular the major naval Powers, to refrain from enlarging their naval activities in areas of conflict or tension, or far from their own shores, and recognized the urgent need to start negotiations with the participation of the major naval Powers, the nuclear-weapon States in particular, on the limitation of naval activities and the extension of confidence-building measures to seas and oceans, especially to regions with the busiest sea lanes or regions where the probability of conflict situations was high; and by resolution 38/188 J of 20 December 1983,[4] entitled "Institutional arrangements relating to the process of disarmament", the Assembly invited the specialized agencies and other organizations and programmes of the United Nations system to broaden further their contribution, within their areas of competence, to the cause of arms limitation and disarmament and reaffirmed the necessity of ensuring constant co-ordination of activities carried out in the field of disarmament by various entities of the United Nations.

Furthermore, some other resolutions were introduced under certain agenda items which, although not dealing primarily with disarmament, covered related security issues and contained aspects relevant to disarmament questions. For example, by resolution 38/77 of 15 December 1983,[5] the General Assembly, affirming the conviction that Antarctica should continue forever to be used exclusively for peaceful purposes, requested the Secretary-General to prepare a comprehensive study on all aspects of Antarctica. By resolution 38/189 of 20 December 1983,[6] the Assembly stressed the importance of the strengthening of peace and security in the Mediterranean region and its impact on international peace and security and called for strengthening co-operation among the States of the region and between them and all other States.

By resolution 38/190 of 20 December 1983[7] on "Review of the implementation of the Declaration on the Strengthening of International Security", the General Assembly again called upon all States, in particular the nuclear-weapon States and other militarily significant States, to take immediate steps aimed at promoting and using effectively the system of collective security as envisaged in the Charter of the United Nations, together with measures for the effective halting of the arms race and for the achievement of general and complete disarmament under effective international control.

By resolution 38/191 of 20 December 1983,[8] the General Assembly decided to establish an *Ad Hoc* Committee on the Implementation of the Collective Security Provisions of the Charter of the United Nations for the purpose of exploring ways and means of implementing the said provisions.

(iii) *Comprehensive programme of disarmament*

After the failure of the twelfth special session of the General Assembly to achieve consensus on a comprehensive programme of disarmament, in 1983 the Committee on Disarmament succeeded in reaching agreement on a considerably more modest and shorter programme than had been envisaged at the outset of the current endeavours, in 1979.[9] Even the shorter programme was incomplete, reflecting reservations by some delegations in a number of areas. That limitation on what was accomplished was due to the persistence of differences among States on various questions of long-standing difficulty such as priorities, measures to be undertaken, a timetable for implementation, machinery for implementation and the legal character of the document.

By resolution 38/183 K of 20 December 1983,[10] the General Assembly, while welcoming the progress achieved in the preparation of the programme during the period covered by the report of the *Ad Hoc* Working Group on the Comprehensive Programme of Disarmament, noted that it had not yet been possible to complete the elaboration of such a comprehensive programme, which, as provided for in paragraph 109 of the Final Document of the Tenth Special Session of the General Assembly, should encompass all measures thought to be advisable in order to ensure that the goal of general and complete disarmament under effective international control became a reality in a

world in which international peace and security prevailed and in which the new international economic order was strengthened and consolidated.

(iv) *World disarmament conference*

In 1983 the trend towards a gradual lessening of interest in a world disarmament conference prevailed. None of the countries which had supported the idea during the debate in the *Ad Hoc* Committee referred to the subject during the thirty-eighth session of the General Assembly. The Assembly retained the question of the convening of a world disarmament conference as a recurring item on its agenda by renewing the mandate of the *Ad Hoc* Committee by resolution 38/186 of 20 December 1983.[11]

(*b*) Nuclear disarmament

(i) *Nuclear arms limitation and disarmament*

Throughout 1983, the question of nuclear arms limitation and disarmament was actively debated in the Disarmament Commission, the Committee on Disarmament and the General Assembly at its thirty-eighth session, as well as bilaterally between the USSR and the United States in their two separate negotiating forums—one on strategic and one on intermediate-range forces—at Geneva. No substantial progress was made, however, in solving any of the problems connected with many aspects of the question.

At its thirty-eighth session, the General Assembly adopted altogether 26 resolutions dealing with nuclear questions. Only one of the resolutions was adopted without a vote.

The question of the bilateral nuclear arms negotiations between the two major Powers was the subject of particularly intense consideration, as evidenced by the submission of four distinct and partly competing draft resolutions on the subject.[12] None of the four was supported by consensus despite general recognition that it would have been not only preferable but also more meaningful and encouraging had the international community been able to speak with a common voice on this important subject.

By resolution 38/183 A of 20 December 1983,[13] the General Assembly urged the Governments of the Union of Soviet Socialist Republics and the United States of America to make every effort to reach an agreement at their bilateral negotiations at Geneva, or at least to agree on a provisional basis that no medium-range missiles be deployed and the number of existing ones be reduced, and called upon all European States as well as all interested States to do their utmost in order to assist the process of negotiation. By resolution 38/183 N of 20 December 1983,[14] the Assembly further urged the two States mentioned above to examine immediately, as a way out of the current impasse, the possibility of combining into a single forum the two series of negotiations which they had been carrying out and of broadening their scope so as to embrace also the "tactical" or "battlefield" nuclear weapons and reiterated its request to the two negotiating parties that they bear constantly in mind that not only their national interests but also the vital interests of all the peoples of the world were at stake in the question. In a similar way, the Assembly urged the two States also by resolution 38/183 P of 20 December 1983[15] to continue, without pre-conditions, their bilateral negotiations at Geneva as long as necessary in order to achieve positive results in accordance with the security interests of all States and the universal desire for progress towards disarmament and to spare no effort in seeking the attainment of the final objective of the negotiations.

Dealing with the more general aspect of the question of nuclear disarmament and the prevention of nuclear war under the item "Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session", the General Assembly, by its resolution 38/183 M of 20 December 1983,[16] recalling that nuclear weapons posed the greatest danger to mankind and to the survival of civilization and that removing the threat of a nuclear world war was the most acute and urgent task of the day, reaffirmed the special responsibilities of the nuclear-weapon States for nuclear disarmament and for undertaking measures to prevent nuclear war and to halt the nuclear-arms race in all its aspects and the central role and primary responsibility of

the United Nations in the sphere of disarmament. Furthermore, by resolution 38/183 D, also of 20 December 1983,[17] the Assembly, convinced that the Conference on Disarmament was the most suitable forum for the preparation and conduct of negotiations on nuclear disarmament, called upon the Conference 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 the purpose an *ad hoc* working group on the cessation of the nuclear-arms race and on nuclear disarmament. And by resolution 38/183 C of the same date,[18] the Assembly reaffirmed its request to the Conference on Disarmament to start without delay negotiations with a view to concluding a convention on the prohibition of the development, production, stockpiling, deployment and use of nuclear neutron weapons as an organic element of negotiations, as envisaged in paragraph 50 of the Final Document of the Tenth Special Session of the General Assembly.

Finally, under the agenda item entitled "Implementation of the conclusions of the Second Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons and establishment of a Preparatory Committee for the Third Review Conference of the Parties to the Treaty", the General Assembly adopted resolution 38/74 of 15 December 1983[19] in which, noting the provisions of article VIII, paragraph 3, of that Treaty concerning the holding of successive review conferences and that, in its Final Document of the Second Review Conference of the Parties to the Treaty, the Conference had proposed to the Depositary Governments that a third conference to review the operation of the Treaty be convened in 1985, requested the Secretary-General to render the necessary assistance and to provide the necessary services for the Third Review Conference and its preparation.

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

As in recent years, the debate in 1983 centred on the question of whether a declaration on the non-use or non-first-use of nuclear weapons, or an international convention outlawing the use of nuclear weapons, would provide an effective measure to reduce the threat of nuclear war. The two viewpoints on the question remained widely divergent. On the one hand, the Western States continued to hold that a declaration on the non-first-use of nuclear weapons would undermine the wider principle of the non-use of force in any form set out in the Charter of the United Nations. On the other hand, the supporters of a declaration maintained that such an obligation, undertaken by all nuclear-weapon States, would strengthen that principle of the Charter. Accordingly, by resolution 38/183 B of 20 December 1983[20] the General Assembly, reaffirming that the nuclear-weapon States had special responsibilities to undertake measures aimed at preventing the outbreak of nuclear war, considered that the solemn declaration 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 those nuclear-weapon States which had not yet done so would consider making similar declarations with respect to not being the first to use nuclear weapons.

By resolution 38/183 G, also of 20 December 1983,[21] the General Assembly requested the Conference on Disarmament to undertake negotiations with a view to achieving agreement on appropriate and practical measures for the prevention of nuclear war and to establish for that purpose an *ad hoc* working group on the subject. By resolution 38/73 G of 15 December 1983[22] the General Assembly, reaffirming that the use of nuclear weapons would be a violation of the Charter of the United Nations and a crime against humanity, as declared in its previous resolutions, reiterated its request to the Conference on Disarmament to commence negotiations, as a matter of priority, in order to achieve 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 annexed to the resolution.

By resolution 38/75 of the same date[23] the General Assembly resolutely, unconditionally and for all time condemned nuclear war as being contrary to human conscience and reason, as the most monstrous crime against peoples and as a violation of the foremost human right—the right to life, condemned the formulation, propounding, dissemination and propaganda of political and military doctrines and concepts intended to provide "legitimacy" for the first use of nuclear weapons and

in general to justify the "admissibility" of unleashing nuclear war, and called upon all States to unite and redouble their efforts aimed at removing the threat of nuclear war, halting the nuclear-arms race and reducing nuclear weapons until they were completely eliminated.

(iii) *Freeze on nuclear weapons*

The proponents of a freeze on nuclear weapons continued in the various disarmament bodies to hold that the nuclear arms race must be brought to a halt, both in qualitative and quantitative terms as well as in certain other of its aspects, such as the testing of nuclear weapons. In general, they saw a freeze as a first step towards the reduction and eventual elimination of all nuclear weapons. A minority of delegations, mainly those of Western States, however, saw little or no merit in the freeze concept or in the three freeze proposals that were placed before the Assembly in 1983. According to them a freeze would indicate acceptance of certain imbalances which had built up in favor of the USSR and ultimately increase, not decrease, the danger of war by reducing the latter's incentive to negotiate.

By resolution 38/73 B of 15 December 1983,[24] the General Assembly once again 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 weapon purposes. By resolution 38/73 E, also of 15 December 1983,[25] the Assembly urged once more 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. Finally, by resolution 38/76 of the same date,[26] the Assembly urged all nuclear-weapon States to proceed to freeze, under appropriate verification, all nuclear weapons in their possession; called upon the USSR and the United States, which possessed the largest nuclear arsenals, to freeze, in the first place and simultaneously, their nuclear weapons on a bilateral basis by way of example to other nuclear States; believed that all the other nuclear-weapon States should subsequently and as soon as possible freeze their nuclear weapons; and stressed the urgent need to intensify efforts aimed at the speedy achievement of agreements on substantial limitations and radical reductions of nuclear weapons with a view to their complete elimination as the ultimate goal.

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

Differing views persisted on the scope, nature and substance, as well as the form, of possible arrangements towards effective international assurances for non-nuclear-weapon States against the use or threat of use of nuclear weapons. Although many States favoured the conclusion of an international convention, opposition to the practical implementation of that idea continued. In addition, there were divergent views on whether or not the nuclear-weapon States had exhibited genuine political will, on the value and application of their unilateral declarations regarding the non-use of nuclear weapons against non-nuclear-weapon States and on the relevance of pledges on the non-first-use of nuclear weapons to security assurances offered to non-nuclear-weapon States.

By its resolutions 38/67[27] and 38/68[28] of 15 December 1983, the General Assembly recommended that the Conference on Disarmament should actively continue to explore ways and means to overcome the difficulties encountered in the negotiation to reach an appropriate agreement on effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons.

(v) *Cessation of nuclear-weapon tests*

In 1983 the debate in the various disarmament bodies disclosed that some major Powers were not ready in the current situation to relinquish nuclear-test explosions as a means of enhancing the effectiveness of their nuclear arsenals. A major obstacle to progress was seen by a large number of States in the continued refusal of some States to accede to changing the mandate of the Disarmament Committee's Working Group to enable it to commence actual multilateral negotiations on the

formulation of a comprehensive nuclear-test-ban treaty. The States resisting such a change in the mandate held that the current one was far from exhausted and, moreover, that it embraced the major outstanding issues, including verification and control and nuclear explosions for peaceful purposes, which had to be resolved before such negotiations could be constructively undertaken.

By resolution 38/62 of 15 December 1983[29] the General Assembly, taking into account that the three nuclear-weapon States which acted as depositaries of the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water[30] had undertaken in that Treaty to seek the achievement of the discontinuance of all test explosions of nuclear weapons for all time and that such an undertaking had been explicitly reiterated in 1968 in the preamble to the Treaty on the Non-Proliferation of Nuclear Weapons,[31] article VI of which further embodied their solemn and legally binding commitment to take effective measures relating to cessation of the nuclear-arms race at an early date and to nuclear disarmament, 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 highest priority and that such a treaty would constitute a contribution of the utmost importance to the cessation of the arms race and an indispensable element for the success of the Treaty on the Non-Proliferation of Nuclear Weapons; urged once more the three depository Powers to abide strictly by their undertakings; and reiterated its appeal to all States members of the Conference on Disarmament to initiate immediately the multilateral negotiation of a treaty for the prohibition of all nuclear-weapon tests.

Similar views were expressed in resolutions 38/63[32] and 38/72[33] of 15 December 1983.

(vi) *Nuclear-weapon-free zones*

In 1983, as in previous years, a large number of States supported the idea of the creation of nuclear-weapon-free zones either in general or in regions of particular concern. In the debates it was argued that the creation of nuclear-weapon-free zones would prevent the further proliferation of nuclear weapons and strengthen the security of the countries in such zones. However, certain prerequisites were emphasized, including the principle that general agreement should exist among all countries of the region on the creation of such a zone, that the zones should be based on agreements freely arrived at between the States of a given region and that the nuclear-weapon States should undertake obligations to respect the denuclearized status of such zones. A number of delegations considered that the Treaty of Tlatelolco[34] should serve as a model for the zones in other parts of the world. By resolution 38/61 of 15 December 1983,[35] the General Assembly deplored the fact that the signature of Additional Protocol I of the Treaty of Tlatelolco by France had not yet been followed by corresponding ratification and once more urged France not to delay any further such ratification. By resolution 38/181 A of 20 December 1983[36] the Assembly, bearing in mind the Declaration on the Denuclearization of Africa adopted by the Assembly of Heads of State and Government of the Organization of African Unity at its first ordinary session, held at Cairo from 17 to 21 July 1964, strongly reiterated its call upon all States to consider and respect the continent of Africa and its surrounding areas as a nuclear-weapon-free zone and condemned South Africa's continued pursuit of a nuclear capability and all forms of nuclear collaboration by any State, corporation, institution or individual which enabled it to frustrate the objective of the Declaration which sought to keep Africa free from nuclear weapons.

By resolution 38/64 of 15 December 1983[37] the General Assembly, recalling its previous resolutions on the establishment of a nuclear-weapon-free zone in the region of the Middle East, 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 and, as a means of promoting that objective, invited the States concerned to adhere to the Treaty on the Non-Proliferation of Nuclear Weapons. In that connection, the Assembly condemned again, by resolution 38/69 of the same date,[38] Israel's refusal to renounce any possession of nuclear weapons and to place all its nuclear activities under international safeguards.

And by resolution 38/65, also of 15 December 1983,[39] the General Assembly reaffirmed its endorsement, in principle, of the concept of a nuclear-weapon-free zone in South Asia.

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

The General Assembly decided by resolution 38/60 of 14 December 1983[40] that the United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy should be held in 1986. By resolution 38/8[41] of 4 November 1983, the Assembly, conscious of the importance of the work of the International Atomic Energy Agency in the implementation of the safeguards provisions of the Treaty on the Non-Proliferation of Nuclear Weapons and other international treaties, conventions and agreements designed to achieve similar objectives and welcoming the decision of the General Conference of the International Atomic Energy Agency to grant membership of the Agency to the People's Republic of China, expressed its satisfaction at the prospect of mutual benefit arising from that membership and urged all States to strive for effective and harmonious international co-operation in carrying out the work of the 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.

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

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

In 1983 the negotiations in the *Ad Hoc* Working Group on Chemical Weapons and its Contact Groups caused the Committee on Disarmament to succeed in elaborating and agreeing on many of the substantive provisions to be included in a chemical weapons convention. Regardless of the limited progress achieved with regard to such long-standing issues as the scope and verification procedures for a future convention, crucial differences persisted as to such areas as the actual steps in the process of the destruction of chemical weapons stocks, including the content of initial declarations on stockpiles and whether verification of the destruction of stockpiles should be carried out by inspections on a quota basis or continuously. Although there was general recognition of the existence of a rule of customary international law regarding the non-use of chemical weapons and agreement on most issues relating to the incorporation of a prohibition of their use in a new convention, positions varied as to the scope of such a provision and how it should be reflected in the convention.

By resolution 38/187 A of 20 December 1983[42] the General Assembly, taking note of proposals on the creation of chemical-weapon-free zones aimed at facilitating the complete prohibition of chemical weapons, reaffirmed the necessity of the speediest elaboration and conclusion of a convention on the prohibition of the development, production and stockpiling of all chemical weapons and on their destruction and reaffirmed its call to all States to refrain from any action that could impede negotiations on the prohibition of chemical weapons and specifically to refrain from the production and deployment of binary and other new types of chemical weapons, as well as from stationing chemical weapons on the territory of other States.

By resolution 38/187 B[43] of the same date the General Assembly, reaffirming the necessity of strict observance by all States of the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,[44] and of the adherence by all States to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, signed in London, Moscow and Washington on 10 April 1972,[45] urged the Conference on Disarmament, as a matter of high priority, to intensify, during its session in 1984, the negotiations on a convention on the prohibition of the development, production and stockpiling of all chemical weapons and on their destruction.

(ii) *New weapons of mass destruction*

In 1983 the Eastern European States and a number of non-aligned countries reaffirmed their belief that the conclusion of a general international agreement of a comprehensive character would be the most effective way towards the prohibition of the development and manufacture of new weapons of mass destruction. They also supported the conclusion of separate agreements banning specific

types of weapons of mass destruction. The Western States continued to believe that the general prohibitory agreement would be too ambiguous to be useful and would not permit the definition and implementation of the requisite verification measures. They considered, however, that periodic informal meetings of the Committee on Disarmament would allow it to follow the question in an appropriate manner and to identify adequately any cases which might require particular consideration, thus justifying the opening of specific negotiations. By resolution 38/182 of 20 December 1983,[46] the General Assembly requested the Conference on Disarmament to intensify negotiations, with the assistance of qualified governmental experts, with a view to preparing a draft comprehensive agreement on the prohibition of the development and manufacture of new types of weapons of mass destruction and new systems of such weapons, and to draft possible agreements on particular types of such weapons; once again urged all States to refrain from any action which could adversely affect the talks aimed at working out an agreement or agreements to prevent the emergence of new types of weapons of mass destruction and new systems of such weapons; and called upon the States permanent members of the Security Council as well as upon other militarily significant States to make declarations, identical in substance, concerning the refusal to create new types of weapons of mass destruction and new systems of such weapons, as a first step towards the conclusion of a comprehensive agreement on the subject, bearing in mind that such declarations would be approved thereafter by a decision of the Security Council.

(iii) *Radiological weapons*

As negotiations on the question of radiological weapons continued in the Committee on Disarmament in 1983, the problem of a linkage between the so-called traditional radiological weapon matters and the prohibition of attacks on nuclear facilities was deliberately given less prominence than in the previous year. On the suggestion of the Chairman of the *Ad Hoc* Working Group on Radiological Weapons, two subgroups were established to deal with two major aspects of the issue. However, differences of opinion among delegations on many aspects of those issues continued during the session.

The General Assembly adopted resolution 38/188 D of 20 December 1983,[47] by which it requested the Conference on Disarmament to continue negotiations on a convention prohibiting the development, production, stockpiling and use of radiological weapons in order that it might be submitted to the Assembly at its thirty-ninth session, and to continue its search for a prompt solution to the question of prohibition of attacks on nuclear facilities.

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

At the thirty-eighth session of the General Assembly, the main focus of discussion on the question of the militarization of outer space and efforts to prevent an arms race in that sphere continued to be on whether the work should be concentrated on a general agreement to prevent an arms race in outer space in all its aspects, taking into account the draft treaty submitted by the Soviet Union, or whether priority should be given to a verifiable agreement prohibiting anti-satellite systems, as a first step.

By resolution 38/70 of 15 December 1983[48] the General Assembly, recalling that the States parties to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,[49] had undertaken, in article III, to carry on activities in the exploration and use of outer space in accordance with international law and the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding, reaffirmed that general and complete disarmament under effective international control warranted that outer space should be used exclusively for peaceful purposes and should not become an arena for an arms race; reiterated that the Conference on Disarmament had a primary role in the negotiation of an agreement or agreements on the prevention of an arms race in all its aspects in outer space; and requested the Conference to consider as a matter of priority the question of preventing an arms race in outer space.

(*d*) Consideration of conventional disarmament and other approaches

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

Although not a separate item on the agenda, the subject of conventional weapons arose on a number of occasions at the thirty-eighth session of the General Assembly, either in its own right or as part of efforts aimed at regional measures of disarmament.

The year 1983 did not witness, however, a single measure of progress in restraining the constant march of conventional armaments and arms transfers other than the entering into force of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, together with the Protocol on Non-Detectable Fragments (Protocol I), the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices (Protocol II) and the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III).[50]

By its resolution 38/66 of 15 December 1983,[51] the General Assembly noted with satisfaction that, upon the fulfilment of the conditions set out in article 5 of the Convention, the Convention and the three Protocols annexed thereto had entered into force on 2 December 1983; urged all States that 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 ultimately universal adherence; and noted that, under article 8 of the Convention, conferences might be convened to consider amendments to the Convention or any of the annexed Protocols, to consider additional protocols relating to other categories of conventional weapons not covered by the existing annexed Protocols, or to review the scope and operation of the Convention and the Protocols annexed thereto and to consider any proposal for amendments to the Convention or to the existing annexed Protocols and any proposals for additional protocols relating to other categories of conventional weapons not covered by the existing annexed Protocols.

By its resolution 38/73 J also of 15 December 1983[52] on regional disarmament the General Assembly expressed its satisfaction at the convening at Stockholm of the Conference on Confidence- and Security-building Measures and Disarmament in Europe, commencing on 17 January 1984, as a substantial and integral part of the multilateral process initiated by the Conference on Security and Co-operation in Europe.

(ii) *Reduction of military budgets*

In 1983 the Disarmament Commission continued its efforts to elaborate the principles that should govern actions of States in freezing and reducing military expenditures. However, discussions in its Working Group established for that purpose revealed continuing irreconcilable differences among individual Member States and groupings.[53]

The general debate in the General Assembly and deliberations in the First Committee indicated, as in previous years, the growing concern of many Member States about the implications—both for international peace and security and for the world economy—of the growth and magnitude of world military expenditures. At the same time opinions continued to differ as to the best or most expeditious means of curbing and reducing spending on armaments.

By its resolution 38/184 A of 20 December 1983,[54] the General Assembly declared once again its conviction that it was possible to achieve international agreements on the reduction of military budgets without prejudice to the right of all States to undiminished security, self-defence and sovereignty, called upon all Member States, in particular the most heavily armed States, to reinforce their readiness to co-operate in a constructive manner with a view to reaching agreements to freeze, reduce or otherwise restrain military expenditures; and appealed to all 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, particularly for the benefit of developing countries.

By resolution 38/184 B, also of 20 December 1983,[55] the General Assembly, reaffirming its conviction that provisions for defining, reporting, comparing and verifying military expenditures would have to be basic elements of any international agreement to reduce such expenditures and recalling that an international system for the standardized reporting of military expenditures had been introduced in pursuance of General Assembly resolution 35/142 B and that annual reports on military expenditures had been received from a number of Member States, stressed the need to increase the number of reporting States with a view to the broadest possible participation of States from different geographic regions and representing different budgeting systems.

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

Pursuant to resolution 37/96 of 13 December 1982, by which the General Assembly had renewed its mandate, the *Ad Hoc* Committee on the Indian Ocean held three sessions in 1983. As before, the main task of the Committee was to do preparatory work for the convening of the Conference on the Indian Ocean. Consequently, it dealt with the substantive and organizational issues relating to the Conference. Two basic approaches regarding the Conference on the Indian Ocean continued to prevail in the discussion. Most of the non-aligned members, supported by the Eastern European States, held that the Committee should finalize the dates for the Conference as soon as possible and begin practical preparations, including discussion on its draft agenda and other substantive and organizational matters, with the aim of holding it not later than the first half of 1984. Other members of the Committee, however, took the view that until the necessary harmonization of views on the remaining issues had been achieved and until there was closer agreement on the scope and nature of the zone of peace and on how the Conference would contribute to its establishment, the setting of conference dates was premature, and that the prevailing political and security climate in the region, including the situation in Afghanistan, prejudiced the likelihood of success of any such conference.

By its resolution 38/185 of 20 December 1983,[56] the General Assembly regretted that the *Ad Hoc* Committee had failed to reach consensus on the finalization of dates for the convening, during 1984, of the Conference on the Indian Ocean; emphasized its decision to convene the Conference at Colombo as a necessary step for the implementation of the Declaration of the Indian Ocean as a Zone of Peace, adopted in 1971,[57] and requested the *Ad Hoc* Committee to make decisive efforts in 1984 to complete preparatory work relating to the Conference, in consideration of the political and security climate in the region and with a view to enabling the opening of the Conference at Colombo in the first half of 1985.

(iv) *Second Review Conference of the Parties to the Sea-Bed Treaty*

The Second Review Conference of the Parties to the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof[58] was held at Geneva from 12 to 23 September 1983. The Conference was convened in order to enable the States parties to review the Treaty's operation with a view to ensuring that its purposes and provisions were being realized. The substantive work of the Conference was devoted largely to two items on its agenda, namely: (*a*) "Review of the operation of the Treaty as provided for in article VII"; and (*b*) "Preparation and adoption of Final Document(s)".

Regarding the scope of the Treaty, it was generally recognized by delegations that, within its limits, the Treaty had been effective and that the continued observance of the prohibition contained in article I was essential to the objective of avoiding an arms race in nuclear and other weapons of mass destruction on the sea-bed. At the same time, many non-aligned and socialist States parties reiterated their belief that the scope of the Treaty was too narrow and called again, as at the First Review Conference, for the initiation of negotiations on further measures for the prevention of an arms race on the sea-bed. For their part, Western States generally did not see any current need for such negotiations. In their opinion, the Treaty not only had achieved its primary purpose by banning nuclear and other weapons of mass destruction from the sea-bed, but had also played a broader role by preventing the emergence of an arms race in that environment.

Two main points of view were discernible with respect to the verification procedures. On the one hand, a number of States parties considered that, since most States parties did not possess adequate independent means of verification, the procedures provided for in article III should be further elaborated to include resort to international mechanisms. On the other hand, others, including the three depositaries, maintained that the relevant provisions were adequate to ensure effective verification of compliance with the Treaty and broad enough to permit States parties to resort to various international procedures.

With regard to the relationship between the sea-bed Treaty and the 1982 United Nations Convention on the Law of the Sea, it was generally held that nothing in that Convention should affect the rights and obligations assumed by States parties under the sea-bed Treaty.

On 23 September 1983, at its final plenary meeting, the Second Review Conference adopted its Final Document[59] by consensus. Part II of the Document contains the Final Declaration which consists of a preamble and the Conference's article-by-article review of the Treaty, including certain affirmations and requests concerning its operation and a call for additional States to become parties.

The General Assembly by its resolution 38/188 B of 20 December 1983[60] welcomed with satisfaction the positive assessment by the Second Review Conference of the effectiveness of the Treaty since its entry into force, as reflected in its Final Declaration; reiterated its expressed hope for the widest possible adherence to the Treaty; and requested the Conference on Disarmament, in consultation with the States parties to the Treaty, to proceed promptly with consideration of further measures in the field of disarmament for the prevention of an arms race on the sea-bed, the ocean floor and the subsoil thereof.

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2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) Implementation of the Declaration on the Strengthening of International Security[61]

In its resolution 38/190 of 20 December 1983,[62] adopted on the recommendation of the First Committee,[63] the General Assembly reaffirmed the validity of the Declaration on the Strengthening of International Security and called upon all States to contribute effectively to its implementation; again called upon all States, in particular the nuclear-weapon States and other militarily significant States, to take immediate steps aimed at promoting and using effectively the system of collective security as envisaged in the Charter of the United Nations, together with measures for the effective halting of the arms race and for the achievement of general and complete disarmament under effective international control; considered that respect for and the promotion of human rights and fundamental freedoms in their civil, political, economic, social and cultural aspects, on the one hand, and the strengthening of international peace and security, on the other, mutually reinforced each other; reaffirmed the legitimacy of the struggle of peoples under colonial domination, foreign occupation or racist régimes and their inalienable right to self-determination and independence and urged Member States to take urgent and effective measures for the speedy completion of the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples[64] and for the final elimination of colonialism, racism and *apartheid*; and welcomed the successful conclusion of the Madrid meeting of representatives of the participating States of the Conference on Security and Co-operation in Europe, held from 11 November 1980 to 9 September 1983, and expressed the hope that the conference to be held at Stockholm, beginning on 17 January 1984, the Conference on Confidence- and Security-Building Measures and Disarmament in Europe, the continent with the greatest concentration of armaments and military forces, would achieve significant and positive results.

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

In its resolution 38/191 of 20 December 1983,[65] adopted on the recommendation of the First Committee,[66] the General Assembly decided to establish an *Ad Hoc* Committee on the Implementation of the Collective Security Provisions of the Charter of the United Nations for the purpose of exploring ways and means of implementing the said provisions.

(*c*) 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-second session at United Nations Headquarters from 21 March to 8 April 1983.[67]

In continuing as a matter of priority 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 re-established its Working Group on remote sensing. The Sub-Committee's Working Group had carried out a principle-by-principle reading of the draft principles as formulated to date with special attention being given to the discussion of principles XI through XV.

The Sub-Committee also re-established its Working Group on the agenda item "Consideration of the possibility of supplementing the norms of international law relevant to the use of nuclear power sources in outer space". The Sub-Committee's Working Group examined the question of notification in the case of the malfunctioning of a space object with nuclear power sources on board with a risk of re-entry of radioactive materials to the Earth and addressed itself to the matters of the format, content and procedure of such notification. Two working papers were submitted, one by Canada entitled "Use of nuclear power sources in outer space"[68] and the other by the Federal Republic of Germany entitled "Recommendations for the notification prior to re-entry of a nuclear-powered satellite".[69]

The Working Group agreed that "any State launching a space object with nuclear power sources on board should timely inform States concerned in the event this space object is malfunctioning with a risk of re-entry of radioactive materials to the Earth . . . This information should also be transmitted to the Secretary-General of the United Nations." The format according to which the information should be submitted was also agreed.[70]

The Legal Sub-Committee continued to consider 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 had before it a working paper submitted by the Union of Soviet Socialist Republics entitled "Approach to the delimitation of airspace and outer space".[71]

During a general exchange of views the Latin American countries members of the Legal Sub-Committee presented a declaration in the form of a working paper containing the views on some aspects of the utilization, exploration and exploitation of outer space.[72]

The Committee on the Peaceful Uses of Outer Space, at its twenty-sixth session held at United Nations Headquarters from 20 June to 1 July 1983, took note with appreciation of the report of the Legal Sub-Committee on the work of its twenty-second session[73] and made a recommendation as to the agenda of the Sub-Committee at its twenty-third session. At the same session the Committee, taking into account the recommendation contained in paragraph 309 of the report of UNISPACE-82,[74] by which the Conference recognized, *inter alia*, that "it is now time for countries to agree on the legal implications of remote sensing of the Earth from space", recommended that the Legal Sub-Committee should make every effort to finalize the draft principles on remote sensing; in particular, the Committee recommended that the Legal Sub-Committee should devote special attention to principles XII, XIII and XV with a view to reaching meaningful agreement.

With regard to the item entitled "Consideration of the possibility of supplementing the norms of international law relevant to the use of nuclear power sources in outer space", the Committee endorsed an agreed text concerning the format and the procedure for notification in the case of malfunction of a spacecraft carrying a nuclear power source on board.

A variety of views was expressed on the necessity of drafting a treaty concerning the use of direct television broadcast satellites and whether the principles adopted by the General Assembly at its thirty-seventh session in resolution 37/92 of 10 December 1982[75] could serve as the basis for this purpose.

At its thirty-eighth session, by resolution 38/80 of 15 December 1983,[76] adopted on the recommendation of the Special Political Committee,[77] the General Assembly endorsed the report of the Committee on the Peaceful Uses of Outer Space; decided that the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space at its twenty-third session should: (*a*) continue, 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 relating to remote sensing; (*b*) continue its consideration of the possibility of supplementing the norms of international law relevant to the use of nuclear power sources in outer space through its working group; and (*c*) establish a working group to consider, on a priority basis, matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including the elaboration of general principles to govern the rational and equitable use of the geostationary orbit, a limited natural resource, and, to that end, requested Member States to submit draft principles; in doing so, it would have to take account of the different legal régimes governing airspace and outer space, respectively, and the need for technical planning and legal regulation of the geostationary orbit; invited States that had not become parties to the international treaties governing the use of outer space[78] to give consideration to ratifying or acceding to those treaties; called upon all States, in particular those with major space capabilities, to undertake prompt negotiations, under the auspices of the United Nations, with a view to reaching agreement or agreements designed to halt the militarization of outer space and to prevent an arms race in outer space, thus contributing to the achievement of the internationally accepted goal of ensuring the use of outer space exclusively for peaceful purposes.

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3. ECONOMIC, SOCIAL, HUMANITARIAN AND CULTURAL QUESTIONS

(*a*) Environmental questions

Eleventh session of the Governing Council of the United Nations Environment Programme[79]

The eleventh session of the United Nations Environment Programme was held at UNEP headquarters, Nairobi, from 11 to 24 May 1983.

By its decision 11/7 of 24 May 1983,[80] adopted by consensus, in Part two, B, "Environmental law", section I, the Governing Council requested the Executive Director to convene a third session 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 1983 and, if required, a fourth session in 1984, with a view to having the Working Group, if possible, complete its work and transmit an agreed draft text of such a convention, through the Executive Director and the Governing Council, to the General Assembly; in section II, requested the Executive Director to ensure the continuation of adequate preparatory work on the meetings to be held in connection with the preparation of guidelines and principles on the following topics of the Montevideo Programme for the Development and Periodic Review of Environmental Law:[81] (*a*) the protection of the marine environment against 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; in section III, decided, subject to the availability of additional funds, to entrust the Working Group of Experts on Environmental Law established under decision 91 (V) of 25 May 1977 with the task of developing principles and guidelines with regard to environmental impact assessment; in section IV, called upon all States not yet parties to existing conventions and protocols in the field of the environment to consider early adherence to them and appealed to all contracting parties to promote the effective implementation of these conventions and protocols; and in section V, requested the Executive Director

to make available to the Governing Council at its twelfth session a consolidated and updated register of international treaties and other agreements in the field of the environment in all official languages of the Governing Council and further requested him, in co-operation with other intergovernmental and non-governmental organizations as appropriate, to continue the collection and dissemination of information concerning international and national legal instruments and machinery in the field of the environment, in particular the publication of national profiles in the Handbook of Environmental Legislation and Machinery.

Consideration by the General Assembly

At its thirty-eighth session the General Assembly, by its resolution 38/165 of 19 December 1983,[82] adopted on the recommendation of the Second Committee,[83] took note of the report of the Governing Council of the United Nations Environment Programme on the work of its eleventh session and the decisions contained therein and welcomed the progress made in the implementation of the Montevideo Programme for the Development and Periodic Review of Environmental Law and appealed to Governments to participate actively in the Programme and provide adequate financial resources or facilities in order to achieve its full and timely implementation.

(*b*) International code of conduct on the transfer of technology

By its resolution 38/153 of 19 December 1983,[84] adopted on the recommendation of the Second Committee,[85] the General Assembly decided to convene a sixth session of the United Nations Conference on an International Code of Conduct on the Transfer of Technology, under the auspices of the United Nations Conference on Trade and Development, in order to complete successfully the negotiations on the code of conduct not later than the first half of 1985.

(*c*) Office of the United Nations High Commissioner for Refugees[86]

The period under review was marked by an evolution of existing refugee situations rather than by an upsurge of new emergencies.

In the field of international protection, increasing attention had been given to problems arising from mass movements of people who were forced to seek refuge elsewhere as a result of serious civil disturbances or military conflict in their countries of origin. At the same time, attention continued to be given to the difficulties confronting individual refugees and asylum-seekers, as their situation in various parts of the world was frequently no less critical than that of the asylum-seeker in a large-scale influx.

In cases of either large-scale influxes or individual asylum-seekers, UNHCR considered it of the utmost importance to enhance the principles of international protection developed since the establishment of UNHCR. Efforts had been firmly directed towards the promotion of accession to the international refugee instruments and the adoption of pertinent provisions in national legislation.

Another important point of concern for UNHCR related to the physical safety of refugees and asylum-seekers. While UNHCR had neither the means nor the competence to provide refugees with direct physical protection, which remained the primary responsibility of the country where refugees found themselves, the Office had been instrumental in involving other States in providing assistance and support in the context of international solidarity and humanitarian concern.

The primary objective of UNHCR's assistance programmes continued to be the achievement of permanent solutions to the problems of refugees through voluntary repatriation, local integration or resettlement to another country. Pending the attainment of such solutions, which might take considerable time, the current assistance programmes included, besides the necessary care and maintenance measures, projects designed to promote the self-reliance of the refugees through income-generating and other activities, thereby also reducing the burden on the host countries. Throughout the year, measures were also taken to strengthen and improve UNHCR emergency preparedness and to advise on the management of actual refugee emergencies.

The High Commissioner's efforts to extend international protection to refugees, both individually and in large-scale refugee situations, were aimed at ensuring that refugees received asylum, that they were protected against *refoulement*, that their basic human rights were respected and that they were treated according to recognized international standards.

With reference to the basic international instruments regulating the problem of refugees, it should be noted that during 1983 three more States became parties to the 1951 Convention relating to the Status of Refugees[87] and to the 1967 Protocol relating to the Status of Refugees.[88]

The High Commissioner's activities in the field of international protection had been effectively supported by the adoption and acceptance by States of standard-setting instruments at the regional levels.

The determination of refugee status was of fundamental importance to enable refugees to take advantage of the various rights and standards established by the international community for their benefit and to avail themselves of the international protection extended to refugees by the High Commissioner's Office. During the reporting period, encouraging progress was made in a number of countries towards the adoption of procedures for determining the refugee status of individual applicants.

In a number of countries confronted with large numbers of individual asylum-seekers whose determinations were made on an individual basis, a recent phenomenon was that a large number of abusive or manifestly unfounded claims were made by persons seeking to take advantage of asylum procedures in order to remain in the country. At its thirty-third session, the Executive Committee of the Programme of the United Nations High Commissioner for Refugees recognized the need for measures to meet this problem. It further recognized that a decision that a claim was manifestly unfounded or abusive should only be taken by or after reference to the authority competent to determine refugee status.[89]

With regard to social security, UNHCR welcomed the adoption in June 1982 of Convention 157 concerning the Establishment of an International System for the Maintenance of Rights in Social Security by the International Labour Organisation. Some of the main provisions of the Convention were specially extended to refugees and stateless persons.

During the reporting period UNHCR continued an active programme of the promotion, advancement and dissemination of principles of international protection and of refugee law. The Office co-operated with States at the national level in the training of government officials concerned with the admission and determination of refugees in the principles of international protection. Workshops or seminars for the purpose were held in Canada, Bolivia, the Dominican Republic, Sudan, the United States of America, Zaire and Zambia. In Honduras, UNHCR briefed military staff in various parts of the country on the basic principles of international protection.

The Office continued its close and fruitful co-operation with the International Institute of Humanitarian Law at San Remo, Italy. A two-week lecture course on refugee law brought together government officials from 27 countries. The Institute organized a series of meetings of experts to discuss matters of relevance to the continuing development of principles of international protection.

The promotional activities of the Office were of particular importance in countries which were not party to the international refugee instruments. In those countries, UNHCR sought to establish a climate of opinion that was both understanding of the problem of refugees and favourable to the acceptance of the international instruments that had been established for their benefit.

At its thirty-fourth session, held at Geneva from 10 to 20 October 1983, the Executive Committee of the Programme of the United Nations High Commissioner for Refugees considered the question of the international protection of refugees and adopted a number of conclusions on the subject. The Committee, *inter alia*, reaffirmed the fundamental humanitarian character of the activities of the Office of the High Commissioner but drew attention to the vital need for the international community to address in appropriate forums the root causes of refugee flows through actions complementing the efforts of the High Commissioner on behalf of refugees; noted that the High Commissioner's international protection function included, in addition to promoting the development and observance

of basic standards for the treatment of refugees, promoting, by all means within his competence, measures to ensure the physical safety of refugees and asylum-seekers; stressed the importance for further States to accede to the 1951 United Nations Convention and the 1967 Protocol relating to the Status of Refugees and welcomed the additional accessions to those important humanitarian instruments which had taken place since the Committee's thirty-third session; called upon all States to ensure the full and effective application of those and other instruments for the protection of refugees to which they were party; noted with satisfaction that further States had adopted national measures to ensure the effective implementation of the provisions of the 1951 Convention and the 1967 Protocol, particularly as regards procedures for the determination of refugee status, and stressed the importance for States to establish such procedures to ensure fair and equitable decision-making in line with the conclusions adopted by the Executive Committee at its twenty-eighth and thirty-third sessions; reiterated the importance of determining the country which was responsible for examining an asylum request by the adoption of common criteria as identified in the Conclusion on Refugees without an Asylum Country, adopted by the Executive Committee at its thirtieth session; recognized the importance of developing standards of protection by maintaining a constant dialogue with Governments, non-governmental organizations and academic institutions and of filling lacunae in international refugee law, particularly as regards asylum-seekers whose status had not been determined and as regards the physical protection of refugees and asylum-seekers; recognized the value of the High Commissioner's continuing activities in encouraging the teaching and further development of international refugee law and welcomed his intention to enlarge his Office's legal documentation centre in co-operation with the International Institute of Humanitarian Law at San Remo; considered that national procedures for the determination of refugee status might usefully include special provisions for dealing in an expeditious manner with applications considered to be so obviously without foundation as not to merit full examination at every level of the procedure (such applications had been termed either "clearly abusive" or "manifestly unfounded" and were to be defined as those which were clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees or to any other criteria justifying the granting of asylum); welcomed the initiatives undertaken by UNHCR to meet the grave problem of asylum-seekers in distress at sea by promoting measures to facilitate the rescue of those asylum-seekers and expressed the hope that those initiatives would receive the widest possible support of Governments; commended the initiatives undertaken by UNHCR in co-operation with the International Maritime Organization aimed at identifying joint action for facilitating the rescue of asylum-seekers in distress at sea; took note of the report of the Sub-Committee of the Whole on International Protection, which included a draft statement of principles on the prohibition of military and armed attacks on refugee camps and settlements; noted with regret that it had not been possible to reach a consensus on those principles in the time available; and requested the Chairman to continue his consultations in order to seek final agreement on the principles with the least possible delay.

By its resolution 38/121 of 16 December 1983,[90] adopted on the recommendation of the Third Committee,[91] 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 this 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*; urged States, in co-operation with the Office of the High Commissioner and other competent international bodies, to take all necessary measures to ensure the safety of refugees and asylum-seekers; and reaffirmed the principle of international solidarity and burden-sharing in responding to the refugee problem, particularly in view of the heavy burden borne by receiving countries on account of the presence of large numbers of refugees and asylum-seekers.

(*d*) International drug control

In the course of 1982, there was no change in the status of the multilateral treaties on international drug control.

By its resolution 38/98 of 16 December 1983,[92] adopted on the recommendation of the Third Committee,[93] the General Assembly approved the programme of action for the biennium

1984-1985, the third and fourth years of the basic five-year programme of action,[94] and decided that, beginning with its eighth special session, the Commission on Narcotic Drugs, meeting in plenary during its sessions and in the presence of all interested observers, would constitute the task force envisaged in General Assembly resolution 36/168 of 16 December 1981 to review, monitor and co-ordinate the implementation of the International Drug Abuse Control Strategy and the basic five-year programme of action. Moreover, by its resolution 38/122 of the same date,[95] adopted also on the recommendation of the Third Committee,[96] the General Assembly called upon Member States that had not yet done so to ratify the international drug control treaties and, until such time, to endeavour to abide by the provisions thereof, and requested the Secretary-General, through the Commission on Narcotic Drugs, to explore all avenues leading to a further improvement of regional and interregional co-ordination of activities against drug trafficking and drug abuse.

(*e*) Crime prevention and criminal justice

Principles of Medical Ethics[97]

By its resolution 38/118 of 16 December 1983,[98] adopted on the recommendation of the Third Committee,[99] the General Assembly urged all Governments to take measures with a view to promoting the application by all health personnel and government officials, in particular those employed in institutions of detention or imprisonment, of the Principles of Medical Ethics[100] 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.

(*f*) Human rights questions

(1) *Status and implementation of international instruments*

(i) *International Covenants on Human Rights*[101]

In 1983, five more States became a party to the International Covenant on Economic, Social and Cultural Rights,[102] five more States became a party to the International Covenant on Civil and Political Rights[103] and three more States became a party to the Optional Protocol to the International Covenant on Civil and Political Rights.[104]

By its resolution 38/116 of 16 December 1983,[105] adopted on the recommendation of the Third Committee,[106] the General Assembly took note with appreciation of the report of the Human Rights Committee on its seventeenth, eighteenth and nineteenth sessions[107] and expressed its satisfaction at the serious and constructive manner in which the Committee was continuing to perform its functions; again invited all States that had not yet done so to become parties to the Covenants, as well as to consider acceding to the Optional Protocol to the International Covenant on Civil and Political Rights; and 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. Moreover, by its resolution 38/117 of the same date,[108] adopted also on the recommendation of the Third Committee,[109] the Assembly reiterated the importance it attached to the reporting systems established by the International Covenants on Human Rights; requested the Economic and Social Council and its Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights to consider the suggestions contained in the report of the Secretary-General[110] with a view to improving the situation regarding the submission of reports under the Covenant; and requested the Secretary-General to consider the possibility of convening, in accordance with the suggestion contained in the report of the Human Rights Committee[111] and within existing resources, a meeting of the chairmen of the bodies entrusted with the consideration of reports submitted under the relevant human rights instruments in order to consider the report of the Secretary-General, taking into account the results of General Assembly resolution 38/20 of 22 November 1983 and of the current resolution.

(ii) *International Convention on the Elimination of All Forms of Racial Discrimination*[112]

In 1983, five more States became a party to the International Convention on the Elimination of All Forms of Racial Discrimination.

By its resolution 38/18 of 22 November 1983,[113] adopted on the recommendation of the Third Committee,[114] the General Assembly reaffirmed once again 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 those 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. By its resolution 38/20 of the same date,[115] adopted also on the recommendation of the Third Committee,[116] the General Assembly requested the Secretary-General to transmit his report on the reporting obligations of States parties under the International Convention on the Elimination of All Forms of Racial Discrimination and other relevant human rights instruments,[117] and an analytical summary of the records of the General Assembly's consideration thereof, to the ninth meeting of the States parties to the Convention; and invited the Committee on the Elimination of Racial Discrimination to consider the analysis and recommendations contained in the report of the Secretary-General, taking into account the various suggestions made in the General Assembly and at the ninth meeting of the States parties to the Convention.

By its resolution 38/21 of 22 November 1983,[118] adopted on the recommendation of the Third Committee,[119] the General Assembly took note with appreciation of the report of the Committee on the Elimination of Racial Discrimination on its twenty-seventh and twenty-eighth sessions; called upon all Member States to adopt effective legislative, socio-economic and other necessary measures in order to ensure the prevention or elimination of discrimination based on race, colour, descent or national or ethnic origin; further called upon the States parties to the Convention to protect fully, by the adoption of the relevant legislative and other measures, in conformity with the Convention, the rights of national or ethnic minorities and persons belonging to such minorities, as well as the rights of indigenous populations; reiterated its invitation to the States parties to the Convention to provide the Committee, in accordance with its general guidelines, with information on the implementation of the provisions of the Convention, including information on the demographic composition of their population and on their relations with the racist régime of South Africa; and took note with appreciation of the contribution of the Committee towards the achievement of the goals of the Decade to Combat Racism and Racial Discrimination as well as its contribution to the Second World Conference to Combat Racism and Racial Discrimination in preparing studies on the implementation of particular articles of the Convention.

Furthermore, by its resolution 38/14 of 22 November 1983,[120] adopted likewise on the recommendation of the Third Committee,[121] the General Assembly proclaimed the 10-year period beginning on 10 December 1983 the Second Decade to Combat Racism and Racial Discrimination; took note of the results of the Second World Conference to Combat Racism and Racial Discrimination contained in the report of the Conference,[122] and approved the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination annexed to the resolution and called upon all States to co-operate in its implementation. Sections F and G of the Programme of Action are reproduced below.

F. IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION AND OTHER RELATED INTERNATIONAL INSTRUMENTS

44. The Conference urges States which have not yet become parties to the International Convention on the Elimination of All Forms of Racial Discrimination to do so as part of their contribution to the objectives of the Decade for Action to Combat Racism and Racial Discrimination and until such States ratify the Convention they should utilize its provisions as guidelines in combating racial discrimination and in securing the realization of the principles of equality at both the national and international levels. The Conference calls upon States parties to the Convention to consider the possibility of making the Declaration provided for in article 14 of the Convention.

45. Those States should enact, as a matter of the highest priority, appropriate legislation and other suitable measures to prohibit and bring to an end racial discrimination, to abrogate, amend, rescind or nullify any policies or regulations that have the effect of creating or perpetuating racial hatred and to declare the dissemination of ideas based on racial superiority and hatred to be an offence punishable by law, taking duly into account the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

46. The Conference also appeals to States which have not yet done so to consider ratifying or acceding to as soon as possible other relevant international instruments adopted under the aegis of the United Nations and of the specialized agencies, such as the Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the International Convention on the Suppression and Punishment of the Crime of *Apartheid*, the Convention concerning Discrimination in Respect of Employment and Occupation adopted by the International Labour Organisation on 25 June 1958, the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization and the Convention on the Elimination of All Forms of Discrimination against Women; States are urged to comply with the reporting requirements called for by the relevant conventions.

G. National legislation and institutions

47. The Conference suggests that States that have not already done so should consider the urgent enactment, as a matter of the highest priority, of appropriate legislation and other suitable measures to prohibit and bring to an end racial discrimination, to abrogate, amend, rescind or nullify any policies or regulations that have the effect of creating or perpetuating racial hatred and, with due regard to the principles embodied in the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, *Apartheid* and Incitement to War, the Declaration on Race and Racial Prejudice adopted by the United Nations Educational, Scientific and Cultural Organization on 27 November 1978, and the rights set forth in the International Convention on the Elimination of All Forms of Racial Discrimination, to declare the dissemination of ideas based on racial superiority and hatred to be an offence punishable by law.

48. The Conference calls upon all States that have not yet done so to take effective legislative and other measures, including in the field of penal law, to prevent the recruitment, use, financing and training, transit and transport of mercenaries, in particular when the aim is to assist racist régimes, and to punish such mercenaries as common criminals. The Conference urges the *Ad Hoc* Committee on the Drafting of an International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, established by the General Assembly at its thirty-fifth session, to complete, as soon as possible, the draft international convention.

49. The Conference urges all States to adopt strict legislation to declare any dissemination of ideas based on racial superiority or hatred to be an offence punishable by law and to prohibit organizations based on racial prejudice and hatred, including neo-Nazi and Fascist organizations, and private clubs and institutions established on the basis of racial criteria or propagating ideas of racial discrimination and *apartheid*.

50. With regard to national legislation, the Conference recommends that:

(*a*) Governments, where necessary, should guarantee non-discrimination on grounds of race and equal rights for all individuals in their constitutions and legislation;

(*b*) Governments, where necessary, should undertake to review and update all national legislation and remove from it any discriminatory provisions;

(*c*) Legislation should be consistent with international standards embodied in relevant international instruments;

(*d*) Victims of discrimination should be informed and advised of their rights, by all possible means, and given assistance in securing those rights;

(*e*) Governments should, where necessary, establish appropriate and effective mechanisms, including conciliation and mediation procedures and national commissions, to ensure that such legislation is enforced effectively and thereby to promote equality of opportunity and good race relations.

51. A system of regular review and appraisal should be continued to enable Member States, all organizations of the United Nations system, including relevant regional bodies, and non-governmental organizations, to assess the measures taken towards achieving the aims and objectives of the Decade.

52. Within the framework of their national legislation and policy, and according to their means, States should set up national institutions for the promotion and protection of human rights. Those institutions should study legal developments and review the laws and policies of the Government with a view to ensuring the elimination of all discriminatory laws, prejudices and practices based on race, sex, colour, descent and national and ethnic origin.

(iii) *International Convention on the Suppression and Punishment of the Crime of* Apartheid[123]

In 1983, eight more States became a party to the International Convention on the Suppression and Punishment of the Crime of *Apartheid*.

By its resolution 38/19 of 22 November 1983,[124] adopted on the recommendation of the Third Committee,[125] 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; expressed its appreciation of 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;[126] and called upon all States parties to the Convention to implement fully article IV thereof 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.

(iv) *Convention on the Elimination of All Forms of Discrimination against Women*[127]

In 1983, eight more States became a party to the Convention on the Elimination of all Forms of Discrimination against Women.

By its resolution 38/109 of 16 December 1983,[128] adopted on the recommendation of the Third Committee,[129] the General Assembly invited States that had not yet done so to become parties to the Convention and welcomed the fact that the Committee on the Elimination of Discrimination against Women had successfully started its work and, *inter alia*, had adopted general guidelines regarding the form and content of reports received from States parties under article 18 of the Convention.

(2) *Torture and other cruel, inhuman or degrading treatment or punishment*[130]

By its resolution 38/119 of 16 December 1983,[131] adopted on the recommendation of the Third Committee,[132] the General Assembly requested the Commission on Human Rights to complete, at its fortieth session, as a matter of the highest priority, the drafting of a convention against 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-ninth session.

(3) *Summary or arbitrary executions*

By its resolution 38/96 of 16 December 1983,[133] adopted on the recommendation of the Third Committee,[134] the General Assembly appealed to all Governments to co-operate with and assist the Special Rapporteur of the Commission on Human Rights in the preparation of his report on the occurrence and extent of the practice of summary or arbitrary executions; again requested the Secretary-General to continue to use his best endeavours in cases where the minimum standard of legal safeguards provided for in articles 6, 14 and 15 of the International Covenant on Civil and Political Rights appeared not to be respected; and requested the Commission on Human Rights at its fortieth session, on the basis of the report of the Special Rapporteur to be prepared in conformity with Economic and Social Council resolutions 1982/35 and 1983/36, to make recommendations concerning appropriate action to combat and eventually eliminate the practice of summary or arbitrary executions.

(4) *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 38/124 of 16 December 1983,[135] adopted on the recommendation of the Third Committee,[136] 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, including the question of the Commission's programme and working methods, 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 and concepts of General Assembly resolution 32/130 and other relevant texts; reaffirmed that it was of paramount importance for the promotion of human rights and fundamental freedoms that the 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 the implementation of the relevant international instruments should be encouraged; and considered it necessary that all Member States promote international co-operation on the basis of respect for the independence, sovereignty and territorial integrity of each State, including the right of each people to choose freely its own socio-economic and political system, with a view to resolving international problems of an economic, social and humanitarian character.

Furthermore, by its resolution 38/123 of 16 December 1983,[137] adopted also on the recommendation of the Third Committee,[138] the General Assembly invited all Member States to take appropriate steps for the establishment or, where they already existed, the strengthening of national institutions for the protection and promotion of human rights; emphasized the importance of the integrity and independence of such national institutions, in accordance with national legislation; and drew attention to the constructive role that national non-governmental organizations could play in the work of national institutions.

(5) *Measures to improve the situation and ensure the human rights and dignity of all migrant workers*

By its resolution 38/86 of 16 November 1983,[139] adopted on the recommendation of the Third Committee,[140] the General Assembly took note of the reports of the Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families and expressed its satisfaction with the substantial progress that the Working Group had so far made in the accomplishment of its mandate and decided that, in order to enable it to complete its task as soon as possible, the Working Group should again hold an intersessional meeting of two weeks' duration in New York, immediately after the first regular session of 1984 of the Economic and Social Council; and that it should meet also during the thirty-ninth session of the General Assembly to continue and, if possible, to complete the elaboration of an international convention on the protection of the rights of all migrant workers and their families.

(6) *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 38/87 of 16 December 1983,[141] adopted on the recommendation of the Third Committee,[142] the General Assembly decided to establish, at its thirty-ninth session, an open-ended working group 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.

(7) *Question of a convention on the rights of the child*

By its resolution 38/114 of 16 December 1983,[143] adopted on the recommendation of the Third Committee,[144] the General Assembly requested the Commission on Human Rights to give the highest priority at its fortieth session to the question of completing a draft convention on the rights of the child and to make every effort to submit it, through the Economic and Social Council, to the General Assembly at its thirty-ninth session, as the Commission's tangible contribution to the commemoration of the twenty-fifth anniversary of the Declaration of the Rights of the Child.

(8) *Elimination of all forms of religious intolerance*

By its resolution 38/110 of 16 December 1983,[145] adopted on the recommendation of the Third Committee,[146] the General Assembly, noting that the Economic and Social Council, in its

decision 1983/150 of 27 May 1983, had endorsed the request of the Commission on Human Rights to the Secretary-General to hold, within the framework of the advisory services programme in the period 1984-1985, a seminar on the encouragement of understanding, tolerance and respect in matters relating to freedom of religion or belief, pledged its determination to encourage understanding, tolerance and respect in matters relating to freedom of religion or belief and expressed the hope that the seminar would contribute towards the realization of those aims and requested the Commission to continue its consideration of measures to implement the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief[147] and to report, through the Economic and Social Council, to the General Assembly at its thirty-ninth session.

(9) *Measures to be taken against Nazi, Fascist and neo-Fascist activities and all other forms of totalitarian ideologies and practices based on racial intolerance, hatred and terror*

By its resolution 38/99 of 16 December 1983,[148] adopted on the recommendation of the Third Committee,[149] the General Assembly again condemned all totalitarian or other ideologies and practices, in particular Nazi, Fascist and neo-Fascist, based on racial or ethnic exclusiveness or intolerance, hatred, terror or systematic denial of human rights and fundamental freedoms, or which had such consequences; called upon States to assist each other in detecting, arresting and bringing to trial persons suspected of having committed war crimes and crimes against humanity and, if they were found guilty, in punishing them; and invited Member States to adopt, in accordance with their national constitutional systems and with the provisions of the Universal Declaration of Human Rights and the International Covenants on Human Rights, as a matter of high priority, measures declaring punishable by law any dissemination of ideas based on racial superiority or hatred and of war propaganda, including Nazi, Fascist and neo-Fascist ideologies.

(10) *Human rights and scientific and technological developments*

By its resolution 38/111 of 16 December 1983,[150] adopted on the recommendation of the Third Committee,[151] the General Assembly, recalling its resolution 33/53 of 14 December 1978, in which it had requested the Commission on Human Rights to urge the Sub-Commission on Prevention of Discrimination and Protection of Minorities to undertake, as a matter of priority, a study of the question of the protection of those detained on the grounds of mental ill-health, with a view to formulating guidelines, and reaffirming its conviction that detention of persons in mental institutions on account of their political views or on other non-medical grounds was a violation of their human rights, again urged the Commission on Human Rights and, through it, the Sub-Commission to expedite their consideration of the draft body of guidelines, principles and guarantees, so that the Commission could submit its views and recommendations, including a draft body of guidelines, principles and guarantees, to the General Assembly at its fortieth session, through the Economic and Social Council.

By its resolution 38/112 of 16 December 1983,[152] adopted on the recommendation of the Third Committee,[153] the General Assembly stressed the importance of the implementation by all States of the provisions and principles contained in the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind[154] in order to promote human rights and fundamental freedoms and requested the Commission on Human Rights to pay special attention, in its consideration of the item entitled "Human rights and scientific and technological developments", to the question of the implementation of the provisions of the Declaration, taking into consideration the information submitted by Member States, specialized agencies and other organizations of the United Nations system pursuant to General Assembly resolution 35/130 A of 11 December 1980. Furthermore, by its resolution 38/113 of 16 December 1983,[155] adopted also on the recommendation of the Third Committee,[156] the General Assembly reaffirmed that all peoples and all individuals had an inherent right to life and that the safeguarding of that cardinal right was an essential condition for the enjoyment of the entire range of economic, social and cultural, as well as civil and political rights; called upon all States, appropriate organs of the United Nations, specialized agencies and intergovernmental and non-governmental organizations concerned to take the necessary measures to ensure that the results of scientific and technological progress were used exclusively in the interests of international peace, for the benefit of mankind and for promoting

and encouraging universal respect for human rights and fundamental freedoms; and again called upon all States that had not yet done so to take effective measures with a view to prohibiting by law any propaganda for war.

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4. LAW OF THE SEA

Status of the United Nations Convention on the Law of the Sea[157]

As of 31 December 1983, 132 States had signed and 8 States and the United Nations Council for Namibia had ratified the United Nations Convention on the Law of the Sea.

Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea[158]

Resolution I of the Third United Nations Conference on the Law of the Sea, adopted on 30 April 1982, together with the United Nations Convention on the Law of the Sea, established a Preparatory Commission to prepare for two of the institutions to be established when the Convention entered into force: the International Sea-Bed Authority and the International Tribunal for the Law of the Sea.

In accordance with the requirements established by resolution I of the Conference and as authorized by General Assembly resolution 37/66 of 3 December 1982, the Secretary-General convened the Preparatory Commission, which held its first session at Kingston, Jamaica, from 15 March to 8 April 1983. The total attendance was 99 members and 17 observers. On 8 April 1983, the Preparatory Commission adopted a "consensus statement of understanding" concerning the general features of the structure of the Commission, its agenda and decision-making.[159] During the session, the Group of 77 issued a statement opposing any action by States to apply selectively provisions of the Convention and appealed to all States to sign expeditiously the Convention.[160] The Group of Eastern European States made a similar declaration.[161]

The Commission reconvened on 15 August at Kingston for the resumed first session. The total attendance was 82 members and 16 observers. The Preparatory Commission adopted a package of three proposals of the Chairman before proceeding to the adoption of its rules of procedure.[162] On 8 September 1983, the Chairman declared that it was the understanding of the Preparatory Commission that the elaboration and adoption of rules, regulations and procedures for the implementation of resolution II of the Conference on the protection of preparatory investments in pioneer activities relating to the mining of polymetallic nodules should be considered as a matter of high priority by the Preparatory Commission at its next session.[163] The Commission concluded the organization of its work with the adoption of its rules of procedure[164] on the same day. It decided that it would hold one regular four-week session a year at the seat of the International Sea-Bed Authority and one four-week session a year of its working groups (plenary, Special Commissions and other subsidiary bodies) at Kingston, New York or Geneva, depending on the decision of the Commission. Furthermore, the Preparatory Commission might at any time decide to hold additional sessions for itself or for its working groups.

Consideration by the General Assembly

By its resolution 38/59 A of 14 December 1983,[165] the General Assembly recalled the historic significance of the United Nations Convention on the Law of the Sea as an important contribution to the maintenance of peace, justice and progress for all peoples of the world; expressed its satisfaction at the large number of signatures affixed to the Convention as well as at the number of ratifications deposited with the Secretary-General during the year following the opening of the Convention for signature; called upon States that had not done so 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; also called upon all States to safeguard the unified character of

the Convention and its related resolutions; and appealed to all States to refrain from taking any action directed at undermining the Convention or defeating its objectives and purposes.

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5. INTERNATIONAL COURT OF JUSTICE[166, 167]

Cases before the Court

(i) *Continental Shelf (Libyan Arab Jamahiriya/Malta)*[168]

On 27 July 1982 the Vice-President of the Court made an Order[169] whereby, having regard to an agreement between the Parties recorded in the Special Agreement, he fixed 26 April 1983 as the time-limit for the filing of a Memorial by each Party. The Memorials were duly filed and, by an Order dated 26 April 1983, the President fixed 26 October 1983 as the time-limit for the filing of Counter-Memorials.[170] These pleadings were duly filed.

Since the Court did not include upon the Bench a judge of Libyan or of Maltese nationality, each of the Parties exercised its right under Article 31 of the Statute of the Court to choose a person to sit as judge *ad hoc*. The Libyan Arab Jamahiriya chose Mr. E. Jiménez de Aréchaga and Malta chose Mr. J. Castañeda.

On 24 October 1983 the Government of Italy filed an Application for permission to intervene pursuant to Article 62 of the Statute. It indicated in its Application that its purpose in seeking to intervene in the case concerning delimitation of the continental shelf between the Libyan Arab Jamahiriya and Malta was to enable it to take part in the proceedings to the extent necessary to defend its rights over certain of the areas claimed by the Parties so that the Court would be in a position to take those rights into consideration in coming to its decision.

Pursuant to Article 83 of the Rules of Court, on 5 December 1983, within the time-limit fixed therefor, the Governments of the Libyan Arab Jamahiriya and Malta submitted written observations on Italy's request for permission to intervene. Objections have been raised to that request.

(ii) *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*[171]

By an Order dated 5 November 1982, the President of the Chamber constituted to deal with the case fixed 28 June 1983 as the time-limit for the filing of Counter-Memorials,[172] which were duly filed.

By an Order dated 27 July 1983, the President of the Chamber authorized the filing of Replies by Canada and the United States of America and fixed 12 December 1983 as the time-limit therefor.[173] These pleadings were duly filed. In support of their contentions, the Parties had submitted an extremely copious documentation to the Chamber (approximately 9,500 pages).

(iii) *Frontier dispute (Upper Volta/Mali)*

On 14 October 1983, the Governments of the Republic of Upper Volta and the Republic of Mali jointly notified to the Registrar a Special Agreement concluded by them on 16 September 1983, having entered into force on that same day and registered with the United Nations Secretariat, by which they submitted to a chamber of the Court the question of the delimitation of part of the land frontier between the two States. Each Party has appointed an agent.

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6. INTERNATIONAL LAW COMMISSION[174]

THIRTY-FIFTH SESSION OF THE COMMISSION[175]

The International Law Commission held its thirty-fifth session at Geneva from 3 May to 22 July 1983. In accordance with General Assembly resolutions 37/102 and 37/111 of 16 December 1982, it continued its work aimed at the preparation of drafts on all the topics on its current programme.

With respect to the question of the draft Code of Offences against the Peace and Security of Mankind, the Commission held a general debate on the basis of the first report submitted by the Special Rapporteur,[176] which dealt with the scope of the draft (*ratione materiae* and *ratione personae*), its methodology and the implementation of the Code. In its conclusions the Commission expressed the opinion that the draft Code should cover only the most serious international offences and that those offences would be determined by reference to a general criterion and also to the relevant conventions and declarations pertaining to the subject The Commission also asked the General Assembly to express its views with regard to the subjects of law to which international criminal responsibility could be attributed and with regard to the implementation of the Code to indicate whether the Commission's mandate extended to the preparation of the statute of a competent international criminal jurisdiction for individuals as well as whether such jurisdiction should also be competent with respect to States.

On the question of jurisdictional immunities of States and their property, the Commission had before it the fifth report on the topic submitted by the Special Rapporteur.[177] The report dealt with part III of the draft articles concerning exceptions to State immunity and contained three draft articles: "Contracts of employment" (article 13); "Personal injuries and damage to property" (article 14); and "Ownership, possession and use of property" (article 15). At the conclusion of its debate on the topic, the Commission decided to refer draft articles 13, 14 and 15 to the Drafting Committee. The Drafting Committee recommended draft articles 10, 12 and 15, which were provisionally adopted by the Commission, together with the relevant provisions of articles 2 (1) (*g*) and 3 (2). On the basis of the discussions in the Commission, the Special Rapporteur prepared and submitted to the Drafting Committee a revised version of draft articles 13 and 14.[178]

Regarding the topic of State responsibility, the Commission considered the fourth report submitted by the Special Rapporteur,[179] which concentrated on an "outline" of the possible contents of part 2 (the content, forms and degrees of international responsibility) and part 3 (settlement of disputes and the implementation of international responsibility) of the draft articles on State responsibility.

With regard to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the Commission considered the first and second instalments of the fourth report submitted by the Special Rapporteur.[180] They contained draft articles 15 to 23 of part II of the draft articles on facilities to be granted to the diplomatic courier and the inviolability and jurisdictional immunity of the diplomatic courier. The Commission decided to refer draft articles 15 to 19 to the Drafting Committee and to resume its debate on draft articles 20 to 23 at its next session. The Commission adopted also on first reading the texts of articles 1 to 8.

Regarding the question of the law of the non-navigational uses of international watercourses, the Commission had before it the first report submitted by the newly appointed Special Rapporteur,[181] which contained, as a basis for discussion, a tentative draft of a convention on the law of the non-navigational uses of international watercourses. There was broad agreement that the Special Rapporteur's outline could, generally speaking, be taken as the basis for further work on the topic.

The Commission resumed also its consideration of the topic "Relations between States and international organizations" (second part of the topic) on the basis of a preliminary report submitted by the current Special Rapporteur.[182] The Commission reached the following conclusions: (*a*) it should take up the study of the second part of the topic; (*b*) the work should proceed with great prudence; (*c*) for the purposes of its initial work on the second part of the topic it should adopt a broad outlook, inasmuch as the study should include regional organizations, and the final decision on whether to include such organizations in a future codification should be taken only when

the study was completed; (*d*) the same broad outlook should be adopted in connection with the subject-matter, as regards determination of the order of work on the topic and the desirability of carrying out that work in different stages.

With respect to the question of international liability for injurious consequences arising out of acts not prohibited by international law, the Commission had before it the fourth report submitted by the Special Rapporteur,[183] containing a single chapter entitled "Delineation of the topic". The main purpose of the report was to take into account the views expressed in the Sixth Committee and in the Commission in 1982, to re-evaluate the schematic outline in the light of those views and to provide a better and more complete commentary. At the end of a short debate, it was agreed that the third part of the Secretariat's review of State practice should be put in the form of an analytical study so that it would correspond more closely with the two earlier parts. It was also agreed that the Special Rapporteur should, with the help of the Secretariat, prepare a questionnaire to be addressed to selected international organizations.

Consideration by the General Assembly

At its thirty-eighth session, the General Assembly had before it the report of the International Law Commission on the work of its thirty-fifth session.[184] By its resolution 38/138 of 19 December 1983,[185] adopted on the recommendation of the Sixth Committee,[186] the Assembly recommended that the Commission continue its work on all the topics in its current programme; reaffirmed its previous decisions concerning the increased role of the Codification Division of the Office of Legal Affairs of the Secretariat and those concerning the documentation of the Commission; and also reaffirmed its wish that the Commission continue to enhance its co-operation with intergovernmental legal bodies whose work was of interest for the progressive development of international law and its codification. Moreover, by its resolution 38/132 of 19 December 1983,[187] adopted also on the recommendation of the Sixth Committee,[188] the Assembly invited the Commission to continue its work on the elaboration of the draft Code of Offences against the Peace and Security of Mankind by elaborating, as a first step, an introduction recalling the general principles of criminal law as well as a list of offences that the draft Code should cover.[189]

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7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[190]

Sixteenth session of the Commission[191]

The United Nations Commission on International Trade Law held its sixteenth session at Vienna, from 24 May to 3 June 1983.

With respect to international contract practices, the Commission had before it a revised text of the uniform rules on liquidated damages and penalty clauses.[192] After deliberation, the Commission completed its work on the substance of the subject by adopting the draft Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance.[193] The Commission could not, however, reach a consensus as to the form which the draft Rules should take. In view of the importance of the issue, which was of interest to all States, the Commission considered that any decision on the final form of the draft Rules should be one for the Sixth Committee of the General Assembly.

Regarding the question of international payments, the Commission considered a suggestion of the Secretariat to devote a substantial period of time of the seventeenth session to a substantive discussion of key features and major controversial issues to be identified by the Secretariat in an analysis of all comments of Governments and international organizations on the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Convention on International Cheques. The Commission accepted the suggestion in principle. Furthermore, the Commission took note of a progress report that the Secretariat had begun the work leading to the preparation of the legal guide on electronic funds transfers.[194]

On the question of international commercial arbitration, the Commission took note of the reports of the Working Group on International Contract Practices on the preparation of a draft model law on international commercial arbitration[195] and requested the Working Group to proceed with its work expeditiously.

With respect to the new international economic order, the Commission had before it the report of the Working Group on the New International Economic Order on the work of its fourth session,[196] which set forth the deliberations of the Working Group on the basis of the report of the Secretary-General entitled "Draft legal guide on drawing up contracts for construction of industrial works: sample chapters".[197] The Commission expressed its appreciation to the Group for the progress made in this extremely complex field. The importance of the guide for developing countries was stressed and the Commission agreed with the Working Group on the need to prepare the legal guide expeditiously.

The Commission discussed also a report of the Secretary-General which set forth the main activities of the Secretariat for the purpose of co-ordination of work in the field of international trade law since the fifteenth session[198] and expressed its approval of those activities. The Secretariat was urged to continue its efforts in this regard. In response to the request by the General Assembly contained in its resolution 34/142 of 17 December 1979 that the Secretary-General place before the Commission, at each of its sessions, a report on the legal activities of the international organs, organizations and bodies concerned, together with recommendations regarding steps to be taken by the Commission, the Commission had before it a report of the Secretary-General entitled "Current activities of international organizations related to the harmonization and unification of international trade law".[199] There was general agreement that the report was informative and useful to government officials and law professors alike and that it also contributed to the co-ordination of activities among international organizations.

After considering a report of the Secretary-General on some recent developments in the field of international transport of goods,[200] which described the activities of other organizations in the areas of marine insurance, transport by container and freight forwarding as well as liability of international terminal operators, the Commission decided to include the topic of liability of international terminal operators in its work programme, to request the International Institute on the Unification of Private Law to transmit its preliminary draft Convention on the subject to the Commission for its consideration and to assign work on the preparation of uniform rules on the topic to a working group.

The Commission considered the status of conventions that were the outcome of its work.[201] The Secretary of the Commission informed the Commission that the Secretariat had intensified its efforts to promote the conventions, particularly through its co-ordination and training-and-assistance programmes.

With regard to training and assistance, the Commission had before it a report of the Secretary-General on the subject.[202] The report set out the steps taken by the Secretariat to implement the decisions of the Commission and of the General Assembly. The report also noted that plans had been made to collaborate in the holding of regional seminars and that, while the principal limitation on the organization of symposia and seminars was that not enough funds were available for these purposes, the Secretariat would continue its efforts to explore all suitable opportunities for training and assistance and to make the work of the Commission known. The Commission approved the general approach taken by the Secretariat in this area.

Consideration by the General Assembly

At its thirty-eighth session, the General Assembly, by its resolution 38/134 of 19 December 1983,[203] adopted on the recommendation of the Sixth Committee,[204] called upon UNCITRAL to continue to take account of the relevant provisions of the resolutions concerning the new international economic order, as adopted by the Assembly at its sixth and seventh special sessions; took note with appreciation of the commencement by the Commission of work on drafting a legal guide on drawing up contracts for the supply and construction of industrial works, identifying the legal issues

involved in such contracts and suggesting possible solutions to assist parties, in particular from developing countries, in their negotiations; reaffirmed the mandate of the Commission, as a 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 effort and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law; and recommended that UNCITRAL continue its work on the topics included in its programme of work. Furthermore, by its resolution 38/135 of 19 December 1983,[205] adopted also on the recommendation of the Sixth Committee,[206] the Assembly, noting that UNCITRAL had adopted Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance, recommended that States give serious consideration to the Rules and, where appropriate, implement them in the form of either a model law or a convention.

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8. LEGAL QUESTIONS DEALT WITH BY THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY AND BY *AD HOC* LEGAL BODIES

(*a*) Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

By its resolution 38/136 of 19 December 1983,[207] adopted on the recommendation of the Sixth Committee,[208] the General Assembly 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 to ensure effectively the protection, security and safety of all diplomatic and consular missions and representatives officially present in territory under their jurisdiction, including practicable measures to prohibit in their territories 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; recommended that States should co-operate closely through, *inter alia*, contacts between the diplomatic and consular missions and the receiving State, 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, in cases where a dispute arose in connection with a violation of the principles and rules of international law concerning the inviolability of diplomatic and consular missions and representatives, to make use of the means for peaceful settlement of disputes, including the good offices of the Secretary-General; also 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; and requested (*a*) all States to report to the Secretary-General as promptly as possible serious violations of the protection, security and safety of diplomatic and consular missions and representatives; and (*b*) the State in which the violation had taken place—and, to the extent applicable, the State where the alleged offender had been present—to report as promptly as possible 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.

(*b*) Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes

By its resolution 38/130 of 19 December 1983,[209] adopted on the recommendation of the Sixth Committee,[210] the General Assembly invited all States to take all appropriate measures at the national level with a view to the speedy and final elimination of the problem of international terrorism,

such as the harmonization of domestic legislation with international conventions, the implementation of assumed international obligations and the prevention of the preparation and organization in their territory of acts directed against other States; called upon all States to fulfil their obligations under international law to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State, or acquiescing in organized activities within their territory directed towards the commission of such acts; appealed to all States that had not yet done so to consider becoming parties to the existing international conventions relating to various aspects of the problem of international terrorism; urged all States to co-operate with one another more closely, especially through the exchange of relevant information concerning the prevention and combating of international terrorism, the apprehension and prosecution of the perpetrators of such acts, the conclusion of special treaties and/or the incorporation into appropriate bilateral treaties of special clauses, in particular regarding the extradition or prosecution of international terrorists; re-endorsed the recommendations submitted by the *Ad Hoc* Committee on International Terrorism in its report to the General Assembly at its thirty-fourth session relating to practical measures of co-operation for the speedy elimination of the problem of international terrorism;[211] and called upon all States to observe and implement the recommendations submitted by the *Ad Hoc* Committee.

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

By its resolution 38/126 of 19 December 1983,[212] adopted on the recommendation of the Sixth Committee,[213] the General Assembly reaffirmed that good-neighbourliness fully conformed with the purposes of the United Nations and should be founded upon the strict observance of the principles of the Charter and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,[214] and so presupposed the rejection of any acts seeking to establish zones of influence or domination; deemed it appropriate, on the basis of the working paper concerning the development and strengthening of good-neighbourliness between States,[215] as well as of other proposals and ideas which had been or would be submitted by States, and the replies and views of States and international organizations, to start clarifying and formulating the elements of good-neighbourliness as part of a process of elaboration of a suitable international document on the subject; and requested the Sixth Committee to decide, at the thirty-ninth session of the General Assembly, on the appropriate framework to accomplish those tasks.

(*d*) Progressive development of the principles and norms of international law relating to the new international economic order

By its resolution 38/128 of 19 December 1983,[216] adopted on the recommendation of the Sixth Committee,[217] the General Assembly requested UNITAR to continue preparing the third and final phase of the analytical study on the progressive development of the principles and norms of international law relating to the new international economic order and to complete it in time for the Secretary-General to submit it to the General Assembly at its thirty-ninth session; also requested UNITAR to prepare a summary and an outline of the study in order to facilitate debate on the item; and urged Member States to submit relevant information with respect to the study, including proposals concerning further action to be taken on the final study to be submitted to the General Assembly at its thirty-ninth session.

(*e*) Draft articles on most-favoured-nation clauses

By its resolution 38/127 of 19 December 1983,[218] adopted on the recommendation of the Sixth Committee,[219] the General Assembly requested the Secretary-General to reiterate his invitation to Member States and interested organs of the United Nations, as well as interested intergovernmental organizations, to submit or bring up to date any written comments and observations which they deemed appropriate on chapter II of the report of the International Law Commission on the work of its thirtieth session,[220] and also requested the Secretary-General to invite Member States to

comment on the most appropriate procedure for completing work on most-favoured-nation clauses and on the forum for future discussion, bearing in mind the suggestions and proposals made in the Sixth Committee, including the suggestion to establish a working group of the Sixth Committee after one of the existing working groups accomplished its mandate.

(*f*) 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

By its resolution 38/142 of 19 December 1983,[221] adopted on the recommendation of the Sixth Committee,[222] the General Assembly requested the Secretary-General to invite Member States to comment on the most appropriate procedure for completing work on 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 and the forum for future discussion, bearing in mind the suggestions and proposals made in the Sixth Committee; and also requested the Secretary-General to submit to the Assembly at its thirty-ninth session a report containing those comments and observations, with a view to taking a final decision on the procedure to be followed.

(*g*) United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations

By its resolution 38/139 of 19 December 1983,[223] adopted on the recommendation of the Sixth Committee,[224] the General Assembly decided that the appropriate forum for the final consideration of the draft articles on the law of treaties between States and international organizations or between international organizations, adopted by the International Law Commission at its thirty-fourth session,[225] should be a conference of plenipotentiaries to be convened not earlier than 1985; and agreed to decide at its thirty-ninth session upon the question of the date and place for the convening of the United Nations Conference on the Law of Treaties between States or between International Organizations, as well as upon the question of participation in the Conference.

(*h*) United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

By its resolution 38/129 of 19 December 1983,[226] adopted on the recommendation of the Sixth Committee,[227] the General Assembly authorized the Secretary-General to carry out in 1984 and 1985 the activities specified in his report on the implementation of the Programme;[228] urged all Governments to encourage the inclusion of courses on international law in the programmes of legal studies offered at institutions of higher learning; and decided to appoint 13 Member States as members of the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, for a period of four years beginning on 1 January 1984.

(*i*) Report of the Committee on Relations with the Host Country[229]

In accordance with its resolution 37/113 of 16 December 1982, the General Assembly decided that the Committee on Relations with the Host Country should continue its work, in conformity with General Assembly resolution 2819 (XXVI) of 15 December 1971. In its report to the General Assembly at its thirty-eighth session, the Committee included a set of recommendations whereby it, *inter alia*, urged the host country to continue to take measures to apprehend, bring to justice and punish all those responsible for committing or conspiring to commit 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; called upon the missions of States Members of the United Nations to co-operate as fully as possible with federal and local United States authorities

in cases affecting the security of those missions and their personnel; and called upon the host country to avoid actions not consistent with meeting effectively obligations undertaken by it in accordance with international law, in relation to the privileges and immunities of States Members of the United Nations including those relevant to their participation in the work of the United Nations. Considering questions pertaining to the application of the United Nations Foreign Missions Act, which had been enacted on 24 August 1982, the Committee had before it the legal opinion of the Legal Counsel on the subject.[230] The Committee decided to keep the item on the agenda.

The General Assembly, by its resolution 38/140 of 19 December 1983,[231] adopted on the recommendation of the Sixth Committee,[232] endorsed the recommendations of the Committee on Relations with the Host Country; recalled that continued adherence to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations remained an indispensable condition for the normal functioning of the Organization; and called upon all countries to build up public awareness by explaining the importance of the role played by the United Nations and all missions accredited to it in the strengthening of international peace and security.

(*j*) Question concerning the Charter of the United Nations and the strengthening of the role of the Organization

In accordance with General Assembly resolution 37/114 of 16 December 1982, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met at United Nations Headquarters from 11 April to 6 May 1983.[233] It established an open-ended Working Group to discuss the topics referred to in paragraphs 3 and 5 of the resolution. The Working Group started its work with the consideration of the question of rationalization of existing procedures of the United Nations using the draft list of proposals made by Member States prepared by the Philippines and Romania[234] as the basis for its work. Owing to lack of time the Special Committee was not able to complete its consideration of the draft list. Considering the question of the maintenance of international peace and security, the Working Group had before it a revised draft recommendation presented by Egypt on behalf of non-aligned countries of the Special Committee[235] and two proposals submitted by France.[236] After the examination of these proposals the Working Group carried out the work on the preparation of the list of proposals which had been or would be made in the Committee and identified those which had elicited special interest. The discussions and informal consultation which took place on the basis of a draft list prepared by Romania[237] did not lead to the generally agreed results. With regard to the question of the peaceful settlement of disputes, the Working Group considered a proposal orally submitted by Romania and the Philippines for the creation of a United Nations permanent commission on mediation, conciliation and good offices. The Group reviewed also the proposals contained in the list of proposals prepared by the Special Committee at its 1979 session[238] in order to determine which of those proposals on which general agreement was or might be possible called for further action on the part of the Special Committee. As a result of that work the Special Committee, *inter alia*, agreed that the Secretary-General should be entrusted by the General Assembly with the preparation of a preliminary outline on the possible contents of a handbook on the peaceful settlement of disputes which would comprise all existing means and mechanisms available for the purpose.

At its thirty-eighth session the General Assembly, by its resolution 38/141 of 19 December 1983,[239] adopted on the recommendation of the Sixth Committee,[240] requested the Special Committee at its next session: (*a*) to accord priority by devoting more time to the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations, in particular the Security Council, and to enable it to discharge fully its responsibilities under the Charter in this field; (*b*) to continue its work on the question of the peaceful settlement of disputes between States and in this context: (i) to consider the proposal contained in the working paper on the establishment of a permanent commission on good officies, mediation and concilation for the settlement of disputes and the prevention of conflicts among States; (ii) to continue the consideration of the proposal concerning the elaboration of a handbook on the peaceful

settlement of disputes between States; and (*c*) to finalize its current work on the question of the rationalization of existing procedures, with a view to submitting its conclusions to the General Assembly at its thirty-ninth session.

(*k*) Enhancing the effectiveness of the principle of non-use of force in international relations

In accordance with General Assembly resolution 37/105 of 16 December 1982, the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations met at United Nations Headquarters from 31 January to 25 February 1983.[241] It held a general debate on the questions within its mandate. The Committee had before it the draft World Treaty on the Non-Use of Force in International Relations submitted by the Union of Soviet Socialist Republics.[242] In addition, the reconstituted Working Group of the Committee had before it the working paper submitted at the 1979 session of the Committee by Belgium, France, the Federal Republic of Germany, Italy and the United Kingdom,[243] a revised working paper submitted at the 1981 session of the Committee by 10 non-aligned countries (Benin, Cyprus, Egypt, India, Iraq, Morocco, Nepal, Nicaragua, Senegal and Uganda[244] and a proposal by the Chairman submitted at the 1982 session of the Committee.[245]

Since the Committee had not completed its work, it generally recognized the desirability of further consideration of the question before it. While the majority was in favour of renewing the mandate of the Committee, some delegations took the position that the mandate should not be renewed and others considered that the mandate should be reviewed.

At its thirty-eighth session, the General Assembly, by its resolution 38/133 of 19 December 1983,[246] adopted on the recommendation of the Sixth Committee,[247] 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, and requested the Special Committee, in order to ensure further progress in its work, to continue at its session in 1984 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 the efforts undertaken at its session in 1983.

(*l*) International convention against the recruitment, use, financing and training of mercenaries

Pursuant to General Assembly resolution 37/109 of 16 December 1982, 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 2 to 26 August 1983.[248] The Committee had before it, *inter alia*, the texts of a draft convention submitted by Nigeria[249] and France.[250] The *Ad Hoc* Committee reconstituted its two working groups, Working Group A, which dealt with issues of definition and with the question of the scope of the convention, and Working Group B, which dealt with all other issues relevant to the future convention. Statements of a general nature were made by the representatives of the Union of Soviet Socialist Republics, the United States of America and the Bahamas at the beginning of the session. The Committee had not completed the mandate entrusted to it under paragraph 2 of General Assembly resolution 37/109.

At its thirty-eighth session, by its resolution 38/137 of 19 December 1983,[251] adopted on the recommendation of the Sixth Committee,[252] the General Assembly decided that the *Ad Hoc* Committee should continue its work with the goal of drafting, at the earliest possible date, an international convention against the recruitment, use, financing and training of mercenaries and invited the *Ad Hoc* Committee to take into account the draft articles contained in paragraph 56 of its report[253] for the elaboration of the provisions relating to the scope of the convention, the definition of the term "mercenary" and the obligations of States, as well as the proposals which had been made and which might be submitted at its next session.

9. CO-OPERATION BETWEEN THE UNITED NATIONS AND THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

By its resolution 38/37 of 5 December 1983,[254] the General Assembly, having considered the report of the Secretary-General on co-operation between the United Nations and the Asian-African Legal Consulative Committee[255] and having heard the statement of the Secretary-General of the Committee[256] on the continuing close and effective co-operation between the two organizations, requested the Secretary-General to continue to take steps to strengthen the co-operation between the United Nations and the Asian-African Legal Consultative Committee in the field of the 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[257]

During the period under review the United Nations Institute for Training and Research continued to organize, on a selective basis, certain well-established training activities, while at the same time it undertook to reorient and restructure its programme with a view to presenting a redesigned programme to the Board of Trustees at its twenty-second session in April 1984. The Institute carried out the following programmes, among others: a seminar for newly arrived diplomats in permanent missions on the workings of the United Nations system (New York); a seminar for new members of permanent missions on the activities and special features of the various bodies of the United Nations system located at Geneva; United Nations/UNITAR fellowship programme in international law (The Hague and other locations); United Nations/UNITAR regional training and refresher course in international law for Latin American and Caribbean countries (Buenos Aires); as well as training in response to *ad hoc* requests by individual Member States.

In keeping with its statutory mandate, UNITAR focused its research on studies designed to enhance the effectiveness of the United Nations, studies on issues relating to the maintenance of peace and security and studies designed to promote the economic and social development of Member States. The Institute continued to carry out, *inter alia*, projects on the preparation of a guide to the interpretation of the International Covenant on Economic, Social and Cultural Rights; an evaluation of the liability of States for damage through scientific and technological innovations; a study on credentials and representation issues at the United Nations; and a study on the International Civil Service Commission. UNITAR also completed the third and final phase of the study concerning the progressive development of the principles and norms of international law relating to the new international economic order, and the document containing analytical papers and a textual analysis of the study,[258] together with the relevant report of the Secretary-General,[259] were submitted to the General Assembly at its thirty-eighth session.

Among the studies published by UNITAR in 1983, mention should be made of the two-volume research report by Anna Mamalakis Pappas entitled *Law and the Status of the Child.*[260]

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

1. INTERNATIONAL LABOUR ORGANISATION[261]

The International Labour Conference, which held its sixty-ninth session at Geneva in June 1983, adopted the following instruments: a Convention and a Recommendation concerning vocational rehabilitation and employment (disabled persons)[262] and a Recommendation concerning the establishment of an international system for the maintenance of rights in social security rights.[263]

The Committee of Experts on the Application of Conventions and Recommendations met at Geneva from 10 to 23 March 1983 and presented its Report.[264]

The Governing Body Committee on Freedom of Association met at Geneva and adopted reports Nos. 222,[265] 223,[265] 224[265] and 225[265] (222nd session of the Governing Body, March 1983); reports Nos. 226,[266] 227,[266] 228,[266] and 229[266] (223rd session of the Governing Body, May-June 1983); and reports Nos. 230,[267] 231[267] and 232[267] (224th session of the Governing Body, November 1983).

Finally, mention may be made of the publication of the report of the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance of certain international labour Conventions by the Dominican Republic and Haiti with respect to the employment of Haitian workers on the sugar plantations of the Dominican Republic.[268]

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2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) Constitutional and general legal matters

(i) Meeting of the Committee on Constitutional and Legal Matters

The Committee on Constitutional and Legal Matters (CCLM) held its forty-third session from 3 to 5 October 1983.[269] At the session CCLM considered two substantive questions: (*a*) amendment to rule XXXIX.3 of the General Rules of the organization and (*b*) amendments to the Plant Protection Agreement for the Asia and Pacific Region.

a. *Amendment to rule XXXIX.3 of the General Rules of the organization*

CCLM noted that the FAO Council at its eighty-second session in 1982[270] had decided that the Director-General should be authorized to apply immediately, at his discretion, "to staff in the Professional and higher categories (including the Deputy Director-General) any future recommendations of the International Civil Service Commission (ICSC) approved by the General Assembly of the United Nations, reporting his actions or reasons for not taking immediate action to the Finance Committee and, as necessary, to the Council". Further, CCLM noted that the Council had recognized that "although action by the General Assembly on personnel matters did not require similar action on the part of FAO, not to do so would imply a deviation from the United Nations common system".

CCLM considered that the application by the Director-General of recommendations of ICSC approved by the General Assembly concerning the salaries and allowances of staff in the Professional and higher categories, as proposed by the Council, would require changes in the General Rules of the Organization. CCLM proposed for consideration by the Council a draft Conference resolution containing amendments to the General Rules and the Staff Regulations that were required to give effect to the Council's decision.

b. *Amendments to the Plant Protection Agreement for the Asia and Pacific region*

CCLM was informed that the Plant Protection Commission for the Asia and Pacific region had, at its thirteenth session, held in April 1983, endorsed amendments to the Agreement which had been prepared by the FAO secretariat at the Commission's request.

CCLM noted that, in accordance with the provisions of the Agreement, proposed amendments should be presented to the FAO Council for approval and that the Director-General had referred the amendments to CCLM for review before they were considered by the Council.

CCLM considered separately the proposed amendments which dealt with two distinct matters: the introduction of mandatory contributions by contracting Governments and the amendment of the definition of the region in order to include the People's Republic of China. CCLM recommended a draft resolution to be adopted by the Council containing approval of these amendments.

(ii) Amendments to the Basic Texts of the Organization and to the Statutes of FAO Bodies

Following review by CCLM[271] and recommendation by the Council at its eighty-fourth session (1-3 November 1983), the Conference at its twenty-second session (5-23 November) adopted a resolution (resolution 10/83) by which it approved the amendment to rule XXXIX.3 of the General Rules of the organization and the consequential amendment to staff regulation 301.122, in order to empower the Director-General to apply without delay ICSC recommendations relating to salaries and allowances approved by the General Assembly of the United Nations.[272]

The Council, having agreed with CCLM's recommendation, approved amendments to the Plant Protection Agreement for the Asia and Pacific Region by adopting resolution 1/84.[273]

(iii) Amendments to the Rules of Procedures of FAO Bodies

At its fifty-fourth session (3-7 October 1983), the Committee on Commodity Problems approved the revised Rules of Procedure[274] adopted in 1982 by the following intergovernmental groups: Intergovernmental Group on Oilseeds, Oils and Fats; Intergovernmental Group on Rice; Intergovernmental Group on Grains; Intergovernmental Group on Meat; Intergovernmental Group on Hard Fibres; Intergovernmental Group on Jute, Kenaf and Allied Fibres; and Intergovernmental Group on Bananas. At the same session, the Committee on Commodity Problems also approved the changes to its terms of reference and to its Rules of Procedure proposed by the Intergovernmental Group on Wine and Vine Product.

(iv) Establishment and Abolition of FAO Bodies

At its eighty-third session (13-24 June 1983), the Council adopted two resolutions (resolutions 4/83 and 5/83) by which it established, respectively, under article VI.1 of the FAO Constitution, the Near East Regional Commission on Agriculture and the Near East Regional Economic and Social Policy Commission. At the same time the Council decided to abolish six of the existing Regional Commissions: Animal Production and Health Commission in the Near East; Near East Plant Protection Commission; Commission on Horticultural Production in the Near East and North Africa; Regional Food and Nutritional Commission for the Near East; Near East Commission on Agricultural Planning; and Near East Commission on Agricultural Statistics.[275]

As requested by the Conference, the Council at its eighty-fifth session (24 November 1983) adopted a resolution (resolution 1/85) by which it established under article VI.1 of the FAO Constitution a Commission to be known as the Commission on Plant Genetic Resources, open to all member nations and associate members of the organization.[276]

(v) Change of Title of a Region

At its twenty-second session (5-23 November 1983), the Conference endorsed the proposal made by the Seventeenth Regional Conference for Latin America (1982) to change the name of the region, the Regional Conference and the regional office, from "Latin America" to "Latin America and the Caribbean". Thus the region will be known as "Latin America and the Caribbean"; the Regional Conference will be known as "Regional Conference for Latin America and the Caribbean"; and the regional office will be known as "Regional Office for Latin America and the Caribbean".

In this connection some countries proposed that in due course the distribution of Council seats for the Latin America and the Caribbean region should be consistent with the increased membership of the region.[277]

(vi) Applications for Membership in the Organization

The Conference at its twenty-second session (5-23 November 1983) admitted to membership of the organization Antigua and Barbuda, Belize, Saint Christopher and Nevis, and Vanuatu.[278]

(vii) Sovereign Order of Malta

At its twenty-second session (5-23 November 1983), the Conference agreed that the Sovereign Order of Malta should be invited to send an observer to the current session as well as to future sessions of the Conference and the Council.[279]

(viii) Status of conventions and agreements and amendments thereto for which the Director-General of FAO acts as depositary

(*a*) In 1983 the amendments to the International Plant Protection Convention[280] were accepted by the following countries: Luxembourg, Belgium, Yugoslavia, Czechoslovakia and Argentina. At its twenty-second session (5-23 November 1983), the Conference[281] recalled that, when approving the amendments to the Convention at its twentieth session (November 1979) by resolution 14/79, it had urged the parties to the Convention to accept the revised text at the earliest possible time, and that at its twenty-first session (November 1981) it had reiterated its appeal. The Conference noted, however, the large number of acceptances still required for the entry into force of the revised text. In view of the importance of the Convention in strengthening international action against the spread of pests attacking plants and plant products, the Conference reiterated its appeal to States that had not yet accepted the revised text of the Convention to deposit an instrument of acceptance as soon as possible.

(*b*) In 1983 the amendments to the Plant Protection Agreement for the Asia and Pacific region approved by the FAO Council in June 1979[282, 283] were accepted by the following countries: the Philippines and Malaysia. In accordance with article IX.4 of the Agreement, the amendments entered into force on 16 February 1983.

(*c*) In 1983 the International Convention for the Conservation of Atlantic Tunas[284] was ratified by Venezuela, while Uruguay and Sao Tome and Principe deposited an instrument of adherence to that Convention.

(*d*) In 1983 the Government of Senegal deposited an instrument of accession to the Agreement for the Establishment of a Centre on Integrated Rural Development for Africa.[285]

(ix) Treaty concluded at a Plenipotentiary Conference convened by the Organization

A Conference of Plenipotentiaries which met in Rome from 26 to 28 September 1983 adopted and opened for signature the Agreement for the Establishment of a Regional Centre on Agrarian Reform and Rural Development for the Near East [Accord portant création d'un centre régional de réforme agraire et de développement rural pour le Proche-Orient]. The Director-General of FAO is the depositary of the Agreement. (The Centre was established outside the framework of FAO.)

On 28 September the following countries signed the Agreement: Democratic Yemen, Egypt, Iraq, Jordan (host State) and Syrian Arab Republic. Such signatures are subject to ratification.

(x) Agreements and arrangements with intergovernmental organizations and bodies

In 1983 the organization established relations on the basis of a co-operation agreement or a memorandum of understanding with the following intergovernmental organizations: Central African Economic and Customs Union; Organization of the Islamic Conference; Economic Community of West African States; Junta del Acuerdo de Cartagena; South Pacific Bureau for Economic Co-operation; and South Asia Co-operative Environment Programme.

(xi) International undertaking of plant genetic resources

On a proposal by Mexico, the Conference had adopted at its twenty-first session (November 1981) resolution 6/81 entitled "Plant genetic resources",[286] by which it had requested the Director-General to examine and prepare the elements of a draft international convention, including legal provisions designed to ensure that global plant genetic resources of agricultural interest would be

conserved and used for the benefit of all human beings. Moreover, by the resolution the Conference had requested the Director-General to prepare a study on the establishment of an international bank of plant genetic resources of agricultural interest under the auspices of FAO and to present proposals based on the studies mentioned to the Committee on Agriculture for consideration at its seventh session in 1983; the Committee would report thereon to the Council with a view to consideration by the twenty-second session of the FAO Conference.

That report[287] was in fact examined by the Conference at its twenty-second session (5-23 November 1983). It incorporated suggestions of a Working Party of 13 member nations which the Director-General had convened during June and July of this year, as requested by the Committee on Agriculture at its seventh session in March 1983.[288] According to the basic principles that it contained, plant genetic resources should be considered as a common heritage of mankind and be available without restrictions for plant breeding, scientific and development purposes to all countries and institutions concerned.

On the basis of the Director-General's proposals the Conference adopted resolution 8/83 entitled "International undertaking on plant genetic resources".[289, 290] The Undertaking is presented in the form of a Conference resolution with a detailed annex.

The objective of the Undertaking is to ensure that plant genetic resources of economic and/or social interest, particularly for agriculture, will be explored, preserved, evaluated and made available for plant breeding and scientific purposes. It is based on the universally accepted principle that plant genetic resources are a heritage of mankind and consequently should be available without restriction. At the heart of the International Undertaking is an internationally co-ordinated network of national, regional and international centres. It is also envisaged that there should be under the auspices or the jurisdiction of FAO an international network of base collections in gene banks that have assumed the responsibility to hold, for the benefit of the international community and on the principle of unrestricted exchange, base or active collections of plant genetic resources of particular plant species.

It was further recommended in the Undertaking that an intergovernmental body be established within the framework of FAO[291] which would, in particular, monitor the operation of the international arrangements proposed in the Undertaking.

Thus the Conference adopted resolution 9/83 entitled "Establishment of a commission on plant genetic resources",[292, 293] in which it requested the Council to establish at its next session a commission on plant genetic resources in accordance with article VI, paragraph 1, of the Constitution, open to all member nations and associate members, which would meet at the same time as the regular sessions of the Committee on Agriculture.

In consequence, the Council of the organization at its eighty-fifth session (24 November 1983) adopted resolution 1/85[294, 295] by which it decided to establish a commission to be known as the Commission on Plant Genetic Resources.[296] The terms of reference of the Commission shall be to monitor the operation of the arrangements referred to in article 7 of the Undertaking, to recommend measures necessary or desirable in order to ensure the comprehensiveness of the global system and the efficiency of its operation in line with the Undertaking and, in particular, to review all matters relating to the policy, programmes and activities of FAO in the field of plant genetic resources.

(xii) FAO'S IMMUNITY FROM LEGAL PROCESS IN ITALY

At its eighty-second (2 November-3 December 1982),[297] eighty-third (13-24 June 1983)[298] and eighty-fourth (1-3 November 1983)[299] sessions,[300] the Council of the organization considered the question connected with the denial by the Italian Supreme Court of Cassation of FAO's immunity from legal process in a dispute with the lessors of certain premises that it had leased,[301] and adopted resolutions on the matter at its eighty-second and eighty-third sessions. In resolution 3/83, adopted at its eighty-third session, the Council urged the host Government, *inter alia*, to ensure that no measures of execution were applied against FAO and that its assets were not frozen, to ensure that relevant sections of the headquarters Agreement were respected, to take the necessary action with a view

to the settlement of the dispute with the landlords of the building concerned without further recourse to the Italian courts and to take expeditious measures to ensure that the future FAO would be immune from all forms of legal process before the Italian courts.

The question was also considered by the FAO Conference at its twenty-second session (5-23 November 1983).[302] In order to explore all possible means of resolving the problems that had arisen, a suggestion was made that, if a solution could not readily be found through discussions or negotiation betweed FAO and the host Government, consideration should be given by the Council, with the advice of CCLM, to the desirability of either having recourse to arbitration, as envisaged in the headquarters Agreement, regarding the interpretation of that Agreement or, alternatively, to requesting an advisory opinion of the International Court of Justice on the interpretation of the provision.

The Conference expressed its serious concern at and strong dissatisfaction with the current situation. It accordingly urged the host Government to take expeditious measures to give effect to the resolutions adopted by the Council and, especially, to ensure that the organization's immunity from all forms of legal process was safeguarded in the future. Following assurances given by the representative of the host Government, the Conference noted with satisfaction that FAO would at least be immune from measures of execution.

As far as the landlords' actions are concerned,[303] the Italian courts ruled that there were no grounds to evict FAO from the building it occupied,[304] while a judgement on the merits of the action relating to the retroactive increases in rent was expected.

In addition, other actions have been brought against FAO. In two of them, in which FAO had not waived its immunity, the courts rendered judgements in favour of the plaintiff.[305]

In a judgement of 12 November 1983,[306] the Pretore di Roma, referring to the headquarters Agreement between Italy and IFAD, recognized the immunity from legal process of a senior staff member of that organization whose landlord had sought his eviction.[307]

(*b*) Activities of legal interest relating to fisheries

In preparation for the 1984 FAO World Conference on Fisheries Management and Development, an expert consultation on conditions of access to the fish resources of the exclusive economic zones was organized in Rome from 11 to 15 April 1983.[308]

(*c*) Environment law

In 1983, FAO's assistance to Governments relating to international and national environment law included field missions in marine and coastal environmental protection legislation (Comoros, Kenya, Madagascar, Morocco, Mozambique, Seychelles, Somalia and United Republic of Tanzania).

FAO was instrumental in the preparation of a first draft of a Convention for the protection and development of the coastal and marine environment of the East African region, under the aegis of UNEP. It participated in the UNEP *Ad Hoc* Working Group of Experts on the Protection of the Marine Environment against Pollution from Land-based Sources (Geneva) and contributed to a legal training course on forestry and environment (University of Limoges, France).

FAO commented on the work of the International Law Commission on the subject of international liability for injurious consequences of acts not prohibited by international law.

(*d*) Activities of the Joint FAO/WHO Codex Alimentarius Commission in relation to food law

The Codex Alimentarius Commission was established by FAO and WHO in 1962 to implement the Joint FAO/WHO Food Standards Programme. The purpose of the Programme is to protect the health of consumers and to ensure fair practices in the food trade through the development of modern

food laws and regulations and food control systems. The membership of the Codex Alimentarius Commission has reached 122 countries. The Commission has been assisted by some 27 subsidiary bodies. Some 180 international food standards and some 40 international codes of practice have been elaborated. These standards cover all the principal food commodity groups as well as several matters such as food hygiene, additives, labelling and sampling. The Commission's regional co-ordinating committees have adopted a Model Food Law and Regulations. An important code, developed by the Commission in 1979, has been the Code of Ethics for International Trade in Food.

In July 1983, the Commission held its fifteenth session. At that time, 65 countries indicated their acceptance of a number of standards, and 35 countries their acceptance of the Codex Limits for Pesticides Residues.

(*e*) Legislative matters

(i) Activities connected with international meetings

FAO participated in and provided contributions to the following international meetings:

Twelfth International Congress of the European Commission on Agrarian Law, Ferrara, Italy (May 1983);

International Water Resources Committee of the International Law Association, Rome (September 1983);

Fifteenth session of the Codex Alimentarius Commission, Rome (4-15 July 1983);

Thirty-second session of the Council of the European Food Law Association, Rome (8 July 1983);

Inter-Agency Consultations on the Development of the International Code of Conduct on the Distribution and Use of Pesticides, Rome (31 August-2 September 1983);

Organization of Eastern Caribbean States (OECS)/FAO Workshop on the Harmonization of Fisheries Legislation, Castries, St. Lucia (28 April-3 May 1983);

DANIDA/FAO/CECAF Regional Workshop on Fisheries Management and Development, Santa Cruz de Tenerife, Spain (1-10 June 1983);

OECS/FAO Workshop on the Harmonization and Co-ordination of Fisheries Régimes, Regulations and Access Agreements in the Lesser Antilles Region, St. John's, Antigua (26 September-1 October 1983);

Council of Europe Parliamentary Conference on the United Nations Convention on the Law of the Sea, Palermo, Italy (2-4 November 1983);

FAO/UNDP Project for the Development of Fisheries in Areas of the Red Sea and Gulf of Aden, Symposium on Fisheries Institution Building, Djibouti (28 October-2 November 1983);

FAO/UNCTC/CECAF Regional Training Workshop on Joint Ventures and other Commercial Arrangements in Fisheries, Casablanca, Morocco (8-17 November 1983).

(ii) Legislative research and publications

Research was conducted, *inter alia*, in the following legislative areas:

(*a*) Water Legislation in Selected European Countries;

(*b*) Rural land use planning legislation for developing countries;

(*c*) Muslim water law;

(*d*) Legislation on food for infants and small children, meat export and import legislation, agricultural census legislation, livestock production and health regulations, plant protection, legislation on toxic wastes and dangerous chemicals, legal limits for toxic substances in fish and fishery products, pesticide registration and legislation;

(*e*) Coastal State requirements for foreign fishing, fisheries joint ventures, forestry legislation and rural development, compendia of fisheries legislation, conditions of access and compliance control.

(iii) COLLECTION, TRANSLATION AND DISSEMINATION OF LEGISLATIVE INFORMATION

In 1983 FAO published the semi-annual *Food and Agriculture Legislation.* Annotated lists of relevant laws and regulations related to food legislation were also published in the semi-annual *Food and Nutrition Review.*

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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 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*
Fiji	14 July 1983	14 July 1983
Saint Christopher and Nevis	26 October 1983	26 October 1983
Saint Vincent and the Grenadines	14 January 1983	15 February 1983

Under the terms of articles II and XV of the UNESCO Constitution, each of the above-mentioned States became a member of the organization on the respective date on which its acceptance took effect. At its third and thirty-first plenary meetings, on 26 October and 24 November 1983, the General Conference decided to admit the Netherlands Antilles and the British Virgin Islands as associate members of UNESCO.

On 14 July 1983, the United Kingdom of Great Britain and Northern Ireland gave notice, on behalf of the British Eastern Caribbean Group, of the latter's withdrawal from associate membership in the organization. On 28 December 1983, the United States of America gave notice of withdrawal from the organization. Under the terms of article II (6) of the UNESCO Constitution these notices take effect on 31 December 1984.

(*b*) International regulations

(i) *Entry into force of instruments previously adopted*

In accordance with the terms of its article 18, the Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States, adopted on 5 December 1981 at Arusha, United Republic of Tanzania, by an international conference of States convened by UNESCO, entered into force on 1 January 1983, that is, one month after the deposit with the Director-General of the second instrument of ratification.

(ii) *Instruments adopted by international conferences of States for which UNESCO became the depositary*

—Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific (adopted on 16 December 1983 at Bangkok).

(*c*) Initial special reports by member States

At its twenty-second session, the General Conference, after considering the initial special reports submitted by member States on the action taken by them on the Recommendation concerning the

Status of the Artist (22 C/22 and Add.), the Recommendation for the Safeguarding and Preservation of Moving Images (22 C/23 and Add.) and the Recommendation concerning the International Standardization of Statistics on the Public Financing of Cultural Activities (22 C/24) adopted by the General Conference at its twenty-first session, adopted a General Report (22 C/116, annex) embodying its comments on the action taken by member States and decided that the General Report would be transmitted to member States, to the United Nations and to National Commissions in accordance with article 19 of the Rules of Procedure concerning Recommendations to member States and International Conventions covered by the terms of article IV, paragraph 4, of the Constitution.

(*d*) 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 16 to 24 May and 12 to 19 September 1983 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 56 communications, of which 45 were examined as to their admissibility and 11 were examined on their substance. Of the 45 communications examined as to admissibility, none were declared admissible and 11 were struck from the list since they were considered as having been settled. The examination of 34 communications was suspended. The Committee presented its report to the Executive Board at its one hundred sixteenth session.

At its fall session, the Committee had before it 47 communications, of which 41 were examined as to their admissibility and 7 were examined on their substance. Of the 41 communications examined as to their admissibility, 1 was declared admissible, 4 were declared irreceivable and 4 were struck from the list since they were considered as having been settled. The examination of 37 communications was suspended. The Committee presented its report on its examination of these communications to the Executive Board at its one hundred seventeenth session.

(*e*) Copyright and neighbouring rights

(i) *Universal Copyright Convention*

The Intergovernmental Committee of the Universal Copyright Convention held its second extraordinary session (Paris, 30 November-2 December 1983) and fifth ordinary session (sitting together with the Executive Committee of the Berne Union, at Geneva from 12 to 16 December 1983).

While the extraordinary session dealt with the fair balance of the distribution of seats on the Committee and set up a sub-committee to study the same question prior to its next ordinary session in 1985, at the ordinary session the Committee had on its own agenda the items including (i) implementation of the Universal Copyright Convention; (ii) application of the Recommendation on the Legal Protection of Translators and Translations and the Practical means to Improve the Status of Translators; (iii) legal and technical assistance to States to develop national legislation and infrastructures in the field of copyright; and (iv) partial renewal of the Committee. On the common agenda of the two Committees there appeared topics which included, among others, (i) application of the Rome Convention, the Phonogram Convention and the Satellite Convention, and acceptance of the Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties; (ii) advisory notes on the implementation of the system of translation and reproduction licences for developing countries under the Copyright Conventions; (iii) Recommendations for Settlement of Copyright Problems Arising from the Use of Computer Systems for Access to or the Creation of Works; (iv) copyright problems arising from or allied with (*a*) the transmission by cable of television programmes, (*b*) the rental of materials reproducing protected works and their distribution and (*c*) relations between employers and employed or salaried authors; (v) protection of folklore; (vi) implementation of the systems of (*a*) "domaine public payant" and (*b*) "droit de suite".[309]

(ii) *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)*

At its ninth ordinary session (Geneva, 8, 9 and 12 December 1983), the Intergovernmental Committee of the Rome Convention had on its agenda items including (i) promotion of the Rome Convention, the Phonograms Convention, and the Satellite Convention; (ii) action to combat piracy; and (iii) problems arising from the transmission by cable of television programmes.[310]

(iii) *Safeguarding of works in the public domain*

In the Committee of Governmental Experts on the Safeguarding of Works in the Public Domain (January 1983), a large majority of the participants favoured the idea of a recommendation to regulate the subject but some delegations were in favour of action at the national level.[311]

(iv) *Protection of Folklore*

Two regional Committees of Experts on means of implementation of the Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore in Asia and Africa were convened jointly by UNESCO and WIPO and met respectively at New Delhi (31 January-2 February 1983) and Dakar (23-25 February 1983) and suggested certain amendments or improvements to the said Model Provisions (drawn up by a Committee of Governmental Experts in June-July 1982).[312]

(v) *Television by cable*

At their second joint meeting (5-7 December 1983) the Sub-Committees on Television by Cable (created by the three Intergovernmental Committees, namely, the Executive Committee of the Berne Union and the Intergovernmental Committees of the Universal Copyright Convention and of the Rome Convention) formulated, on the basis of the work accomplished by the Group of Independent Experts on the Impact of Cable Television in the Sphere of Copyright and Neighbouring Rights (March 1980 and May 1981) and a Meeting of Government Consultants (March 1983), the Draft Annotated Principles of Protection of Authors, Performers, Producers of Phonograms and Broadcasting Organizations, which, with certain corrections made by the above-mentioned Intergovernmental Committees at their December 1983 sessions, have been sent to the member States.[313]

(vi) *Institutions administering authors' rights*

The Committee of Governmental Experts on the Drafting of Model Statutes for Institutions Administering Authors' Rights in Developing Countries, convened jointly by UNESCO and WIPO, met at Geneva from 17 to 21 October 1983 and adopted two texts of those statutes under the headings (i) Model Statute for Public Institutions Administering Authors' Rights and (ii) Model Statute for Private Societies Administering Authors' Rights.[314]

(vii) *Joint International UNESCO-WIPO service for access by developing countries to works protected by copyright*

At its second ordinary session, the Joint UNESCO-WIPO Consultative Committee on the Access by Developing Countries to Works Protected by Copyright (Geneva, 4-7 July 1983) considered, among others, the questions of the "Establishment of recommended standards for obtaining the required clearances from foreign copyright owners" and stressed that the development of guidelines and Model Contracts on the subject should be supplemented by preparing a vade-mecum on different steps to be taken in order to secure authorized use of protected foreign works.[315]

(viii) *"Droit de suite"*

UNESCO and WIPO conducted a joint survey, through a questionnaire, of the existing provisions for the system of "droit de suite" in order to discover what structures existed in the member States'

copyright laws to give effect to that institution. The results of the survey were submitted to the two Intergovernmental Copyright Committees at their above-mentioned December 1983 sessions, which kept the item on their agenda.[316]

(ix) *Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties (Madrid Convention)*

A consultation meeting on the implementation of the Madrid Convention and the Protocol annexed to that Convention organized by UNESCO and WIPO (Paris, 14-16 September 1983) expressed the wish that efforts be made to avoid the double taxation of copyright royalties and, should it subsist, to eliminate it or reduce its effect. It also recommended that an explanatory pamphlet on the Convention should be widely disseminated and that a survey on the operation of existing bilateral agreements in the field would be useful.[317]

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4. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(*a*) Legal meetings

The twenty-fifth session of the Legal Committee was held at Montreal from 12 to 25 April 1983. The main subject for consideration was the review of the general work programme, and the Committee, when establishing the work programme, had in mind the decision of the twenty-third session of the ICAO Assembly that only problems of sufficient magnitude and practical importance requiring an urgent international action should be included in the general work programme of the Legal Committee.

As a result of the deliberations and decisions of the Committee, the general work programme contained the following three items:

(*a*) United Nations Convention on the Law of the Sea; implications, if any, for the application of the Chicago Convention, its annexes and other international air law instruments;

(*b*) Liability of air traffic control agencies;

(*c*) Study of the instruments of the Warsaw System.

With respect to the item "Study of the instruments of the Warsaw System", the Committee adopted a resolution whereby it "strongly urges all member States which have not yet ratified the Montreal Protocols to do so as soon as possible".

The Council, on 3 June 1983, approved the general work programme established by the Legal Committee.

(*b*) Work programme of the Legal Committee

During the twenty-fourth session of the Assembly, the Legal Commission had for consideration the general work programme of the Legal Committee established by the Legal Committee at its twenty-fifth session in April and approved by the Council in June. The Commission expressed the opinion that the work programme of the Legal Committee was realistic and reasonable.

The Assembly adopted the recommendation made by the Legal Commission regarding the work programme of the Legal Committee and reconfirmed the decision of the twenty-third session of the Assembly that only problems of sufficient magnitude and practical importance requiring an urgent international action should be included in the work programme in the legal field.

The Assembly decided that the Council should continue to monitor the work of the United Nations Committee on the Peaceful Uses of Outer Space. The Assembly also considered that the organization should continue to monitor closely the deliberations of the United Nations on problems of interest for air law as well as other important decisions taken within the framework of the United Nations and other international organizations.

The Assembly agreed that a proposal presented by Canada concerning a possible convention on the interception of civil aircraft be referred to the Council for further consideration. On 9 December, the Council decided to include in the general work programme of the Legal Committee an item on the preparation of a draft instrument on the interception of civil aircraft and accorded a high priority to the item; furthermore, the Council requested the Chairman of the Legal Committee to establish a sub-committee for its consideration, taking into account the results of the work of the extraordinary session of the Assembly in April 1984 in relation to the amendment to the Chicago Convention, and to convene the sub-committee at Montreal from 25 September to 5 October 1984.

(*c*) Proposed amendment to the Chicago Convention

The extraordinary session of the Council decided, on 16 September 1983, to include in its work programme and examine with the highest priority the question of an amendment to the Convention on International Civil Aviation involving an undertaking to abstain from recourse to the use of force against civil aircraft and to convene an extraordinary session of the Assembly to examine and adopt that amendment. The decision was endorsed by the twenty-fourth session of the Assembly in resolution A24-5.

During its one hundred tenth session, the Council decided to convene the extraordinary session of the Assembly from 24 April to 11 May 1984 and approved its provisional agenda. By the end of the year, specific proposals for an amendment to the Convention had been received from France and Austria (joint proposal), from the United States of America and from the Union of Soviet Socialist Republics.

(*d*) Resolutions of legal significance adopted by the twenty-fourth session of the Assembly

(i) *Resolution A24-2: Ratification of the Protocol incorporating article 83* bis *into the Convention on International Civil Aviation*

In this resolution the Assembly, having noted that it was highly desirable that the amendment come into force for the benefit of all ICAO member States, so as to facilitate the lease, charter or interchange of aircraft, urged all contracting States which had not yet done so to ratify the amendment as soon as possible.

(ii) *Resolution A24-3: Ratification of the Protocol amending the Final Clause of the Convention on International Civil Aviation*

This resolution recalled Assembly resolution A22-3 on the ratification of the Protocol amending the Final Clause of the Chicago Convention so as to provide for the authentic text of the Convention in the Russian language; the Protocol was adopted in 1977 and has not yet entered into force.

(iii) *Resolution A24-4: Ratification of the Protocols adopted by the International Conference on Air Law, held at Montreal in 1975*

In this resolution the Assembly noted with approval the decision of the twenty-fifth session of the Legal Committee, which strongly urged all member States of ICAO to ratify the Montreal Protocols as soon as possible.

(iv) *Resolution A24-18: Reaffirmation of resolutions for the encouragement of ratification of and accession to international air law conventions and reporting requirements under article 11 of the Hague Convention and article 13 of the Montreal Convention*

In this resolution the Assembly reaffirmed resolutions A22-16 and A23-21, adopted at its twenty-second and twenty-third sessions, whose purpose had been the strengthening of measures to suppress acts of unlawful seizure of aircraft (hijacking) and other acts of unlawful interference with civil aviation. Bearing in mind the continuing importance of the objectives of resolutions A22-16 and A23-21,

the Assembly directed the Secretary-General "to continue, with the utmost vigour, to take follow-up action on these resolutions and to report to each session of the Assembly on the results achieved".

(v) *Resolution A24-19: Strengthening of measures to suppress acts of unlawful seizure of aircraft and other unlawful acts against the security of civil aviation*

This resolution called upon contracting States to intensify their efforts to suppress acts of unlawful seizure of aircraft and other unlawful acts against the security of civil aviation by concluding appropriate agreements for the suppression of such acts which would provide for extradition or submission of the case to competent authorities for the purpose of prosecution.

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5. WORLD HEALTH ORGANIZATION

(*a*) Constitutional and legal developments

During 1983, the following countries became members of WHO by the deposit of an instrument of acceptance of the WHO Constitution, as provided for in articles 4 and 79 (*b*) of the Constitution:

State	*Date of deposit of instrument of acceptance*
Saint Vincent and the Grenadines	2 September 1983
Solomon Islands	4 April 1983
Vanuatu	7 March 1983

At the year end there were 161 States members and one associate member of WHO.

The amendments to articles 24 and 25 of the Constitution adopted in 1976 by the twenty-ninth World Health Assembly, providing for an increase in the membership of the Executive Board from 30 to 31, were accepted by a further 21 members, bringing the total number of acceptances to 107.

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 three members, bringing the total number of acceptances to 27.

(*b*) Health legislation and human rights

Four issues of the *International Digest of Health Legislation* appeared in 1983. The journal covers significant national and international legal instruments in the health and health-related fields. Reports on relevant conferences and other meetings appear in the "News and views" section of the periodical, while new additions to the literature are covered in the "Book reviews" and "In the literature" sections.

Certain issues of the *Digest* contain articles on current problems in health legislation. A survey by M. Owen on "Laws and policies affecting the training and practice of traditional birth attendants" was published in the course of 1983 (vol. 34, No. 3).

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6. WORLD BANK

International centre for settlement of investment disputes

(i) *Signatures and ratifications*

During 1983, Paraguay, Israel and Barbados ratified the Convention,[318] bringing the total number of contracting States to 84. Five countries have signed the Convention but have not yet deposited an instrument of ratification.[319]

(ii) *Disputes before the Centre*

During 1983, the Secretary-General registered two new requests for the institution of arbitration proceedings and one request for the institution of conciliation proceedings. The arbitration proceedings involve *Swiss Aluminium Ltd. (ALUSUISSE) and Icelandic Aluminium Company Ltd. (ISAL)* v. *Government of Iceland* (case ARB/83/1), and *Liberian Eastern Timber Corporation (LETCO)* v. *Government of the Republic of Liberia* (case ARB/83/2). The conciliation proceeding involves *Tesoro Petroleum Corporation* v. *Government of Trinidad and Tobago* (case CONC/83/1).

On 3 October 1983, the parties in the case *ALUSUISSE/ISAL* v. *Government of Iceland* agreed to suspend proceedings.

On 23 June 1983, the conciliation proceedings in the case *SEDITEX Engineering Beratungsgesellschaft für die Textilindustrie mbH* v. *Government of the Democratic Republic of Madagascar* (case CONC/82/1) were terminated at the request of SEDITEX.

On 21 October 1983, the Arbitral Tribunal rendered an award in the case *Klöckner Industrie-Anlagen GmbH et al* v. *the United Republic of Cameroon* (case ARB/81/2). Attached to the award was a dissenting opinion of one of the arbitrators.

In addition to the newly registered cases, the following cases are still pending before the Centre: *Amco Asia Corporation et al.* v. *the Republic of Indonesia* (case ARB/81/1) and *Société Ouest Africaine de Bétons Industriels (SOABI)* v. *l'Etat du Sénégal* (case ARB/82/1).

(iii) *Costs*

Pursuant to administrative and financial regulation 13 (1) the Secretary-General, with the approval of the Chairman of the Administrative Council, on 1 April 1983 increased the daily fees of conciliators and arbitrators to SDR 600. The fees will continue to be payable in United States dollars. The United States dollar equivalent of any amount in special drawing rights due in respect of any calendar quarter will be determined as of the first day of such quarter as published by the International Monetary Fund.

(iv) *Promotional activities*

The Centre continues to receive numerous requests for advice on dispute settlement and, in particular, on the drafting of ICSID clauses.

Amongst the visitors to the Centre were most prominently a group of officials and professors from China under the leadership of Gu Ming, Deputy Secretary-General of the State Council.

The Centre sponsored, with the American Arbitration Association and the International Chamber of Commerce, a joint International Arbitration Conference on "Resolving commercial and investment disputes". The Conference took place on 18 November 1983 at the headquarters of The World Bank in Washington, D.C.

(v) *Additional Facility*

When the Additional Facility was established in 1978, the Administrative Council decided to review its operation after five years in order to decide, in the light of the experience gained during that period, whether to continue the Additional Facility or to terminate it for the future. The subject of the Additional Facility was placed on the agenda of the Administrative Council at its 17th annual meeting held in Washington, D.C. on 29 September 1983. The Council resolved to continue the Additional Facility until its next annual meeting in 1984, when it will decide whether to continue it or to terminate it for the future.

(vi) *Investment promotion treaties*

ICSID has collected nearly 200 bilateral investment promotion and protection treaties signed since 1960. The first volume, containing treaties from 1960 to 1974, was published in May 1983 by Oceana Publications, Inc., Dobbs Ferry, N.Y. 10522; the second volume, covering the period from 1975 on, was published in July 1983.

That body of treaties, together with national laws governing investments, constitutes at present the principal legal guidelines for State practice in the field. Publication of the collection complements the Centre's earlier initiative in publishing *Investment Laws of the World.* The treaty collection will be updated on a biennial basis and supplemented as appropriate.

(vii) *ICSID and the courts*

A petition for a writ of *certiorari* has been denied by the Supreme Court of the United States of America in the case of *Maritime International Nominees Establishment* v. *Republic of Guinea* (104 S. Ct. 71 (1983)).

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7. INTERNATIONAL MONETARY FUND

MEMBERSHIP

At the end of 1983, 146 countries were members of the Fund. Saint Christopher and Nevis applied for membership on 2 August 1983; on 4 April 1984, the Board of Governors approved the terms and conditions of its membership, establishing a quota of SDR 4.5 million. An earlier application for membership by Poland continued to be pending. All of the 146 current members participate in the Special Drawing Rights Department.

QUOTAS

The Board of Governors approved, on 31 March 1983, a 47.5 percent increase in the total of Fund quotas, from SDR 61,059.8 million to SDR 90,034.8 million. Increases in quotas were proposed for all members, with the exception of Democratic Kampuchea.

Pursuant to that resolution of the Board of Governors, each member had until 30 November 1983 to consent to the proposed increase in its quota, but the increase in quotas would not take place until the Fund had received the consent of members having not less than 70 per cent of total Fund quotas. This requirement was reached by 30 November 1983.

FINANCIAL ASSISTANCE

During 1983, the Fund again increased its financial assistance to members, reflecting the impact of the prolonged international recession and the debt problems of developing countries. Fund members purchased a record SDR 12.6 billion; the previous high, in 1982, was SDR 7.4 billion. The level of repurchases was at SDR 2 billion; thus net purchasing amounted to SDR 10.6. At the end of 1983, 33 stand-by arrangements and 10 extended arrangements were in effect, with a total commitment of SDR 22.9 billion and an undrawn balance of SDR 12.4 billion.

The Executive Board examined several of the Fund's facilities and associated policies in 1983. The Extended Fund Facility, established in 1974 to provide medium-term assistance to overcome serious structural balance-of-payments problems, was reviewed in November 1983. It was decided that the terms of the Facility remained appropriate and that the decision should be reviewed again not later than 31 December 1984.

The Supplementary Financing Facility, established in 1977 to provide additional financing under stand-by or extended arrangements in conjunction with the use of the Fund's ordinary resources, was financed with loans attained from 14 lenders, which agreed to provide a total of SDR 7.8 billion. Under the terms of the Facility and the borrowing agreements, funds could not be committed by the Fund after 22 February 1982 or be borrowed by the Fund after 22 February 1984. In order to be able to utilize resources that might become available during the two years after 22 February 1982 as a result of cancellation or expiration of stand-by or extended arrangements under the Supplementary Financing Facility that had not been fully drawn, the Fund adopted a decision in 1982 that made it possible for the Fund to use these resources in connection with purchases from

the Fund under the Policy of Enlarged Access that had been approved for members. The arrangements of 12 members were amended to provide for such use.

Disbursements of supplementary financing in purchases by members during the fiscal year ended 30 April 1984 amounted to SDR 1.1 billion, representing the major portion of the balance of SDR 1.6 billion that had not been disbursed as of 30 April 1983. In total, SDR 7.2 billion of the SDR 7.8 billion that had been available originally was called upon and disbursed.

The Policy on Enlarged Access to Fund resources, adopted by the Executive Board on 11 March 1981, enabled the Fund, following the full commitment of resources from the Supplementary Financing Facility, to continue to provide assistance to members whose balance-of-payments problems were large in relation to their quotas and which needed resources in larger amounts and for longer periods than available under the regular credit tranches.

The Executive Board also reviewed several aspects of the Compensatory Financing Facility. In July 1983 the Board reviewed the facility generally together with the Cereal Decision and the Buffer Stock Financing Facility, and made no changes. In September 1983 the Executive Board adopted guidelines on the requirement of co-operation in respect of purchases under the Compensatory Financing Facility.

Borrowing

In order to cover the potential need to provide financial assistance to members with assured lines of credit, the Fund has resorted to borrowing from official sources, in member countries and Switzerland.

To finance its Policy on Enlarged Access, the Fund had entered into a medium-term borrowing agreement for SDR 8.0 billion with the Saudi Arabian Monetary Agency (SAMA) in 1981. The Fund had borrowed SDR 3.6 billion under the agreement through 30 April 1983. The commitment period under the agreement with SAMA expires in May 1987.

Under short-term agreements concluded in 1981, the central banks or official agencies of 18 countries agreed to make available to the Fund the equivalent of SDR 1.3 billion over a commitment period of two years.

In January 1982, the Fund adopted guidelines for borrowing by the fund; these were reviewed and revised in December 1983, subsequent to the completion of the Eighth General Review of Quotas. Under those guidelines, outstanding borrowing, plus unused credit lines, will not be allowed to exceed the range of 50 to 60 per cent of the total of Fund quotas.

In respect of the General Arrangement to Borrow (GAB) and borrowing arrangements associated with GAB, the total of outstanding borrowing plus unused credit lines will include either outstanding borrowing by the Fund under these arrangements or two thirds of the total of credit lines under these arrangements, whichever is the greater.

On 24 February 1983, the Executive Board approved the revision and enlargement of GAB, which came into effect on 26 December 1983 when all 10 of the original participants had notified the Fund of their concurrence. GAB, as revised and enlarged, increased substantially the lines of credit available to the Fund under these arrangements to SDR 17 billion from approximately SDR 6.4 billion; for the first time permitted the Fund, under certain circumstances, to extend GAB resources to members that are not GAB participants; amended the interest rate to equal the combined market interest rate computed by the Fund for the purpose of determining the rate at which it pays interest on holdings of special drawing rights; denominated the credit arrangements of participants in special drawing rights; and permitted certain borrowing arrangements between the Fund and non-participating members to be associated with GAB. Saudi Arabia and the Fund have already entered into such an agreement, which also has come into effect with the revised GAB.

The revised GAB will be in effect for five years from its effective date, subject to further review and renewal.

Charges and remuneration

Under the procedures in effect since 1 May 1981 the Executive Board determines at the beginning of each financial year a rate of charge applicable to members' use of the Fund's ordinary resources.

For the financial year ended on 30 April 1984, the rate of charge to be applied to holdings arising from purchases financed from the Fund's ordinary resources was set at 6.6 per cent per annum by the Executive Board.

The charges applicable to holdings arising from purchases financed with borrowed resources under the Supplementary Financing Facility and the Policy on Enlarged Access reflect the costs incurred by the Fund in borrowing to finance these facilities. The rates of charges applied to the use of borrowed resources under the Supplementary Financing Facility (SFF) and the Policy on Enlarged Access continued to be determined on the same basis as in the previous financial year. The rate of charge under SFF is the rate of interest paid by the Fund plus 0.2 per cent in the first 3 1/2 years plus 0.325 per cent thereafter. Under the Policy on Enlarged Access, the rate of charge is the net cost of borrowing by the Fund plus 0.2 per cent per annum.

The Fund pays remuneration to those members that hold a remunerated reserve tranche position. In July 1983 the Executive Board amended the Fund's Rules relating to remuneration effective 1 August 1983. Under the amended Rules, remuneration, as well as SDR interest and charges, is paid quarterly instead of annually as of the beginning of the following quarter.

Special drawing rights

Effective 1 August 1983, the Fund adopted the term "SDR" as standard usage in Fund documents, correspondence and publications where a reference to the special drawing right is intended. This new rule allows, however, for the retention of a different usage of the term if the text is in a language in which a different usage has been established.

At the same time, the Executive Board introduced changes in the SDR interest rate and related matters, in order to enhance the role of SDR as an international reserve asset, by bringing its yield closer in line with yields on other reserve assets included in the SDR interest basket. This involved changes in the rules relating to the payment of interest and charges on SDRs and of remuneration.

During the year, the Fund prescribed the East African Development Bank as a holder of SDRs, bringing the total number of "prescribed holders" to 14.

Status under article VIII or article XIV

Under article XIV of the Fund's Articles of Agreement,[320] a member may choose, when joining the Fund, to avail itself of transitional arrangements, thereby maintaining and adapting existing restrictions on payments and transfers for current international transactions. Otherwise, article VIII prohibits members from imposing such restrictions without the approval of the Fund. During 1983, three members, namely, Belize, Iceland, and Antigua and Barbuda, accepted the obligations of article VIII, sections 2, 3 and 4, raising to 59 the number of members that have formally accepted these obligations. Eighty-seven members continued to avail themselves of transitional arrangements under article XIV, section 2.

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8. UNIVERSAL POSTAL UNION[321]

As in 1982, UPU continued its study of the following legal and administrative problems:

(*a*) Organization, functioning and working methods of the Congress;

(*b*) Organization, functioning and working methods of the Executive Council and delimitation of responsibility as between the Executive Council and the Consultative Council for Postal Studies (CCPS);

(*c*) Quorum needed for amendment of the Constitution.

The study of these problems was to be the subject of a comprehensive report for submission to the nineteenth Congress, to be convened at Hamburg from 18 June to 27 July 1984.

Two additional studies requested from the Executive Council by the 1979 Rio de Janeiro Congress led to the following developments.

Extraordinary congresses, administrative conferences and special committees

As the provisions of the Constitution relating to extraordinary congresses, administrative conferences and special committees had been in desuetude for many years, the question arose as to whether they should be maintained or eliminated. After considering the purpose and justification of those organs, the Executive Council decided to retain the provision regarding extraordinary congresses.

Administrative conferences and special committees were considered in the context of the study relating to the organization, functioning and working methods of the Congress. Finally, for a number of technical, juridical and practical reasons, it was not considered desirable for ITU to introduce the practice of holding administrative conferences for the study of technical questions, as is done at ITU. In addition, the idea of reintroducing special committees—which had lost their reason for existence following the creation of the Executive Council and the Consultative Council for Postal Studies—for the prior consideration of proposals for submission to the Congress was not pursued, bearing in mind the disappointing experience with preparatory committees before the 1929 London Congress and the 1934 Cairo Congress. The Council accordingly recommended to the 1984 Hamburg Congress to delete the provisions relating to administrative conferences and special committees.

Participation of restricted unions in the technical assistance programme of UPU

This study dealt in particular with the technical, financial and legal aspects of the participation of restricted unions in the technical assistance programme of UPU. After taking into account the requirements of the restricted unions, the Executive Council recognized the usefulness of developing such participation. It did not, however, consider it necessary to modify the legal situation of restricted unions within UPU. Believing that it was preferable to restrict itself for the time being to an empirical development of UPU/restricted union collaboration for regional projects, the Executive Council adopted resolution CE 6/1983, reproduced below, in order to set the legal framework for such collaboration.

Resolution CE 6

PARTICIPATION OF THE RESTRICTED UNIONS IN THE UPU TECHNICAL ASSISTANCE PROGRAMME

The Executive Council,

In view of Rio de Janeiro Congress resolution C 90,

Aware of the assistance which the Restricted Unions can give the Universal Postal Union particularly in the field of technical assistance,

Basing itself on the result of the study undertaken by the EC on this subject,

Having taken note of the constant development of UPU-Restricted Unions collaboration,

Anxious to promote the development of these relations,

Stressing

a. that the participation in the Restricted Unions in these activities must respect the UNDP procedures;

b. that the fundamental rights of UPU member countries, particularly of those countries which do not belong to any Restricted Union, must be taken into consideration,

Conscious of the disparity in the technical and administrative capabilities of the Restricted Unions,

Invites the International Bureau to strengthen its collaboration with the Restricted Unions in order to:

(i) identify the needs and priorities peculiar to each region;

(ii) prepare a global programme for each region, particularly as regards postal training;

(iii) determine which components of this programme it will implement and co-ordinate those which are to be executed by the Restricted Unions in accordance with their own resources;

(iv) promote the harmonious implementation of the regional programmes by means of co-ordination machinery in which the member countries of the region concerned will also participate;

(v) evaluate the result of the global programme executed for each period, in collaboration with all the parties concerned,

Considers that it is not necessary to amend the Acts of the Union to promote the development of this co-operation, and that bilateral agreements can be concluded between the UPU and the Restricted Unions whenever this is found to be expedient,

Is of the opinion that such agreements will make for greater effectiveness of technical assistance without adverse financial consequences for the Union and without reducing the amounts allocated to the technical assistance programmes concerned.

Authorizes the Director-General of the International Bureau to conclude such agreements within the scope of his powers.

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9. WORLD METEOROLOGICAL ORGANIZATION

(*a*) Questions concerning the Convention

AMENDMENTS TO ARTICLE 13 (*C*) OF THE CONVENTION

The World Meteorological Congress examined the formal proposals for amendments to article 13 (*c*) of the Convention submitted by Kenya in order to make the Executive Council more representative of the organization as a whole.

There was a consensus that there was a need to increase the number of the elected members of the Executive Council in view of the increased membership of the organization. It was also agreed to increase the maximum and minimum number of members of the Executive Council comprising the President and Vice-Presidents of the organization, the presidents of regional associations and the elected members coming from one region in order to have a better representation of the various regions.

The Congress therefore decided:

(*a*) To increase the number of directors of meteorological or hydrometeorological services of the organization on the Executive Council, as provided in article 13 (*c*) of the Convention, from 19 to 26;

(*b*) To increase the maximum and minimum number of members of the Executive Council coming from one region, as provided for in article 13 (*c*) (ii) of the Convention, from seven to nine and from two to three respectively.

Resolution 41 (Cg-IX) was adopted unanimously by the delegations of 121 member States present and entitled to vote.

DISTRIBUTION OF SEATS ON THE EXECUTIVE COMMITTEE AMONGST THE DIFFERENT REGIONS

The Congress noted with interest the results of the studies made by the Executive Committee in consultation with the members of the organization as requested by Cg-VIII on the question of distribution of seats amongst the different regions.

The Congress endorsed the views of the Executive Committee that the current system of reaching an agreement within and between the delegations to the Congress of members belonging to different regional associations should be continued and that the negotiations to be made to reach a mutually satisfying agreement within the limits of article 13 (*c*) should be left to the wisdom of the Congress.

CHANGE OF NAME OF THE EXECUTIVE COMMITTEE

The Congress examined the recommendation made by the EC Panel of Experts for the Review of the Scientific and Technical Structure of WMO to change the name of the Executive Committee to the "Executive Council." It noted that the Executive Committee at its thirty-fourth session had endorsed the proposal. The Congress agreed that the Executive Committee should be renamed the Executive Council. Resolution 42 (Cg-IX) was accordingly adopted unanimously by the delegations of 107 member States present and entitled to vote.

AMENDMENT TO ARTICLE 14 (*f*)

The Congress examined the proposal for the amendment of article 14 (*f*) of the Convention contained in resolution 27 (EC-XXXIV) and agreed with the recommendation of the Committee that the French text of article 14 (*f*) should be considered as expressing the will of the contracting parties to the WMO Convention. As a result, the Congress decided to adopt resolution 43 (Cg-IX) whereby the term "agenda" in the English text of article 14 (*f*) would be replaced by the term "work programme". Resolution 43 (Cg-IX) was adopted unanimously by the delegations of 112 member States present and entitled to vote.

AMENDMENTS TO ARTICLES 3 AND 34

The Congress reconsidered the amendments already proposed at the Eighth Congress by the Executive Committee to articles 3 and 34 of the Convention enabling the United Nations Council for Namibia to become a member of the organization. These amendments were made to comply with United Nations General Assembly resolutions 31/149 of 20 December 1976 and 32/9 of 4 November 1977, by which the General Assembly had requested all specialized agencies and other organizations and conferences within the United Nations system to consider granting full membership to the United Nations Council for Namibia so that it could participate in that capacity as the "administering authority for Namibia in the work of these agencies, organizations and conferences".

In view of the importance of the matter and in order to enable all members to vote, including those not present at the session, the Congress decided to request the Executive Council to arrange for voting by correspondence on the adoption of the proposed amendment to articles 3 and 34 (*c*) of the Convention.

Some delegations, however, expressed the view that a vote by correspondence on those amendments could only be held after agreement had been reached on a certain interpretation of several articles of the Convention. They also pointed out that the Executive Council was not competent to decide on interpretations of the Convention.

AMENDMENTS TO ARTICLE 21

The Congress examined the formal amendments to article 21 of the Convention submitted by Kenya. Many delegations supported the proposed amendment, which would entrust the Congress with the appointment of the Deputy Secretary-General in order to ensure a balance at the senior levels in the secretariat, particularly between the nationals of developed and developing countries.

Other delegations emphasized that the Secretary-General must be able to select his own deputy, with whom he has to work very closely and harmoniously on a day-to-day basis.

The Congress reached a consensus that the basic objective of the proposed amendments could be achieved without amending the Convention by laying down a procedure for the appointment of the Deputy Secretary-General within the existing legal framework.

The Congress consequently adopted the following procedure for the appointment of the Deputy Secretary-General:

(*a*) In applying article 21 (*b*) of the Convention:

(i) The Secretary-General will bring to the Executive Council for its approval the name and qualifications of his proposed appointee for the post of the Deputy Secretary-General before proceeding with the appointment;

(ii) The Secretary-General will also inform the Executive Council in writing of the names and qualifications of the other candidates;

(iii) In the case where the Executive Council does not approve the proposed appointee, the Secretary-General will propose another candidate for approval by the Executive Council;

(iv) This procedure will be repeated, if and as necessary, until a candidate acceptable to both the Secretary-General and the Executive Council is identified;

(*b*) In addition to the provisions of regulations 4.2 and 4.3 of the Staff Regulations, the Executive Council and the Secretary-General should be guided by the following considerations in the appointment of the Deputy Secretary-General:

(i) The desirability of a balance between qualified nationals from developed and developing countries in the posts of Secretary-General and Deputy Secretary-General;

(ii) The desirability of either the Secretary-General and/or the Deputy Secretary-General having occupied a senior position with responsibility for operational meteorological services and having had experience in international meteorological activities.

In addition, the Congress requested the Executive Council to examine the question of establishing a similar procedure for the appointment of staff members at Director levels as well as any unclassified post which may be established and to submit its report to the Tenth Congress.

(*b*) Revision of the General Regulations

The Congress considered the proposed amendment to general regulation 83 as a result of the adoption by the Congress of the amendments to article 13 (*c*) of the Convention relating to the increase in the minimum and maximum number of members per Region on the Executive Council. The amendment was adopted by resolution 44 (Cg-IX).

The Congress requested the Executive Council to consider further possible changes to regulation 83 of the General Regulations resulting from the aforesaid amendment to the Convention.

The Congress examined the proposals by the Executive Committee for new and amended General Regulations. In this connection, the Congress adopted resolution 45 (Cg-IX), the annex to which gives the text of these new and amended regulations.

The Congress considered the proposed amendments to general regulations 109 and 110, submitted by Norway, which aimed at reducing the need for summarized minutes at plenary sessions of constituent bodies and at simplifying related procedures contained in regulation 110. The Congress decided to amend regulations 109 and 110 of the General Regulations as given in the annex to resolution 45 (Cg-IX).

The Congress considered the proposed amendments to general regulations 117 and 119 which were submitted by Jordan, the Libyan Arab Jamahiriya, Saudi Arabia and the Syrian Arab Republic.

One proposal requested that, in addition to providing the equipment for interpretation at sessions of technical commissions, the organization should also provide interpreters, upon request. The other proposal provided for the publication of the Convention and the General Regulations of the organization in Arabic, in addition to Chinese.

Since it was considered that the participation of Arabic countries in the activities of WMO would be greatly facilitated by the proposed amendments, the Congress unanimously agreed to the proposals and made the necessary budgetary provisions to ensure their implementation. The Congress therefore decided to amend regulations 117 and 119 of the General Regulations as given in the annex to resolution 45 (Cg-IX).

The Congress further adopted resolution 46 (Cg-IX) to replace resolutions 50 (Cg-VII) and 54 (CG-VIII), since the provision for the use of the Arabic and Chinese languages in the sessions of the Congress, the Executive Council and technical commissions had already been included in the General Regulations.

The Congress considered and unanimously agreed to the proposed amendment to the General Regulations submitted by Malaysia to change the name Malaya to "Malaysia" in the appropriate texts of the General Regulations as well as in all other related future WMO publications. The Congress decided to amend annex II to the General Regulations as given in the annex to resolution 45 (Cg-IX).

The Congress studied the report of the EC Panel of Experts for the Review of the Scientific and Technical Structure of WMO. The proposals to amend general regulations 144, 177 and 195 to provide guidance on programme management and implementation were carefully examined, as were the suggested amendments to regulations 128 and 152 relating to the attendance of presidents

of technical commissions at sessions of the Congress and the Executive Council. The Congress decided to amend regulations 128, 144, 152, 177 and 195 of the General Regulations as given in the annex to resolution 45 (Cg-IX).

The Congress studied the recommendations of the EC Panel for the Review of the Scientific and Technical Structure of WMO relating to the technical commission system. It agreed that the current eight technical commissions should be retained with revised general and individual terms of reference. The Congress also agreed that the title of the Commission for Climatology and Applications of Meteorology should be changed to the Commission for Climatology (CCl). The Congress therefore adopted resolution 47 (Cg-IX), which establishes the system and terms of reference of the technical commissions and which replaces resolution 53 (Cg-VIII).

The Congress reconsidered the question of the interpretation of the term "designated" in regulation 142 of the General Regulations and made no new decision on the matter. However, it requested the Executive Council to reconsider the question.

The Congress decided that the word "designated" in regulation 142 of the General Regulations should continue to mean "elected" until the Congress decided otherwise.

The Congress considered the proposal of the President of the Commission for Hydrology (CHy) to incorporate the provisions of resolution 31 (Cg-VIII), "Co-operation between hydrological services in the relevant General Regulations". It decided that, instead of amending the General Regulations, resolution 31 (Cg-VIII) should be retained with minor amendment and should specify the terms of reference of regional hydrological advisers. The Congress adopted resolution 48 (Cg-IX).

The Congress considered the proposal submitted by Canada, Denmark, the Federal Republic of Germany, France and Sweden aimed at instructing the Executive Council to examine the possibility of limiting the number of terms of office of the Secretary-General and to prepare the necessary amendments to the General Regulations in order to achieve this.

The Congress decided that there was no need to submit the question for further study to the Executive Council since the existing provisions relating to the appointment of the Secretary-General already provided sufficient flexibility.

(*c*) Questions concerning the Convention and the General Regulations

The Executive Council noted that the Ninth Congress had requested it to study the following matters relating to the Convention and General Regulations and to submit its report thereupon to the Tenth Congress:

(*a*) Establishment of procedures for the appointment of staff members at Director levels similar to those established by Cg-IX for the appointment of the Deputy Secretary-General (Cg-IX, general summary, para. 10.1.16);

(*b*) Possible changes to regulation 83 of the General Regulations resulting from the amendments adopted by Cg-IX to article 13 (*c*) of the Convention (Cg-IX, general summary, para. 10.2.1);

(*c*) Interpretation of the term "designated" given in regulation 142 of the General Regulations relating to filling vacant seats on the Executive Council between sessions of the Congress. In this connection it was noted that the word "designated" in regulation 142 should continue to mean "elected" until the Congress decided otherwise (Cg-IX, general summary, para. 10.2.13).

The Council requested the Secretary-General to submit reports on these three subjects to the next session of the Executive Council for its consideration.

The Executive Council noted with satisfaction the advice of the Legal Counsel of the United Nations that the decision of the Ninth Congress to direct the Executive Council to arrange voting by correspondence to amend articles 3 and 34 (*c*) of the Convention to enable the United Nations Council for Namibia to become a WMO member had been validly made. The texts of the question sent to the United Nations Legal Counsel and his reply are given in annex V to this report.

In compliance with the directives of the Ninth Congress on this matter as given in paragraph 10.1.2 of the general summary of its work, the Executive Council directed the Secretary-General:

(*a*) To communicate to the members of the organization which are States the draft resolution given in annex VI to the report on the proposed amendments to articles 3 and 34 (*c*) of the Convention;

(*b*) To invite the members which are States to vote on the adoption of these amendments in accordance with articles 5 (*b*) and 11 (*a*) of the Convention.

These amendments shall come into force on approval by two thirds of the members which are States, in accordance with article 28 (*c*) of the Convention.

(*d*) Staff matters

AMENDMENTS TO THE STAFF RULES

The Executive Council noted that, since the thirty-fourth session, some amendments had been made to the Staff Rules applicable to headquarters staff and to those applicable to technical assistance project personnel. These amendments are pursuant to the amendments made by the United Nations or have been made following decisions of the International Civil Service Commission.

STAFF RULES APPLICABLE TO HEADQUARTERS STAFF

These amendments relate to the addition of a subparagraph (vii) to staff rule 171.16 to include "passport costs" in the list of "miscellaneous travel expenses" reimbursable by the organization; to an adjustment of the salary scales for staff in the General Service category (staff rule 131.2, appendix B.1), effective 1 February 1983; to an increase of the children's allowance for staff in the Professional and higher categories (staff rule 134.1 (i)) effective 1 January 1983; and to an adjustment of the pensionable remuneration for staff in the Professional and higher categories (staff rule 134.2, appendix A.1) effective 1 October 1982.

STAFF RULES APPLICABLE TO TECHNICAL ASSISTANCE PROJECT PERSONNEL

These amendments relate to an adjustment of the pensionable remuneration for project personnel (staff rule 203.1, appendix I), effective 1 October 1982 and an increase of the children's allowance (staff rule 203.6), effective 1 January 1983; an increase of the installation grant (staff rule 207.22) and of the assignment allowance (staff rule 203.8), effective 1 January 1983.

(*e*) Membership of the organization

The membership of the Organization, comprising 152 member States and five Territories, remained unchanged during 1983.

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10. INTERNATIONAL MARITIME ORGANIZATION

(*a*) Membership of the organization

In 1983, the following countries became members of the International Maritime Organization: Fiji (14 March), Guatemala (16 March) and Togo (20 June). At 31 December 1983, the number of members of IMO was 125. There is also one associate member.

(*b*) Amendments to the IMO Convention

On 10 November 1983, the requirements for entry into force were fulfilled in respect of the amendments to the Convention on the International Maritime Organization which were adopted in November 1977[322] and November 1979.[323, 324]

(*c*) Changes in status of IMO Conventions

(i) *International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 thereto (MARPOL 1973/78)*

The conditions for the entry into force of the 1978 MARPOL Protocol were met on 1 October 1982 following acceptance by 15 States, the combined fleets of which represented more than 50 per cent of the gross tonnage of the world's merchant shipping. Accordingly, the Protocol entered into force on 2 October 1983, viz., 12 months after the conditions for entry into force had been met. With effect from that date the régime of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 thereto (MARPOL 1973/78), was in force.

(ii) *Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973*

The conditions for the entry into force of this Protocol were met on 30 December 1982 with the deposit of the fifteenth instrument. In accordance with article VI (1) thereof the Protocol entered into force on 30 March 1983.

(iii) *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978*

The conditions for the entry into force of the 1978 STCW Convention were met on 27 April 1983 following acceptance by twenty-five States, the combined merchant fleets of which represented more than 50 per cent of the gross tonnage of the world's merchant shipping. Accordingly, the Convention will enter into force on 28 April 1984, viz., 12 months after the conditions for entry into force have been met.

(iv) *1983 Amendments to the International Convention for the Safety of Life at Sea, 1974*

The amendments were adopted by the Maritime Safety Committee on 17 June 1983. In accordance with the determination made at the time of their adoption, the amendments will enter into force on 1 July 1986 unless, prior to 1 January 1986, more than one third of the contracting Governments to the Convention, or contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, notify their objection to the amendments.

(v) *1981 Amendments to the Convention on the International Regulations for Preventing Collisions at Sea, 1972*

The amendments, adopted by the IMO Assembly on 19 November 1981 (resolution A.464(XII)), entered into force on 1 June 1983, in accordance with the provisions of the Convention and the terms of the Assembly resolution.

(vi) *1973 Amendment to the Convention on Facilitation of International Maritime Traffic, 1965*

The amendment was adopted by a Conference of Parties to the Convention in November 1973. In accordance with the provisions of article IX of the Convention, the conditions for the entry into force of the amendment were met on 2 June 1983, and the amendment will accordingly enter into force on 2 June 1984.

(vii) *1983 Amendments to the International Convention for Safe Containers, 1972, as amended*

The amendments were adopted on 13 June 1983 in accordance with article X (2) of the CSC Convention. They entered into force on 1 January 1984.

(*d*) Legal activities*

(i) *Review of the limits of liability and compensation in the 1969 Civil Liability Convention and the 1971 Fund Convention*

The Legal Committee concluded its work on the preparation of two draft protocols for revising the limits of liability and compensation and related provisions in the 1969 Civil Liability Convention and the 1971 Fund Convention. The draft articles for the two protocols prepared by the Legal Committee were collated and circulated in the usual way to the States and organizations invited to a diplomatic conference to be held in April/May 1984.

(ii) *Draft convention on liability and compensation in connection with the carriage of hazardous and noxious substances by sea Convention*

The Legal Committee undertook a final review of its work on the draft hazardous and noxious substances (HNS) convention, which was substantially concluded at its forty-eighth session. The Committee noted and approved the documentation, in respect of the draft convention, which has been circulated by the secretariat for the diplomatic conference to be convened in April/May 1984.

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11. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

ADOPTION OF GUIDELINES ON SUPPLEMENTARY FINANCING OF COST OVERRUNS[325]

In order to provide an operational framework for the handling of proposals for supplementary financing of cost overruns, the Executive Board, after due deliberation at its eighteenth session in April 1983, approved the Guidelines on Supplementary Financing of Cost Overruns. The Guidelines envisage a case-by-case approach to the problems of supplementary cost overruns which, against a restrictive background, provide, notwithstanding the necessary flexibility for the management and the Executive Board to handle each specific case on its merits taking account of factors such as the nature of the project, the stage of implementation, the extent of the cost overrun and the underlying reason for the cause, especially of the Borrower to raise additional resources, the possibility of scaling down or rephasing the project scope and facility, the need for supplementary financing. The Guidelines place emphasis on providing measures for avoiding cost overrun situations through strengthening the attention to be paid at the appraisal stage to cost estimates and contingencies provided and by monitoring implementation carry-over to enable timely adjustments to be made and thus avoid or reduce the need for supplementary financing.

EXTENSION *AD INTERIM* OF THE CURRENT PRESIDENT'S TERM OF OFFICE

The Governing Council, during its first annual session held in Rome from 13 to 16 December 1977, appointed the first President of IFAD for a three-year constitutional term. Prior to the expiry of his first term of office on 12 December 1980, the Governing Council, during its fourth annual session, held from 8 to 11 December 1980, reappointed the incumbent President for a second term of three years by consensus. Paragraph (*a*), section 8, of article 6 of the Agreement establishing IFAD, pursuant to which the Governing Council appoints the President, restricts any one person to holding the office of President to two terms of three years each, a total of six years.

The current second term of office of the incumbent President was to expire on 12 December 1983. The 60-day time-limit prescribed by section 6 of IFAD's by-laws for the conduct of business was to expire on 7 October 1983. No nominations of candidature for the position of President were

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*It should also be noted that an Agreement between the Government of Sweden and the International Maritime Organization regarding the World Maritime University was signed at London on 9 February 1983. Excerpts from that Agreement are reproduced in the present volume, p. 62.

received prior to that date and the election of the President was due to be held during the seventh annual session of the Governing Council, scheduled for 6-9 December 1983. In view of this, the Executive Board recommended an *ad interim* arrangement to enable the incumbent President to continue in his position until the Governing Council had appointed his successor and the appointee assumed the office. Under any circumstance, however, the arrangement as recommended by the Executive Board was not to extend beyond 12 December 1984. In presenting the proposal to the Governing Council for its consideration, the Executive Board had specifically taken into account the current status of negotiations for the second replenishment, which had entered a critical phase.

To implement the interim arrangement referred to above, the Executive Board was of the view that adoption by the Governing Council of a suitable resolution would be sufficient to provide a legal basis for the incumbent President to continue performing his functions uninterruptedly on an interim basis. This would be accomplished through waiving temporarily the constitutional restriction of a total of six years' duration prescribed for any one person to be President. The resolution, *inter alia*, would explicitly provide for the timing for the interim arrangement to terminate so as to prevent its becoming the legal basis for any future action or decision by the Governing Council. This recommended approach to resolving the current situation had the advantage of leaving intact the requirements as currently provided for the appointment of any future President and also other provisions related to that office, and during the interim period the current incumbent would be able to perform the responsibilities of his office beyond the date of his current term.

Since the IFAD Agreement in its present form does not envisage that at some point the need might arise to set aside the restrictive effect of its paragraph (*a*), section 8, of article 6, in order to deal as an interim measure with a particular unforeseen situation, it was imperative that the adoption of the proposed resolution be accomplished in accordance with the constitutional procedures prescribed therein for an amendment. This was considered to be in accordance with the legal requirements for the validity of the proposed solution once it had passed through all the formal motions.

Accordingly, the Governing Council adopted the following resolution under procedures described in article 12 of the Agreement. At the same time, the Governing Council decided that the resolution was to enter into force and effect immediately upon approval as provided under article 12, thus waiving the normal three-month waiting period prescribed therein.

Resolution 29/VII

The Governing Council,

Having considered the proposal of the Executive Board contained in Document GC 7/L.9 for continuation *ad interim* in office of the incumbent President of IFAD beyond his current term of office which ends on 12 December 1983,

Notwithstanding the restriction of two terms consisting of a cumulative total tenure of six years for any one person to be the President of IFAD contained in paragraph (*a*) of Section 8 of Article 6 of the Agreement Establishing IFAD, as adopted by the United Nations Conference on the Establishment of an International Fund for Agricultural Development held on 13 June 1976 in Rome,

A. *Decides:*

(*a*) to extend *ad interim* the second term of office of the incumbent President of IFAD beyond 12 December 1983; and

(*b*) that during the interim the President shall continue to discharge the responsibilities of his office on terms and conditions set forth in the Governing Council Resolution 77/6 adopted at its First Annual Session and subject to the provisions of this Resolution.

B. *Further decides that:*

(*a*) this Resolution shall enter into force and effect immediately upon its adoption;

(*b*) the extension *ad interim* of the second term of the incumbent President shall not exceed beyond 12 December 1984;

(*c*) this Resolution shall not be construed for any future action or decision as having modified or amended paragraph (*a*) of Section 8 of Article 6 of the Agreement;

(*d*) The Governing Council shall meet prior to 12 December 1984 at an appropriate time determined by the Executive Board, to appoint the new President in accordance with the requirements of paragraph (*a*) of Section 8 of Article 6 of the Agreement; and

(*e*) this Resolution shall cease to be operational after the date the President, appointed by the Governing Council pursuant to paragraph (*d*) above, assumes the office which shall not be later than the date specified in paragraph B (*b*) above.

C. *Requests* Mr. Abdelmushin M. Al-Sudeary to continue as the President of IFAD for the interim period referred to in this Resolution.

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12. INTERNATIONAL ATOMIC ENERGY AGENCY

REGIONAL CO-OPERATION

The Agreement of 1980 Establishing the Asian Regional Co-operative Project on Food Irradiation[326] for a period of three years was extended for a further period of one year with effect from 28 August 1983. By the end of 1983, the Agreement as extended was in force for IAEA and the following Member States: India, Indonesia, Japan, the Republic of Korea, Malaysia, Pakistan, the Philippines, Sri Lanka, Thailand and Viet Nam.

SEMINAR ON NUCLEAR LAW

An interregional seminar on nuclear law and safety regulations was organized in Morocco in co-operation with the Ministry of Energy and Mines and the National Electricity Board of Morocco. The purpose of the seminar was to provide an overview of the major areas of nuclear regulation and to discuss both the elaboration and the implementation of legislation. More than 100 participants, from Algeria, Morocco and Tunisia, took part in the seminar. Lectures were presented by Agency staff members and by experts from France, Spain and the Nuclear Energy Agency of the Organization for Economic Co-operation and Development. The lectures and discussions covered nuclear safety, radiation and environmental protection, functions of a nuclear regulatory body, licensing requirements, site selection and environmental impact assessment, national systems of materials control and nuclear third-party liability and insurance. Emphasis was placed on the regulatory steps required in the planning and implementation of a nuclear power programme.

ADVISORY SERVICES

Advisory services were provided to the Government of Morocco in the preparation of legislation for radiation protection and for the control of nuclear installations. Advice and assistance were also provided to the Government of Tunisia for the framing of radiation protection regulations.

PHYSICAL PROTECTION

By the end of 1983, 36 States and one regional organization had signed the Convention on the Physical Protection of Nuclear Material[327] and 8 States had ratified it. The Convention requires 21 ratifications for its entry into force.

FUEL SUPPLY ARRANGEMENTS

In February 1983, IAEA and the Governments of the United States of America and Yugoslavia concluded an agreement for the transfer of approximately 20,200 grams of uranium of United States origin, enriched to less than 20 per cent, for use in the operation of the TRIGA Mark II research reactor at the Josef Stefan Institute in Ljubljana, Yugoslavia.[328].

Agreements for the supply of enriched uranium by IAEA to the Governments of Romania and Viet Nam were concluded in July 1983.[329] These were the first cases in which enriched uranium

was provided by the Government of the Union of Soviet Socialist Republics under IAEA's technical co-operation programme. Five kilograms of uranium dioxide powder containing 4.5 kilograms of 20-per-cent-enriched uranium were supplied to Romania for the fabrication of experimental fuel elements for use in irradiation tests in a TRIGA research reactor and in post-irradiation studies at the Institute of Nuclear Power Reactors, Pitesti. In the case of Viet Nam, 3.6 kilograms of 36-per-cent-enriched uranium were supplied for the operation of a TRIGA-type research reactor which was being reconstructed and upgraded at the Nuclear Research Institute at Da Lat.

In December 1983, an agreement was concluded between IAEA and the Governments of Morocco and the United States[330] concerning the transfer of about 12.896 kilograms of uranium enriched to less than 20 per cent for use as fuel in a TRIGA Mark I research reactor which was to be installed at and operated by the National School for the Mineral Industry, Rabat, and used for training and research.

In October 1983, the Board of Governors approved an agreement between IAEA and the Governments of Canada, Jamaica and the United States[331] for the transfer from Canada to Jamaica, through IAEA, of approximately 906 grams of 93-per-cent-enriched uranium of United States origin, contained in fuel elements, and of approximately one gram of the same material contained in metal foils. The materials were for the operation of a low-power critical-experiment reactor supplied by Canada to Jamaica. The reactor has been installed at the Centre for Nuclear Sciences of the University of the West Indies at Kingston, Jamaica, for training and research purposes.

Guidelines for emergency assistance arrangements

A group of experts was convened by IAEA in April 1983 to consider terms and conditions which could be applied to emergency assistance and could (*a*) serve as a model for the negotiation of bilateral or regional agreements and (*b*) be readily agreed between a requesting State and an assisting party at the time of a nuclear emergency. The group recommended a set of "Guidelines for mutual emergency assistance arrangements in connection with a nuclear accident or radiological emergency", together with a technical annex which provides information on the nature and extent of the assistance which might be required. The Guidelines were subsequently published[332] as advisory material for use by Member States as they deem suitable.

Committee on assurances of supply

The Committee on Assurances of Supply (CAS) held its seventh to tenth sessions in January, April, September and December 1983 respectively. It continued its consideration of principles of international co-operation in the field of nuclear energy, in accordance with its mandate, and narrowed down further the areas where the views of Member States diverged. During 1983 it also considered the question of mechanisms for revising international nuclear co-operation agreements and formulated a number of conclusions for examination by the Board of Governors.

CAS concluded its consideration of emergency and back-up mechanisms by making recommendations to the Board of Governors for the establishment within IAEA of a system which would:

(*a*) Receive, register and keep records on supplies made available for a back-up mechanism and register and keep records on the conditions for making available and drawing on such supplies;

(*b*) Provide Member States upon request and to the extent possible, with such information and services as are needed for the implementation of the mechanism;

(*c*) Serve, upon request, as an intermediary between a State requesting relief from the mechanism and back-up suppliers.

IAEA transport regulations

The IAEA Regulations for the Safe Transport of Radioactive Materials, first published in 1961 (IAEA Safety Series No. 6), had been revised in 1964, 1967 and 1973. A further revised edition was published in 1979. The Regulations, which are applied to the Agency's own operations and to operations carried out with its assistance, have been adopted by all international organizations

concerned with transport and by most countries. They now form the regulatory basis for the international transport of radioactive materials by all means of transport.

The last extensive revision, which was started in 1979, was nearing completion at the end of 1983 with a view to the publication of a revised version in 1984 after approval by the Board of Governors.

SAFEGUARDS

During 1983, safeguards agreements concluded pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) with the Ivory Coast and Papua New Guinea entered into force, bringing the total number of non-nuclear-weapon States with agreements in force pursuant to NPT and/or the Tlatelolco Treaty to 77.

Negotiations started in May 1983 between IAEA and the Union of Soviet Socialist Republics on a voluntary offer by the latter to place some of its peaceful nuclear installations under the Agency's safeguards.

NOTES

[1] This summary has been prepared on the basis of *The United Nations Disarmament Yearbook*, vol. 8: 1983 (United Nations Publication, Sales No. E.84.IX.3).

[2] *Official Records of the General Assembly, Thirty-eighth Session, Plenary Meetings*, 5th to 33rd and 97th to 103rd meetings; *ibid., First Committee*, 3rd to 41st and 46th meetings; and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[3] Adopted by a recorded vote of 73 to 19, with 44 abstentions.

[4] Adopted by a recorded vote of 114 to 17, with 12 abstentions.

[5] Adopted without a vote.

[6] Adopted without a vote.

[7] Adopted by a recorded vote of 135 to none, with 12 abstentions.

[8] Adopted by a recorded vote of 109 to 20, with 18 abstentions.

[9] *Official Records of the General Assembly, Thirty-eighth session, Supplement No. 27* (A/38/27), paras. 87 and 88; paragraph 88 embodies the report of the *Ad Hoc* Working Group and the "Texts for the comprehensive programme of disarmament submitted by the *Ad Hoc* Working Group" in an annex.

[10] Adopted without a vote.

[11] Adopted without a vote.

[12] All four draft resolutions on bilateral nuclear-arms negotiations between the Soviet Union and the United States were entitled "Bilateral nuclear-arms negotiations" and submitted under the item entitled "Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session".

[13] Adopted by a recorded vote of 88 to 31, with 24 abstentions.

[14] Adopted by a recorded vote of 122 (including China and the USSR) to 1 (United States), with 25 abstentions (including France and the United Kingdom).

[15] Adopted by a recorded vote of 99 to 18, with 24 abstentions.

[16] Adopted by a recorded vote of 133 to 1, with 14 abstentions.

[17] Adopted by a recorded vote of 108 to 19, with 16 abstentions. China did not participate in the vote.

[18] Adopted by a recorded vote of 74 to 12, with 57 abstentions.

[19] Adopted by a recorded vote of 134 to none, with 7 abstentions. China and France did not participate in the vote.

[20] Adopted by a recorded vote of 110 to 19, with 15 abstentions.

[21] Adopted by a recorded vote of 128 to none, with 20 abstentions.

[22] Adopted by a recorded vote of 126 to 17, with 6 abstentions.

[23] Adopted by a recorded vote of 95 to 19 (Western States), with 30 abstentions.

[24] Adopted by a recorded vote of 124 to 15 (mainly Western States), with 7 abstentions.

[25] Adopted by a recorded vote of 124 to 13 (Western States, Israel, Japan and New Zealand), with 8 abstentions.

[26] Adopted by a recorded vote of 108 to 18, with 20 abstentions.

[27] Adopted by a recorded vote of 108 to 17 (mainly Western States), with 18 abstentions.

[28] Adopted by a recorded vote of 141 to none, with 6 abstentions.

[29] Adopted by a recorded vote of 119 to 2, with 26 abstentions.

[30] United Nations, *Treaty Series*, vol. 480, p. 43.

[31] General Assembly resolution 2373 (XXII), annex; see also United Nations, *Treaty Series*, vol. 729, p. 161.

[32] Adopted by a recorded vote of 117 to none, with 29 abstentions.

[33] Adopted by a recorded vote of 118 to 4, with 24 abstentions.

[34] United Nations, *Treaty Series*, vol. 634, p. 281.

[35] Adopted by a recorded vote of 135 to none, with 9 abstentions.

[36] Adopted by a recorded vote of 142 to none, with 6 abstentions.

[37] Adopted without a vote.

[38] Adopted by a recorded vote of 99 to 2, with 39 abstentions.

[39] Adopted by a recorded vote of 94 to 3, with 46 abstentions.

[40] Adopted without a vote.

[41] Adopted without a vote.

[42] Adopted by a recorded vote of 98 to 1, with 49 abstentions.

[43] Adopted without a vote.

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

[45] For the text of the Convention, see General Assembly resolution 2826, annex.

[46] Adopted by a recorded vote of 116 to 1, with 26 abstentions.

[47] Adopted without a vote.

[48] Adopted by a recorded vote of 147 to 1, with one abstention.

[49] General Assembly resolution 2222 (XXI), annex; see also United Nations, *Treaty Series*, vol. 610, p. 205.

[50] As of the end of the year, 23 countries had deposited their instrument of ratification with the Secretary-General. For the text of the Convention and its Protocols, see *Status of Multilateral Arms Regulation and Disarmament Agreements*, 2nd ed., 1982 (United Nations publication, Sales No. E.83.IX.5).

[51] Adopted without a vote.

[52] Adopted without a vote.

[53] See the report of the Working Group, *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 42* (A/38/42), sect. IV, para. 23.

[54] Adopted without a vote.

[55] Adopted by a recorded vote of 116 to 13, with 8 abstentions.

[56] Adopted without a vote.

[57] General Assembly resolution 2832 (XXVI).

[58] For the text of the Treaty see General Assembly resolution 2660 (XXV), annex; also reproduced in *Juridical Yearbook, 1970*, p. 121 and United Nations *Treaty Series*, vol. 955, p. 115.

[59] SBT/CONF. II/20.

[60] Adopted without a vote.

[61] General Assembly resolution 2734 (XXV); also reproduced in *Juridical Yearbook*, 1970, p. 62.

[62] Adopted by a recorded vote of 135 to none, with 12 abstentions.

[63] See A/38/643.

[64] General Assembly resolution 1514 (XV).

[65] Adopted by a recorded vote of 109 to 20, with 18 abstentions.

[66] See A/38/644.

[67] For the report of the Legal Sub-Committee, see document A/AC.105/320 and Corr.1.

[68] A/AC.105/320 and Corr.1, annex III, sect. A, document A/AC.105/C.2/L.137.

[69] A/AC.105/320 and Corr.1, annex III, sect. A, document A/AC.105/C.2/L.138.

[70] A/AC.105/320 and Corr.1, annex II, para. 6.

[71] A/AC.105/320 and Corr.1, annex III, sect. B, document A/AC.105/C.2/L.139.

[72] A/AC.105/320 and Corr.1, annex III, sect. C, document A/AC.105/C.2/L.142.

[73] *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 20* (A/38/20), chap. II.B.

[74] 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).

[75] Reproduced in *Juridical Yearbook, 1982*, p. 77.

[76] Adopted by a recorded vote of 124 to 12, with 8 abstentions.

[77] See A/38/714.

[78] 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).

[79] For detailed information, see *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 25* (A/38/25).

[80] *Ibid.*, annex.

[81] UNEP/GC.10/5/Add.2 and Corr.1 and 2, annex, chap. II.

[82] Adopted without a vote.

[83] See A/38/702/Add.7.

[84] Adopted without a vote.

[85] See A/38/702/Add.2.

[86] For detailed information, see *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 12* (A/38/12) and *ibid., Supplement No. 12A* (A/38/12/Add.1).

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

[88] *Ibid.*, vol. 606, p. 267.

[89] *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 12A* (A/37/12/Add.1), para. 70 (4) (*d*).

[90] Adopted without a vote.

[91] See A/38/688.

[92] Adopted without a vote.

[93] See A/38/680.

[94] *Official Records of the Economic and Social Council, 1983, Supplement No. 5* (E/1983/15).

[95] Adopted without a vote.

[96] See A/38/689.

[97] For background information on the question, see *Juridical Yearbook, 1981*, p. 59.

[98] Adopted without a vote.

[99] See A/38/687.

[100] For the text of the Principles, see General Assembly resolution 37/194, annex; also reproduced in *Juridical Yearbook, 1982*, p. 88.

[101] See General Assembly resolution 2200 A (XXI), annex; also reproduced in *Juridical Yearbook, 1966*, pp. 170 *et seq.*

[102] General Assembly resolution 2200 A (XXI), annex; see also United Nations, *Treaty Series*, vol. 993, p. 3.

[103] General Assembly resolution 2200 A (XXI), annex; see also United Nations, *Treaty Series*, vol. 999, p. 171.

[104] *Ibid.*

[105] Adopted without a vote.

[106] See A/38/686.

[107] *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40* (A/38/40).

[108] Adopted without a vote.

[109] See A/38/686.

[110] A/38/393.

[111] See *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40* (A/38/40), para. 32.

[112] See General Assembly resolution 2106 A (XX), annex; also reproduced in *Juridical Yearbook, 1965*, p. 63, and in United Nations, *Treaty Series*, vol. 660, p. 195.

[113] Adopted without a vote.

[114] See A/38/543.

[115] Adopted without a vote.

[116] See A/38/543.

[117] A/38/393.

[118] Adopted without a vote.

[119] See A/38/543.

[120] Adopted without a vote.

[121] See A/38/541.

[122] United Nations publication, Sales No. E.83.XIV.4 and corrigendum.

[123] For the text of the Convention, see General Assembly resolution 3068 (XXVIII); also reproduced in *Juridical Yearbook, 1973*, p. 70, and in United Nations, *Treaty Series*, vol. 1015, p. 244.

[124] Adopted by a recorded vote of 110 to 1, with 23 abstentions.

[125] See A/38/543.

[126] E/CN.4/1286, annex.

[127] For the text of the Convention, see General Assembly resolution 34/180; also reproduced in *Juridical Yearbook, 1979*, p. 115.

[128] Adopted without a vote.

[129] See A/38/682.

[130] For background information on the question, see *Juridical Yearbook, 1980*, pp. 66 and 67.

[131] Adopted without a vote.

[132] See A/38/687.

[133] Adopted without a vote.

[134] See A/38/680.

[135] Adopted by a recorded vote of 132 to 1, with 13 abstentions.

[136] See A/38/690.

[137] Adopted without a vote.

[138] See A/38/690.

[139] Adopted without a vote.

[140] See A/38/680.

[141] Adopted without a vote.

[142] See A/38/680.

[143] Adopted without a vote.

[144] See A/38/685.

[145] Adopted without a vote.

[146] See A/38/683.

[147] For the text of the Declaration, see General Assembly resolution 36/55; also reproduced in *Juridical Yearbook, 1981*, pp. 63-65.

[148] Adopted without a vote.

[149] See A/38/680.

[150] Adopted without a vote.

[151] See A/38/684.

[152] Adopted by a recorded vote of 125 to none, with 22 abstentions.

[153] See A/38/684.

[154] For the text of the Declaration, see General Assembly resolution 3384 (XXX); also reproduced in *Juridical Yearbook, 1975*, pp. 51 and 52.

[155] Adopted by a recorded vote of 123 to none, with 23 abstentions.

[156] See A/38/689.

[157] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.2), document A/CONF.62/122.

[158] For detailed information on the Preparatory Commission, see the report of the Secretary-General on the Third United Nations Conference on the Law of the Sea (A/38/570 and Corr.1 and Add.1 and Corr.1).

[159] LOS/PCN/3.

[160] LOS/PCN/5.

[161] LOS/PCN/6.

[162] LOS/PCN/27.

[163] LOS/PCN/27, para. 2.

[164] LOS/PCN/28.

[165] Adopted by a recorded vote of 136 to 2, with 6 abstentions.

[166] For the composition of the Court, see *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 51*, (A/36/51) sect. X, p. 253.

[167] As of 31 December 1983, 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.

[168] For detailed information, see *I.C.J. Yearbook 1981-1982*, No. 36, and *I.C.J. Yearbook 1982-1983*, No. 37.

[169] *I.C.J. Reports 1982*, p. 554.

[170] *I.C.J. Reports 1983*, p. 3.

[171] For detailed information, see *I.C.J. Yearbook 1981-1982*, No. 36, and *I.C.J. Yearbook 1982-1983*, No. 37.

[172] *I.C.J. Reports 1982*, p. 560.

[173] *I.C.J. Reports 1983*, p. 6.

[174] For the membership of the Commission, see *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 10* (A/38/10), chap. I.

[175] For detailed information, see *Yearbook of the International Law Commission*, 1983, vol. I (United Nations publication, Sales No. 84.V.6); *ibid.*, vol. II, Part One (United Nations publication, Sales No. 84.V.7 (Part I)); and *ibid.*, Part Two (United Nations publication, Sales No. 84.V.7 (Part II)).

[176] Yearbook of the International Law Commission, vol. II, Part One (United Nations publication, Sales No. E.84.V.7 (Part I)), document A/CN.4/367.

[177] *Ibid.*, document A/CN.4/363 and Add.1.

[178] A/CN.4/L.367.

[179] *Yearbook of the International Law Commission*, vol. II, Part One (United Nations publication, Sales No. E.84.V.7 (Part I), document A/CN.4/366 and Add.1.

[180] *Ibid.*, document A/CN.4/374 and Add.1-4.

[181] *Ibid.*, document A/CN.4/367.

[182] *Ibid.*, document A/CN.4/370.

[183] *Ibid.*, document A/CN.4/373.

[184] *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 10* (A/38/10).

[185] Adopted without a vote.

[186] See A/38/671.

[187] Adopted by a recorded vote of 128 to none, with 13 abstentions.

[188] See A/38/665.

[189] *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 10* (A/38/10), paras. 67 and 69.

[190] For the membership of the Commission, see *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 17*, (A/38/17), chap. I.B, para. 4.

[191] For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XIV:1983 (United Nations publication, Sales No. E.85.V.3).

[192] *Ibid.*, part two, chap. I, document A/CN.9/235.

[193] For the text of the draft rules, see *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 17* (A/38/17), annex I.

[194] *Yearbook of the United Nations Commission on International Trade Law*, vol. XIV:1983 (United Nations publication, Sales No. E.85.V.3), part two, chap. I, document A/CN.9/242.

[195] *Ibid.*, chap. III, sect. A, document A/CN.9/232, and sect. B, document A/CN.9/233.

[196] *Ibid.*, chap. IV, sect. A, document A/CN.9/234.

[197] *Ibid.*, sect. B, document A/CN.9/WG.V/WP.9 and Add.1-5.

[198] *Ibid.*, chap. V, sect. A, document A/CN.9/239.

[199] *Ibid.*, sect. B, document A/CN.9/237 and Add.1-3.

[200] *Ibid.*, sect. C, document A/CN.9/236.

[201] 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 Rules); United Nations Convention on the Contracts for the International Sale of Goods (Vienna 1980).

[202] *Yearbook of the United Nations Commission on International Trade Law*, vol. XIV:1983 (United Nations publication, Sales No. E.85.V.3), chap. VII, document A/CN.9/240.

[203] Adopted without a vote.

[204] See A/38/667.

[205] Adopted without a vote.

[206] See A/38/667.

[207] Adopted without a vote.

[208] See A/38/668.

[209] Adopted without a vote.

[210] See A/38/663.

[211] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 37* (A/34/37), para. 118.

[212] Adopted without a vote.

[213] See A/38/659.

[214] General Assembly resolution 2625 (XXV).

[215] A/38/440, annex.

[216] Adopted by a recorded vote of 110 to 1, with 30 abstentions.

[217] See A/38/661.

[218] Adopted without a vote.

[219] See A/38/660.

[220] *Official Records of the General Assembly, Thirty-third Session, Supplement No. 10* (A/33/10).

[221] Adopted without a vote.

[222] See A/38/675.

[223] Adopted without a vote.

[224] A/38/672.

[225] *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 10* (A/37/10), chap. II.

[226] Adopted without a vote.

[227] See A/38/662.

[228] A/38/546.

[229] For detailed information, see *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 26* (A/38/26).

[230] *Ibid.*, annex I. The text of the legal opinion is reproduced also in the present volume, p. 220.

[231] Adopted without a vote.

[232] See A/38/673.

[233] For the report of the Special Committee, see *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 33* (A/38/33).

[234] A/AC.182/WG/39.

[235] A/AC.182/L.29/Rev.1; *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 33* (A/37/33), paras. 254 and 255.

[236] A/AC.182/L.25 and A/AC.182/WG/51; *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 33* (A/37/33), paras. 256 and 265.

[237] A/AC.182/WG/56 and Add.1-3.

[238] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 33* (A/34/33), para. 13.

[239] Adopted without a vote.

[240] See A/38/674.

[241] For the report of the Special Committee, see *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 41* (A/38/41).

[242] *Ibid., Thirty-fourth Session, Supplement No. 41* (A/34/41 and Corr.1), annex.

[243] See *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 41* (A/34/41), paras. 94 and 130-149.

[244] *Ibid., Thirty-sixth Session, Supplement No. 41* (A/36/41), para. 259.

[245] *Ibid., Thirty-seventh Session, Supplement No. 41* (A/37/41), para. 372.

[246] Adopted by a recorded vote of 119 to 15, with 8 abstentions.

[247] See A/38/666.

[248] For the report of the *Ad Hoc* Committee, see *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 43* (A/38/43).

[249] *Ibid., Thirty-seventh Session, Supplement No. 43* (A/37/43 and Corr.1), annex.

[250] A/AC.207/L.15 and Corr.1.

[251] Adopted without a vote.

[252] See A/38/669.

[253] *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 43* (A/38/43).

[254] Adopted without a vote.

[255] A/38/491.

[256] *Official Records of the General Assembly, Thirty-eighth Session, Plenary Meetings*, 82nd meeting, paras. 88-104.

[257] For detailed information, see *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 14* (A/38/14), and *ibid., Thirty-ninth Session, Supplement No. 14* (A/39/14).

[258] "Progressive development of the principles and norms of international law relating to the new international economic order" (UNITAR/DS/6).

[259] A/38/366.

[260] UNITAR publication, Sales No. E.83.XV.RR/29.

[261] 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.

[262] *Official Bulletin*, vol. LXVI, 1983, Series A, No. 2, pp. 53-57 and 78-85; English, French, Spanish. Regarding preparatory work, see *First discussion*—Vocational Rehabilitation, ILC, 68th session (1982), report VI (1) (this report contains, *inter alia*, details of the action which led to the placing of the question on the agenda

of the Conference), and report VI (2), 52 and 96 pages respectively; English, French, German, Russian, Spanish. See also ILC, 68th session (1982), *Record of Proceedings*, No. 25; No. 32, pp. 1-5; English, French, Spanish. *Second discussion*—Vocational Rehabilitation, ILC, 69th session (1983), report IV (1) and report IV (2), 39 and 61 pages respectively; English, French, German, Russian, Spanish. See also ILC, 69th session (1983), *Record of Proceedings*, No. 27; No. 36, pp. 1-5; No. 37, pp. 5-6, pp. 10-15; English, French, Spanish.

[263] *Official Bulletin*, vol. LXVI, 1983, Series A, No. 2, pp. 57-78; English, French, Spanish. *Single Discussion*—Maintenance of Rights in Social Security, ILC, 69th session (1983), report V (this report contains, *inter alia*, details of the action which led to the placing of the question on the agenda of the Conference), 101 pages; English, French, German, Russian, Spanish. See also ILC, 69th session (1983) *Record of Proceedings*, No. 24; No. 29, pp. 1-4; No. 37, pp. 7-9; English, French, Spanish.

[264] The report has been published as report III (part 4) to the 69th session of the Conference and comprises two volumes: vol. A: "General report and observations concerning particular countries" (report III (part 4A)), 316 pages; English, French, Spanish; vol. B: "General survey on the application of the Conventions on freedom of association, the right to organise and collective bargaining and the Convention and Recommendation concerning rural workers' organisations" (report III (part 4B)), 157 pages; English, French, Spanish.

[265] *Official Bulletin*, vol. LXVI, 1983, Series B, No. 1.

[266] *Ibid.*, No. 2.

[267] *Ibid.*, No. 3.

[268] *Official Bulletin*, vol. LXVI, 1983, Series B.

[269] See the report of the forty-third session of the Committee on Constitutional and Legal Matters, document CL 84/5 and CL 84/REP. paras. 112-122.

[270] CL 82/REP, paras. 181 and 182.

[271] See section (*a*) (i) *a.* above.

[272] C 83/REP, paras. 327-329.

[273] CL 84/REP, paras. 117-122.

[274] CL 84/6, paras. 66-95.

[275] CL 83/REP, paras. 270 and 271.

[276] CL 85/REP, paras. 12-15.

[277] C 83/REP, paras. 325 and 326.

[278] C 83/REP, paras. 367-369.

[279] C 83/REP, para. 27.

[280] See *Juridical Yearbook, 1979*, p. 79, and *Juridical Yearbook, 1981*, p. 81.

[281] C 83/REP, paras. 323 and 324.

[282] See *Juridical Yearbook*, 1979, pp. 78 and 79.

[283] The present title was adopted as a result of amendments to the Agreement which entered into force on 16 February 1983.

[284] The Convention was adopted by a conference of plenipotentiaries which met at Rio de Janeiro, Brazil, from 2 to 14 May 1966.

[285] See *Juridical Yearbook, 1979*, p. 79, and *Juridical Yearbook, 1980*, p. 85.

[286] C 81/REP, paras. 152 and 153.

[287] See C 83/25.

[288] CL 83/9, paras. 219-238.

[289] C 83/REP, paras. 275-285.

[290] The delegations of Canada, France, the Federal Republic of Germany, Japan, Switzerland, the United Kingdom and the United States reserved their position with respect to the resolution and the International Undertaking. The delegation of New Zealand reserved its position on the text of the International Undertaking because there was no provision which took account of plant breeders' rights.

[291] Article 9.2 of the Undertaking.

[292] C 83/REP, para. 287.

[293] The delegations of Canada, France, the Federal Republic of Germany, Japan, the Netherlands, Switzerland, the United Kingdom and the United States reserved their position with respect to the resolution.

[294] CL 85/REP, paras. 12-15.

[295] The Governments of Canada, France, the Federal Republic of Germany, Japan, the United Kingdom and the United States reserved their positions with respect to the resolution.

[296] See note 289 above.

[297] For details, see *Juridical Yearbook, 1982*, p. 234.

[298] CL 82/REP, paras. 200-218.

[299] CL 83/REP, paras. 262-269.

[300] CL 84/REP, paras. 123-127.

[301] The Finance Committee also considered the matter at its fifty-first (25 April-6 May 1983) and fifty-second (19-30 September 1983) sessions; see CL 83/4 and CL 84/4.

[302] C 83/REP, paras. 342-345 and appendix G; C 83/III/PV/2; C 83/III/PV/4; C 83/PV/20.

[303] C 83/REP, appendix G.

[304] Judgement No. 634 of the Tribunale Civile di Roma, sez. III, rendered on 31 October 1980, and Judgement No. 827 of the Corte di Apello di Roma, rendered on 9 February 1983.

[305] *ENPALS* v. *FAO*, Pretura di Roma, Sez. controversie di lavoro, 2 October 1982, reproduced in *Juridical Yearbook, 1982*, p. 236, and *Carbone* v. *FAO*, Judgement of Pretore di Roma, 2nd sez. of Pretura Civile di Roma, 6 July 1983.

[306] *Aziz* v. *Caruzzi*, Pretura di Roma; reproduced in the present volume, p. 232.

[307] See *Il Foro Italiano*, anno CIX, No. 2, February 1984, pp. 599-602, which, in addition to summarizing the judgement, also cites in footnotes a number of cases in which the immunity from legal process of senior officials of FAO and IFAD has been upheld by Italian courts. Reproduced in the present volume, p. 232.

[308] FAO Fisheries Report No. 293.

[309] IGC(1971)/V/23.

[310] ILO/UNESCO/WIPO/ICR.9/8.

[311] PRS/CPY/DP/CEG/I/11.

[312] UNESCO/WIPO/FOLK/ASIA/5 and UNESCO/WIPO/FOLK/AFR/4.

[313] BEC/IGC/ICR/SC.2 (part II)/CTV/7.

[314] UNESCO/WIPO/SSA/CGE/5.

[315] UNESCO/WIPO/CCC/II/11.

[316] B/EC/XXII/19-IGC(1971)/V/19, 19 Corr., 19 Add. and 19 annex.

[317] UNESCO/WIPO/DT/CM/3.

[318] Convention on the Settlement of Investment Disputes between States and National of Other States of 1965, reproduced in *Juridical Yearbook, 1966*, p. 196; see also United Nations, *Treaty Series*, vol. 575, p. 159.

[319] The list of contracting States and other signatories to the Convention is reproduced in document ICSID/3.

[320] For the Articles of Agreement of the International Monetary Fund, see United Nations, *Treaty Series*, vol. 2, p. 39.

[321] English Translation prepared by the Secretariat of the United Nations on the basis of a French version provided by UPU.

[322] United Kingdom Command Paper No. 9719.

[323] United Kingdom Command Paper No. 9777.

[324] The amendments entered into force on 10 November 1984.

[325] EB 83/18/R.29.

[326] Reproduced in document INFCIRC/285.

[327] Reproduced in document INFCIRC/274/Rev.1.

[328] The agreement was concluded in connection with the Fourth Supply Agreement of 1980; reproduced in document INFCIRC/32/Add.4, part I.

[329] Reproduced in documents INFCIRC/307 and INFCIRC/308 respectively.

[330] Reproduced in document INFCIRC/313.

[331] The agreement was subsequently concluded on 25 January 1984 and is reproduced in document INFCIRC/315.

[332] Reproduced in document INFCIRC/310.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Treaties concerning international law concluded under the auspices of the United Nations

UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS (VIENNA, 1 MARCH-8 APRIL 1983)

(*a*) VIENNA CONVENTION ON SUCCESSION OF STATES IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS. DONE AT VIENNA ON 8 APRIL 1983[1]

The States Parties to the present Convention,

Considering the profound transformation of the international community brought about by the decolonization process,

Considering also that other factors may lead to cases of succession of States in the future,

Convinced, in these circumstances, of the need for the codification and progressive development of the rules relating to succession of States in respect of State property, archives and debts as a means for ensuring greater juridical security in international relations,

Noting that the principles of free consent, good faith and *pacta sunt servanda* are universally recognized,

Emphasizing the importance of the codification and progressive development of international law which is of interest to the international community as a whole and of special importance for the strengthening of peace and international co-operation,

Believing that questions relating to succession of States in respect of State property, archives and debts are of special importance to all States,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force, and of universal respect for, and observance of, human rights and fundamental freedoms for all,

Recalling that respect for the territorial integrity and political independence of any State is required by the Charter of the United Nations,

Bearing in mind the provisions of the Vienna Conventions on the Law of Treaties of 1969 and on Succession of States in Respect of Treaties of 1978,

Affirming that matters not regulated by the present Convention continue to be governed by the rules and principles of general international law,

Have agreed as follows:

PART I. GENERAL PROVISIONS

Article 1. Scope of the present Convention

The present Convention applies to the effects of a succession of States in respect of State property, archives and debts.

Article 2. Use of terms

1. For the purposes of the present Convention:

(*a*) "succession of States" means the replacement of one State by another in the responsibility for the international relations of a territory;

(*b*) "predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(*c*) "successor State" means the State which has replaced another State on the occurrence of a succession of States;

(*d*) "date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;

(*e*) "newly independent State" means a successor State the territory of which, immediately before the date of the succession of States, was a dependent territory for the international relations of which the predecessor State was responsible;

(*f*) "third State" means any State other than the predecessor State or the successor State.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

Article 3. Cases of succession of States covered by the present Convention

The present Convention applies only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

Article 4. Temporal application of the present Convention

1. Without prejudice to the application of any of the rules set forth in the present Convention to which the effects of a succession of States would be subject under international law independently of the Convention, the Convention applies only in respect of a succession of States which has occurred after the entry into force of the Convention except as may be otherwise agreed.

2. A successor State may, at the time of expressing its consent to be bound by the present Convention or at any time thereafter, make a declaration that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State of State Party to the Convention which makes a declaration accepting the declaration of the successor State. Upon the entry into force of the Convention as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the Convention shall apply to the effects of the succession of States as from the date of that succession of States.

3. A successor State may at the time of signing or of expressing its consent to be bound by the present Convention make a declaration that it will apply the provisions of the Convention provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provisions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.

4. Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the Parties and the States entitled to become Parties to the present Convention of the communication to him of that notification and of its terms.

Article 5. Succession in respect of other matters

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the effects of a succession of States in respect of matters other than those provided for in the present Convention.

Article 6. Rights and obligations of natural or juridical persons

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the rights and obligations of natural or juridical persons.

PART II. STATE PROPERTY

SECTION 1. INTRODUCTION

Article 7. Scope of the present Part

The articles in the present Part apply to the effects of a succession of States in respect of State property of the predecessor State.

Article 8. State property

For the purposes of the articles in the present Part, "State property of the predecessor State" means property, rights and interests which, at the date of the succession of States, were, according to the internal law of the predecessor State, owned by that State.

Article 9. Effects of the passing of State property

The passing of State property of the predecessor State entails the extinction of the rights of that State and the arising of the rights of the successor State to the State property which passes to the successor State, subject to the provisions of the articles in the present Part.

Article 10. Date of the passing of State property

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State property of the predecessor State is that of the succession of States.

Article 11. Passing of State property without compensation

Subject to the provisions of the articles in the present Part and unless otherwise agreed by the States concerned or decided by an appropriate international body, the passing of State property of the predecessor State to the successor State shall take place without compensation.

Article 12. Absence of effect of a succession of States on the property of a third State

A succession of States shall not as such affect property, rights and interests which, at the date of the succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State.

Article 13. Preservation and safety of State property

For the purpose of the implementation of the provisions of the articles in the present Part, the predecessor State shall take all measures to prevent damage or destruction to State property which passes to the successor State in accordance with those provisions.

SECTION 2. PROVISIONS CONCERNING SPECIFIC CATEGORIES OF SUCCESSION OF STATES

Article 14. Transfer of part of the territory of a State

1. When part of the territory of a State is transferred by that State to another State, the passing of State property of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of such an agreement:

(*a*) Immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(*b*) Movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State.

Article 15. Newly independent State

1. When the successor State is a newly independent State:

(*a*) Immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(*b*) Immovable property, having belonged to the territory to which the succession of States relates, situated outside it and having become State property of the predecessor State during the period of dependence, shall pass to the successor State;

(*c*) Immovable State property of the predecessor State other than that mentioned in subparagraph (*b*) and situated outside the territory to which the succession of States relates, to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory;

(*d*) Movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;

(*e*) Movable property, having belonged to the territory to which the succession of States relates and having become State property of the predecessor State during the period of dependence, shall pass to the successor State;

(*f*) Movable State property of the predecessor State, other than the property mentioned in subparagraphs (*d*) and (*e*), to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory.

2. When a newly independent State is formed from two or more dependent territories, the passing of the State property of the predecessor State or States to the newly independent State shall be determined in accordance with the provisions of paragraph 1.

3. When a dependent territory becomes part of the territory of a State, other than the State which was responsible for its international relations, the passing of the State property of the predecessor State to the successor State shall be determined in accordance with the provisions of paragraph 1.

4. Agreements concluded between the predecessor State and the newly independent State to determine succession to State property of the predecessor State otherwise than by the application of paragraphs 1 to 3 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources.

Article 16. Uniting of States

When two or more States unite and so form one successor State, the State property of the predecessor States shall pass to the successor State.

Article 17. Separation of part or parts of the territory of a State

1. When part or parts of the territory of a State separate from that State and form a successor State, and unless the predecessor State and the successor State otherwise agree:

(*a*) Immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(*b*) Movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;

(*c*) Movable State property of the predecessor State, other than that mentioned in subparagraph (*b*), shall pass to the successor State in an equitable proportion.

2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

3. The provisions of paragraphs 1 and 2 are without prejudice to any question of equitable compensation as between the predecessor State and the successor State that may arise as a result of a succession of States.

Article 18. Dissolution of a State

1. When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States concerned otherwise agree:

(*a*) Immovable State property of the predecessor State shall pass to the successor State in the territory of which it is situated;

(*b*) Immovable State property of the predecessor State situated outside its territory shall pass to the successor States in equitable proportions;

(*c*) Movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territories to which the succession of States relates shall pass to the successor State concerned;

(*d*) Movable State property of the predecessor State, other than that mentioned in subparagraph (*c*), shall pass to the successor States in equitable proportions.

2. The provisions of paragraph 1 are without prejudice to any question of equitable compensation among the successor States that may arise as a result of a succession of States.

PART III. STATE ARCHIVES

SECTION 1. INTRODUCTION

Article 19. Scope of the present Part

The articles in the present Part apply to the effects of a succession of States in respect of State archives of the predecessor State.

Article 20. State archives

For the purpose of the articles in the present Part, "State archives of the predecessor State" means all documents of whatever date and kind, produced or received by the predecessor State in the exercise of its functions which, at the date of the succession of States, belonged to the predecessor State according to its internal law and were preserved by it directly or under its control as archives for whatever purpose.

Article 21. Effects of the passing of State archives

The passing of State archives of the predecessor State entails the extinction of the rights of that State and the arising of the rights of the successor State to the State archives which pass to the successor State, subject to the provisions of the articles in the present Part.

Article 22. Date of the passing of State archives

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State archives of the predecessor State is that of the succession of States.

Article 23. Passing of State archives without compensation

Subject to the provisions of the articles in the present Part and unless otherwise agreed by the States concerned or decided by an appropriate international body, the passing of State archives of the predecessor State to the successor State shall take place without compensation.

Article 24. Absence of effect of a succession of States on the archives of a third State

A succession of States shall not as such affect archives which, at the date of the succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State.

Article 25. Preservation of the integral character of groups of State archives

Nothing in the present Part shall be considered as prejudging in any respect any question that might arise by reason of the preservation of the integral character of groups of State archives of the predecessor State.

Article 26. Preservation and safety of State archives

For the purpose of the implementation of the provisions of the articles in the present Part, the predecessor State shall take all measures to prevent damage or destruction to State archives which pass to the successor State in accordance with those provisions.

SECTION 2. PROVISIONS CONCERNING SPECIFIC CATEGORIES OF SUCCESSION OF STATES

Article 27. Transfer of part of the territory of a State

1. When part of the territory of a State is transferred by that State to another State, the passing of State archives of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of such an agreement:

(*a*) The part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be at the disposal of the State to which the territory concerned is transferred, shall pass to the successor State;

(*b*) The part of State archives of the predecessor State, other than the part mentioned in sub-paragraph (*a*), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the successor State.

3. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the transferred territory or its boundaries, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to the successor State pursuant to other provisions of the present article.

4. The predecessor State shall make available to the successor State, at the request and at the expense of that State, appropriate reproductions of its State archives connected with the interests of the transferred territory.

5. The successor State shall make available to the predecessor State, at the request and at the expense of that State, appropriate reproductions of State archives of the predecessor State which have passed to the successor State in accordance with paragraph 1 or 2.

Article 28. Newly independent State

1. When the successor State is a newly independent State:

(*a*) Archives having belonged to the territory to which the succession of States relates and having become State archives of the predecessor State during the period of dependence shall pass to the newly independent State;

(*b*) The part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the newly independent State;

(*c*) The part of State archives of the predecessor State, other than the parts mentioned in sub-paragraphs (*a*) and (*b*), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the newly independent State.

2. The passing or the appropriate reproduction of parts of the State archives of the predecessor State, other than those mentioned in paragraph 1, of interest to the territory to which the succession of States relates, shall be determined by agreement between the predecessor State and the newly independent State in such a manner that each of those States can benefit as widely and equitably as possible from those parts of the State archives of the predecessor State.

3. The predecessor State shall provide the newly independent State with the best available evidence from its State archives which bears upon title to the territory of the newly independent State or its boundaries, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to the newly independent State pursuant to other provisions of the present article.

4. The predecessor State shall co-operate with the successor State in efforts to recover any archives which, having belonged to the territory to which the succession of States relates, were dispersed during the period of dependence.

5. Paragraphs 1 to 4 apply when a newly independent State is formed from two or more dependent territories.

6. Paragraphs 1 to 4 apply when a dependent territory becomes part of the territory of a State other than the State which was responsible for its international relations.

7. Agreements concluded between the predecessor State and the newly independent State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.

Article 29. Uniting of States

When two or more States unite and so form one successor State, the State archives of the predecessor States shall pass to the successor State.

Article 30. Separation of part or parts of the territory of a State

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree:

(*a*) The part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the successor State;

(*b*) The part of State archives of the predecessor State, other than the part mentioned in sub-paragraph (*a*), that relates directly to the territory to which the succession of States relates, shall pass to the successor State.

2. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the successor State or its boundaries, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to the successor State pursuant to other provisions of the present article.

3. Agreements concluded between the predecessor State and the successor State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.

4. The predecessor and successor States shall, at the request and at the expense of one of them or on an exchange basis, make available appropriate reproductions of their State archives connected with the interests of their respective territories.

5. The provisions of paragraphs 1 to 4 apply when part of the territory of a State separates from that State and unites with another State.

Article 31. Dissolution of a State

1. When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States concerned otherwise agree:

(*a*) The part of the State archives of the predecessor State which should be in the territory of a successor State for normal administration of its territory shall pass to that successor State;

(*b*) The part of the State archives of the predecessor State, other than the part mentioned in subparagraph (*a*), that relates directly to the territory of a successor State shall pass to that successor State.

2. The State archives of the predecessor State other than those mentioned in paragraph 1 shall pass to the successor States in an equitable manner, taking into account all relevant circumstances.

3. Each successor State shall provide the other successor State or States with the best available evidence from its part of the State archives of the predecessor State which bears upon title to the territories or boundaries of that other successor State or States, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to that State or States pursuant to other provisions of the present article.

4. Agreements concluded between the successor States concerned in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.

5. Each successor State shall make available to any other successor State, at the request and at the expense of that State or on an exchange basis, appropriate reproductions of its part of the State archives of the predecessor State connected with the interests of the territory of that other successor State.

PART IV. STATE DEBTS

SECTION 1. INTRODUCTION

Article 32. Scope of the present Part

The articles in the present Part apply to the effects of a succession of States in respect of State debts.

Article 33. State debt

For the purposes of the articles in the present Part, "State debt" means any financial obligation of a predecessor State arising in conformity with international law towards another State, an international organization or any other subject of international law.

Article 34. Effects of the passing of State debts

The passing of State debts entails the extinction of the obligations of the predecessor State and the arising of the obligations of the successor State in respect of the State debts which pass to the successor State, subject to the provisions of the articles in the present Part.

Article 35. Date of the passing of State debts

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State debts of the predecessor State is that of the succession of States.

Article 36. Absence of effect of a succession of States on creditors

A succession of States does not as such affect the rights and obligations of creditors.

Article 37. Transfer of part of the territory of a State

1. When part of the territory of a State is transferred by that State to another State, the passing of the State debt of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of such an agreement, the State debt of the predecessor State shall pass to the successor State in an equitable proportion, taking into account, in particular, the property, rights and interests which pass to the successor State in relation to that State debt.

Article 38. Newly independent State

1. When the successor State is a newly independent State, no State debt of the predecessor State shall pass to the newly independent State, unless an agreement between them provides otherwise in view of the link between the State debt of the predecessor State connected with its activity in the territory to which the succession of States relates and the property, rights and interests which pass to the newly independent State.

2. The agreement referred to in paragraph 1 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor shall its implementation endanger the fundamental economic equilibria of the newly independent State.

Article 39. Uniting of States

When two or more States unite and so form one successor State, the State debt of the predecessor States shall pass to the successor State.

Article 40. Separation of part or parts of the territory of a State

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree, the State debt of the predecessor State shall pass to the successor State in an equitable proportion, taking into account, in particular, the property, rights and interests which pass to the successor State in relation to that State debt.

2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

Article 41. Dissolution of a State

When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States otherwise agree, the State debt of the predecessor State shall pass to the successor States in equitable proportions, taking into account, in particular, the property, rights and interests which pass to the successor States in relation to that State debt.

PART V. SETTLEMENT OF DISPUTES

Article 42. Consultation and negotiation

If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall. upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

Article 43. Conciliation

If the dispute is not resolved within six months of the date on which the request referred to in article 42 has been made, any party to the dispute may submit it to the conciliation procedure

specified in the annex to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations and informing the other party or parties to the dispute of the request.

Article 44. Judicial settlement and arbitration

Any State at the time of signature or ratification of the present Convention or accession thereto or at any time thereafter, may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures referred to in articles 42 and 43, that dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other party to the dispute has made a like declaration.

Article 45. Settlement by common consent

Notwithstanding articles 42, 43 and 44, if a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they may by common consent agree to submit it to the International Court of Justice, or to arbitration, or to any other appropriate procedure for the settlement of disputes.

Article 46. Other provisions in force for the settlement of disputes

Nothing in articles 42 to 45 shall affect the rights or obligations of the Parties to the present Convention under any provisions in force binding them with regard to the settlement of disputes.

PART VI. FINAL PROVISIONS

Article 47. Signature

The present Convention shall be open for signature by all States until 31 December 1983 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 June 1984, at United Nations Headquarters in New York.

Article 48. Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 49. Accession

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 50. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 51. Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna this eighth day of April, one thousand nine hundred and eighty-three.

ANNEX

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 43, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(*a*) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(*b*) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the appointment of the last of them, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any Party to the present Convention to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

(*b*) RESOLUTIONS ADOPTED BY THE CONFERENCE

Resolution concerning peoples struggling against colonialism, alien domination, alien occupation, racial discrimination and apartheid

The United Nations Conference on Succession of States in Respect of State Property, Archives and Debts,

Recalling the principles of international law, and in particular the principle of equal rights and self-determination of peoples embodied in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Emphasizing that the present Convention applies exclusively to the effects of a succession of States arising in accordance with international law and, more particularly, with the principles of international law embodied in the Charter of the United Nations,

1. *Recognizes* that the provisions of this Convention may not in any circumstances impair the exercise of the lawful right to self-determination and independence, in accordance with the Purposes and Principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, for peoples struggling against colonialism, alien domination, alien occupation, racial discrimination and *apartheid*;

2. *Recognizes* also that the peoples in question possess permanent sovereignty over their resources and natural wealth and their rights to development, information concerning their history and to the conservation of their cultural heritage;

3. *Declares* that the implementation of the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts by States acceding to independence subsequent to its adoption will be facilitated by the observance of the principle and the rights mentioned in paragraph 2 by administering Powers and other States.

Resolution concerning Namibia

The United Nations Conference on Succession of States in Respect of State Property, Archives and Debts,

Taking into account United Nations General Assembly resolution 2145 (XXI) of 27 October 1966, by which the General Assembly decided to terminate the Mandate of South Africa over Namibia and by which the United Nations assumed direct responsibility for the Territory until independence, and General Assembly resolution 2248 (S-V) of 19 May 1967, by which the United Nations Council for Namibia was established and entrusted with the responsibility of administering the Territory until independence,

Recalling the advisory opinion of the International Court of Justice of 21 June 1971 which declared that, the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from the Territory and thus put an end to its illegal occupation of the Territory,

Further recalling the relevant resolutions of the United Nations, in particular Security Council resolutions 385 (1976) which reaffirmed the territorial integrity and unity of Namibia and 432 (1978) which took note of paragraph 7 of General Assembly resolution 32/9 D (1977) declaring that Walvis Bay is an integral part of Namibia,

1. *Resolves* that the relevant articles of the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts shall be interpreted, in the case of Namibia, in conformity with United Nations resolutions on the question of Namibia;

2. *Resolves* that, in consequence, all the rights of the future independent State of Namibia should be reserved.[2]

NOTES

[1] The text of the Convention appeared in document A/CONF.117/14. The Convention has not yet entered into force.

[2] The Conference adopted four additional resolutions which are not reproduced here. See A/CONF.117/15, annex, Final Act of the Conference.

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. 305 (2 JUNE 1983): JABBOUR *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[3]

Non-renewal of fixed-term appointment—A staff member on a fixed-term appointment has no legal expectancy of renewal of his contract—Respondent's negligence in failing to extend to the applicant fair and just treatment

The applicant, who had been with the United Nations on a series of fixed-term appointments from 1961 to 1976, appealed the non-renewal of his fixed-term appointment.

The Tribunal stated that, although a staff member on a fixed-term appointment had no legal expectancy of renewal of his contract, nevertheless "after a staff member has been retained in service by a series of short-term contracts for many years and has rendered satisfactory services to the United Nations he can reasonably expect a measure of accommodation either in the form of extension or renewal of short-term contracts or by the respondent trying in good faith and earnestly to find him some alternative employment". The Tribunal observed that the respondent had been, in a variety of ways, negligent as an employer in failing to extend to the applicant fair and just treatment, and as a consequence the applicant had suffered. Accordingly, the Tribunal considered that the applicant was entitled to some compensation for the wrong administrative treatment he received and for the delay in the disposal of his appeal by the Joint Appeals Board due to procrastination by the respondent.

For the above reasons, the Tribunal awarded the applicant $2,500 in damages.

2. JUDGEMENT NO. 306 (2 JUNE 1983): GAKUU *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[4]

Non-renewal of fixed-term appointment—Discovery of false statement made by the applicant frustrates any reasonable expectation of renewal of his contract—Discretionary power of the respondent not to renew the contract

The applicant appealed against the non-renewal of his fixed-term appointment.

The applicant had been in the employment of the United Nations for less than two years when it was found that he had made false statement in his Personal History form.

The Tribunal observed that its jurisprudence had always maintained that if after long and loyal service and after a series of fixed-term and similar contracts a staff member was separated there must be a determination whether such a staff member could reasonably expect an extension. The Tribunal concluded that, whatever might have been the hope of the applicant for continued employment after the discovery by the respondent of the false statement, he could have no reasonable expectation of any extension.

As to the question whether the respondent had been influenced by improper motives or had failed to observe the basic procedural requirements, the Tribunal was hesitant to come to a definite conclusion on a matter of this nature, particularly as the respondent had been within his rights, both in terms of the contract and because of the false statements made by the applicant, to refuse further extension. Even if there had not taken place the incident in which the applicant's supervisor allegedly

assaulted him, and which the applicant believed had influenced the respondent's decision, the rights of the respondent not to renew the contract remained unimpaired.

For the above reasons, the Tribunal rejected the application.

3. JUDGEMENT NO. 310 (10 JUNE 1983): ESTABIAL *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[5]

Geographical distribution as basis for excluding promotion opportunity—The action constitutes a violation of Article 101.3 of the Charter of the United Nations and staff regulations 4.2 and 4.4—Excessively long delay on the part of the Administration in connection with the hearing of the applicant's appeal—The injury caused to the applicant by the Administration's refusal to take his candidature into consideration cannot be equated with the loss of salary since he did not have a right to promotion.

The applicant and the respondent disagreed as to whether the applicant's candidature for the post of Director of the Division of Recruitment had been ruled out without having been taken into consideration or examined.

The Tribunal found, on the basis of written communications from the Office of Personnel Services in the dossier, that the applicant had been excluded from consideration for appointment to the post in question because the position had been reserved for candidates from French-speaking African countries. The Tribunal held that the respondent's decision to rule out the applicant's candidature was tainted with errors of law and prevented the applicant from exercising his right to have his candidature for a vacant post examined on the basis of all the conditions established by Article 101.3 of the Charter of the United Nations and staff regulations 4.2 and 4.4. The Tribunal observed that it was not for the Secretary-General to alter these conditions laid down by the Charter and the Staff Regulations by establishing as a "paramount" consideration the search, however legitimate, for "as wide a geographical basis as possible", thereby eliminating the paramount consideration set by the Charter in the interests of the service—"the necessity for securing the highest standards of efficiency, competency and integrity". The applicant lost any chance of success that his candidature might have had if the correct procedure had been followed. The Tribunal held that the Administration's responsibility was therefore entailed and the injury thereby caused to the applicant must be remedied.

The applicant further requested the Tribunal to order the respondent to pay him compensation for the excessive delay in replying to the Joint Appeals Board's proceedings, which the Tribunal had already recognized in its Judgement No. 291.[6] The Tribunal additionally noted that the Secretary-General's reply to the applicant's request for review had been sent to him only after the Secretary-General had decided to fill the vacancy. The applicant had thus been informed indirectly and his request had been rejected without being told the reasons. The Administration then had waited nearly 18 months before communicating the reply to the Joint Appeals Board. The circumstances in which the applicant had been informed of the rejection of his request for a review and the excessive delay on the part of the Administration in connection with the hearing of his appeal, in particular, in sending its reply to the Joint Appeals Board, constituted a fault which entailed the responsibility of the Administration.

The Tribunal found that the injury caused to the applicant by the Administration's refusal to take his candidature into consideration in making the appointment to the vacant post while binding and restricting itself by legally erroneous conditions which automatically had eliminated the applicant, could not be equated with the loss of salary and allowances which the applicant had suffered as a result of not being promoted, since the applicant had not had a right to promotion. While the Secretary-General had been under the strict obligation to respect the rules of form and substance applicable in the case, he had also been free to choose among the various candidates.

In view of the overall circumstances of the case, the Tribunal decided that the applicant should be fairly compensated for the injury he had sustained as a result both of the refusal to take his candidature into consideration and of the delays caused in the hearing of his appeal, by the award of overall compensation equivalent to two months of his net base salary.

4. JUDGEMENT NO. 317 (21 OCTOBER 1983): CUNIO *v.* THE SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION[7]

Extent of the power or control of the Tribunal in relation to a unanimous conclusion of the Advisory Joint Appeals Board that an appeal is frivolous within the meaning of article 7, paragraph 3, of the Tribunal's statute—Exclusion of the applicant from hearings of the Advisory Joint Appeals Board—The Board is not competent to examine substantive questions of professional efficiency

The applicant impugned a decision whereby the Secretary-General had accepted a recommendation of the Advisory Joint Appeals Board that the applicant's appeal be rejected as frivolous.

The Tribunal recalled the terms of article 7, paragraph 3, of its statute which reads as follows:

> "In the event that the recommendations made by the joint body and accepted by the Secretary-General are unfavourable to the applicant, and in so far as this is the case, the application shall be receivable, unless the joint body unanimously considers that it is frivolous."

The Tribunal furthermore recalled that in its Judgements No. 288 (*Marret*)[8] and No. 269 (*Bartel*),[9] it had ruled that it was not precluded from considering whether a joint body's conclusion based on the frivolous character of the appeal was vitiated by some irregularities.

In this connection, the Tribunal expressed dissatisfaction with the Advisory Joint Appeals Board's action in excluding the applicant from hearings at which her superiors had been invited to be present and to make statements on the substance of her appeal. It felt constrained to observe that it could not sanction any practice by which a joint body would act from the beginning of its proceedings to exclude an appellant from meetings convened to hear individuals who might take positions in opposition to those advanced by the appellant.

The Tribunal added that it would accept the exclusion of an appellant should he or she by misconduct demonstrate that his or her presence was disruptive of the joint body's proceedings; in that case the appellant could be warned and if, following a warning, the misconduct continued, doubtless the joint body could properly exclude the appellant and admit only his or her counsel. But it was wrong in principle to exclude the staff member from the outset of proceedings.

The Tribunal did not, however, consider that the Board's proceedings had been vitiated by any irregularity that might have arisen from limiting participation at the two meetings to the applicant's counsel. Had the applicant participated in those meetings, she would have been able at best to provide information and opinions concerning her competence in her work. But evaluation of professional competence and efficiency was beyond the competence of the Board pursuant to ICAO General Secretariat Instruction GSI-1.4.7, paragraph 16, which provides that:

> "In the case of a termination or other actions on the grounds of inefficiency or relative efficiency, the Board shall not consider the substantive question of efficiency, but only evidence that the decision had been motivated by prejudice or by some other extraneous factor."

With respect to the applicant's claim that the Advisory Joint Appeals Board had failed to consider relevant evidence, the Tribunal reiterated that the Board was not competent to determine inefficiency or relative efficiency and that its failure to consider evidence related to that issue was not of such a character as to vitiate its proceedings.

For the above reasons, the Tribunal rejected the application.

5. JUDGEMENT NO. 320 (28 OCTOBER 1983): MILLS *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[10]

Request for tax reimbursement on a partial lump-sum withdrawal benefit from the United Nations Joint Staff Pension Fund—Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the organizations applying the United Nations Common System of Salaries and Allowances—Question whether the Agreement is a source of rights and obligations for staff members—Characterization of the reimbursement of the taxes imposed upon the lump-sum payment as "terminal expenses"—Situations resulting from transfer to and from the United Nations should not be resolved

in such a way as to create anomalies—Principle of equality of treatment among the staff members of the United Nations

The applicant would have been due for retirement on 31 October 1979 but was, prior to that date, transferred to FAO with an initial assignment until 31 October 1981, which he accepted on the express understanding that his acceptance would not jeopardize his acquired rights under his permanent appointment with the United Nations.

On 31 October 1981, having completed his fixed-term appointment and attained the FAO retirement age of 62, the applicant exercised the option under article 29 (*d*) (i) of the Pension Fund Regulations to commute into a lump sum one third of the actuarial equivalent of his retirement benefit and subsequently received a lump-sum payment of $201,534.50 upon which he was assessed and paid United States income taxes. He then requested reimbursement of that part of the tax attributable to his lump-sum withdrawal benefit which related to his service with the United Nations. His request having been rejected by the Assistant Secretary-General for Personnel Services, he brought the case before the Tribunal.

The crucial question in the Tribunal's view was whether the applicant had lost his entitlement to tax reimbursement owing to the fact that shortly before the date on which he would have attained the mandatory United Nations retirement age he had transferred to FAO, where he had worked under a fixed-term appointment until his retirement.

The respondent based his position on the "principle that a staff member moving from organization to organization within the United Nations common system can only retire once, at which time his terminal and pension entitlements are established under the regulations and rules of the organization from which he separates." The respondent made reference to the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations applying the United Nations Common System of Salaries and Allowances (CO-ORDINATION/R.931/Add.1), sub-paragraphs 8 (*a*) and (*b*) of which read as follows:

> "(*a*) A staff member who is transferred will cease as from the date of transfer to have any contractual relationship with the releasing organization, which will therefore be under no obligation to re-employ him should he leave the receiving organization.
>
> "(*b*) As from the date of transfer, the entitlements of the staff member will be governed by his contractual relationship with the receiving organization."

The Tribunal, however, observed that the Agreement in question also contained the following provision:

> "1 (*b*) The Agreement . . . does not of itself give the staff member rights which are enforceable against an organization. It merely sets out what the organizations will normally do. The Agreement can only be enforced to the extent that either the organizations have included appropriate provisions in their administrative rules or the parties have accepted to apply it in the individual case."

In the view of the Tribunal, it was evident from this provision that the Agreement was generally not *per se* a source of rights and obligations for staff members, and the respondent's argument that the Agreement did bind the applicant because it was reflected in the terms and conditions of the FAO appointment was unacceptable because the FAO appointment merely mentioned that the case was an "inter-agency transfer" and said nothing about the Agreement. The Tribunal recalled that in its Judgement No. 237 (*Powell*)[11] it had stated that the one-third lump-sum payment might be regarded as a terminal payment, from which it flowed that the reimbursement of the taxes imposed on the lump-sum payment was also a terminal expense. On the question whether the situations resulting from transfers from and to the United Nations must necessarily be resolved in a way creating anomalies, the Tribunal observed that under its paragraph 1 (*b*) the Agreement "merely sets out what the organization will [in case of transfer] normally do". Normally, in the view of the Tribunal, the organizations would not adversely affect legitimate expectations of staff members, particularly of those with long years of service; they would seek to avoid inequities and would not act in a way which would prejudice certain categories of staff and give undeserved advantages to others. Inequities

could be avoided by pro-rating for the purpose of tax reimbursement the lump sums received both by those leaving and by those joining the United Nations.

The Tribunal was not convinced by the argument of the respondent suggesting a measure of illegitimacy in the applicant's effort to have the benefit of extended service in FAO and at the same time maintain his claim for reimbursement of taxes on the lump-sum payment he had expected from the Pension Fund on the basis of his years of service with the United Nations. The Tribunal observed that, as tax reimbursement was regarded as a terminal payment due to the applicant by the United Nations for work done for the Organization during the period of his service, the fact that the applicant has continued working for a different employer could not be considered as either reprehensible or legally depriving him of the fruits of his former work. The Tribunal added that to deny the applicant reimbursement of the national income taxes levied on that portion of the lump sum pension payment which was the fruit of his service to the United Nations would also run counter to the overriding principle of equality of treatment among the staff members of the United Nations.

In the light of the above, the Tribunal rescinded the impugned decision and ordered the Secretary-General to reimburse to the applicant a sum equivalent to the taxes he would have paid on the lump-sum pension benefit to which he would have been entitled had he retired from the United Nations in 1979, and to pay him interest on that sum.[12]

B. Decisions of the Administrative Tribunal of the International Labour Organisation[13]

1. JUDGEMENT NO. 550 (30 MARCH 1983): GLORIOSO *v.* PAN AMERICAN HEALTH ORGANIZATION (WORLD HEALTH ORGANIZATION)[14]

Irreceivability of a claim on account of non-exhaustion of internal means of redress—Decision of the Director of PAHO refusing to consider a complaint as having allegedly been already disposed of by a previous judgement—Quashing of that decision as tainted with a mistake of law—Only exceptional circumstances warrant compensation for distress and moral injury

Further to an appeal by the complainant, the Board of Inquiry and Appeal had recommended repayment to her of such medical costs resulting from her situation in PAHO as could be substantiated by her personal physician and verified by the organization's medical referee. The recommendation had been endorsed by the Director of PAHO in a decision dated 18 June 1980.

The complainant subsequently claimed repayment of medical costs she had allegedly incurred as a result of the way PAHO had treated her. On the recommendation of the PAHO Board of Inquiry and Appeal, the Administration decided to repay some of the above-mentioned costs. The complainant went again to the Board to claim repayment of further costs alleging that its earlier recommendations had not been respected. The Board found that its earlier recommendations were "under implementation" and declared the appeal irreceivable. The conclusions of the Board were endorsed by the Director.

The Tribunal recalled that under article VII of its statute there were two conditions of receivability of a complaint, namely, exhaustion of internal remedies and respect of time-limits. With respect to the first condition, the Tribunal noted that the relevant staff rule precluded an appeal to the Board of Inquiry and Appeal until an authorized official had taken a final decision. It observed that a final decision had been taken by the Administration on a first series of claims but that on subsequent claims the complainant had not sought a final decision. The Tribunal concluded that although she had submitted to the Board of Inquiry and Appeal and to the Director the general question of her medical expenses, the complainant had exhausted the internal means of redress only in respect of the above-mentioned first series of claims, and that her complaint was not receivable in relation to the subsequent claims.

On the merits, the Tribunal noted that, in endorsing the conclusion of the Board that the complainant's claim was *res judicata*, the Director appeared to have relied on Judgement No. 450.[15] The Tribunal, however, observed that that judgement did not dispose of the question of the repayment of medical expenses which PAHO had agreed to bear and therefore did not have the authority of *res judicata* in the matter. In fact, both the Director and the Board were required to take the matter up. The Director's refusal to consider the claim for repayment of medical expenses therefore suffered from a mistake of law. The Tribunal accordingly quashed the impugned decision and ordered the Director to ascertain whether due effect had been given to his decision of 18 June 1980.

Under a second head of claim, the complainant sought the "expungement of all correspondence" about her of which she had not been given a copy. The Tribunal found this claim irreceivable as the internal means of redress had not been exhausted.

The third claim related to damages for distress and moral injury. The Tribunal observed that friction, in greater or lesser degree, was the inevitable adjunct of everyday life and that to award restitution for every sort of emotional distress would be to invite ceaseless litigation. It found that there were in the present case no exceptional circumstances which alone warranted compensation for such distress.

2. JUDGEMENT NO. 551 (30 MARCH 1983): SPANGENBERG *v.* EUROPEAN PATENT ORGANIZATION[16]

Complaint against a decision denying promotion on the basis of rules applicable to staff members of a specific nationality—Principle of equal treatment among officials of an international organization—Admissibility in certain circumstances of departures from this principle aimed at securing a balanced staff

The complainant had been recruited from the German Patent Office to a post in Grade A-3 in October 1979. His application for a post at Grade A-4 was rejected on the ground that he did not meet the seniority requirement applicable to nationals of the Federal Republic of Germany.

The Tribunal noted that the organization, because of the circumstances in which it had been created, had found it necessary, in order to avoid starting off with a staff that was not nationally well balanced, to offer to potential employees who were not nationals of the Federal Republic, for a transitional and limited period a reduction in the minimum number of years of experience required for recruitment and in the seniority requirement for promotion. The Tribunal furthermore noted that the complainant, while agreeing that an organization could offer special benefits to staff recruited abroad, argued that such differential treatment should not apply to promotion.

The Tribunal expressed the following views on the matter:

> "A system which discriminates in the matter of promotion between officials according to their nationality seriously offends against the principle of equal treatment and should as a general rule be forbidden. Although international organizations may determine quotas for recruitment for the purpose of preserving or developing the international character of the staff, officials are normally entitled to objective treatment after they have taken up duty. This is a general rule. If in any particular case it can be shown that a scheme for determining quotas on recruitment would not work satisfactorily unless it was extended in a limited way to subsequent promotion, an exception may be justified.
>
> "In the unusual circumstances of this case, in which it proved necessary to recruit many officials of the same nationality to establish a new secretariat, the Tribunal holds that the Administrative Council was free to lay down for a strictly limited period conditions for promotion which differed according to nationality. When as here the object is to secure a balanced staff and there is no evidence to suggest any abuse of authority by the Administration designed to show favour or cause detriment to particular staff members, the Tribunal holds that its action was not unlawful."

As regards the complainant's argument that the policy of accelerated promotion for staff who were not nationals of the Federal Republic was not introduced until after the date of his contract of employment and should therefore not be able to prejudice him, the Tribunal observed that promotion

was a matter within the discretion of the President and Administrative Council and that the staff member had no right or expectation that the rules or policy applicable at the date of his contract would remain unchanged.

3. JUDGEMENT NO. 566 (20 DECEMBER 1983): BERTE AND BESLIER *v.* EUROPEAN PATENT ORGANIZATION[14]

Salary deductions of staff members on strike—A special rule for calculating deductions cannot be introduced by the organization in breach of staff regulations

The complainant, staff members of EPO, took part in a series of strikes concerning working hours from 12 May to 18 June 1981. By a circular of 20 May 1981, the Chief of Personnel introduced a method of calculating salary deductions for services not rendered which was less favourable to the staff members than the one established under the existing EPO Service Regulations. The rule was applied retroactively to the complainants for salary deductions for the periods during which they were on strike.

The complainants submitted the case to an Appeals Committee, and in January 1982 EPO refunded the difference between the sums withheld and the lesser sums the complainants said it was entitled to withhold. However, it did so *ex gratia* and without payment of interest. Further strikes occurred in September, October and December 1982. The complainants took part and deductions were again made from their salaries in accordance with the circular of 20 May 1981. The Appeals Committee recommended allowing their claims to interest for the period for which each sum had been withheld, but on 15 December 1982, the President of the Office rejected the claims. That and the circular of 20 May 1981 were the decisions they impugned.

The complainants contended that the Chief of Personnel had no authority to issue the circular or to apply it retroactively. Article 65 (1) *b* of the Service Regulations prescribing a method of calculating remuneration payable to staff members for services rendered was, in their view, the only rule applicable to the case. Accordingly, they moved that the Tribunal quash the decision of 15 December 1982, declare unlawful the circular of 20 May 1981 and order payment of the sums and interest wrongly withheld and costs.

The Tribunal held that the strikes were lawful and that a contractual relationship continued to exist between the organization and the staff members on strike; the Service Regulations should therefore apply and article 65 was the rule by which to calculate salary deductions. In the absence of any exceptions provided in article 65, the Tribunal considered that the organization had no legal authority to establish a special rule by a circular.

The Tribunal observed, however, that even where a strike was not an abuse of right an organization would of course be entitled to make special rules on salary deduction different from the rules on absence from duty for other reasons. But such rules must be incorporated into the staff regulations in accordance with the prescribed procedure for the making and approval of rules. The executive head was not competent to adopt such rules, let alone such rules which were retroactive. To accept EPO's submissions would be to allow the imposition of a covert disciplinary sanction. The EPO staff had exercised an acknowledged right and had not committed any misconduct.

For the above reasons, the Tribunal ruled that the impugned decisions were unlawful and must be set aside. The Tribunal ordered that the complainants be paid the sums wrongfully deducted from salary and interest at 10 per cent per year on the sums wrongfully withheld with effect from the date of payment of each corresponding monthly salary up to the date of repayment; and awarded 1,000 guilders to each of the complainants as costs.

4. JUDGEMENT NO. 570 (20 DECEMBER 1983): ANDRÉS, BLANCO AND GARCIA *v.* EUROPEAN SOUTHERN OBSERVATORY (NO. 2)[14]

Application for review of earlier judgements of the Tribunal—The finality of the Tribunal judgements does not preclude the exercise by the Tribunal of a limited power of review provided certain conditions are met

The Organization requested the review of Judgements Nos. 507[16] and 508.[17]

The Tribunal first considered the general question of the nature of its power of review. It held that article VI of its statute providing that the judgements of the Tribunal shall be final and without appeal did not purport that errors arising through accident or inadvertence or the like could ever be corrected, and thus the provision did not preclude the exercise of a limited power of review. The Tribunal noted that cases in which the power of review might be exercised include an omission to take account of particular facts; a material error involving no exercise of judgement and therefore distinguishable from misappraisal of fact which did not warrant review; an omission to pass judgement on a claim; and the discovery of a new fact.

The Tribunal found that the organization failed to show with convincing evidence that its pleas fell into any of the above categories of cases or that the case was exceptional in which insistence upon the principle of finality would be unjust.

The Tribunal further considered an application made by the respondent in their surrejoinder that the compensation ordered by Judgements Nos. 507 and 508 should be paid in United States currency. It upheld the organization's objection to this application on the ground that the application had no place either in response to an application for review or in a surrejoinder.

For the above reasons, the Tribunal decided to dismiss the application for review of Judgements Nos. 507 and 508 and the application that the sums ordered to be paid by the said judgements should be paid in United States currency and to order payment of $500 to each respondent as costs.

5. JUDGEMENT NO. 580 (20 DECEMBER 1983): TEVOEDJRE *v.* INTERNATIONAL LABOUR ORGANISATION AND MR. FRANCIS BLANCHARD[14]

Terms of competence of the Tribunal—Retirement age and the special position of the Director-General of the organization—Scope of the principles of equality

The complainant, a citizen of Benin born in 1929, was a Deputy Director-General in ILO and was presented by his Government as a candidate for the post of Director-General of ILO in the election to be held by the Governing Body of ILO on 1 March 1983. Mr. Blanchard, the incumbent, a French citizen born in 1916, made it known that he would accept a further term as Director-General. The complainant wrote to the offices of the Governing Body to ask that the Tribunal be invited to state whether article 11.3 of the Staff Regulations, which set an official's 65th birthday as the latest date for his retirement, applied to the Director-General. The request was refused. After several representations made by the complainant and the Government of his country to the Governing Body advocating the disqualification of any candidate over the age of 65, and in view of the refusal of the Governing Body to do so, the complainant's Government withdrew his candidacy on 1 March 1983. On the same day, Mr. Blanchard, as sole candidate, was elected for the further five-year term.

The complainant submitted that the decision by the Governing Body not to apply to Mr. Blanchard (the second defendant in the present case) the retirement age of 65 ran counter to the principles of legality and equal treatment. The former required that an authority comply with the rules in force even though it had adopted them itself. The Governing Body was not free to ignore the rule on the retirement age in article 11.3 of the Staff Regulations, which applied *mutatis mutandis* to the Director-General as to any other staff member. That the Director-General was a staff member was clear from articles 0.2 and 2.1 and 2.2 of the Regulations. The application of the rule on retirement age to the Director-General was also required by the principle of equality. The complainant contended that the decision by the Governing Body had caused him injury in that the Government of Benin withdrew his candidacy; by 1989 he would be too old to stand for election, and there was injury to his career. He invited the Tribunal to declare unlawful the admission of the second defendant's candidacy and therefore to quash the Governing Body's decision of 1 March 1983; subsidiarily, to award him token damages of one Swiss franc for moral injury, the Swiss-franc equivalent of $US 200,000 ($US 40,000 a year for five years) for material injury and SwF 30,000 in costs.

ILO challenged the competence of the Tribunal on three grounds: (1) the impugned decision had been taken by the Governing Body; (2) it had been an appointment by a collective body to an elective post, and therefore a policy decision; and (3) its purport had been to appoint the Director-General, who was not a member of the ILO staff.

The Tribunal observed that in accordance with its statute it was competent to hear complaints alleging non-observance of the terms of appointment of officials and of provisions of the Staff Regulations, without reference to who had taken the alleged wrongful decision. Furthermore, the claim that the age limit had not been observed did not involve a matter of policy but rather a matter within the purview of the Tribunal's powers. Besides, if the Director-General was not subject to the rule which the complainant alleged had been broken, the complaint would be dismissed not for lack of the Tribunal's competence but for lack of merit.

On the merits of the case, the Tribunal examined the allegations of the complainant summarized above. As to the question of legality, the Tribunal observed that article 11.3 set the normal age of retirement at 60 and vested in the Director-General the power to extend an appointment up to the age of 65 in particular instances. The rule did not apply to an official appointed for a fixed term to a post other than one approved by the General Conference or the Governing Body. Furthermore, in empowering the Director-General to keep some officials up to the age of 65, the rule implied that his subordinates might not stay on after reaching that age, but it did not make the Director-General himself subject to the rule. It did not vest in the Governing Body in regard to the Director-General the power which the Director-General had in regard to his subordinates. As to the Director-General, the question of age limit had been left open.

Concerning the question of the principle of equal treatment, the Tribunal observed that that principle did not mean that the same rules might be uniformly applied to everyone. What it meant was that like facts required like treatment in law but different facts allowed of different treatment. The impugned decision was compatible with the principle as so stated. The Director-General's place in the organization was beyond comparison. Because of his unique status and position of pre-eminence, the Governing Body was at liberty to set no age limit and in so deciding was not in breach of the principle of equality.

For the above reasons, the Tribunal dismissed the complaint.

6. JUDGEMENT NO. 595 (20 DECEMBER 1983): BENYOUSSEF *v.* WORLD HEALTH ORGANIZATION[18]

Complaint directed at a decision terminating a fixed-term appointment for reasons of health—A complainant cannot alter the substance of his original claim after filing his complaint—In case of termination, the period of notice should begin on the date of notification of the termination decision—The finding of fact serving as a basis for the decision may however be made at a date prior to that of the decision

The complainant impugned a decision terminating his fixed-term appointment under staff rule 1030 for reasons of health.

The Tribunal considered the main question in the case to be whether the conditions set in staff rule 1030.2 for termination for reasons of health had been fulfilled. It recalled that staff rule 1030.2.1 set forth the first of those conditions as follows: "The medical condition must be assessed as of long duration or likely to recur frequently." The Tribunal noted that the complainant had expressly declined to allow disclosure to the Tribunal of the medical files in the hands of the WHO staff physician, a position which, the Tribunal observed, he was entitled to take, inasmuch as only the patient could release his doctor from professional secrecy. The Tribunal also noted that at a subsequent stage the complainant's counsel had indicated that his client agreed to waive professional secrecy. In this connection, the Tribunal recalled that the purpose of the procedural rules it applied was to enable the parties not only to submit the full pleadings but also to hold an exchange of briefs in which they enjoyed complete freedom of speech. It pointed out that, while the existence of rules of this liberal kind was necessary if justice was to function properly, the parties must not be allowed to delay the judgement by resorting to dilatory action, this being one reason why a complainant could not alter the substance of his original claim after filing his complaint. The Tribunal recalled that as a rule it allowed each side to file no more than two briefs and that only in exceptional cases did it admit further material. It pointed out that the complainant had consistently declined throughout the written proceedings to allow discovery of his medical file and could therefore not at a late stage be allowed to alter the basis of his case.

Proceeding on the basis of the complainant's refusal to allow discovery of his medical file, which precluded study of the report of the WHO physician and of the reasons for his diagnosis, the Tribunal noted that in support of his claim that his illness was only temporary the complainant indicated that he had carried out research and missions since leaving WHO. The Tribunal held that that did not necessarily mean that one condition set forth in staff rule 1030.2 had not been fulfilled. As for the medical certificates produced by the complainant, the Tribunal observed that they had no value as evidence since the complainant had refused to let the WHO physician state his opinion, thereby destroying the parity which should exist between the parties, and which the Tribunal could only restore by discounting the medical certificates.

On the complainant's request for an expert inquiry, the Tribunal stressed that it was never bound to order such an inquiry and would do so only when necessary to ascertain the truth. The Tribunal stated that such a step did not appear to be necessary in the present instance, adding that its stand in the matter was no more than the consequence in law of the fact of the complainant's refusal to allow disclosure of the medical file. The Tribunal concluded from the foregoing that the complainant should be deemed incapable for reasons of health of performing his former duties in WHO.

With respect to the second condition for termination for reasons of health which was set forth in staff rule 1030.2.2 in the following terms: "reassignment possibilities shall be explored and an offer made if this is feasible," the Tribunal observed that the evidence did not reveal whether WHO had complied with this requirement, and that if WHO had failed to comply with the above rule, then the complainant would be right to contend that the impugned decision was in breach of staff rule 1030.2.2. The Tribunal, however, noted that the reason why the point remained obscure was that the complainant would not allow the Tribunal access to the whole file. It also remarked that this plea was not included in the complainant's internal appeal and that, in any case, there was no formal defect. The Tribunal therefore rejected the claim on its merits.

The complainant further contended that the impugned decision was unlawful because it was retroactive in effect. The Tribunal noted that staff rule 1030.3.1 provided that a staff member whose appointment was terminated for reasons of health "shall be given three months' notice", and staff rule 1030.4 stipulated that he should receive a termination payment. The Tribunal held that, while the complainant had not, in his internal appeal seeking the quashing of the termination, pleaded breach of staff rule 1030.3, he was not precluded from doing so for the first time before the Tribunal, inasmuch as his plea fell within scope of the claim he had submitted to WHO and was therefore not in breach of staff rule 1240.2.

On the substance of the plea, the Tribunal found that the complainant had received the letter of termination of 9 June 1981 and that the period of notice should have begun on that date, with the termination grant and other benefits being calculated and paid accordingly. It held that any other conclusion would offend against the rule that a decision must not be retroactive in effect, adding that no organization might retroactively alter at will the position of staff and that, furthermore, the effect of WHO's arrangement might be to do away with one of the benefits prescribed in staff rule 1030.3. The Tribunal thus concluded that the impugned decision should be set aside on that point and that WHO should review the complainant's administrative position.

The Tribunal held, however, that the complainant could not plead the rule against retroactivity in support of his contention that WHO was wrong to take 2 April 1981 as the material date for determining his medical condition. It observed that the rule did not preclude making the finding of fact at a date prior to that of the decision and that once it was correctly decided that the complainant's medical condition came within staff rule 1030.2.1 it was irrelevant that the Board took 2 April as the material date. To hold any other view, the Tribunal remarked, would obviously make it impossible to terminate an appointment for reasons of health.

In the light of the foregoing, the Tribunal quashed the impugned decision in so far as it was in breach of staff rules 1030.3.1 and 1030.3.4, and the complainant was referred back to WHO for the correction of his administrative position prior to termination. The Tribunal also decided that the sums payable to the complainant should bear interest at 10 per cent a year from the date on which they were due and awarded him 2,000 Swiss francs as costs. The remaining claims were dismissed.

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[1] In view of the large number of judgements which were rendered in 1983 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. 301 to 320 of the United Nations Administrative Tribunal, Judgements Nos. 543 to 595 of the Administrative Tribunal of the International Labour Organisation and Judgements Nos. 13 and 14 of the World Bank Administrative Tribunal, see, respectively: documents AT/DEC/301 to 320; *Judgements of the Administrative Tribunal of the International Labour Organisation:* 50th Ordinary Session and *ibid.*, 51st Ordinary Session; and *World Bank Administrative Tribunal Reports*, 1983, part II.

[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] Mr. Samar Sen, Vice-President, presiding; Mr. Herbert Reis and Mr. Roger Pinto, Members.

[4] Mr. Endre Ustor, President; Mr. Samar Sen, Vice-President; Mr. Roger Pinto, Member; and Mr. T. Mutuale, Alternate Member.

[5] Mr. Arnold Kean, Vice-President, presiding; Mr. Luis de Posadas Montero and Mr. Roger Pinto, Members.

[6] For the text of the judgement, see *Judgements of the United Nations Administrative Tribunal*, Numbers 231 to 300, 1978-1982 (United Nations Publications, Sales No. E.83.X.1).

[7] Mr. Samar Sen, Vice-President, presiding; Mr. Herbert Reis and Mr. Roger Pinto, Members.

[8] For a text of the judgement, see *Judgements of the United Nations Administrative Tribunal*, Numbers 231 to 300, 1978-1982 (United Nations Publication, Sales No. E.83.X.1).

[9] For a summary of the judgement, see *Juridical Yearbook, 1981*, p. 112.

[10] Mr. Endre Ustor, President; Mr. Luis de Posadas Montero and Mr. Roger Pinto, Members.

[11] For a summary of the judgement, see *Juridical Yearbook, 1979*, p. 129.

[12] In a dissenting opinion, one Member of the Tribunal expressed the view that the applicant, having retired as a staff member of FAO, was only entitled at the time of his retirement to the rights and benefits due to the staff members of that organization and could not claim a benefit which was only due to those who retired as staff members of the United Nations. He stressed that the applicant was eligible for the benefit he claimed neither at the time when he left the service of the United Nations nor at the time of retirement. He furthermore observed that the Tribunal could have based its judgement on the fact of the existence of an undeniable responsibility on the part of the United Nations for not having duly and timely informed the applicant as to what his entitlements in his new post would be, thus failing to comply with paragraph 1 (*c*) of the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations applying the United Nations Common System of Salaries and Allowances.

[13] The Administrative Tribunal of the International Labour Organisation is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment, and of such provisions of the staff regulations as are applicable to the case of officials of the International Labour Office and of officials of the international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1983, the World Health Organization (including the Pan American Health Organization (PAHO)), the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the Interim Commission for the International Trade Organization (General Agreement on Tariffs and Trade), the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organization for the Safety of Air Navigation, the Universal Postal Union, the European Patent Organization, 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, the Central Office for International Railway Transport and the International Center for the Registration of Serials. 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.

[14] Mr. André Grisel, President; Mr. Jacques Ducoux, Vice-President; and Lord Devlin, Judge.

[15] For a summary of the judgement, see *Juridical Yearbook, 1981*, p. 127.

[16] For a summary of the judgement, see *Juridical Yearbook, 1982*, p. 149.

[17] For a text of the judgement, see *Judgements of the Administrative Tribunal of the International Labour Organisation:* 48th Ordinary Session.

[18] Mr. André Grisel, President; Mr. Jacques Ducoux, Vice-President; and Sir William Douglas, Deputy Judge.

Chapter VI

SELECTED LEGAL OPINIONS OF THE SECRETARIATS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Legal opinions of the Secretariat of the United Nations
(Issued or prepared by the Office of Legal Affairs)

1. QUESTION WHETHER A TRANSNATIONAL CORPORATION IS LEGALLY OBLIGATED TO "COMPLY WITH" OR TO "OBSERVE" A UNITED NATIONS RESOLUTION—LEGAL CHARACTER OF UNITED NATIONS RESOLUTIONS

Memorandum to the Executive Director of the Centre on Transnational Corporations

1. I refer to your memorandum of 2 May 1983 on the code of conduct of transnational corporations in which you asked my view on the following formulation:

> "Transnational corporations should comply with United Nations Security Council decisions concerning their activities in [name of a Territory] and, where applicable, observe all other relevant United Nations resolutions."

2. The proposed formulation raises a complicated question of whether a transnational corporation is legally obligated to "comply with" or to "observe" a United Nations resolution. The determination of the legal effects of a particular United Nations resolution is a complex matter requiring in-depth study of the nature, intention and purpose of the resolution involved. Your present formulation is further complicated by the fact that it refers not only to Security Council resolutions but also to "all other relevant United Nations resolutions". As you know, not all United Nations resolutions have binding force and even where a resolution is binding the problem arises whether it can be directly binding on transnational corporations. A decision of the Security Council under Chapter VII, for example, is a binding act of an international character and creates an obligation on the States to which it is addressed. But even Security Council decisions of this nature are not self-executing in the sense that they can be directly enforced by the Security Council within the jurisdiction of States, nor automatically binding on transnational corporations before first becoming part of domestic law. Such decisions create a binding international legal obligation, but the manner in which this obligation is translated into domestic law varies according to the legal system which prevails in each particular jurisdiction.

3. While some national constitutions contain general references to international organizations, such provisions usually fall short of incorporating decisions of international organizations into domestic law in the same way as many constitutions do with regard to treaties and international customs. Generally speaking, therefore, some domestic action of an executive, legislative or administrative nature is required to translate United Nations decisions into binding and enforceable domestic law.

4. On several occasions General Assembly and/or Security Council resolutions have condemned certain actions of certain transnational corporations (e.g., General Assembly resolution 35/206 C of 16 December 1980, para. 5). But whenever transnational corporations are called upon to take or to refrain from taking certain actions, the General Assembly and the Security Council resolutions normally impose the obligation on the States or Governments concerned (e.g., Security Council resolution 418 (1977) of 4 November 1977). As a rule, United Nations resolutions do not address directly transnational corporations on such matters.

5. Several ways may be considered to deal with the problem you raise. You may wish to consider restricting the reference to *binding* resolutions, or replacing *inter alia* "comply with" and "observe"

by such words as "taking into account" or "should not act in such a way as to be inconsistent with the decision . . . " Even with these changes, the formulation is not completely satisfactory for obvious reasons. An alternative might be to transfer this paragraph, which is now under chapter III, dealing with actions of transnational corporations, to chapter IV or V, dealing with the treatment of transnational corporations and international corporations respectively. It would seem more appropriate to deal with this question in either of these two chapters, where the States or Governments may be called upon, for example, to require transnational corporations not to act in contravention of United Nations resolutions.

6 May 1983

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2. LEGAL MEANING AND IMPLICATIONS OF THE WORDS "EXISTING INTERNATIONALLY RECOGNIZED" AND "EXISTING INTERNATIONAL" AS QUALIFICATIONS OF "BOUNDARIES" IN, RESPECTIVELY, THE 1981 DECLARATION ON THE INADMISSIBILITY OF INTERVENTION AND INTERFERENCE IN THE INTERNAL AFFAIRS OF STATES AND THE 1970 DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

Memorandum to the Under-Secretary-General for Special Political Affairs

1. I refer to your memorandum dated 5 May 1983, in which you requested our opinion on the legal meaning and implications of the words "existing internationally recognized" and "existing international" as qualifications of "boundaries" in, respectively, paragraph 2, II, (*a*) of the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States (General Assembly resolution 36/103 of 9 December 1981) and the fourth paragraph of the section devoted to the principle of non-use of force 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 (General Assembly resolution 2625 (XXV) of 24 October 1970). You also asked us to consider the legal implications of referring in any particular text to the inviolability of "international boundaries" without further qualifications.

2. We should like to note first that the general prohibition of the threat or use of force is a well-established rule of international law as evidenced in such important legal documents as the Kellogg-Briand Pact of 1928,[1] the Rio de Janeiro Anti-War Treaty (Non-Aggression and Conciliation) of 1933[2] and the Helsinki Final Act of the Conference on Security and Co-operation in Europe (1975).[3] This customary rule is restated and reinforced in singular clarity in Article 2, paragraph 4, of the Charter of the United Nations:

> "All Members 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."

Under the Charter, the use of force is justified only in two situations: self-defence (Article 51) and actions authorized by the Security Council under Chapter VII of the Charter. Otherwise this prohibition is comprehensive and all-embracing. It prohibits use of force under all circumstances, including violation of frontiers by force. Furthermore, the obligation is to be observed under all circumstances, irrespective of and without prejudice to the substantive issues or merits of the case. It is also generally recognized that, as a corollary, all disputes, including territorial disputes, should be settled by peaceful means. It should be stressed that the threat or use of force is prohibited as a means of realizing claims and settling disputes. That prohibition does not itself relate to or prejudice the existence of claims and disputes. The fact that the threat or use of force in international relations is prohibited as a means of realizing claims and settling disputes with respect to international boundaries does not in any way imply that such claims and disputes themselves are not legitimate under international law. The essence is that territorial claims cannot be enforced and boundary disputes cannot be settled

by the use of force. It follows logically that the inadmissibility of the threat or use of force for settlement of boundary disputes or the enforcement of territorial claims does not prove anything regarding the recognition or non-recognition of the boundaries in question. The prohibition of the threat or use of force applies to all existing boundaries, generally recognized or not, which in fact separate one State from another. This has been accepted in international practice and supported by opinions expressed by well-known international jurists.[4] It suffices to refer to the Helsinki Final Act of 1975, which lists in its Declaration on Principles Guiding Relations between Participating States inviolability of frontiers (principle III) in connection with the non-use of force (principle II) but which contains also the notion of the "peaceful change" of territorial jurisdiction (principle I). The States participating in the Conference on Security and Co-operation in Europe found this acceptable in spite of the existence of a number of frontiers in Europe the origins, character or status of which continued, or continue, to be contested. In this connection we should also like to point to the importance which the Organization of African Unity and the African States attribute to the inviolability of the existing colonial boundaries quite irrespective of the recognition of the lawfulness of their origins.[5]

3. The legislative history of the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex) confirms this view. As you know, the Declaration was the product of several years of careful work and detailed negotiations in the Special Committee appointed for preparing the Declaration. The General Assembly unanimously adopted the instrument and many States have since regarded it as an important political and legal document and a source of international law.

4. In the initial stage of formulating the 1970 Declaration on Friendly Relations, there was immediate agreement in the Special Committee on the unqualified nature of the principle of inviolability of international boundaries as a basic concept. Several States suggested that the concept be extended even further to cases where only "international lines of demarcation" existed. However, several other States resisted this proposal. During the discussions, it was stressed that the objective of the principle of non-use of force was to prohibit the violation of all boundaries, even those of a *de facto* character. It was also pointed out in this connection that what is the legal status of such boundaries and whether or not they are recognized as such by the parties concerned was considered as irrelevant to the application of that principle. Although various compromise formulations were subsequently put forward (including the phrase "internationally agreed lines of demarcation"), none proved to be generally acceptable. After several years of further negotiations, it was decided to leave the statement of the general principle of the inviolability of existing international boundaries untouched but to add a further paragraph stating that:

> "Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed a prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special régimes or as affecting their temporary character."

5. As to the 1981 Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States,[6] the first draft text submitted to the First Committee in 1979 by the States members of the Movement of Non-Aligned Countries (A/34/827, para. 9) did not contain any reference to the inviolability of boundaries. Nor was it included in the 1980 negotiating text (A/C.1/35/WG/CRP.1). The reference to the inviolability of "internationally recognized boundaries" appeared only in the 1981 text submitted by the Chairman (Guyana) of the *ad hoc* working group (A/C.1/36/WG/CRP.1/Rev.1). The records do not contain an explanation or interpretative statement on this point. Venezuela in this connection criticized the text for its lack of reference to the existence of disputes on territorial matters still pending and not yet resolved (A/C.1/36/PV.51, p. 46). We can only stress the fact that nothing speaks in favour of any intention of the authors to exclude the not specifically recognized boundaries from the prohibition of the threat or use of force. All they did was to underline the applicability of the rule reflected in Article 2, paragraph 4, of the Charter of the United Nations to recognized boundaries. In this respect we would like to draw attention to the fact that the exemption of non-recognized boundaries from the prohibition of the threat or use of force would create a

dangerous hole in this rule, a hole which would be all the more dangerous by the absence of a clear definition of what constitutes recognition of a boundary in international law.

6. The common element between the two phrases is "existing . . . boundaries"; they differ in the adjectives: "international" (1970 Declaration on Friendly Relations) and "internationally recognized" (1981 Declaration on the Inadmissibility of Intervention). The term "existing international boundaries" refers to *de facto* boundaries between States or countries regardless of their status in law and irrespective of the position taken by the parties concerned thereon. While the term "existing internationally recognized boundaries" retains the word "existing" (i.e., the *de facto* character of the boundaries), it requires the additional element of recognition; it therefore limits the concept to those boundaries which are "internationally recognized". The scope of the latter phrase is consequently more restrictive than that of the former, since not all "international boundaries" are "internationally recognized".

7. The phrase "internationally recognized" is itself vague and ambiguous. It is far from clear, for example, whether the phrase means recognition by more than one State; furthermore, in a particular situation does it require recognition by the parties or one of the parties directly involved? A logical and pragmatic interpretation would be that the position of the parties directly involved is an essential element. It is also not entirely clear what constitutes recognition. A declaration by the parties directly concerned recognizing a boundary would be sufficient, but many other forms of recognition under international law may also be envisaged.

8. Since the phrase "internationally recognized" is inherently ambiguous when it is injected into the principle of inviolability of boundaries, a State may negate the application of the principle by simply arguing that it does not recognize the boundary in question. Consequently, the phrase "internationally recognized" resticts the scope of application of the principle of the inviolability of frontiers; it introduces an ambiguous element and can be used as an "escape" clause at any time.

9. In the light of the above analysis, we should like to stress the all-embracing nature of the non-use of force principle, and the importance of keeping it entirely distinct from the issue of the status of a particular boundary or the recognition thereof. They are separate issues and should be dealt with separately. Recognition of boundaries is a highly political and legally complex issue. Therefore the words "internationally recognized" are problematic and cause confusion. Expressions of this nature should be avoided if the value of the principle of inviolability of boundaries is to be preserved. The terms "existing international boundaries" as used in the 1970 Declaration on Friendly Relations or "existing frontiers" as used in the Helsinki Declaration serve the purpose of maintaining the concept of inviolability of the lines which separate one State from another, but without prejudging the substantive issues involved.

26 May 1983

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3. AGENDA OF MEETINGS OF STATES PARTIES TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS—QUESTION WHETHER THE MEETINGS MAY CONSIDER ANY MATTER OTHER THAN THE ELECTION OF MEMBERS OF THE HUMAN RIGHTS COMMITTEE PURSUANT TO ARTICLE 30 (4) OF THE COVENANT AND, IF SO, WHAT QUESTION CAN BE CONSIDERED UNDER AN AGENDA ITEM ENTITLED "OTHER MATTERS"

Memorandum to the Assistant Secretary-General, Centre for Human Rights

1. This is to respond to your memorandum of 16 December on the agenda of meetings of States parties to the International Covenant on Civil and Political Rights.

2. The question whether the meetings of States parties to the International Covenant on Civil and Political Rights may consider any matter other than the election of members of the Human Rights Committee pursuant to article 30 (4) of the Covenant must be examined from both the substantive and the procedural points of view.

3. With respect to the former, it should first of all be said that, at least in principle, a meeting of representatives of sovereign States may consider any question that these representatives wish to take up. Naturally, they can restrict their freedom through rules of procedure, and this possibility is discussed below. In addition, there may be some other limitations consequent on international law in general or the Covenant in particular; for example, in the light of the review procedures established in part IV of the Covenant and in the Protocol thereto, it would seem improper if the States parties were to decide to establish a procedure for reviewing communications from individuals concerning alleged violations of a State not party to the Protocol. There would, however, be no point in attempting to establish, in the abstract, a list of subjects that could or could not be considered by the States parties.

4. From the point of view of procedure, the device of including an item entitled "other matters" or "other business" on an agenda does not make much sense, unless it is clear that these matters are meant to be no more than isolated statements by particular representatives not leading to any collective consideration or are issues requiring merely a procedural decision (e.g., scheduling the next meeting). If a substantive discussion or decision is envisaged, it is highly desirable that a specific item be placed on the agenda and that the proposal to do so be notified to the States parties in advance so that they might prepare to consider the item—or to object on a reasoned basis thereto.

5. In the light of these considerations, it is suggested that the rules of procedure of the meetings of States parties to the Covenant (CCPR/SP/2) be amended to include some provisions regarding the agendas of these meetings, which at this point are not regulated at all in the rules. For this purpose we would suggest that the standard agenda be set out in the rules themselves (as is done in rule 9 of the rules of procedure for United Nations Pledging Conferences (A/33/580) adopted by the General Assembly some years ago) and that other items be added only if adequate notice thereof has been given.

6. Incidentally, the meeting will probably, as a consequence of General Assembly resolution 38/115 of 16 December 1983, wish to amend its rule 16 to add Arabic as an official and perhaps also as a working language.

7. Finally, it might be desirable to add a rule concerning the convening of meetings by the Secretary-General, to expand slightly on articles 30 (4) and 34 (2) of the Covenant. Such a rule would primarily deal with dates and notice.

21 December 1983

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4. ARTICLE 19 OF THE CHARTER OF THE UNITED NATIONS AND WORKING CAPITAL FUND ADVANCES—QUESTION OF HOW TO TAKE INTO ACCOUNT, FOR THE PURPOSE OF ESTABLISHING THE AMOUNT OF CONTRIBUTIONS DUE FROM A MEMBER STATE FOR THE PRECEDING TWO FULL YEARS, INCREASES OR DECREASES IN THE ADVANCES THAT IT MAY BE REQUIRED TO MAKE TO THE FUND

Memorandum to the Senior Contributions Officer, Office of Financial Service[5]

1. This is in response to your memorandum of 14 October on Article 19 of the Charter of the United Nations and Working Capital Fund advances. The question is how to take into account, for the purpose of establishing the "amount of contributions due from [a Member State] for the preceding two full years", increases or decreases in the advances that it may be required to make to the Working Capital Fund (WCF).

2. The first question is whether any account should be taken at all of amounts payable in respect of the Working Capital Fund, which in the Financial Regulations are consistently referred to as "advances" and thus differentiated from the "contributions" due in respect of the regular budget. While the WCF advances are thus not "contributions" within the meaning of the Financial Regulations and Rules, they should be treated as such for the purpose of Article 19 of the Charter, because both the advances and the contributions constitute compulsory payments assessed by the General Assembly pursuant to Article 17 of the Charter for the purpose of meeting the expenses of the

Organization. Furthermore, as financial regulation 5.6 requires that payments from Member States be credited first to advances due for the regular budget, "the amount of . . . arrears" necessarily is directly affected by the amount of any WCF advances that become due; consequently, it would be unfair *vis-à-vis* a State to have its arrears measured in part by the amount of the advances due, if such amounts would not also appear in the other side of the equation, i.e., as contributions due.

3. The second question is whether additional advances assessed in respect of WCF determined for a particular biennium should be fully taken into account as of the beginning of the biennium, or should be divided into halves (as are the contributions due for the regular budget for the biennium). In this connection it should be noted that when the General Assembly establishes a particular level for WCF for a given biennium, it intends that that level be maintained throughout the biennium and consequently the entire amount of any change in the advance due from each Member State for the biennium is billed at the beginning of that biennium. In the light of this practice, which means that the total amount of any new advance due for the biennium may be reflected in the arrears at the beginning of the next calendar year (as required by financial regulation 5.4), it follows that that total amount must also be added to the contributions due for the first year of the biennium.

4. There is thus no dispute that whenever additional WCF advances are due, either because of an increase in WCF for a particular biennium or because the rate of assessment for a particular Member State is increased from the previous rate, the total amount of such increase due in respect of such State is to be added to the contributions due for the year in respect of which such advance is billed in accordance with paragraphs 2 and 3 above.

5. It is, however, less clear whether account should similarly be taken of any reduction in WCF advances, whether owing to a reduction in the amount of WCF (an unlikely contingency) or to a reduction in the rate of assessment for a particular Member State. Various arguments can be made either for taking such decreases into account or for not doing so:

(*a*) For taking decreases into account:

(i) In principle, there should be no essential difference between the effect to be given to a billing for a payment due and a credit for a refund due, in particular since in every instance there will be, in respect of the total of both WCF advances and regular budget contributions, a net amount due from the Member State to the Organization, which amount is merely increased or decreased depending on the payments due to or the refunds due from WCF.

(ii) Symmetry considerations suggest a parallel treatment of payments due to or refunds due from the WCF. For example, if at the beginning of a biennium for which no change in the total amount of WCF is foreseen, the rate of assessment of a particular Member State were to be increased for the first year of the biennium and decreased by precisely the same amount for the second year (thus restoring the rate to its original level—a not unlikely sequence), then it would seem that the total amount of the contributions due for the biennium should not be affected at all by these two mutually cancelling transactions, in particular as the amount of any "arrears" for that period would not thereby be affected; but this result can only be accomplished if equal effect is given to both positive and negative changes in the WCF advances.

(*b*) Against taking decreases into account:

(i) It should be recognized that for the Member State concerned, while a reduction in its advances to WCF is of course a favourable development, if account is taken of such a change by diminishing the "contributions due" side of the equation, this would have the effect of making the application of the penalty under Article 19 of the Charter more likely (because it makes it more likely that the arrears will exceed the contributions due for two years).

(ii) A credit resulting from a reduction in the WCF advances required from a Member State does not differ in essence from other types of credits under financial regulation 5.2 (e.g., those resulting from the Tax Equalization Fund), and these credits are not taken into account for the purpose of establishing contributions due. In particular, even though a credit resulting from a reduction in WCF advances would normally be used to reduce the contributions

payable, a Member State can demand that a sum equivalent to such credit be paid to it immediately by the Organization before the State makes its own payment of assessed contributions to the latter.

Although from a strictly logical point of view it would seem that the arguments summarized in subparagraph (*a*) for taking reductions into account should prevail, it would appear that the countervailing arguments as set out in subparagraph (*b*) against doing so might actually be given greater weight. This is so in particular in respect of argument (*b*) (i), which rests on the well-established principle that treaty provisions (including those of the Charter) should, in case of doubt, be interpreted so as to be as little burdensome to the States parties as possible. Consequently, it is suggested that it would be preferable not to deduct, from contributions otherwise due within the meaning of Article 19 of the Charter, any credits resulting from a reduction in WCF advances.

26 October 1983

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5. QUESTION WHETHER A STATE PARTICIPATING AS AN OBSERVER ON A COMMITTEE OF LIMITED MEMBERSHIP CAN BECOME A CO-SPONSOR OF A PROPOSAL BEFORE THE COMMITTEE

Internal memorandum

Advice has been requested on whether a State participating as an observer on a committee of limited membership can become a co-sponsor of a proposal before the committee. In the practice of the General Assembly, only the States that are members of a committee are entitled to co-sponsor proposals submitted to that committee. Since in the case under review the State concerned is not a member of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations but participates in its work as an observer, it cannot be officially regarded as a co-sponsor of a proposal before the Committee. There would, of course, be no objection to reflecting in the Committee's report the fact that the State in question was a sponsor of the proposal when it was originally submitted to the Committee in 1981 and continues to support the proposal.

16 February 1983

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6. QUESTION WHETHER A SUBSIDIARY ORGAN CAN PROVIDE THAT ONE OF ITS OWN SUBSIDIARIES USE FEWER LANGUAGES THAN ITSELF

Cable to the Chief of the Governing Council Secretariat, United Nations Environment Programme

The Department of Conference Services is not aware of any case where a subsidiary organ has provided that one of its subsidiary bodies would use fewer languages than itself, though arrangements are frequently made whereby an organ or conference is actually serviced with fewer languages than its rules provide, if it is known or informally agreed that certain languages will not be used by any participant. The legal difficulty with limiting the number of languages used in sub-subsidiary organs lies in the existence of General Assembly directives on the matter; for example, the Assembly has provided in its resolution 35/219 A of 17 December 1980 that all its subsidiary organs are to include Arabic among their working languages; however, no such decision was apparently made in respect of the Russian or Chinese languages. If a choice of languages is desired that would contravene a General Assembly or Economic and Social Council decision, then the permission of the Assembly or the Council must be secured. This can be granted by an explicit resolution or decision, or implicitly through the approval of a financial implications statement anticipating the use of fewer languages than those normally authorized.

7 April 1983

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7. QUESTION WHETHER MEMBERSHIP IN ANY SUBSIDIARY ORGAN ESTABLISHED BY THE GOVERNING COUNCIL OF THE UNITED NATIONS ENVIRONMENT PROGRAMME AND ENTRUSTED TO ACT ON ITS BEHALF MUST CONSIST EXCLUSIVELY OF STATES MEMBERS OF THE GOVERNING COUNCIL

Cable to the Chief of the Governing Council Secretariat, United Nations Environment Programme

We refer to your cable requesting advice on whether membership in any subsidiary organ established by the Governing Council and entrusted to act on its behalf must consist exclusively of States members of the Governing Council.

In our view there is no legal impediment to the Governing Council establishing a subsidiary organ with authority to act on its behalf in matters within the competence of the Governing Council and having in its membership some States that are not members of the Council provided that the States concerned are Members of the United Nations or alternatively States that are assessed contributions by the General Assembly on the basis of their participation in UNEP activities. In the absence of guidance from the General Assembly there would not appear to be a sufficient basis for the Governing Council to include as members of the proposed subsidiary organ States that meet neither of these criteria.

10 May 1983

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8. RULE 38 OF THE RULES OF PROCEDURE OF THE GOVERNING COUNCIL OF THE UNITED NATIONS ENVIRONMENT PROGRAMME RELATING TO RIGHT OF REPLY—PRACTICE OF THE GENERAL ASSEMBLY AND THE ECONOMIC AND SOCIAL COUNCIL REGARDING THE EXERCISE OF THE RIGHT OF REPLY

Cable to the Legal Liaison Officer to the United Nations Environment Programme

Rule 38 of the rules of procedure of the Governing Council of UNEP concerning the right of reply is based on rule 73 of the rules of procedure of the General Assembly.[7] Although rule 73 is formulated in a way that gives the President discretion to grant the right of reply or not to do so, in practice the right of reply is routinely granted to any Member State that requests it. In the light of this practice, members of the Governing Council of UNEP should be considered as having an absolute right to exercise the right of reply. In contrast, observer States and other observers such as the PLO and SWAPO do not have an absolute right to reply but may be granted an opportunity to reply by the President. In practice such requests are traditionally granted and very rarely denied. If a statement in the exercise of the right of reply by one State gives rise to a request by another State for a statement in reply, this request is normally acceded to in the practice of the Assembly and the Economic and Social Council. In effect, rule 46 of the rules of procedure of the Economic and Social Council, which was adopted in its current form later than the corresponding rule in the rules of procedure of the General Assembly and of the Governing Council of UNEP, accurately reflects the established practice whereby the right of reply is regarded to be an absolute right of Member States which is not subject to the discretion of the presiding officer as regards States which are full members of the organ concerned. The said may of course limit the length and the number of interventions that may be made in the exercise of the right of reply at a given meeting and under the same agenda item.

16 May 1983

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9. PARTICIPATION OF A MEMBER STATE AS AN OBSERVER IN A SESSION OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW—IMPLICATIONS, AS REGARDS PARTICIPATION OF THE MEMBER STATE CONCERNED IN MEETINGS OF UNITED NATIONS ORGANS, OF ACTION TAKEN BY THE GENERAL ASSEMBLY WITH REGARD TO THAT STATE'S CREDENTIALS

Memorandum to the Chief of the International Trade Law Branch

This is in reply to your memorandum of 13 June 1983 in which you requested our advice on the participation of [name of a Member State] in the sixteenth session of UNCITRAL.

We should like first of all to comment briefly on the legal situation regarding the participation of the State in question in meetings of United Nations organs. Basically, the fact that the General Assembly has on various occasions rejected the credentials of the representatives of the State to sessions of the Assembly does not automatically have the effect of excluding the State concerned from future sessions of the Assembly or from meetings of other United Nations organs. Indeed, it participates in the work of the Security Council and in various UNCTAD conferences notwithstanding the decisions taken by the General Assembly regarding the credentials of its representatives to Assembly sessions. Accordingly, the State in question is invited to all United Nations conferences and meetings open to all Member States and is treated in the same way as other Member States in respect of meetings of organs of limited membership. Thus, in the case of organs of limited membership, if States that are not members are to be officially notified of the meeting of the organ concerned or to be invited to participate in an observer capacity, then a notification or invitation, as the case may be, should be sent to the State concerned. It is also relevant to note that the Secretary-General accepts credentials issued for a Permanent Representative of this State and deals with the person so concerned in that capacity.

It is noted that the State in question was in fact correctly invited to attend the sixteenth session of UNCITRAL at Vienna from 24 May to 3 June 1983. In the absence of a decision of the Commission to exclude the observer of the State concerned from its meetings, the Secretariat should treat its representative in exactly the same way as observers of other States that are not members of the Commission.

In view of the foregoing, the name of the observer should not be excluded by the Secretariat from the provisional list of participants for the sixteenth session of UNCITRAL in the absence of a decision of the Commission to exclude the State from its meetings.

. . .

23 June 1983

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10. PROCEDURAL QUESTIONS RAISED IN CONNECTION WITH THE ADOPTION OF A REPORT OF THE SUB-COMMITTEE ON PETITIONS, INFORMATION AND ASSISTANCE OF THE SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES—QUESTION WHETHER ACTION MAY VALIDLY BE TAKEN ON AN AMENDMENT NOT CIRCULATED IN ONE OF THE WORKING LANGUAGES—QUESTION WHETHER A FINAL VOTE MUST BE TAKEN ON THE REPORT AS A WHOLE AFTER SEPARATE PARTS HAVE BEEN ADOPTED

Memorandum to the Officer-in-Charge, Department of Political Affairs, Trusteeship and Decolonization

This is in response to your memorandum of 31 August, requesting legal advice as to two procedural questions raised in connection with the adoption of the 226th Report of the Sub-Committee on Petitions, Information and Assistance of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

1. As the Special Committee and its Sub-Committees are subsidiary organs of the General Assembly, they are to apply the procedures relating to committees of the Assembly, as provided in rule 161 of its rules of procedure.

2. With regard to the objection raised by a delegation concerning the failure to circulate the text of an amendment in one of the working languages before a vote was taken thereon, the relevant rule, namely rule 120, requires that "as a general rule" no proposals shall be put to a vote until the day following their circulation—which is understood to mean circulation in all the working languages. Chairmen are authorized to permit the discussion and consideration of amendments even if they have not been circulated at all or have only been circulated the same day. The practice in implementing this rule has been that frequent use is made of the exceptional authorization to act on uncirculated or only recently circulated amendments, particularly towards the end of a session. In particular, the procedure followed by the Chairman of the Sub-Committee, to read out the amendment at dictation speed to enable the interpreters to translate it carefully and the representatives to copy it down in their respective languages, is often followed. Consequently the objection in question is not well taken.

3. Rule 129 provides that if a proposal (such as the draft report) is divided, and action is taken to adopt separate parts thereof, a final vote must be taken on the proposal as a whole (i.e., on the sum of all the parts adopted separately). This is so whether the division was a formal one under the first part of rule 129, or is merely done informally. It is also immaterial whether the separate parts were adopted by votes or by consensus. The body as a whole must be given an opportunity of acting on (i.e., adopting or rejecting) the sum of all the separate parts. Consequently the demand of the delegation concerned was justified, and a vote on the report as a whole should now be taken.

1 September 1983

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11. QUESTION OF THE PUBLICATION OF AN EXPERT'S DISSENT TO THE REPORT OF A GROUP OF EXPERTS—EXISTENCE OF A WELL-ESTABLISHED CUSTOM IN THE UNITED NATIONS FOR REPORTS PREPARED BY ANY REPRESENTATIVE ORGAN OR BODY OF GOVERNMENTAL EXPERTS CLEARLY TO REFLECT DISSENTING OPINIONS

Memorandum to the Assistant Secretary-General, Centre against Apartheid

1. This is in response to your memorandum of 28 September on the publication of an expert's dissent to the report of the Group of Experts on the Supply of Oil and Oil Products to South Africa.

2. In general, it is for each body to formulate and adopt its own report and, while the instructions of the parent body (e.g., as to the inclusion of certain materials or the limitation on length of reports) must be complied with, there are no explicit legal principles as to what must or must not be included. In the present instance, paragraph 1 of General Assembly resolution 37/69 J of 9 December 1982, which established the Group of Experts, gives no guidance on the inclusion or non-inclusion of dissenting opinions in the Group's report.

3. It should, however, be recognized that, in the light of the principle of sovereign equality, it is a well-established custom in the United Nations for reports prepared by any representative organ or body of governmental experts to reflect clearly any dissents, generally in the words of the dissenter. It might therefore be concluded that the General Assembly and the Committee against *Apartheid* may have expected that any report of the Group of Experts would conform to that practice.

4. It is noted that paragraph 6 of the report clearly refers to the fact that the expert of [name of a Member State] dissented. It would seem that from a legal point of view any expectations as referred to in paragraph 3 above should be satisfied if the position of the expert concerned is reflected comprehensively and in terms acceptable to his delegation, either in an annex to the report or in a separate document to be given the same and simultaneous circulation in every forum in which the report of the Group of Experts is to be considered.

. . .

30 September 1983

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12. Question whether a Member State not a member of the United Nations Council for Namibia may be granted observer status in the Council

Memorandum to the Under-Secretary-General for Political Affairs, Trusteeship and Decolonization

Reference is made to your memorandum of 18 October 1983 by which you requested legal advice in connection with the request by a Member State for observer status in the United Nations Council for Namibia.

The resolutions adopted by the General Assembly relating to the establishment and terms of reference of the United Nations Council for Namibia are silent on the question of participation by non-members in the Council's meetings except in respect of the South West Africa People's Organization, which plays a special role in the work of the Council and regularly participates in the Council in a consultative capacity.

In the absence of instructions by the General Assembly on the question of participation by observers other than SWAPO in the work of the Council, it is within the competence of the Council itself to decide whether or not to grant the request for observer status. It is relevant to add that it has become the normal practice in United Nations organs of limited membership for the body concerned to decide on whether to invite non-members to participate in an observer capacity where this is not precluded by decisions of the competent deliberative organ. It is our understanding on the basis of information provided to us by members of the secretariat of the Council for Namibia that one Member State in fact already participates in an observer capacity in plenary meetings of the Council. In these circumstances we can see no obstacle to the Member State in question being invited by the Council to participate in a similar capacity on the same basis in the work of the Council.

24 October 1983

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13. Question whether Member States not members of the Credentials Committee may participate as observers in the Committee's work

Letter to the Permanent Representative of a Member State to the United Nations

As you requested, the Office of Legal Affairs has examined the question of the participation in the Credentials Committee, as observers, of Member States that are not members of the Committee. Our comments on the matter are as follows:

The rules of procedure of the General Assembly are silent on the question of participation of non-members in committees of the General Assembly that are of limited membership.

In the practice of the Credentials Committee, that question arose at the resumed thirty-fifth session of the General Assembly. On that occasion, the Credentials Committee was considering an objection that had been raised in the General Assembly concerning the credentials of the representatives of a Member State. When the Committee met on 2 March 1981 at the request of the General Assembly to consider the matter, a letter had been received by the Chairman of the Committee from the representative of the State concerned requesting that he be permitted to present his delegation's position on its credentials to the Chairman personally or to the Committee. The Chairman made a statement to the Committee in which he noted that it was not the practice of the Committee to allow Member States not members of the Committee to make statements and that therefore the request by the representative of the State in question could not be acted upon. The Credentials Committee accepted that ruling without objection. The position taken by the Credentials Committee on the request of the State concerned is reflected in the relevant report of the Credentials Committee[8] approved by the General Assembly.

It is relevant to mention that the action taken by the Chairman of the Credentials Committee in the case referred to in the third paragraph above was based on the practice of the Credentials

Committee and on the advice of the Office of Legal Affairs. In giving its advice the Office of Legal Affairs had emphasized the fact that the Credentials Committee was an expert body and that non-members had not previously been permitted to participate in the Committee's work.

From a legal standpoint, it is our view that the attitude adopted by the Credentials Committee at the resumed thirty-fifth session is the correct one and should be maintained. If non-members were to participate actively in the work of the Credentials Committee and other expert bodies, such participation could seriously affect the ability of such bodies to carry out their responsibilities expeditiously and effectively.

7 November 1983

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14. MOTION TO TAKE NO ACTION ON A PROPOSAL BEFORE THE GENERAL ASSEMBLY—QUESTION OF WHETHER THE MOTION CAN PROPERLY BE MADE UNDER THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Statement made by the Legal Counsel at the 34th plenary meeting of the General Assembly on 20 October 1983

A legal opinion has been requested on the question of whether the motion proposed by the representative of a Member State is a motion that can properly be made under the rules of procedure of the General Assembly. The motion under consideration was proposed within the context of rule 74 of the rules of procedure. That rule provides for the adjournment of debate on the item under consideration without any limitations as to the reasons for which a motion may be presented under the rule.

A review of the practice of the General Assembly shows that the Assembly has on several occasions in the recent past acted on motions to take no action on a proposal before it on the basis of rule 74. Among the precedents which I have referred to, there are not only those which relate to the item as a whole, but also several which relate to a specific question or text under consideration and to adjournment *sine die*.

As representatives may recall, an identical motion within the context of rule 74 of the rules of procedure of the General Assembly was proposed in similar circumstances when the same agenda item was considered at the thirty-seventh session. On that occasion the Assembly acted on the motion and adopted it.

In these circumstances, it is my view that the motion before the Assembly is receivable from a legal standpoint.

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15. QUESTIONS RELATED TO THE CLOSURE OF DEBATE AND CONDUCT DURING VOTING IN THE PLENARY MEETINGS OF THE GENERAL ASSEMBLY AND IN THE MAIN COMMITTEES—RULES 75 AND 88 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. During the current session of the General Assembly a number of questions have arisen, in the plenary and some of the Main Committees, in relation to the closure of debate and conduct during voting, which are principally regulated by rules 75 [117] and 88 [128] of the rules of procedure. The present memorandum discusses these two subjects and their interaction.

I. EFFECTS OF CLOSURE OF DEBATE

A. *Statements*

2. Closure of debate decided under rule 75 or 117 clearly prevents the making of any further substantive statements as to the "item under discussion" (see section I.C. below) in relation to which

the motion for closure was adopted. No exception may be made, even for representatives already on the list of speakers (but see paragraph 4 below).

3. However, closure of debate does not prevent the exercise of the right of reply (rule 73 [115]) or the explanation of votes (rule 88 [128]), whether before or after the vote (see section II.C below).

B. *Motions and proposals*

4. Unless specifically otherwise provided in the motion for closure, no new substantive proposals, including amendments or sub-amendments,* may be submitted after a motion for closure of debate has been adopted. However, a proposal already submitted under rule 78 [120] but not yet formally introduced or even circulated should normally be dealt with; there are even precedents for permitting the principal sponsor to make a statement introducing such a proposal (particularly if the sponsors of other proposals had an opportunity to introduce these before the debate was closed). In addition, the sponsors of a proposal already submitted should normally be permitted to submit a revised version even after closure of debate as long as the initial proposal has not been substantially changed.

5. Normal procedural motions or manoeuvres, such as the withdrawal of a proposal as well as its immediate reintroduction (rule 80 [122]), the division of a proposal (rule 89 [129]) or a motion that there be no vote on a proposal after another has been acted on (rule 91 [131]), are permitted even after closure of debate. The same should be held of a motion to adjourn the debate (for the purpose of putting aside one or more proposals—rule 74 [116]) or of one addressed to an issue of competence (rule 79 [121]). However, other types of proposals relating to procedures not specifically provided for in the rules of procedure (e.g., the referral of an item to a standing or *ad hoc* body) should be considered as substantive proposals (i.e., in accordance with paragraph 4 above).

C. *Item under discussion*

6. Rule 75 [117] refers to the closure of the debate on "the item under discussion". Such an "item" need not be an entire agenda item, but can be a sub-item, a particular proposal or set of proposals, or even an amendment to a proposal. For this reason it is important for the President to ascertain, as soon as a proposal for closure of debate is made, and in any event before asking the body to take a decision on it, what the scope of the proposal is. However, to the extent that this is not done, it should usually be assumed that the motion is intended to have the broadest effect it can sensibly be given, i.e., to close debate on as much of the agenda item as possible; certainly it should never be presumed, without explicit confirmation, that debate was meant to be closed merely on an amendment or on one of a series of related proposals.

D. *Closure achieved by other means*

7. Closure of debate achieved by a motion under rule 75 [117] does not differ substantially from that achieved by closure declared after the normal conclusion of debate or on the exhaustion of a closed list of speakers (rule 73 [115]); indeed, this is explicitly provided in the corresponding procedural rule of the Economic and Social Council (rule 45—E/5715/Rev.1). Nevertheless, the prohibition against the making of further statements and against introducing new substantive proposals (see paragraphs 2 and 4 above) are usually not enforced as strictly in the case of such informal closure.

II. THE VOTING PROCESS

A. *Structure of rule 88 [128]*

8. It should be recognized that rule 88 [128] in effect consists of two separate rules:

(*a*) The first sentence protects the integrity of the voting exercise (see section II.B below);

(*b*) The remaining text deals with explanation of votes (section II.C). This differentiation is explicitly recognized in the rules of procedure of the Economic and Social Council, which deal with these two subjects respectively in rules 63 and 62.

*Hereinafter, "proposals" should be understood as referring also to amendments and sub-amendments.

B. *Conduct during voting*

9. The first question is how to define "during voting" for the purpose of determining the interval during which the strict rule against interruptions* must apply. Though occasionally there have been a few differing rulings, in the past years it has been clearly recognized and consistently held that the period protected by the first sentence of rule 88 [128] (i.e., the period of voting in the "narrow sense") is merely the interval between the time the presiding officer actually initiates the voting process by calling for the casting of votes or ballots on a particular question, and until the results of that particular vote are announced (cf. Economic and Social Council rule 63; the draft Standard Rules of Procedure for United Nations Conferences, A/38/298, annex, rule 56). This is the only period that requires the extraordinary protection provided by the first sentence of rule 88 [128], and in view of the severe restrictions in that sentence (e.g., the prohibition against normal points of order, or against routine procedural motions, such as to suspend a meeting) such protection should not, and in practice cannot, be extended to any period for which this is not absolutely necessary; for example, if a very long series of votes is to be taken, it may be necessary to do so in the course of more than one meeting, i.e., to interrupt for some hours or even some days (e.g., elections to principal organs).

10. In respect of a connected series of votes, it follows from the above that the first sentence of rule 88 [128] is not intended to cover the entire period during which several votes are taken, including the intervals between such votes (i.e., between two amendments to the same proposal or even between two ballots for the same post), which might be referred to as a period of voting in the "wider sense". On the other hand, it must be recalled that such a period of voting normally follows on an explicit or implicit closure of debate (see section I.D above) and is therefore subject to the restrictions consequent on such closure (sections I.A and B), and that often deadlines are set for the submission of substantive proposals which normally will have expired before the period of voting starts. Furthermore, the President often announces (and usually should announce), before or at the beginning of a period of voting, the procedure that he intends to follow during such period (e.g., to permit explanations before the vote on all proposals and amendments, then to call for votes successively on each proposal and the amendments thereto, and then to permit explanations after the vote), and to the extent such announcement is not objected to or is explicitly accepted, it becomes a decision governing that voting period, which can only be changed by an implicit or explicit reconsideration of that decision (subject to rule 81 [123]); even if no explicit régime is established for a period of voting, it may be assumed, on the basis of the usual practice, that a restrictive procedure is to be followed, i.e., that one vote will follow on another, uninterrupted by any substantive business and generally any explanations of vote, though permitting some procedural motions (e.g., suspension or adjournment of the meeting). Only in the somewhat exceptional situation that no such restrictions exist in respect of a particular voting period may room be made during intervals between votes for statements, substantive proposals and procedural motions, and especially (see section II.C below) explanations of vote (i.e., either those after the previous vote or those before the next one).

C. *Explanations of vote***

11. The second sentence of rule 88 [128] states that "the President may permit members to explain their votes". By tradition, the right to explain a vote has become practically absolute (as stated, e.g., in Economic and Social Council procedural rule 62), though the President retains discretion (subject to the authority of the Assembly—rule 36 [107]) as to whether to permit explanations both before and after or only before (which would be unusual) or only after the vote. Also, if a series of votes is to be taken he may, but need not, allow explanations between such votes (see paragraph 10 above). Furthermore, it should be understood that explanations of vote are not part of the debate and that, therefore, the prior closure of debate does not affect the power of the President

*The present memorandum does not deal with what types of points of order it is permissible to raise under the first sentence of rule 88 [128].

**The present memorandum contains no discussion of what constitutes an explanation of vote, or restrictions on such explanations or an application to decisions taken without a vote.

to permit explanations of vote either before or after the vote, since there is a distinction between the period of debate (cut off by rule 75 [117]) and the period of voting in the wider sense (governed in part by rule 88 [128]) and in part by *ad hoc* decisions made in respect of each such period (see end of paragraph 10).

10 November 1983

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16. Status under the Charter of the United Nations of the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees

Opinion requested by the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees

The question has been raised of the status under the Charter of the United Nations of the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees. The Group was established by the General Assembly in its resolution 36/148 of 16 December 1981. By paragraph 4 of that resolution the Assembly:

> "*Decides* to establish a group of governmental experts of seventeen members who shall be appointed by the Secretary-General, upon nomination by the Member States concerned after appropriate consultation with the regional groups and with due regard to equitable geographical distribution . . ."

Paragraph 10 of the same resolution calls on the Group to "submit a report to the Secretary-General . . . for deliberation by the General Assembly at its thirty-seventh session". By its resolution 37/121 of 16 December 1982, the General Assembly enlarged the Group and requested it to submit its report to the Secretary-General for deliberation by the General Assembly at its thirty-eighth session.

The Expert Group is therefore expressly established by the General Assembly and its report is to be submitted to the Assembly, although the establishing resolution provides for the Secretary-General to appoint the members of the Group and to act as the conduit for transmitting the Group's report to the Assembly.

The Charter of the United Nations provides, in its Article 7, for six named principal organs of the United Nations and for "such subsidiary organs as may be found necessary". Article 22 specifically provides that:

> "The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions."

The Expert Group, not being a named principal organ, must therefore be a subsidiary organ. As it is specifically established by the General Assembly, it is a subsidiary organ of the Assembly under Article 22 of the Charter.

This characterization of the Group as a subsidiary organ of the Assembly is not affected by the fact that the members of the Group are appointed by the Secretary-General and that the Group reports through the Secretary-General to the General Assembly. Nor does the characterization of the body as an "Expert Group" affect this conclusion. Members of subsidiary organs of the General Assembly have been appointed in a large variety of ways, other than directly by the Assembly, and subsidiary organs not infrequently report through other bodies to the Assembly. Titles used for such subsidiary organs of the Assembly have *inter alia* been Commissions, Committees, Boards, Councils, Meetings, Panels, Working Groups and Expert Groups. Examples of this great variety of appointing methods, reporting procedures and titles for subsidiary organs of the General Assembly can be found in document A/AC.202/1 of 28 March 1980, which contains a list of subsidiary organs established by the General Assembly for the purposes of an *Ad Hoc* Committee of the General Assembly on Subsidiary Organs. The present Group of Experts is among the subsidiary organs of the General Assembly the list of which is provided annually by the Secretariat to the Committee on Conferences.

As the Group of Experts is expressly established by the General Assembly itself in the authorizing resolution, no analogy can be drawn with those cases arising particularly in connection with disarmament matters where the General Assembly directly confers a particular task on the Secretary-General and proposes that he carry it out with the assistance of experts, one such example being resolution 34/89 of 11 December 1979, whereby the Assembly "*Requests* the Secretary-General, with the assistance of qualified experts, to prepare a study . . ."

Such groups are not organs of the Assembly but advisory mechanisms to the Secretary-General.

It is therefore to be concluded that the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees is a subsidiary organ of the General Assembly established under Article 22 of the Charter. This flows from the provisions of that Article and of paragraph 4 of resolution 36/148 setting up the Group. This conclusion is supported by numerous precedents.

14 April 1983

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17. QUESTION WHETHER THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES AND THE UNITED NATIONS INTERIM FORCE IN LEBANON COULD PLAY A ROLE AS REGARDS THE LEGAL AND PHYSICAL PROTECTION OF REFUGEES IN LEBANON, THE WEST BANK AND GAZA

Memorandum to the Under-Secretary-General for Administration and Management

1. I wish to refer to your memorandum of 4 April 1983 concerning a letter from the Chairman of the Joint Inspection Unit to the Secretary-General which raises the question of the "legal and physical protection" of refugees in Lebanon, the West Bank and Gaza and states that urgent attention should be given to measures which could be taken by the United Nations to assure more adequate protection. Although the Chairman of JIU does not define what he means by "legal and physical protection", his letter does refer to possible roles for UNHCR in providing legal protection for refugees in the area and for UNIFIL in providing physical security. These suggestions raise legal questions relating to the exercise of territorial authority and the terms of reference of United Nations organs.

2. The legal and physical protection of Palestinian refugees, in the broad sense in which that phrase appears to be used by the Chairman of JIU, is the primary responsibility of the territorial sovereign or, in the case of occupied territory, the Occupying Power. In the absence of a specific mandate from the international community and the consent of the sovereign or Occupying Power, an international organ cannot assume such responsibility since it would lack both legitimacy and the means of carrying out its responsibility. As currently constituted, neither UNHCR nor UNIFIL is mandated to provide legal and physical protection to Palestinian refugees.

3. The UNHCR statute and the Convention relating to the Status of Refugees of 28 July 1951[9] excluded Palestinian refugees as persons receiving protection or assistance from other organs or agencies of the United Nations (chapter II, 7 (*c*), of the statute and article 1, D, of the Convention). The function assumed by UNHCR under its statute is that of providing *international* protection by the means specified in chapter II, 8, of the statute. The personal legal status of refugees is governed by the law of the country of domicile or residence (article 12, 1, of the Convention).

4. The mandate conferred upon UNIFIL by the Security Council, although somewhat vaguely worded, it is true, nevertheless seems to be confined to confirming the withdrawal of the occupying forces, restoring international peace and security and assisting the Government of Lebanon in ensuring the return of its effective authority (see Security Council resolution 425 of 19 March 1978). Any change in the mandate of UNIFIL, particularly one of the nature tentatively suggested in the letter in question, would require a decision of the Security Council and for its effective application the consent of the sovereign or Occupying Power.

5. The problem raised by the Chairman of JIU in his letter to the Secretary-General is indeed a major one but as follows from what we set forth above it does not seem solvable on the lines indicated in the letter.

20 April 1983

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18. QUESTION WHETHER A REPRESENTATIVE OF A MEMBER STATE MEMBER OF THE SECURITY COUNCIL HOLDING THE OFFICE OF PRESIDENT OF THE SECURITY COUNCIL MAY ADDRESS A COMMUNICATION TO HIMSELF AS PRESIDENT OF THE COUNCIL

Memorandum to the Director of the Security Council and Political Committees Division

1. You have raised the question of whether there is any legal obstacle in the way of a representative of a Member State which is a member of the Security Council communicating a request to the President of the Security Council when the office of President of the Council is occupied by the same representative.

2. From a legal standpoint it is clear that two separate and distinct capacities are involved, namely, that of a representative of a member of the Security Council and that of the President of the Council. There is certainly no legal obstacle against one and the same person holding the two capacities simultaneously. However, action taken in one of the two capacities must be distinguished from action taken in the other capacity even though the person taking the different actions happens to be one and the same person. This is a situation that occurs frequently when one person has more than one official capacity.

3. If one and the same person can hold and act under the two capacities mentioned above, it follows that that person must be able to address communications to himself or herself in the other capacity. An exception might be expressly provided for in the relevant rules of procedure but that is not the case with regard to the Security Council.

3 May 1983

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19. ACCREDITATION OF REPRESENTATIVES OF MEMBER STATES MEMBERS OF THE SECURITY COUNCIL—PRACTICE FOLLOWED IN APPLYING RULES 13 AND 15 OF THE PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL

Memorandum to the Chief of Protocol

In order to clarify certain points that have arisen in recent months with regard to the accreditation of representatives of Member States members of the Security Council, it appears desirable to reconfirm the procedures followed by the Department of Political and Security Council Affairs with the implicit approval of the Security Council in applying rules 13 and 15 of the provisional rules of procedure of the Security Council.

According to that practice, a Member State member of the Security Council is required to submit credentials issued by the Head of State or Government or by the Minister for Foreign Affairs which expressly state that the person named is that State's accredited representative on the Security Council. Pursuant to rule 15, a report is issued on provisional credentials when accreditation is received from the appropriate authority in telegraph form, and a report stating that credentials are in order is issued when a written communication is received. It is considered that this requirement for specific mention of their accreditation on the Security Council serves to distinguish representatives of Member States members of the Council, which in accordance with Article 24 of the Charter of the United Nations acts on behalf of the United Nations membership as a whole, from representatives of Member States

not members of the Council, for whom accreditation by their Governments to serve on all organs of the United Nations is regarded as adequate pursuant to rule 14 of the provisional rules of procedure, and for whom credentials reports under rule 15 are no longer submitted by the Secretary-General when they are invited to participate in the Council's discussions.

Accordingly, any delegation of a Member State member of the Council making inquiries as to the appropriate manner of complying with the Council's provisional rules of procedure in the matter of representation and credentials should be informed that in accordance with the established practice of the Security Council credentials which expressly indicate that the person named is the accredited representative of the Member State concerned on the Security Council are required.

26 July 1983

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20. EXPORT LICENCES REQUIRED BY THE LAWS OF MEMBER STATES FOR CERTAIN PURCHASES MADE BY THE UNITED NATIONS—QUESTION OF HOW TO DEAL WITH EXPORT LICENSING REQUIREMENTS OF THE UNITED STATES OF AMERICA FOR HIGH-TECHNOLOGY ITEMS PURCHASED BY UNIDO FROM CONTRACTORS WHO ARE NEITHER NATIONALS OF, NOR LOCATED IN, THE UNITED STATES

Memorandum to the Legal Liaison Officer, United Nations Industrial Development Organization

1. I refer to your letter of 10 May 1983 concerning the question of export licences required by the laws of Member States for certain purchases made by the United Nations. In particular, you wish our comments on how to deal with export licensing requirements of the United States of America for high-technology items purchased by UNIDO from contractors who are neither nationals of, nor located in, the United States.

2. The issue was raised by you some time ago and we had replied on 23 March 1983 that the United Nations seeks to avoid the exceedingly difficult legal issues involved in establishing any general rule by dealing with such matters on a case-by-case basis. Your 10 May 1983 letter observed that such a practice is not feasible for UNIDO, apparently because it would require your Purchasing Section to analyse what they are purchasing, so it would be preferable to have a single rule to cover all situations, presumably to the effect that all contractors, wherever and whoever they may be, must respect the laws of the country of manufacture of the equipment. You also express concern that UNIDO staff might otherwise be subject to civil and criminal penalties on entering the United States.

3. Quite apart from the complex legal issues involved, UNIDO could, of course, as a matter of UNIDO policy and from a stated desire to respect the perceived wishes of contributing States, require, as a condition of contract, that vendors outside the territorial jurisdiction of the regulating country of manufacture none the less obtain export licences from that country. However, the implementation of such an across-the-board policy might well lead to complaints by the Governments of the States of the contractors since those contractors, although obeying all their countries' laws, may be prevented from exporting products from their countries because UNIDO insisted that contractors respect the laws of a third country (see, for example, an article in the 7 July issue of *Australia News* concerning draft legislation to prevent the extraterritorial effect of United States export licensing laws). Also, there is the possibility of excluding otherwise desirable suppliers. In other words, UNIDO must balance the convenience of its Procurement Section with the possible difficulties UNIDO, as an institution, may face in adopting a policy without analysing each case. Despite our reservations to a single all-embracing policy, we have, at your request, attempted to analyse the situation generally.

4. In the United States, the Export Administration Act requires United States contractors and their subsidiaries not located in the United States to obtain United States export licences in respect of specified high-technology equipment. United States entities are subject, *ratione personae*, to United States law. Furthermore, the Act undoubtedly applies territorially to all firms or persons doing business

in the United States. The United Nations, of course, requires that all such contractors obtain such licences since they are a pre-condition of legal export, and the United Nations prefers that the contractor rather than the United Nations obtain them.

5. In a few cases the United Nations has, by contract, required non-United States contractors not located in the United States, but selling United States equipment or components, to obtain United States export licences. The reason for this is pragmatic rather than legal. The United Nations wants to avoid difficulties which might hinder future projects requiring such high-technology items from the United States. We emphasize that this conclusion is a policy decision based solely on operational concerns, for in our view, given the international legal personality and the special status of the United Nations in international law, the United Nations does not have to apply to its contracts any particular laws of Member States or to apply the laws of particular Member States in preference to the laws of other Member States. The United Nations will, of course, respect the applicable laws of Member States and may therefore require, by contract, that those with whom it contracts respect applicable laws and regulations. Which laws would be deemed "the applicable laws" by a judicial or arbitral tribunal seized of a case is a complex question which would have to be determined on a case-by-case basis in accordance with the provisions of the contract or the proper law of the contract (if any) or, if the forum is a court of a State, thein in accordance with the principles of private international law of the forum.

6. We realize, of course, that some States, for political or economic reasons, give extraterritorial effect to certain categories of their laws, e.g., their public laws. Whether or not this extraterritorial effect will be enforced, or recognized, by forums of other States depends on the principles of the conflict of laws of each forum. Most courts in Europe may apply foreign public laws to legal relationships of private law between private parties or between private parties and public bodies acting *jure gestionis* or *jure negotii*, at least if the foreign public law is the proper law of the contract or even the law of the place of contracting or place of performance. To our knowledge, European courts are generally disinclined to consider the place of manufacture or even invention in and of itself to be a close enough contract to be applied, although it seems that contracts of this kind are taken into account in anti-trust litigation by courts in the United States and recognition of this approach exists in Europe, for example, in the Swiss draft law on private international law. It is, however, doubtful whether any forum would accept claims based on foreign public law by foreign States or public bodies as plaintiffs acting *jure imperii*. Specific national legislation may also affect the outcome in the courts of a particular forum.

7. The United States Administration might seek to apply the Export Administration Act to UNIDO contracts with non-United States contractors not in the United States, and such a contractor might wish to respect this United States law, e.g., if it has assets in the United States or if its officers visit the United States. However, if UNIDO signed such a contract without requiring a contractor to obtain a United States licence and if the United States attempted to pursue UNIDO officials authorizing such a contract, we would have no hesitation in invoking the Organization's immunities under Article 105 of the Charter and under the Convention on the Privileges and Immunities of the United Nations.

8. In summary, we reiterate our earlier views that there is no simple legal solution to this difficult problem, though as a matter of policy UNIDO could require all contractors to obtain export licences from the country of manufacture of high-technology equipment. This might, we think, lead to complaints difficult to rebut legally; and therefore any such UNIDO general policy or rule of thumb, while making *ad hoc* decisions by contract officers in each and every case unnecessary, should none the less be flexible so that the requirements may be waived when the interest of UNIDO so dictates (e.g., if the relationship of the whole transaction to the country of manufacture was minimal). In cases of purchases or contracts involving very substantial sums, the bid invitations or requests for proposal, as well as the contracts themselves, may well be subject to special *ad hoc* treatment in any event.

1 August 1983

21. World Meteorological Organization Convention and General Regulations—Questions relating to resolution 3 of the Eighth World Meteorological Organization Congress of "Suspension of members for failure to meet financial obligations"

Letter to the Secretary-General of the World Meteorological Organization

This is in response to your letter of 24 March requesting our advice on certain questions concerning the WMO Convention and the General Regulations in relation to resolution 3 of the Eighth WMO Congress entitled "Suspension of members for failure to meet financial obligations".

Before responding to the particular questions set out in your letter, it should first of all be noted that under the above-mentioned resolution, in spite of its title, member States in arrears of their contributions are not actually suspended from membership, nor are all their rights and privileges suspended (as would be permitted by article 31 of the Convention—cf. Article 5 of the Charter of the United Nations), but rather they are only deprived of their right to vote in constituent bodies (cf. Article 19 of the Charter) and to receive WMO publications free of charge. Thus their right to participate otherwise in the organization and its organs is not suspended.

1. *Whether the number of member States whose voting rights are suspended should be deducted from the number on which a quorum of the Congress is established under article 12 of the WMO Convention.* Since article 12 refers only to members and does not refer to their voting rights (unlike regulations 173 and 187—see paragraph 3 below), no reduction in the quorum requirements of the Congress would seem called for; by the same token, if a State whose voting rights have been suspended is present at a Congress, it is to be counted towards the quorum. And since under article 11 (*b*) decisions require a two-thirds majority of the votes cast for and against (and for elections a simple majority of votes cast) and abstentions are evidently not taken into account, there is in any event no assurance that decisions will be adopted only if a certain minimum number of votes are cast in their favour; the proposed interpretation of article 12 would thus not raise any difficulties in that regard.

2. *Should the majorities required for the adoption of amendments by article 28 (b) or (c) of the WMO Convention be reduced if the voting rights of some member States have been suspended?*

(*a*) Again, as in paragraph 1 above, it should be noted that the cited provisions relate to "members which are States" and not to members with voting rights (cf. paragraph 3 below). Since amendments if adopted and brought into force may affect all members, it seems appropriate to take a strict interpretation and not reduce the majority requirements specified in article 28. It is, however, recognized that if fewer and fewer members can vote it may become increasingly difficult to adopt amendments, and if the rights of more than a third are suspended, constitutional amendments can no longer be adopted; in this these provisions, which call for absolute majorities, differ from those discussed in paragraph 1 above in relation to article 11 (*b*). If this is considered a likely development, perhaps a timely amendment of article 28 might have to be considered; alternatively, if resolution 3 (Cg-VIII) were altered to suspend all the rights and privileges of the members affected, it might be easier to argue that these States should not be counted for the purpose of article 28 voting majorities.

(*b*) It should be noted that subparagraph (*a*) above refers solely to the necessary vote in the Congress and not to the subsequent acceptance of amendments by individual member States that is explicitly required by article 28 (*b*) and implicitly by article 28 (*c*). The right of members in arrears to accept (or not) an amendment was not suspended by resolution 3 (Cg-VIII) and, *a fortiori*, the required majorities and the consequences of acceptance or non-acceptance were not changed.

3. *Whether the number of member States whose voting rights are suspended should be deducted from the number on which the quorum of a Regional Association or a Technical Commission is established under regulation 173 or 187.* In this connection it must first of all be noted that the Regional Associations and the Technical Commissions are both constituent bodies (within the meaning of resolution 3 (Cg-VIII)) under article 4 (*a*) (3) and (4) of the WMO Convention. Since regulations 173 and 187 explicitly refer to a "majority of members with voting rights" it would seem that in the Associations and Commissions (unlike in the Congress—see paragraph 1 above) the quorum

requirements are reduced if any members have their voting rights suspended. This interpretation is based on the clear language of these regulations, even though it should be recognized that the reference to members with voting rights was almost certainly not intended to take into account the possibility that some members might have their voting rights suspended, but was meant to exclude basically non-voting participants such as the associate members referred to in regulation 179.

4. *Does the suspension of voting rights under resolution 3 (Cg-VIII) apply to both substantive and procedural issues?* In view of the broad wording of the resolution, voting in respect of all types of issues would seem to be covered. That, incidentally, is also the effect of a suspension of voting rights under Article 19 of the Charter of the United Nations.

Except as examined in paragraph 2 (*a*) above, no amendment of either the Covenant, the General Regulations or resolution 3 (Cg-VIII) would seem called for.

22 April 1983

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22. Legal and constitutional consequences that would arise from a possible inability of the General Assembly to elect a member of the Economic and Social Council

Opinion prepared at the request of the Under-Secretary-General for Political and General Assembly Affairs

1. The question has been raised of the legal and constitutional consequences that would arise from a possible inability of the General Assembly to elect a member of the Economic and Social Council—which would result temporarily in a Council of only 53 members, rather than the 54 prescribed by paragraph 1 of Article 61 of the Charter.

2. It will be recalled that this situation is rather similar to one that faced the Organization at the end of the thirty-fourth session of the General Assembly, in December 1979 and January 1980, when the Assembly was unable to elect one non-permanent member of the Security Council until 7 January 1980. Our Office advised the General Assembly on this question at its 118th meeting, on 31 December 1979.[10] After reviewing the applicable provisions of the Charter and of the rules of procedure of the General Assembly (which are in all here relevant respects similar in respect of the Security Council and the Economic and Social Council) as well as various situations in which a vacancy could arise in the membership of the Security Council (which again correspond to situations that could arise in respect of the Economic and Social Council), we concluded that:

> "... [W]hile the failure of the General Assembly to elect a non-permanent member of the Security Council would be inconsistent with Article 23 of the Charter, such an act of omission could not produce legal consequences for the functioning of the Security Council, which is the organ primarily responsible for the maintenance of international peace and security. In such a situation, it would be the view of the Office of Legal Affairs that decisions of the Security Council taken in accordance with the relevant provisions of Article 27 of the Charter would constitute valid decisions. This is not to say, however, that the exceptional situation created by such a failure on the part of the General Assembly is either legally or constitutionally desirable. But in the interests of maintaining the authority of the Security Council and the balance of powers between the General Assembly and the Security Council, it is essential that the General Assembly should fulfil its obligations and responsibilities under the Charter."

3. That conclusion, and part of the reasoning that preceded it, referred to the special obligations of the Security Council for the maintenance of international peace and security. While the functions of the Economic and Social Council are of course different, it cannot be said, certainly not as a matter of law, that they are of lesser significance, and in any event both Councils are, by virtue of paragraph 1 of Article 7 of the Charter, "principal organs" of the Organization.

4. Consequently, the reasoning of the 1979 opinion in respect of the Security Council is equally applicable to a failure of the General Assembly to complete an election of members of the Economic and Social Council.

5. In this connection it should also be noted that immediately subsequent to the delivery of the above-mentioned opinion to the General Assembly on the last day of 1979, the following occurred:

(*a*) After the President of the General Assembly indicated that it could be concluded from the preceding debate that the Assembly had "an inescapable responsibility" to discharge its responsibility under the Charter, the session of the Assembly was briefly suspended, and resumed again a few days later, on 4 January 1980, and tried, unsuccessfully, to complete the Security Council election.

(*b*) On 5 and 6 January and on the morning of 7 January, the Security Council held five urgent meetings. No member of the Council challenged its composition, though some expressed regret at the situation (no votes were taken in the Council at any of those meetings—the 2185th to 2189th).

(*c*) On the morning of 7 January, at the 120th meeting of its thirty-fourth session, the General Assembly completed the election of the non-permanent members of the Security Council.

(*d*) On the afternoon of 7 January, the Security Council met again for the first time during 1980 with its full complement of members. (Later, at its 2190th meeting, it took its first vote of the year.)

6. From the above it may be concluded that, should the General Assembly not be able to complete the election of the members of the Economic and Social Council before the end of 1983:

(*a*) The Council would then be imperfectly constituted until the election is completed;

(*b*) However, any decisions taken by the Council while thus imperfectly constituted would still be valid decisions—though, in the first instance, this is a matter for the Council itself to consider;

(*c*) The General Assembly has an obligation to make every effort to complete the election of the Council as soon as possible so that the period during which it has to meet with imperfect composition is reduced to a minimum.

15 December 1983

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23. DECISION OF THE ECONOMIC AND SOCIAL COUNCIL IN ITS RESOLUTION 1982/26 OF 4 MAY 1982 THAT THE COMMISSION ON THE STATUS OF WOMEN, WHEN ACTING AS PREPARATORY BODY FOR THE 1985 WORLD CONFERENCE TO REVIEW AND APPRAISE THE ACHIEVEMENTS OF THE UNITED NATIONS DECADE FOR WOMEN, SHOULD "OPERATE ON THE BASIS OF CONSENSUS"—PRACTICE FOLLOWED IN UNITED NATIONS ORGANS WITH SIMILAR TERMS OF REFERENCE

Memorandum to the Acting Assistant Director, Office of Secretariat Services for Economic and Social Matters

1. You have requested the Office of Legal Affairs to provide clarification with regard to the decision of the Economic and Social Council in its resolution 1982/26 of 4 May 1982 that the Commission on the Status of Women, when acting as preparatory body for the 1985 World Conference to Review and Appraise the Achievements of the United Nations Decade for Women, should "operate on the basis of consensus".

2. Although there is no definitive or authoritative interpretation of the words "on the basis of consensus", we would suggest, in the light of the practice followed in United Nations organs with similar terms of reference, that the Commission consider the following interpretation in implementing Council resolution 1982/26 and General Assembly resolution 37/60 of 3 December 1982. When acting as the preparatory body for the 1985 World Conference, the Commission may decide by vote all questions of a procedural nature; however, all decisions on substantive questions, i.e., those relating to any aspect of the Conference, should be taken on the basis of consensus. If the Commission adopts this approach, it would not be precluded from taking indicative votes on those proposals on which a consensus could not be achieved; the results of such votes could also be included in the preparatory body's report to the Economic and Social Council, with an indication that these proposals are not considered as adopted by the Commission.

28 January 1983

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24. RESPONSIBILITY FOR COSTS OF A PROPOSED COMMITTEE AGAINST TORTURE—UNITED NATIONS PRACTICE WITH RESPECT TO SIMILAR ORGANS ESTABLISHED BY TREATIES

Cable to the Assistant Secretary-General, Centre for Human Rights

We refer to your telegram of 27 January 1983. As you know, the normal practice is for States parties to treaties to be responsible for the costs of any organs or conferences provided for by those treaties. However, particularly in the field of human rights instruments, different practice has emerged in the United Nations. Organs which may bear some resemblance to the proposed committee against torture, such as the Human Rights Committee (article 28, 1966 International Covenant on Civil and Political Rights[11]), the Committee on the Elimination of Discrimination against Women (article 17, Convention on the Elimination of All Forms of Discrimination Against Women[12]) and the Committee on the Elimination of Racial Discrimination (article 8, International Convention on the Elimination of All Forms of Racial Discrimination[13]) are provided by the Secretary-General of the United Nations with the necessary staff and facilities for the effective performance of their functions without any reimbursement by participating States. In some cases, committee members are to "receive emoluments from United Nations resources"; in other cases (e.g., CEDAW), the corresponding expenses are borne by the States parties. The expenses of the international control organs established under the 1961 Single Convention on Narcotic Drugs[14] are also to "be borne by the United Nations". We believe this practice was developed in order to encourage the widest possible participation by States in human rights and similar treaties.

2 February 1983

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25. QUESTION OF THE PROVISION OF SUMMARY RECORDS FOR MEETINGS OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Memorandum to the Chief of the Planning and Meetings Servicing Section, Department of Conference Services

1. Reference is made to the memorandum dated 16 February 1983 concerning summary records for the meetings of the Committee on the Elimination of Discrimination against Women, addressed to you by the Centre for Social Development and Humanitarian Affairs.

2. As you know, the Committee on the Elimination of Discrimination against Women was established pursuant to paragraph 1 of article 17 of the Convention on the Elimination of All Forms of Discrimination against Women.[12] Since the Committee was established under a separate treaty instrument, and not by the General Assembly, it is not automatically subject to the decisions of the General Assembly relating to meeting records and documentation for subsidiary organs of the Assembly. Under paragraph 9 of article 17 of the Convention, the Secretary-General of the United Nations is required to provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Convention. In connection with the adoption of its rules of procedure, the Committee has decided that it requires summary records in order to perform its functions effectively. From a legal standpoint, therefore, there is no obstacle to the Committee having summary records. However, since no specific budgetary appropriation was made for the provision of summary records to the Committee, its decision to have records can only be implemented on a provisional basis, if existing resources permit, pending a decision by the General Assembly at its next session.

3. It is our understanding that the Committee's report reflecting its decision that it should have summary records will be transmitted to the General Assembly at its thirty-eighth session through the Economic and Social Council at its first regular session in 1983. The Centre for Social Development and Humanitarian Affairs or the Department of Conference Services may wish to bring CEDAW's decision on summary records to the attention of the General Assembly at its thirty-eighth session when CEDAW's report is considered, with a statement of financial implications and a request for

guidance from the General Assembly on whether, in the light of the Assembly's decisions relating to meeting records for its subsidiary organs, the cost of providing summary records to CEDAW should be met from regular budget resources or be borne by the States parties to the Convention on the Elimination of All Forms of Discrimination against Women.

23 February 1983

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26. PROPOSALS FOR THE ESTABLISHMENT BY THE GENERAL CONFERENCE OF THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION OF A STANDING INTERGOVERNMENTAL REGIONAL COMMITTEE WHICH WOULD INCLUDE AS FULL MEMBERS A NUMBER OF TERRITORIES THAT ARE NOT RESPONSIBLE FOR THE CONDUCT OF THEIR INTERNATIONAL RELATIONS—QUESTION OF WHETHER PRECEDENTS EXIST IN INTERGOVERNMENTAL ORGANS SET UP WITHIN THE UNITED NATIONS

Letter to the Director of the Office of International Standards and Legal Affairs, United Nations Educational, Scientific and Cultural Organization

I wish to refer to your letter of 12 April 1983 concerning proposals for the establishment by the General Conference of UNESCO of a standing intergovernmental regional committee, in which not only UNESCO member States in the region concerned would be full members but also a number of Territories or groups of Territories that are not responsible for the conduct of their international relations would have the same status.

You have requested information on any relevant precedents that might exist in intergovernmental organs, committees or bodies set up within the United Nations. There is no precedent in the practice of the United Nations for granting full membership in a United Nations body to Territories that are not responsible for the conduct of their external affairs. It should be noted, however, that such Territories or groups of Territories are eligible for associate membership in two of the regional commissions of the Economic and Social Council. Under their terms of reference, applications for associate membership in respect of Territories or groups of Territories within the geographical scope of the commission concerned must be submitted by the State Member of the United Nations that is responsible for the conduct of the external relations of those Territories.

On this basis, the following have the status of associate members of the Economic and Social Commission for Asia and the Pacific (ESCAP): Brunei, Cook Islands, Guam, Hong Kong, New Hebrides, Niue and the Trust Territory of the Pacific Islands; and the following have that status in the Economic Commission for Latin America: Anguilla, the Netherlands Antilles, St. Christopher-Nevis and Montserrat. (St. Christopher-Nevis is scheduled to accede to independence on 19 September 1983 and is expected to become a Member of the United Nations and a full member of ECLA shortly thereafter.)

It should be noted that associate members of the regional economic commissions referred to above are entitled to participate fully, but without the right to vote, in the work of the commissions.

Apart from the foregoing and although not really relevant to the information you have requested, it might be useful to mention that there are examples of entities, other than fully independent States, that have full membership, including the right to vote, in United Nations organs, conferences, programmes or bodies. These examples are *sui generis* in nature and are based on *ad hoc* decisions of the competent deliberative organ of the United Nations. The entities in question are: Namibia, represented by the United Nations Council for Namibia, which has full membership in UNCTAD and in various United Nations organs and conferences; and the Palestine Liberation Organization, which is a full member of the Economic Commission for Western Asia.

29 June 1983

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27. Arrangements for participation of Non-governmental organizations in the work of the Economic and Social Council—Question of the circulation of written statements by non-governmental organizations in the Economic and Social Council and its subsidiary organs

Opinion prepared at the request of the Chairman of the Commission on Transnational Corporations

The rules of procedure of the Economic and Social Council which govern the work of the Council and its subsidiary bodies do not contain specific provisions concerning the submission of written statements by non-governmental organizations. However, elaborate arrangements for participation of non-governmental organizations in the work of the Economic and Social Council have been established by the Council pursuant to Article 71 of the Charter of the United Nations. These arrangements are set out in Council resolution 1296 (XLIV) of 23 May 1968. Under these arrangements a Committee on non-governmental organizations has been established to select and classify non-governmental organizations that are to be granted consultative status with the Economic and Social Council. The non-governmental organizations granted consultative status with the Economic and Social Council are entitled to attend meetings, to make statements orally and to have written statements circulated on matters within their competence and to propose items for inclusion in the agenda of the Council.

As far as the submission of written statements in Commissions and subsidiary bodies of the Economic and Social Council is concerned, paragraph 29 of Council resolution 1296 (XLIV) provides:

> "Written statements relevant to the work of the commissions or other subsidiary organs may be submitted by organizations in categories I and II on subjects for which these organizations have a special competence. Such statements shall be circulated by the Secretary-General to members of the commission or other subsidiary organs, except those statements which have become obsolete, for example those dealing with matters already disposed of and those which have already been circulated in some other form to members of the commission or other subsidiary organs."

Paragraph 30 of the same resolution goes on to specify the conditions that are to be observed regarding the submission and circulation of such written statements. Subparagraph (*d*) of the paragraph relates to written statements submitted by an organization in category I. It provides:

> "A written statement submitted by an organization in category I will be circulated in full if it does not exceed 2,000 words. Where a statement is in excess of 2,000 words, the organization shall submit a summary, which will be circulated, or shall supply sufficient copies of the full text in the working languages for distribution. A statement will also be circulated in full, however, upon the specific request of the commission or other subsidiary organs."

A similar provision with a 1,500-word limitation appears in subparagraph (*e*), which relates to organizations in category II.

Organizations on the roster do not have an absolute right to submit written statements and to have them circulated but may be invited to submit such statements by the Secretary-General in consultation with the chairman of the relevant commission or other subsidiary organ, or by the commission or subsidiary organ itself.

On the basis of the foregoing, it is clear that the International Chamber of Commerce (ICC), which has the status of a non-governmental organization in category I with consultative status with the Economic and Social Council, is entitled to submit written statements on matters relevant to the work of the Commission on Transnational Corporations and in which ICC has a special competence, and moreover it is entitled to have such written statements circulated to members of the Commission even if they are in excess of 2,000 words provided that it supplies sufficient copies of the text in the working languages to the Secretariat. The Commission is therefore not legally competent of preventing ICC from exercising these rights if the statement (1) is on a matter in which ICC has a special competence and (2) is relevant to the work of the Commission.

15 March 1983

28. MEMBERSHIP, ASSOCIATE MEMBERSHIP AND OBSERVER STATUS IN THE CARIBBEAN DEVELOPMENT AND CO-OPERATION COMMITTEE—QUESTION WHETHER CDCC HAS THE AUTHORITY TO DECIDE WHETHER AN ASSOCIATE MEMBER OF THE ECONOMIC COMMISSION FOR LATIN AMERICA SHOULD PARTICIPATE IN THE COMMITTEE'S DELIBERATIONS WITH THE SAME STATUS AS IT ENJOYS IN ECLA OR WHETHER SUCH STATUS AUTOMATICALLY APPLIES TO THE COMMITTEE

Memorandum to the Director, ECLA Subregional Office for the Caribbean

1. Reference is made to your memorandum of 28 February 1983, seeking guidance from the Office of Legal Affairs on membership, associate membership and observer status in the Caribbean Development and Co-operation Committee.

2. Specifically, you have requested legal advice on whether CDCC has the authority to decide whether a country or Territory that is an associate member of the Economic Commission for Latin America should participate in the deliberations of CDCC with the same status as it enjoys in ECLA or whether associate membership status in ECLA automatically entitles the country or Territory concerned to participate with the same status in the deliberations of CDCC.

3. We have reviewed the relevant legislative provisions relating to the establishment of CDCC and the terms of reference of ECLA and our comments on the question you have raised are set out below.

4. As far as full membership (i.e., including the right to vote) in the Committee is concerned, we have indicated in legal opinions given previously on this subject to the ECLA secretariat that such membership is limited to the countries members of the Commission specified in ECLA resolution 358 (XVI) including "the other Caribbean countries" that have since achieved or will in the future achieve independence. No provision is made in the ECLA resolution, or in the Constituent Declaration of CDCC, concerning the participation by non-sovereign entities as associate members or as observers. In these circumstances the Committee itself is competent to determine the status and modalities of participation in CDCC of such non-sovereign entities.

5. In our view, there is no basis either in ECLA resolution 358 (XVI) or in the Constituent Declaration and Functions and Rules of Procedure of CDCC or in the terms of reference of ECLA for a conclusion that associate membership in ECLA automatically entitles those concerned to the same status in CDCC, and therefore it is entirely appropriate and certainly within the competence of CDCC itself to decide whether or not to grant that status to the entities concerned. Of course, as a subsidiary body of ECLA, CDCC must take into account the practice and policy of ECLA in deciding on questions of participation of the nature here involved. All entities that participate in the work of ECLA are eligible to participate in the work of CDCC and there would be no legal obstacle to their being granted the same status in CDCC as they have in ECLA.

14 March 1983

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29. RULE 46 OF THE RULES OF PROCEDURE OF THE ECONOMIC AND SOCIAL COUNCIL—QUESTION OF GRANTING OF THE RIGHT OF REPLY TO OBSERVERS

Cable to the Secretary of the United Nations Commission on Human Settlements

We refer to your telex of 26 April requesting clarification of the meaning of the term "member" in rule 46 of the rules of procedure of the Economic and Social Council.

(*a*) The word "member" in rule 46 of the rules of procedure of the Council refers to a State that is a member of the Economic and Social Council and not to a State that is a Member of the United Nations;

(*b*) It should be noted, however, that although rule 46 gives absolute right of reply only to Council members, it does not preclude the President from granting an opportunity to reply also to Observers. Traditionally this courtesy has been accorded by the Council to observer States and

less frequently and consistently also to certain other entities, such as the Palestine Liberation Organization, authorized to participate in Council proceedings;

(*c*) As Observers have no absolute right of reply, opportunities to reply can be more readily restricted for them than for members. Presiding officers may completely deny Observers an opportunity to reply, though their decision in this respect can be reversed by the body concerned under whose authority the presiding officer acts (pursuant to rules 30 (2) and 33 (1) in the case of the Commission on Human Settlements);

(*d*) It is of course desirable that decisions of presiding officers on these questions be consistent throughout a session (so that if one Observer is granted the opportunity to reply, others are given the same opportunity in similar circumstances) and as far as appropriate with the established practice mentioned in (*b*) above.

27 April 1983

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30. PARTICIPATION OF NATIONAL LIBERATION MOVEMENTS IN SESSIONS OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES—RULE 70 OF THE RULES OF PROCEDURE OF THE FUNCTIONAL COMMISSIONS OF THE ECONOMIC AND SOCIAL COUNCIL—PRACTICE OF THE ECONOMIC AND SOCIAL COUNCIL IN THE APPLICATION OF RULE 73 OF THE COUNCIL'S RULES OF PROCEDURE

Memorandum to the Assistant Secretary-General, Centre for Human Rights

Reference is made to your memorandum of 31 May 1983 requesting the views of the Office of Legal Affairs on the participation of national liberation movements in sessions of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

In the light of the provisions of rule 70 of the rules of procedure of the functional commissions of the Economic and Social Council, which, as you correctly conclude in your memorandum, are also applicable to subsidiary organs established by the Commission by virtue of rule 24, there is certainly no legal obstacle to the issuance of an invitation to national liberation movements for the forthcoming session of the Sub-Commission. It is relevant to note that rule 70 of the rules of procedure of the functional commissions is based on identical provisions contained in rule 73 of the Economic and Social Council's rules of procedure. A review of the practice of the Economic and Social Council in the application of that rule reveals that the Palestine Liberation Organization and the African national liberation movements recognized by the Organization of African Unity have participated regularly in the sessions and in the work of the Council. Participation by these organizations (i.e., the Palestine Liberation Organization and the African National Congress, the Pan Africanist Congress of Azania and the South West Africa People's Organization) in meetings of the functional commissions and their subsidiary organs would therefore be entirely consistent with the practice of the Economic and Social Council. We should like to mention in conclusion that in practice the Economic and Social Council secretariat does not issue formal invitations to the PLO and to the African national liberation movements for the Economic and Social Council sessions. In order to avoid introducing a new practice in the Commission on Human Rights and its subsidiary organs you might wish to consider issuing notifications rather than invitations to the PLO and to the African national liberation movements recognized by OAU. It would then be for the organizations themselves to determine whether or not their participation is warranted on any matter of particular concern to them, in which case they could request permission to intervene on the basis of rule 70 of the rules of procedure of the functional commissions. Name plates could be provided for the organizations notified of the meeting concerned which actually attend the meeting.

7 June 1983

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31. Question whether the Fourth Committee has the competence to grant a hearing to a petitioner directly on the question of Puerto Rico

Opinion prepared at the request of the Chairman of the Fourth Committee

1. The advice of the Office of Legal Affairs has been requested on the question of whether a petitioner may make a statement concerning Puerto Rico during the Fourth Committee's consideration of agenda item 103, which is entitled "Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, *apartheid* and racial discrimination in southern Africa".

2. At the 24th meeting of the Fourth Committee, on 24 November 1978, a legal opinion was delivered in the Committee and accepted by it on the question whether the Committee had the competence to grant a hearing to a petitioner directly on the question of Puerto Rico. That opinion concluded as follows:

> "[I]t is the view of the Office of Legal Affairs that the question of Puerto Rico is not a question before the Fourth Committee since it is not on the list of Territories to which the Declaration applies and consequently not in any of the chapters of the report of the Special Committee dealing with specific Territories allocated to the Committee by the General Assembly. Since the General Assembly has reserved to itself the consideration of the question of the implementation of the Declaration as a whole, which in the view of the Office of Legal Affairs is the context in which the question of Puerto Rico has hitherto been considered, it would not be within the competence of the Fourth Committee to consider or grant the request contained in document A/C.4/33/14 without express authorization from the General Assembly."[15]

3. Since the foregoing opinion, no steps have been taken by the General Assembly to include Puerto Rico on the list of Territories to which the Declaration on the Granting of Independence to Colonial Countries and Peoples applies. Furthermore, at its thirty-seventh session the Assembly did not accede to a request to include in its agenda a separate item relating to Puerto Rico.

4. As there has been no change in the legal situation since the previous opinion was given, the question remains whether the legal situation is altered by the fact that the issue is arising under agenda item 103 rather than under those parts of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples which deal with specific Territories under agenda item 18. Agenda item 103 derives, like the question of the Territories to be included in the list, from a chapter in the report of the Special Committee. In our view, it would be open to the same objections to hear a petitioner speak in the Fourth Committee specifically on Puerto Rico under this chapter as it is to hear a petitioner speak on Puerto Rico under the specific list of Territories. Puerto Rico is in that part of the report of the Special Committee which is reserved for plenary in that it relates to the implementation of the Declaration as a whole. More colloquially speaking, it would be unprecedented and legally objectionable to permit through the back door in the Fourth Committee that which has not been allowed through the front door. There would of course be no legal obstacle to the Committee's hearing a petitioner from Puerto Rico on the item under consideration to speak both in general terms and in relation to Territories on the list, provided, however, that his appearance under this item does not serve merely as a cloak for a statement on Puerto Rico.

21 October 1983

32. Question whether United Nations Development Programme funds may be used for technical assistance to Territories under United States administration and the French Overseas Territories in the Pacific

Memorandum to the Assistant Administrator and Regional Director, Regional Bureau for Asia and the Pacific, United Nations Development Programme

1. Please refer to your memorandum of 18 October 1983 in which you request advice on whether UNDP funds may be used for technical assistance to Territories under United States administration and the French Overseas Territories in the Pacific.

2. On the basis of the information available to us, the situation would appear to be as follows:

(*a*) *Trust Territory under United States administration.* The Trust Territory of the Pacific Islands (TTPI), that is, the Commonwealth of the Northern Marianas Islands, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia, are all eligible for UNDP assistance under the Basic Assistance Agreement concluded on 10 June 1974 between the United Nations (United Nations Development Programme) and the United States as the Administering Authority.[16]

On 24 March 1974 the Northern Marianas Islands signed a Covenant which established the Commonwealth of the Northern Marianas Islands in political union with the United States. Under the Covenant, the Northern Marianas Islands would be under United States sovereignty once the trusteeship is terminated. Thus, in the interim period, the Commonwealth of the Northern Marianas Islands, although still part of TTPI, is treated differently by the United States Administration, which as a matter of policy requested that UNDP assistance not be extended to the Territory because it receives direct development assistance from the United States and is treated like the other Territories under United States sovereignty such as Samoa, Guam, the Virgin Islands and Puerto Rico. As you are aware, the United States has not concluded any UNDP Basic Special Fund or Technical Assistance Agreement in respect of the Territories under United States sovereignty; thus no UNDP country Indicative Planning Figures (IPF) have been established in respect of them.

(*b*) *French Overseas Territories.* France signed the Special Fund Agreement on 17 March 1960 and a Technical Assistance Agreement on 31 May 1954 to cover technical assistance provided by UNDP to Non-Self-Governing or Trust Territories for whose international relations the French Government is responsible. There is, therefore, no impediment to UNDP technical assistance to French Overseas Territories. However, from the information available to us, the French Government has indicated that it has no intention to request for its Overseas Territories and departments individual country IPFs for the third cycle. Nevertheless, it does not wish to deny them the advantages of participating in UNDP activities within the framework of regional and subregional programmes which may be of interest to them.

(*c*) *Membership in the South Pacific Commission.* TTPI, Guam, Western Samoa, Nauru, Fiji and Papua New Guinea and the French Overseas Territories in the Pacific are participating members of the South Pacific Commission (SPC) established on 6 February 1974 by Agreement signed between the Governments of Australia, France, the Netherlands, New Zealand, the United Kingdom of Great Britain and Northern Ireland and the United States of America, to promote the economic and social welfare and advancement of the people of the 20 Pacific Island countries and Territories within its zone of action.

The policy of the United States and France has been and still seems to be that the Territories under their jurisdiction which are members of the South Pacific Commission should not be denied the advantages of participating in joint UNDP/SPC activities within the regional and subregional programmes to the extent that such denial might undermine their being full and equal members of the Commission.

(*d*) *Membership in ESCAP.* TTPI and Guam are associate members of ESCAP, and for as long as the United Nations Trusteeship Agreement has not been terminated the membership of the Northern Marianas Islands remains as a part of TTPI; the United States has expressed no intention to seek separate membership for that Territory as a result of its special status *vis-à-vis* the United States.

2 November 1983

33. ARRANGEMENTS TO BE MADE FOR THE PROVISION OF ASSISTANCE BY THE UNITED NATIONS CHILDREN'S FUND TO THE REPUBLIC OF THE MARSHALL ISLANDS, THE FEDERATED STATES OF MICRONESIA AND THE REPUBLIC OF PALAU WHICH FORM PART OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS—PROVISION OF THE TRUSTEESHIP AGREEMENT CONCERNING CO-OPERATIVE ARRANGEMENTS WITH "SPECIALIZED INTERNATIONAL BODIES"—ANALOGY WITH THE UNITED NATIONS DEVELOPMENT PROGRAMME BASIC AGREEMENT CONCLUDED WITH THE ADMINISTRATIVE AUTHORITY

Memorandum to the Chief, Administrative Services Section, United Nations Children's Fund

1. We refer to your letter of 31 March 1983 in which you request advice on the appropriate arrangements to be made for the provision of assistance by UNICEF to the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau which form part of the Trust Territory of the Pacific Islands.

2. The Trusteeship Agreement between the United Nations and the United States, as the Administering Authority, accords the United States full powers of administration, legislation and jurisdiction over the Trust Territory (article 3 of the Agreement). The Administering Authority is also authorized to enter into co-operative arrangements with "specialized international bodies, public or private" and to engage in other forms of international co-operation (article 10 of the Agreement).

3. As you are certainly aware, UNDP's Basic Agreement with respect to the Trust Territory was concluded with the United States as Administering Authority, and it is UNDP policy to treat the Trust Territory as one Trust Territory, until such time as the Trusteeship Agreement comes to an end.

4. We would recommend that UNICEF follow a similar course. As there is no basic agreement between UNICEF and the United States with respect to the Trust Territory, negotiations for the conclusion of a basic agreement should be initiated with the United States as the Administering Authority.

18 May 1983

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34. CIRCULAR NOTE SENT TO THE STATES PARTIES TO THE STATUTE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY BY THE GOVERNMENT OF THE UNITED STATES IN ITS CAPACITY AS DEPOSITARY OF THE STATUTE CONCERNING THE INSTRUMENT OF ACCEPTANCE TENDERED BY THE UNITED NATIONS COUNCIL FOR NAMIBIA—QUESTION OF THE ACCESSION TO MULTILATERAL TREATIES BY NAMIBIA, AS REPRESENTED BY THE UNITED NATIONS COUNCIL FOR NAMIBIA

Memorandum to the Secretary of the United Nations Council for Namibia

1. I wish to refer to your memorandum of 6 January 1983 requesting a legal opinion regarding the circular note of the Government of the United States, in its capacity as depositary of the statute of IAEA,[17] requesting the comments of States parties to the statute concerning the instrument of acceptance tendered by the United Nations Council for Namibia.

2. The circular note makes it clear that the Government of the United States, as the depositary of the statute, does not find itself in a position to accept the instrument of acceptance received from the United Nations Council for Namibia because of the specific language of articles IV and XXI (*c*) of the statute, which limits acceptance to States. The General Conference of IAEA, however, has decided to admit Namibia, as represented by the United Nations Council for Namibia, to membership. Although the decision by the General Conference of IAEA does not, formally speaking, constitute a decision by the parties to the statute, all the parties are represented in the General Conference. These circumstances, therefore, indicate the existence of a probable difference between the depositary and the parties regarding the acceptance of the instrument tendered by the Council.

3. Accordingly, the procedure followed by the Government of the United States appears to be in accordance with international practice as codified in article 77 (2) of the Vienna Convention on the Law of Treaties,[18] which reads as follows:

> "2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of signatory States and the Contracting States or, where appropriate, of the competent organ of the international organization concerned."

4. The only difficulty that could perhaps be found in the procedure adopted by the depositary in this instance is a possible lack of precision regarding what is now expected from the parties, namely, a decision as to whether the instrument should be deposited; instead, the depositary notification simply calls for "any comments" that the parties may have and remains silent as to the further steps that may be contemplated.

5. While Namibia, as represented by the United Nations Council for Namibia, is not a State, it has been treated as such by the international community on two recent occasions in connection with accession to multilateral treaties deposited with the Secretary-General, namely, the 1966 Convention on the Elimination of All Forms of Racial Discrimation[13] and the 1973 International Convention on the Suppression and Punishment of the Crime of *Apartheid.*[19]

6. Accession by Namibia to these Conventions, both of which provide for accession by States only, was based on paragraph 7 of General Assembly resolution 36/121 C of 10 December 1981, which reads as follows:

> "7. *Requests* the United Nations Council for Namibia, in its capacity as the legal Administering Authority for Namibia, to accede to the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of *Apartheid* and such other related conventions as may be appropriate;"

In this connection, it may be recalled that the Secretary-General, in performing his functions as a depositary, follows the practice of the General Assembly regarding which entities are qualified as States (see *Official Records of the General Assembly, Twenty-eighth Session, Plenary Meetings*, 2202nd meeting, 14 December 1973); because of the prior decision by the General Assembly, the accession of the United Nations Council for Namibia did not raise any difficulty of a depositary nature in these two cases.

7. Granted that the two instances mentioned above may be considered as exceptional owing to the relationship that exists between the Secretary-General and the General Assembly of the United Nations, it remains that, in the case of the Namibian acceptance of the IAEA statute, it is up to the parties to make a final determination as to whether the Namibia instrument should be accepted.

8. In these circumstances, it would be the opinion of this Office that the Council should send as soon as possible to the Government of the United States in its capacity as the depositary, with a request that it be circulated to all States concerned, a concise note (*a*) recalling the decision taken by the General Conference of IAEA with regard to the admission of Namibia to IAEA as well as the special status of Namibia, recognized by the international community (even, implicitly at least, by the Government of the United States in its second communication) and evidenced by Namibia's admission to various international organizations, and (*b*) expressing the wish that the other parties pronounce themselves in favour of the deposit of the instrument of acceptance.

9. The response will probably be such as to remove all difficulties of a legal nature that the depositary may find in accepting the instrument. Should, however, the results be deemed inconclusive, article XVII of the IAEA statute ("Settlement of disputes") could be implemented.

. . .

13 January 1983

35. DECISION 83/10 OF THE GOVERNING COUNCIL OF THE UNITED NATIONS DEVELOPMENT PROGRAMME CONCERNING MONIES THAT ARE PROVIDED FROM THE UNITED NATIONS FUND FOR NAMIBIA, WHICH IS ADMINISTERED BY THE UNITED NATIONS COUNCIL FOR NAMIBIA, TO A TRUST FUND ADMINISTERED BY UNDP—QUESTION WHETHER SUCH MONIES COULD BE CONSIDERED "GOVERNMENT CASH COUNTERPART CONTRIBUTIONS"

Memorandum to the Director, Division of Finance, United Nations Development Programme

1. This is in reply to the memorandum dated 22 July 1983 concerning decision 83/10 adopted on 24 June 1983 by the Governing Council of UNDP at its thirtieth session. The decision concerns monies that are provided from the United Nations Fund for Namibia, which is administered by the United Nations Council for Namibia, to a trust fund administered by UNDP.

2. You have requested our views on the question whether such monies could, from the legal point of view, be considered "government cash counterpart contributions".

3. We have set out the relevant considerations, as we see them, in the attachment to the present memorandum. We would, in the light of such considerations, conclude as follows on the question raised.

(*a*) As the United Nations Council for Namibia is the legal Administering Authority for Namibia and, thus, exercises functions of a governmental nature, it is legally possible to support the view that monies provided to UNDP under the authority of the United Nations Council for Namibia could for UNDP purposes be regarded as monies received from a governmental source.

(*b*) However, even if regarded as received from a governmental source, such monies would nevertheless not constitute a "government cash counterpart contribution" for the purpose of UNDP project financing.

The monies in question are received by UNDP into a trust fund administered under UNDP Financial Regulations and Rules and it is from the trust fund that the monies are provided by UNDP to executing agencies for project implementation.

The term "government cash counterpart contribution" is used in UNDP Financial Regulations and Rules in the context of project implementation for which the UNDP Financial Regulations and Rules require the following:

(*a*) a provision of funds by UNDP to an executing agency to cover project costs which UNDP has agreed to cover and which usually require convertible currency;

(*b*) the services of an executing agency;

(*c*) contributions, in cash or in kind, from the recipient Government for project costs of a local nature, such as locally available building materials, equipment, supplies, labour and professional services.

It is with respect to (*c*) above that the expression "government counterpart contribution" is used in the UNDP Financial Regulations and Rules. Where the government counterpart contribution is made in cash, it is referred to in the UNDP Financial Regulations and Rules as a "government cash counterpart contribution". As the monies in question in the present case are provided for project implementation under (*a*) above, they could not be viewed as a "government cash counterpart contribution".

9 September 1983

ATTACHMENT

The United Nations Council for Namibia. The United Nations Council for Namibia is a subsidiary organ of the General Assembly. It is distinguishable from other subsidiary organs, however, because by virtue of General Assembly resolutions 2145 (XXI) of 27 October 1966 and 2248 (S-V) of 19 May 1967 it functions in a dual capacity: as a policy-making organ of the General Assembly and as the legal administering authority of Namibia.

The General Assembly, in resolution 2145 (XXI):

"4. [*Decided*] that the Mandate . . . terminated, that South Africa has no other right to administer the Territory and that henceforth South West Africa [Namibia] comes under the direct responsibility of the United Nations;

"5. [*Resolved*] that in these circumstances the United Nations must discharge those responsibilities with respect to South West Africa [Namibia];

" . . . "

The General Assembly in resolution 2248 (S-V) established the United Nations Council for Namibia, and, *inter alia*, entrusted the Council with the following powers:

" . . .

"(*a*) To administer South West Africa [Namibia] until independence, within 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;

" . . . "

The General Assembly has thus in resolutions 2145 (XXI) and 2248 (S-V) 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 Namibia achieves independence.

The United Nations Commissioner for Namibia. The General Assembly, in resolution 2248 (S-V) of 19 May 1967, provided for the appointment of a United Nations Commissioner for Namibia to whom the United Nations Council for Namibia would entrust such executive and administrative tasks as it deemed necessary.

The United Nations Fund for Namibia. The United Nations Fund for Namibia was established by the General Assembly by its resolution 2679 (XXV) of 9 December 1970. The relevant provisions of the resolution read as follows:

"*The General Assembly*,

"*Recalling* its resolution 2145 (XXI) of 27 October 1966, by which the United Nations decided to terminate the Mandate for South West Africa and assume direct responsibility for the Territory until its independence,

"*Recalling further* its resolve to discharge that responsibility with respect to the Territory,

"*Bearing in mind* that that responsibility includes the solemn obligation to assist and prepare the people of the Territory for self-determination and independence,

"*Considering* that, in order to discharge its responsibilities under resolution 2145 (XXI), the United Nations should provide comprehensive assistance to the people of the Territory,

"*Having considered* the request made by the Security Council, in its resolution 283 (1970) of 29 July 1970, that a United Nations fund be established to provide assistance to Namibians who have suffered from persecution and to finance a comprehensive educational and training programme for Namibians, with particular regard to their future administrative responsibilities in the Territory,

"*Taking into account* the assistance provided to Namibians at present from United Nations agencies and funds, notably the United Nations High Commissioner for Refugees, the United Nations Educational and Training Programme for Southern Africa and the United Nations Trust Fund for South Africa,

"1. *Decides* that a comprehensive United Nations Fund for Namibia shall be established;

" . . . "

As required by the General Assembly, the United Nations Council for Namibia serves as "trustee" of and administers the United Nations Fund for Namibia.

The United Nations Fund for Namibia is composed of three separate accounts: (*a*) the general account for educational, social and relief activities; (*b*) the trust fund for the United Nations Institute for Namibia; and (*c*) the trust fund for the Nationhood Programme for Namibia. It is from separate account (*c*)* that the monies in question in the present case are provided to the trust fund administered by UNDP.

*Separate account (*c*) was established within the United Nations Fund for Namibia at the request of the General Assembly in 1978.

II

The trust fund administered by UNDP. The trust fund administered by UNDP, titled "UNDP Trust Fund for the Nationhood Programme for the Fund for Namibia", was established by the Secretary-General in 1979. At the same time, authority for administration of the trust fund was delegated to the Administrator of UNDP. The trust fund is administered under the UNDP Financial Regulations and Rules.

The trust fund receives its monies exclusively from the United Nations Fund for Namibia's separate account (*c*) above.

III

Transfer of monies from the United Nations Fund for Namibia to the trust fund administered by UNDP. The arrangements for the transfer of monies from the United Nations Fund for Namibia to the trust fund administered by UNDP are set out in the Guidelines of 30 March 1979 agreed to between the United Nations Commissioner for Namibia and UNDP Assistant Administrator and Regional Director for Africa.

As provided for in section 5 of the Guidelines, once a project document has been approved by the United Nations Council for Namibia, the Commissioner for Namibia, UNDP and the executing agency concerned, the monies specified in the project document as the contribution of the Fund for Namibia are transferred from the Fund for Namibia to the trust fund administered by UNDP.

The monies are, thereafter, allocated by UNDP to the executing agency for project implementation.

IV

The term "government cash counterpart contribution". The expression "government cash counterpart contribution" is used in the UNDP Financial Regulations and Rules in the context of project implementation.

For project implementation, the UNDP Financial Regulations and Rules require the following: (*a*) a provision of funds by UNDP to an executing agency to cover project costs which UNDP has agreed to cover and which usually require convertible currency; (*b*) the services of an executing agency; (*c*) contributions, in cash or in kind, from the recipient Government for project costs of a local nature, such as locally available building materials, equipment, supplies, labour and professional services.

It is with respect to (*c*) above that the expression "government counterpart contribution" is used in the UNDP Financial Regulations and Rules; and where the contribution is in cash, it is referred to as a "government cash counterpart contribution".

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36. Procedure followed by the United Nations for receiving assessed contributions

Memorandum to the Senior Contributions Officer, Office of Financial Services

1. This is in response to your memorandum of today's date on the procedure for receiving assessed contributions.

2. The procedure so far followed by the United Nations, as described in your memorandum and in our conversation today, appears to be the correct and prudent one, i.e., to indicate in the acknowledgement of the payment to the State concerned precisely to which account(s) any given payment is being credited. This is done whether or not the paying State indicates the account(s) to which it wishes the payment to be credited and, if it does so, whether its indication coincides with those that the Secretary-General must abide by pursuant to United Nations financial regulation 5.6.

3. A specification of credits may not be essential in those instances in which the Secretariat's calculations coincide with those of the paying State, or even when that State has not specified any such calculation. When the Secretary-General is unable to accept the credits proposed by the paying State, however, it is highly desirable that he so indicate specifically in his acknowledgement of the payment. Should he fail to do so, then that State could argue, in spite of financial regulation 5.6, that its proposed payment scheme had tacitly been accepted. Though such an argument could be refuted by referring to the periodically published tabulations of payments received, which naturally reflect the Secretariat's calculations, and also on the basis that, whatever either the State or the

Secretary-General indicates in their correspondence, the provisions of the Financial Regulations must be observed, the Organization's position would be weaker than if it had clearly indicated in receiving a payment that it could not follow the State-proposed distribution scheme.

4. As a compromise, it might be agreed with a State that does not wish to receive an acknowledgement indicating a particular distribution of the payments received from it, that no such distribution will be shown if in its communication it does not specify any distribution that is contrary to the Financial Regulations, i.e., if it merely specifies "Payment to regular budget" or "Payment to UNIFIL".

24 January 1983

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37. OBLIGATIONS OF THE UNITED NATIONS *VIS-À-VIS* ITS STAFF IN EVACUATION SITUATIONS—SPECIAL RESPONSIBILITY OF THE HOST GOVERNMENT *VIS-À-VIS* THE ORGANIZATION UNDER THE CHARTER OF THE UNITED NATIONS, THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS AND THE RELEVANT HOST-COUNTRY OR STANDARD BASIC AGREEMENT

Memorandum to the Assistant Secretary-General for General Services

I wish to refer herewith to your memorandum dated 24 November 1982 in which you requested our views on the obligations of the Organization *vis-à-vis* its staff in evacuation situations.

After careful research on the subject, we have reached the following conclusions.

The possible obligations of the Organization *vis-à-vis* its staff members and their families in situations of emergency can be divided into two categories:

(i) There is first the direct legal obligation of the Organization *vis-à-vis* its employees, their spouses and dependants which stems from their relationship as employer and employees and which is governed by their contract of employment and the internal law of the Organization. In emergency situations, the obligation of the Organization materializes in duties which arise from the contract of employment of the employees of the Organization. For evacuation purposes, the following situations may be envisaged:

1. All internationally recruited staff members and their families who are not nationals of the host country and for whom the Organization has a duty to repatriate under their contract of employment pursuant to rule 104.7 and annex IV of the Staff Rules and Regulations should be evacuated by the Organization;
2. Nationals (and their families) of the host country who have been recruited internationally are not eligible for evacuation by the Organization since according to their contract of employment and as nationals of the host country they do not qualify for repatriation;
3. Consultants and experts internationally recruited also have a right to be evacuated together with their wives and dependants subject to the conditions specified in their contract of employment as long as they qualify for repatriation purposes;
4. Locally recruited staff members who are nationals of the country of the duty station do not have a right to be evacuated by the Organization pursuant to their contract of employment with the United Nations as specified in staff rule 104.6 and appendix B of the United Nations Staff Regulations and Rules. They may, nevertheless, be guided and assisted by the Organization in emergency situations in accordance with paragraphs 20, 21 and 22 of the United Nations Security Handbook. Compensation and other rights are established in accordance with their contract of employment;
5. Locally recruited staff members who are not nationals of the host country do not have a right to be evacuated by the Organization since they do not have a right to be repatriated, and the same conclusions as specified for locally recruited nationals apply.

(ii) Apart from the legal obligations of the Organization which arise *vis-à-vis* its staff members under their contracts of employment, it may be possible to postulate some bases in international

law for a broader approach on the part of the United Nations towards its staff in specific emergency situations, taking into account the particular nature and circumstances of each situation. This broader approach can be seen as a counterpart to the Organization's own rights *vis-à-vis* the host Governments. As you know, the primary obligation for the security and protection of personnel, their families and property and of the Organization's property against disturbances in the host country rests with the host Government. This responsibility flows from every Government's normal and inherent function of maintaining order and protecting persons and property within its jurisdiction. In the case of the United Nations and its officials and property, however, the Government is considered to have a special responsibility under the Charter, the Convention on the Privileges and Immunities of the United Nations[20] and any relevant host-country or standard basic agreement. Where the Government will not or cannot discharge this special responsibility, the United Nations may at least have the moral obligation to seek to do so when, in its judgement, its personnel may be endangered because of employment with the Organization irrespective of any contractual rights involved. The extent to which the Organization can act will depend on the particular circumstances of the case and the resources available.

21 January 1983

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38. AUTHORITY OF UNITED NATIONS SECURITY OFFICERS—COMMENTS ON PROPOSED GUIDELINES TO SECURITY SERVICE ON THE USE OF FORCE *VIS-À-VIS* STAFF MEMBERS AND VISITORS, USE OF FIREARMS AND NIGHTSTICKS AND THE RIGHT OF SECURITY OFFICERS TO MAKE ARRESTS AND TO CONDUCT RANDOM SEARCHES

Memorandum to the Under-Secretary-General, Department of Administration and Management

1. We refer to the memorandum of 18 October 1983 addressed to you and to the Staff Committee President by the staff representatives on the Joint Advisory Committee, containing proposals for amending the administrative instruction on the authority of United Nations security officers, on which our advice was requested by the Secretary of JAC.

2. In addition to a draft administrative instruction amending ST/AI/309 of 20 September 1983, the staff representatives suggest that clear guidelines should be issued by the Office of Legal Affairs in co-operation with the Office of General Services, on "the use of force *vis-à-vis* staff members and visitors, use of firearms and nightsticks and the right of security officers to make arrests and to conduct random searches".

3. Our comments on the issues raised by the staff representatives on JAC are as follows.

A. GUIDELINES TO SECURITY SERVICE; ARRESTS AND USE OF FORCE

4. The existing administrative instruction is worded in general terms and is essentially addressed to staff, outlining the necessity of staff to comply with directions given by the security officers in the performance of their duties as agents of the Secretary-General. The circular cautions that in case of non-compliance with directives given, the matter may be reported to higher authorities (para. 3) but reiterates the privilege of staff members to file complaints where a directive is "thought to be unfair or unjust" (para. 2).

5. The instruction does not outline the nature of the authority entrusted to the security officers or the manner in which such authority shall be carried out because both these matters are dealt with in some detail in the Security and Safety Service Manual and the Handbook for Personnel of the Security and Safety Service. In fact, this Office was involved in the preparation of both the Manual and the Handbook.

6. In general, security officers exercise their functions as agents of the Secretary-General "to preserve order and to protect persons and property within the Headquarters District (Area)" within the limits prescribed under applicable rules and regulations, including local law. Local law is relevant

because, under the Headquarters Agreement, federal, state and local law applies within the Headquarters Area (article 7) and it has not so far been deemed necessary to promulgate supplementary regulations in the area of criminal law and procedure, under article 8 of the Agreement.

7. With regard to arrests, the use of force and the use of firearms, the authority of the security officers is defined in the Handbook in the context of applicable local law. Thus, an arrest may only be made if the person to be arrested has in fact committed or is committing a felony. The use of physical force is discouraged unless the officer making the arrest encounters physical force, flight or other factors making the procedure impractical, or otherwise reasonably thinks it necessary to use force to defend the officer or someone else from seriously threatened physical injury. However, the security officers are enjoined to exercise their authority in direct proportion to the actual need and are warned that abuse of authority or use of excessive force may lead to disciplinary action under the Staff Regulations and Rules, and, in some cases, civil liability under local law (part IX of the Handbook).

8. We are of the opinion that the legal guidelines, as contained in both the Handbook and the Manual for the Security and Safety Service, afford adequate protection to all concerned, given the circumstances outlined above.

B. DRAFT ADMINISTRATIVE INSTRUCTION; AMENDMENTS PROPOSED BY THE STAFF

9. The staff propose to amend the existing administrative instruction by adding provisions dealing with (*a*) interrogations, (*b*) the investigation of cases involving staff, (*c*) the conduct of inquiries arising from official allegation of misconduct (paras. 3-9) as well as (*d*) the conduct of searches and inspection of bags and vehicles (para. 10).

1. *Interrogation*

10. Although we are not sure of the exact circumstances which prompted the proposed amendments, we should have thought that, given the fact that staff members retain the privilege to file complaints against any security officer exceeding or misusing his authority, if that were the case, individual cases could be dealt with on an *ad hoc* basis under the existing procedures, and action taken against the security officer concerned, as stated in the guidelines to the security service (sect. 9.05 of the Handbook).

11. On the other hand, we understand that some of the problems that have arisen relate to unwarranted interrogation of staff by security officers, a matter not expressly provided for in the instruction or the Handbook. Since the administrative instruction deals with staff obligation *vis-à-vis* the security officers, it may be appropriate to indicate in the instruction that the obligation to obey directives given by the security officers does not extend to submitting to interrogation unless so required by an official designated for that purpose by the Department of Administration and Management. However, we find the provisions proposed to be added to paragraph 3 of the administrative instruction rather difficult to accept, in so far as they appear to be based on the assumption that directions could be defied and action delayed, pending exhaustion of lengthy procedures involving evaluation of requests for investigation, before the actual questioning of suspects can even be commenced.

12. We would suggest, instead, that you consider amending the existing instruction as follows:

Paragraph 1: Amend the last sentence, which reads "The security officers, in turn, have been instructed always to observe courtesy in the discharge of their duties", to read as follows: "The security officers, in turn, have been instructed always to exercise their functions in conformity with established rules and regulations, including applicable local law, and to refrain from subjecting staff to interrogation or other coercive measures, without prior reference to the Chief of the Security Service, except in extraordinary circumstances requiring such immediate action because of peril to security or safety of others";

Paragraph 3: Add the following: "under the Staff Regulations and Rules, and applicable Personnel Directives", so that the paragraph would read: "Refusal to comply with directions issued by the security officers within their authority may be reported by the Chief, Security and Safety Service,

to the Office of Personnel through the Assistant Secretary-General, Office of General Services, for appropriate action, under the Staff Regulations and Rules, and applicable Personnel Directives."

2. *Investigations and inquiries into official allegations of misconduct*

13. The staff propose to include in the administrative instruction provisions intended to protect staff procedural rights, such as the right to counsel, where a decision to investigate has been taken; and in the case of an inquiry, the right to be informed of the allegations made or the intended charges, and the right to answer such charges with the assistance of counsel.

14. We do not think that the administrative instruction dealing with the authority of security officers would be the appropriate place to define staff procedural rights, for the simple reason that disciplinary cases do not arise solely from failure to comply with directives given by security officers. In our view, the whole question of staff procedural rights should be examined in the context of the Staff Regulations and Rules and applicable personnel directives on disciplinary measures.

15. We note in this respect that at Headquarters, Vienna and Geneva, chapter X of the Staff Rules provides that all disciplinary cases involving staff members shall be referred to a Joint Disciplinary Committee prior to imposition of disciplinary measures, and where no joint disciplinary committee has been established, personnel directive PD/1/76 applies.

16. The procedural safeguards incorporated in PD/1/76 have evolved over time through the jurisprudence and decisions of the Tribunal in disciplinary cases and the procedures outlined therein have recently been upheld by the United Nations Administrative Tribunal as affording staff adequate protection (Judgement No. 300).[21] In fact, observance of due process in course of proceedings leading to the imposition of disciplinary measures is a necessary pre-condition to the validity of such measures, and failure to do so automatically attracts the Tribunal's power of review (see, e.g., Judgements Nos. 130, 183, 210, 222 and 300).[22] Consequently, the Joint Disciplinary Committees observe the procedural safeguards in PD/1/76.

17. If the Joint Advisory Committee considers it appropriate to codify further the practice followed by the Joint Disciplinary Committee along the lines of PD/1/76, this can of course be done.

3. *Searches and inspections of bags and vehicles*

18. If it is found necessary to specify the conditions under which searches and inspections may be carried out, as proposed in paragraph 10 of the draft administrative instruction, we think that this should be done by amendment of the Security Handbook in which case the Security Service may have to be consulted to ensure that the proposed text does not in fact diminish the effectiveness of the Security Service in the performance of its duties.

19. We note, for example, that under the proposed text staff members are to be exempted from inspection when departing from the premises except when actually seen with United Nations property in their possession, but that such restriction would not apply upon entering the premises. We also note that it is proposed that inspection of vehicles should be done only on the basis of "a pre-arranged sampling". It is, we think, apparent that such limitations would not be consistent with the duties entrusted to the Service to safeguard United Nations property as well as that of the staff, visitors and delegates.

20. If, in fact, a suitable text is required, rule 2.08 of the Rules regarding security at the Vienna International Centre could be considered for inclusion in the Handbook if the Security Service finds it adequate. It reads: "Security officers are authorized to search persons [we could add, vehicles, handbags, briefcases or packages] and to seize personal property if they have reason to believe that any person is carrying an unauthorized weapon, explosives or other dangerous substances, narcotics or (suspected) stolen goods."[23]

C. GENERAL OBSERVATIONS

21. However desirable, it is often difficult to achieve an appropriate balance between the need to establish adequate security measures for the protection of persons and property in a given jurisdiction

and the desire to safeguard the procedural and substantive rights of the individuals likely to be affected by such measures. For that reason, most legal systems resort to such subjective formulations as "reasonable", "necessity" or "proportionality" (terms also used in the Handbook) when defining the extent of authority granted to security personnel and how it shall be exercised. In a place such as the Headquarters Area which enjoys a special status in municipal law, the problem is compounded by the presence of United Nations premises not only of staff and members of the public given access to the premises to attend or observe United Nations activities, but also of VIPs, diplomats and other State representatives for whom the United Nations assumes responsibility for their security. As a consequence, we think that any action that could lead security officers to relax their vigilance should be avoided wherever possible.

22. We would thus suggest that, rather than attempting to adopt exhaustive definitions of the authority of security officers, and corresponding rights of staff, a better course of action might be to review cases and problems on an *ad hoc* basis under existing guidelines. If, of course, some problems appear to arise from lack of rules or adequate guidelines, a case could be made for the issuance of new rules or guidelines. We would be glad, in such an event, to assist in reviewing these cases and determining the nature and extent to which additional rules and guidelines would serve a useful purpose.

13 December 1983

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39. JURISDICTION OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL IN RESPECT OF PENSION MATTERS OF OFFICIALS WHO ARE NOT STAFF MEMBERS—ANALYSIS OF SUPPLEMENTARY ARTICLE B TO THE UNITED NATIONS JOINT STAFF PENSION FUND REGULATIONS ADOPTED BY GENERAL ASSEMBLY RESOLUTION 37/131 OF 17 DECEMBER 1982

Memorandum to the Secretary of the United Nations Joint Staff Pension Board

1. This is in response to your memorandum of 20 December on the jurisdiction of the United Nations Administrative Tribunal (UNAT) in respect of pension matters of officials who are not staff members.

2. New supplementary article B to the UNJSPF Regulations, adopted by paragraph I.3 of General Assembly resolution 37/131 of 17 December 1982 and quoted in your memorandum, extends the provisions of those Regulations to certain officials who are not staff members but who are covered by the Conventions on the Privileges and Immunities of the United Nations[20] and of the Specialized Agencies.[24] The relevant comment to annex XII of the United Nations Joint Staff Pension Board's report to the General Assembly, on the basis of which this new article was adopted, indicates that it is to apply to persons such as the members of JIU, the Chairman of ACABQ and the Chairman and Vice-Chairman and Vice-Chairman of ICSC (A.37/9, annex XII, supplementary article B, p. 71). By extending the Regulations as a whole to those officials, the Assembly presumably also meant to include article 48 thereof, which specifies the jurisdiction of UNAT in respect of UNJSPF cases. In effect, the new supplementary article assimilates those officials to staff members for the purposes of the Regulations. Since the ACABQ and ICSC officials are affiliated solely with the United Nations, which has by action of the General Assembly fulfilled the requirement of article 48 (*a*) (i) that the employing organization accept the jurisdiction of UNAT in UNJSPF cases, there should be no obstacle to permitting them to apply to the Tribunal; the same may be said of JIU members, whether on the basis that by chapter V of the Unit's statute they are generally assimilated to United Nations staff members or because they might be considered as employees of all the organizations participating in the Unit, each of which has separately taken the required action under article 48 (*a*) (i) in respect of their staffs.

3. While the above analysis suggests the reasoning UNAT would follow, it is naturally not binding on the Tribunal, which under article 48 (*b*) of the Regulations, as well as under article 2 (3) of its own statute, settles any dispute concerning its own competence. Unfortunately, there is

no way of testing the issue outside the context of an actual case brought by or on behalf of an official covered by the new Regulations, as the Tribunal does not give advisory opinions.

4. Although both article 48 (*b*) of the UNJSPF Regulations and article 2 (3) of the UNAT statute suggest that the Tribunal would only settle a question of competence if there were a dispute in relation to that competence, the Tribunal, like any court, could of course raise the issue *sua sponte* in an appropriate case, so as to make sure that its jurisdiction was not abused. However, given the jurisprudence of the Tribunal as to questions of its own competence, it is most unlikely to take a decision that would deprive a class of litigants of access to the Tribunal, particularly if there is no opposition thereto.

5. To ensure that no such opposition arises in the future, it might be useful if the Board were to confirm, by an official decision, the interpretation set out in paragraph 2 above. Such a decision would have the dual purpose of preventing a future representative of the Board in a UNAT proceeding from raising the issue of competence and would also constitute an authoritative interpretation of supplementary article B by the very body that formulated that text and proposed it to the General Assembly.

6. To make assurance triply sure, it would even be possible for the Secretary-General to exchange letters confirming the above interpretation with JIU, ACABQ and ICSC, as was done with the ICJ Registrar in respect of a somewhat similar issue raised in respect of the staff of the Court's Registry.[25] However, this would not seem to be necessary.

7. As the Secretary-General has been charged, by the General Assembly by its resolution 37/129 of 17 December 1982, to continue consultations and to report on the progressive harmonization and further development of the statutes, rules and practices of the Administrative Tribunal of the International Labour Organisation and the United Nations Administrative Tribunal, he will naturally take into account the question raised in your memorandum in possibly formulating any draft amendments of the UNAT statute or of article 48 of the UNJSPF Regulations that would definitively lay to rest any doubt as to this question.

. . .

31 January 1983

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40. CONDITIONS UNDER WHICH MEETING FACILITIES MAY BE PROVIDED TO CLOSED MEETINGS OF NON-UNITED NATIONS ORGANIZATIONS AND ENTITIES WHICH ARE HELD AT UNITED NATIONS HEADQUARTERS

Memorandum to the Under-Secretary-General for Conference Services and Special Assignments

Reference is made to your memorandum of 17 October 1983 in which you requested an opinion from the Office of Legal Affairs on the provision of services to closed meetings of non-United Nations organizations and entities which are held at the United Nations.

Ideally, the responsibility of the United Nations in providing meeting facilities to non-United Nations organizations and entities should be limited to providing on an "as available basis" an appropriate meeting room with the required interpretation facilities. The organization of the seating arrangements and protocol for such meetings is not really a function of the United Nations Secretariat; it is a responsibility that the secretariat or officials of the organization, group or entity concerned are in a better position to fulfil. Nevertheless, it has been the practice of the United Nations Secretariat to be as accommodating as possible in this regard and in practice seating arrangements have regularly been taken care of, and name plates for participants provided, by the Meeting Services Section of the Department of Conference Services. In these circumstances drastic measures to change the current practice would be undesirable and unwarranted. At the same time, as you have rightly indicated in your memorandum, it is necessary to protect the United Nations Secretariat against possible criticism

by Member States for designations given to participants in non-United Nations meetings for which the Secretariat provides meeting services and facilities.

In our view, the solution outlined in your memorandum appears to be the correct one. Therefore it is advisable that in future, in so far as seating arrangements for non-United Nations meetings are concerned, the United Nations limit itself to providing name plates only for Members of the United Nations and for other participants invited to official meetings of United Nations organs and conferences. The organization, entity or group concerned could then if it so wishes itself provide name plates and designations for other participants as required.

25 October 1983

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41. EXCLUSIVE COMPETENCE AND AUTHORITY OF THE SECRETARY-GENERAL TO APPOINT STAFF UNDER ARTICLE 101 OF THE CHARTER OF THE UNITED NATIONS

Cable to the Regional Director of the United Nations Children's Fund

With reference to your cable of 30 March 1983, we wish strongly to reaffirm the views of the Office of Legal Affairs concerning the exclusive competence and authority of the Secretary-General to appoint staff under Article 101 of the Charter of the United Nations. If a Government has objections to the employment of a staff member, they must be communicated to the United Nations in order that the Secretary-General may determine whether there exists an incompatibility with the Staff Regulations and Rules. The text of the substantive part of the note verbale to be sent to the Government concerned should read as follows:

"... has the honour to refer to the letter dated ... from ... to the Regional Director of UNICEF, regarding the employment by UNICEF of a locally recruited staff member who is not a national of the receiving State. The contents of this letter have been communicated to the United Nations Office of Legal Affairs, New York, which has advised us as follows.

"The exclusive competence and authority of the Secretary-General to appoint the staff of the United Nations derives from Article 101, paragraph 1, of the Charter of the United Nations to which [name of a member State] is a party. Article 101, paragraph 3, further provided that the paramount consideration in the employment of staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible. The staff member who is the subject of the present note verbale was recruited on the basis of the procedures normally followed by the United Nations. Her selection was made from a group of applicants to an advertised post, having been judged best qualified.

"The position taken by the Government as set out in the letter referred to above is not acceptable to the United Nations since it would amount to the exercise of a veto by the Government in question on the exclusive competence and authority of the Secretary-General to appoint his staff under Article 101 of the Charter. If the Government entertains objection to the employment of a particular staff member, the Government is under duty to communicate the nature of the objections to the United Nations in order that the Secretary-General may determine whether there exists any incompatibility between the conduct of the staff member and the United Nations Staff Regulations and Rules. The Regional Director trusts that on further reviewing this matter the objections to the continued employment of the staff member will be withdrawn."

6 April 1983

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42. UNITED NATIONS PERSONNEL PRACTICE REGARDING APPOINTMENT OF STAFF MEMBERS SECONDED FROM THEIR NATIONAL GOVERNMENTS—QUESTION OF THE TERMINATION OR RENEWAL OF FIXED-TERM APPOINTMENTS ON SECONDMENT

Memorandum to the Secretary-General

In reply to the question concerning termination of fixed-term appointment on secondment you put to me the other day, I would like to state the following:

Secondment to the United Nations has been defined only in connection with movement of staff between organizations in the United Nations common system. The Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff contains the following definition:

> "*Secondment* is a movement of a staff member from one organization to another for a fixed period during which he will normally be paid by and be subject to the staff regulations and rules of the receiving organization, but will retain his rights of employment in the releasing organization. The period of secondment may be extended for a further fixed period by agreement among all the parties concerned."

However, specific reference to secondment from government service is made in United Nations staff rule 104.12 (*b*), which provides as follows:

> "The fixed-term appointment, having an expiration date specified in the letter of appointment, may be granted for a period not exceeding five years to persons recruited for service of prescribed duration, *including persons temporarily seconded by national Governments or institutions for service with the United Nations*. The fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment." (Emphasis added.)

Under usual United Nations personnel practice, staff members appointed on secondment from their national Governments receive a United Nations letter of appointment containing a notation under the heading "Special Conditions": "On Secondment from the Government of _____ ." This letter of appointment is usually preceded by an exchange of letters between the United Nations and the Government in which the United Nations requests and the Government agrees to the secondment for a fixed period of time. Extensions of fixed-term appointments on secondments are preceded by a similar exchange.

The letter of appointment establishes the relationship between the United Nations and the staff member; and the exchange of letters constitute the agreement between the United Nations and the Government. The United Nations is not a party to the arrangements between the Government and the person seconded. Those arrangements may include the person's duty or only his right to return to government service and may be effective for a fixed or indefinite period of time and may or may not be co-extensive with the term of the United Nations appointment.

"Secondments" may be distinguished from another form of temporary release from government duties for service with the United Nations: There are cases in which national civil servants are temporarily released for service with the United Nations on the basis of a bilateral arrangement between the Government and the civil servant alone without any understanding between the Government and the United Nations. These temporary releases do not really constitute secondments as that word is used formally in the United Nations, in so far as the United Nations has no understanding at all with the Government concerned.

In any case of release by a Government for the purpose of United Nations service—whether or not the United Nations treats it as a formal "secondment"—the appointee will receive a letter stating that the United Nations appointment is "subject to the provisions of the Staff Regulations and Rules" and specifies that it "may be terminated prior to its expiration date in accordance with the relevant provisions of the Staff Regulations and Rules".

Whatever may be his rights and obligations *vis-à-vis* his Government, a United Nations appointee released from government service, therefore, is no different from any other fixed-term appointee during the period of his United Nations appointment under the United Nations Staff Regulations and Rules. Should his arrangement with his Government require him to leave United Nations service

prior to the expiry of his fixed-term appointment, then he may resign; but there would be no more legal basis for the United Nations to take any unilateral action in that regard than in respect of any other staff member. Should he be deemed to have violated, prior to the expiry of his United Nations contract, some obligation to his Government, the United Nations could take action only to the extent that his conduct justified disciplinary proceedings under chapter 10 of the Staff Regulations and Rules.

Upon the expiry of their fixed-term appointments, staff members—including those on secondment from their national Governments—are subject to the following provision which appears in all letters of appointment for a fixed term:

> "The Fixed-Term Appointment does not carry any expectancy of renewal or conversion to any other type of appointment in the Secretariat of the United Nations."

In deciding whether or not to renew a fixed-term appointment, the Secretary-General may exercise his discretion in the interest of the Organization without the strictures which apply during the time of the appointment in respect of termination.

23 March 1983

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43. NATIONALITY STATUS OF TWO STAFF MEMBERS IN THE LIGHT OF A LETTER RECEIVED FROM A PERMANENT MISSION INDICATING THAT THE STAFF MEMBERS ARE NO LONGER CONSIDERED AS NATIONALS OF THE STATE CONCERNED

Memorandum to the Officer-in-Charge, Office of Personnel Services

1. I wish to refer to your memorandum of 28 February 1983 on the nationality status of two staff members. The letter dated 21 January 1983 addressed to the Office of Personnel Services by the Vice-Minister for Foreign Affairs and Permanent Representative of [name of a Member State] appears to raise two issues. First, it is alleged that the officials in question have conducted themselves in a manner which is incompatible with United Nations staff regulation 1.4 and the standards of conduct of the international civil service as set out in the report of the International Civil Service Advisory Board.[26] Secondly, the third paragraph of the letter formally states that the authorities of the State concerned no longer recognize the staff members concerned as being nationals of that State. The letter thus implicitly deprives the staff members of their nationality although it is unclear, on the basis of the letter alone, whether such deprivation has been carried out in accordance with the law and procedures in force in the State concerned.

2. While the two issues have been linked by the Permanent Representative, for the purposes of the United Nations they may be treated separately. Allegations concerning the conduct of officials should be examined and dealt with in accordance with the procedures set up for that purpose under article X of the Staff Regulations. If substantiated, such allegations may give rise to disciplinary measures or, in the case of serious misconduct, summary dismissal.

3. With regard to the question of nationality, the mere implicit assertion of deprivation of nationality by the Permanent Representative would not be sufficient to be taken note of by the United Nations. Deprivation of nationality is such a serious measure that it must be formally communicated to the United Nations. The United Nations cannot, generally speaking, question the sovereign legal acts of Member States in matters coming within their domestic jurisdiction, such as nationality, and a decision of the type under consideration, properly communicated, would have the effect of removing the staff members concerned from the quota of the State in question and they would then be considered stateless for United Nations purposes.

19 April 1983

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44. ISSUANCE OF UNITED NATIONS IDENTITY CARDS TO DEPENDANTS OF MILITARY OBSERVERS—QUESTIONS OF WHO ARE ELIGIBLE DEPENDANTS, WHETHER SECONDARY DEPENDANTS MAY BE ISSUED UNITED NATIONS IDENTITY CARDS AND WHETHER A COMMON-LAW SPOUSE IS ENTITLED TO SUCH A CARD

Memorandum to the Director, Office for Field Operational and External Support Activities

1. I refer to a number of queries recently received on the above subject from UNTSO and UNMOGIP, relating to the question of dependants of military observers who may be eligible to obtain United Nations identity cards. The queries refer particularly to the following questions:

(*a*) Who are eligible dependants;

(*b*) Whether secondary dependants may be issued United Nations identity cards;

(*c*) Whether a common-law spouse is entitled to a United Nations identity card.

2. We would like first to stress that issuance of United Nations identity cards to dependants of military observers is a courtesy of the Organization, which does not normally undertake any responsibility for the presence of those dependants in the mission area. All costs for the travel of dependants of military observers to and from the mission area are paid either by the observer himself or by his Government. This is clearly set out in the manual issued for the guidance of military observers on appointment. Secondly, we would strongly recommend that the policy on this matter should be applied uniformly in all military observer missions and that such a policy, deriving from a courtesy, should be restrictively interpreted to prevent abuses and possible embarrassment to and liability of the Organization to the extent that United Nations identity cards entitle the bearer to cross military lines and travel in United Nations aircraft and vehicles.

3. With respect to question (*a*), we have already expressed our views in a memorandum to you dated 6 October 1982 to the effect that the issuance of identity cards to dependants of military observers should be subject to the same criteria as applied to the issuance of such cards to dependants of civilian international staff, namely, those developed under the Staff Rules. We would recommend that this position be firmly maintained.

4. With regard to the question under (*b*), in our opinion, secondary dependants should not be issued United Nations identity cards, and this is a policy which in effect has so far been implemented. The rationale behind this position is that United Nations identity cards are issued to dependants who would be eligible under United Nations Staff Rules and Regulations to travel to the duty station at United Nations expense. We would refer to rule 107.5 whereby eligible family members, for the purposes of official travel, shall be deemed to comprise a spouse and those children recognized as dependants. Secondary dependants are not included in the entitlement provided for in this provision. This criterion, together with the principle that issuance of United Nations identity cards should be restrictively interpreted, leads us to the conclusion that secondary dependants should not normally be eligible for United Nations identity cards unless an exception is made in special cases by the Office for Special Political Affairs.

5. With regard to the common-law spouse, we should point out that the United Nations is not empowered to recognize as a spouse anyone other than a party to a legally recognized marriage relationship. Valid common-law marriages are possible in only a few countries with the English legal system where it is still unnecessary to have a formal civil or religious ceremony in order to be recognized as legally married; moreover, no one who is already married can enter into a valid common-law marriage. To the extent that a common-law marriage is recognized as a valid marriage within the jurisdiction of the military observer's home country, there would in principle be no basis for denying such a marriage effect for the issuance of United Nations identity cards by assimilating such a spouse to a dependant. However, it is incumbent upon the military observer, or the person claiming as a spouse, to show that the marriage conforms to the requirements for a valid marriage in the home country of the military observer. For those purposes it is our view that the following should be produced:

A certificate from a senior legal or judicial officer of the home country of the military observer confirming that the marriage in question is recognized as a legally valid marriage in that country.

A determination as to the validity of a common-law marriage in these circumstances is solely for internal administrative purposes with a view to issuing a United Nations identity card to the spouse concerned.

4 May 1983

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45. DETERMINATION FOR THE PURPOSE OF THE STAFF RULES OF THE NATIONALITY OF A STAFF MEMBER WITH DUAL ITALIAN/UNITED STATES NATIONALITY—IMPLICATIONS AS REGARDS THE TAX LIABILITY OF SUCH A DETERMINATION

Memorandum to the Chief of the Administrative Section, Division of Personnel, United Nations Development Programme

1. I refer to your memorandum of 19 April 1983 requesting our advice on whether a staff member with dual Italian/United States nationality could be determined to be of Italian nationality while retaining his United States nationality and on the implications which such a determination would have on his tax liability and on the reimbursement of the taxes by the Organization.

2. You have indicated in your memorandum that the person in question has been offered a fixed-term appointment with UNDP under the 200 Series of Staff Rules for a post in UNFPA as an Associate Programme Adviser in the Professional category in New York, that his P.11 indicates his nationality as Italian, that he has a valid Italian passport, that he travelled to New York on 16 January 1983 entering the United States on his United States passport and that he wishes to be recognized by UNDP as an Italian national. From his Personal History form it appears that he was born in New York on 26 August 1956, that his present nationality and his nationality at birth are indicated as Italian, that his permanent address is indicated as being in the United Kingdom, that his present address is indicated as being in the United States, that his mother tongue is Italian, that his secondary and university education was in Belgium and that his past work experience was in Belgium where he apparently worked for the European Economic Community with designation as an Italian national. In summary, it appears that the staff member was born in the United States as the child of an international civil servant who was an Italian national.

3. As you know, staff rule 204.5 provides as follows:

"*Nationality*

"(*a*) In the application of these rules, the United Nations shall not recognize more than one nationality for project personnel.

"(*b*) When project personnel have been legally accorded nationality status by more than one State, nationality for the purpose of these rules shall be the nationality of the State with which, in the opinion of the Secretary-General, the individual is most closely associated."

Determinations under rule 204.5 (*b*) require the exercise of the Secretary-General's discretion upon review of all the facts of each particular case. In determining the choice between nationalities the primary consideration is: with which of the two countries does the prospective staff member have the closest ties?

4. In the case in question it would not be an improper exercise of the Secretary-General's discretion under staff rule 204.5 to find that for the purposes of the Staff Rules the staff member is either (i) a national of Italy or (ii) a national of the United States. As indicated above in paragraph 2, the facts as presented to us are not conclusive and you may wish to seek further information from him relevant to making this determination. It appears that either factual determination is possible on the basis of the official status file and would be a proper exercise of discretion under staff rule 204.5.

5. With respect to your question concerning the staff member's tax liability and reimbursement thereof by UNDP in the event he is determined to be of Italian nationality, it is our opinion that the United States authorities would indeed consider him to be a United States citizen and thus the United States reservation to section 18 (*b*) of the Convention on the Privileges and Immunities of the United Nations concerning income taxes on the salary and emoluments of staff members would apply. Accordingly, UNDP would be liable for the reimbursement of the staff member's United States taxes in the same manner as for other UNDP staff members of UNFPA and this would have similar implications for the respective budgets. UNDP does not benefit from the Tax Equalization Fund for United Nations Secretariat staff financed out of the United Nations regular budget where the United States "assessment is not reduced by" amounts in respect of tax reimbursements paid by the Organization to United States staff members. In other words, if the staff member were to be considered as an Italian national for purposes of the Staff Rules, UNDP would, as is perfectly proper in such cases, bear the financial consequences of Italian nationality (e.g., home leave) as well as of United States nationality (e.g., tax reimbursement). Such financial consequences are the result of the factual determination to be made under rule 204.5 and ought not to be considered as the deciding factor.

24 May 1983

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46. DECLARATIONS UNDER ARTICLE 14 OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION—QUESTION WHETHER SUCH DECLARATIONS MAY INCLUDE RESTRICTIONS AS TO THE COMPETENCE OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Memorandum to the Assistant Secretary-General, Centre for Human Rights

1. In your memorandum of 5 July 1983, you asked for our opinion on whether the declarations under article 14 of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination[14] may be worded so as to limit the Committee's competence to certain select provisions of the Convention.

2. There are some very strong arguments against the admissibility of such a selective restriction of a declaration under article 14 of the 1966 Convention. Such restrictions are not provided for by the 1966 Convention. In general, treaty instruments dealing with the protection of human rights must be so interpreted as to promote their objective, in other words, in order to promote human rights. Moreover, the 1966 Convention is not the only instrument which admits declarations of this type. The International Covenant on Civil and Political Rights[11] provides for a very similar declaration in its article 41, and the Optional Protocol to the Covenant also provides for the consideration of individual communications. The 1950 European Convention on Human Rights provides for declarations on the question of individual remedies. However, none of these instruments recognizes selective restrictions regarding substantive provisions, and no practice has been established in this regard. Finally, such a selective declaration might imply that it was intended as a reservation, which, under article 20 of the Convention, may be made only at the time of ratification or accession.

3. Nevertheless, there are also some arguments which might justify a selective declaration:

(i) As you have noted, declarations made under this article are optional (in particular, they may be withdrawn at any time); it would therefore appear normal for the State concerned to be permitted to gradate the obligations which it assumes in the context of these declarations;

(ii) You cite the case of the declarations referred to in Article 36, paragraph 2, of the Statute of the International Court of Justice (recognition of the jurisdiction of the Court). The standard practice is that States may accompany these declarations with such restrictions as they see fit. This practice is particularly enlightening with regard to the 1966 Convention, for, unlike article 14 of the Convention, which is silent on the subject, Article 36 of the Statute specifically envisages certain conditions, from which it might have been concluded

that the stipulation of further restrictions was implicitly excluded; however, practice shows that this is not the case. As a result, the conclusion drawn in subparagraph (i) above is strengthened;

(iii) At any rate, there are already three cases of restrictive declarations under article 14 of the 1966 Convention.[27] The declarations of the three countries concerned were made with the reservation that the Committee must ensure that the matter under consideration was not being examined or had not been examined by another international body. While it may be argued that this restriction concerns procedure rather than substance, the fact remains that it is not provided for by the Convention;

(iv) Finally, it can be seen that the procedure under article 20 of the 1966 Convention concerning reservations would be difficult to apply to restrictions included in declarations under article 14 of this Convention. Indeed, reservations must be made no later than at the time of ratification or accession, while declarations under article 14 may be made long after ratification or accession. The application of article 20 to restrictions included in declarations under article 14 could have the effect of prohibiting any restriction, in declarations made after ratification or accession, which was certainly not the intended effect.

4. In conclusion, our opinion is that States which desire to include restrictions in their declarations under article 14 are not prevented from doing so by any well-defined rule of international law; however, these States run the risk of provoking objections which would be difficult to meet convincingly.

29 July 1983

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47. LEGAL CAPACITY OF THE UNITED NATIONS TO ACQUIRE REAL AND PERSONAL PROPERTY, INCLUDING TO RECEIVE BEQUESTS—ARTICLE I, SECTION 1, OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS—FORM OF WORDS TO BE USED IN A WILL TO ENSURE THAT A VALID RECEIPT WILL BE OBTAINED IN RESPECT OF A GIFT TO THE UNITED NATIONS

Letter to a solicitor

We are writing in response to your letter of 29 June asking advice on the form of words to be used in a will to ensure that a valid receipt will be obtained in respect of the gift of Guyanan property held by a person who is both resident and domiciled in the United Kingdom.

According to article I, section 1, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, the United Nations possesses juridical personality and is recognized in Member States as legally capable of acquiring real and personal property including receiving bequests and has in fact received many.

We infer that the testatrix's intention is that the gift will be in real property to be received and held by trustees for the benefit of the United Nations until sale when the proceeds will be paid to the United Nations. Inasmuch as Guyana and the United Kingdom are both parties to the Convention on the Privileges and Immunities of the United Nations, there would be no problem with respect to the acceptance of the property itself by the United Nations or of monies by the United Nations. Officials of the United Nations would be able to issue receipts and thus discharge the executor or trustee.

We would mention, however, that under its Financial Regulations and procedures, the United Nations could not itself undertake fiduciary responsibility as a trustee under private law and, therefore, the United Nations should not be named as a trustee in a will.

Any gift to the United Nations would preferably be made with an indication of the testatrix's wishes as to its use. Such intention should be expressed in precatory language. This is desirable in order to avoid the result, most probably inconsistent with her intentions, that the monies would

simply be received as miscellaneous income (i.e., applied to redeem total assessment of Member States without adding to the total sum available for United Nations purposes).

Under the United Nations Financial Regulations and Rules, money given for a purpose consistent with United Nations policy can be accepted, segregated and used for the purpose for which it was given. Thus, monies given for very generally expressed purposes such as "furtherance of peace" would be used to add to the money available for such programmes or activities as the Secretary-General considered would best serve the intended purpose. Similarly, a bequest "for humanitarian purposes" or for "assistance to refugees" or for "international assistance to children" would be directed to related United Nations programmes or activities. Unduly specific language—unless in precatory terms—might prevent acceptance.

30 August 1983

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48. QUESTION WHETHER THE WORLD DISARMAMENT CAMPAIGN FUND CAN BE MADE BENEFICIARY OF THE ESTATE BY WILL OF A CITIZEN OF THE UNITED STATES—BEQUESTS MADE FOR A SPECIFIED PURPOSE MAY BE ACCEPTED BY THE UNITED NATIONS IF THE SECRETARY-GENERAL AGREES THAT THE PURPOSE IS CONSISTENT WITH THE POLICIES AND ACTIVITIES OF THE ORGANIZATION

Memorandum to the Under-Secretary-General for Disarmament Affairs

1. This is to reply to your memorandum of 17 February 1983 in which you requested our advice as to whether the World Disarmament Campaign Fund can be made beneficiary of the estate by will of a citizen of the United States.

2. The testator should not designate the World Disarmament Fund beneficiary of her estate because the World Disarmament Campaign Fund is not a legal entity which enjoys juridical personality and has not been accorded capacity to accept bequests. However, according to section I of the Convention on the Privileges and Immunities of the United Nations, the United Nations possesses juridical personality and the United Nations is recognized in Member States as legally capable of receiving bequests. In this respect, many bequests have been accepted by the Secretary-General of the United Nations.

3. In particular, the United Nations, and the Secretary-General on its behalf, can legally accept gifts and bequests of citizens of the United States because the legal capacity of the United Nations to such effect is legally inferred from Article 104 of the Charter of the United Nations, specifically provided for by the Convention on the Privileges and Immunities of the United Nations to which the United States is a party and recognized for the purpose of the domestic law of the United States by Executive Order No. 9698 and by section 2 of the International Organizations Immunities Act.[28]

4. The testator has expressed her wish that her bequest be applied for a specific purpose, i.e., she states in her letter of 1 February 1983 that "I am particularly interested in the World Disarmament Campaign". Under the Convention on the Privileges and Immunities of the United Nations and financial regulation 7.2, bequests made for a specified purpose may be accepted if the Secretary-General agrees that the purpose is consistent with the policies and activities of the Organization and no direct or indirect financial obligation or liability for the United Nations would result. In our view, a bequest made for the purpose of promoting public support for disarmament clearly satisfies the requirement of consistency with the policies of the United Nations since it is in accordance with Article 11 of the Charter. Furthermore, the General Assembly has devoted two special sessions to disarmament and, on 7 June 1982, launched a World Disarmament Campaign under the auspices of the United Nations. Thus once the bequest is accepted by the Secretary-General he will place it in the World Disarmament Campaign Fund, or later, if such specific use is no longer possible, the Secretary-General will apply the bequest to the use which he considers would most comport with the wishes expressed by the testator, consistent with the policies and activities of the Organization.

5. Therefore, in the circumstances we recommend that the testator designate the Secretary-General of the United Nations as beneficiary of her estate in her will and that she also indicate there, in precatory language, the use for which she wishes that her bequest be applied, as follows:

"To the Secretary-General of the United Nations to be used for the purpose of the World Disarmament Campaign or similar purpose . . . "

22 March 1983

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49. PROPOSED CO-OPERATION WITH A PUBLISHING FIRM FOR THE PREPARATION OF A *UNITED NATIONS ATLAS OF THE WORLD*—QUESTION OF THE USE OF THE UNITED NATIONS NAME AND EMBLEM—UNITED NATIONS REQUIREMENTS REGARDING BOUNDARY DELIMITATIONS

Memorandum to the Under-Secretary-General, Department of Public Information

1. In your memorandum of 6 June 1983 you requested our consent to a proposal, made by the Department of Public Information, to co-operate with a publishing firm for the preparation of a *United Nations Atlas of the World.* As we understand it from your memorandum and from the proposal submitted to the Publications Board, the *United Nations Atlas of the World* will not be a United Nations external publication. The participation by the United Nations in the project will be to provide guidance and furnish relevant material and statistical data to the publisher, and the United Nations will receive royalties from the sale of the book.

2. As you know, the use of the United Nations name and emblem is regulated by General Assembly resolution 92 (I) of 7 December 1946, in which the Assembly recommended that:

"Members of the United Nations should take such legislative or other appropriate measures as are necessary to prevent the use, without authorization by the Secretary-General of the United Nations, and in particular for commercial purposes by means of trade marks or commercial labels, of the emblem, the official seal and the name of the United Nations, and of abbreviations of that name through the use of its initial letters".

Although in a letter of 14 July 1947 written to all Member States calling their attention to General Assembly resolution 92 (I) it was stated that it was "highly undesirable for the United Nations to be connected in any way with private commercial enterprise", it is clear from United Nations practice that the use of the United Nations name in connection with revenue-producing enterprises is not precluded so long as a legitimate United Nations purpose is being served.

3. We note your view that publication of the atlas would result in the creation of a popular channel for the dissemination of United Nations information and that the Department of Public Information has in the past encouraged the external publication of materials of interest to the United Nations with private publishing companies. We also note that care will be taken that all maps and nomenclature will conform to United Nations policy requirements. In this regard, we think it advisable to point out to the publisher that we see difficulties in the production of a four-colour atlas since use of colours highlights boundary delimitations which would make some maps difficult to approve, e.g., maps including Kashmir. In fact, we wonder whether there would be a market for maps which met all United Nations requirements. Nevertheless, we would see no objection to the use of the United Nations name in connection with this atlas as long as the publisher understands that the United Nations would require, by contract, that all maps comply with its requirements.

4. Notwithstanding the above, we would wish to emphasize that the publisher should be advised that the United Nations emblem may not be used on this publication. As you know, the use of the United Nations emblem on documents and publications is regulated by administrative instruction ST/AI/189/Add.21 of 15 January 1979, which provides in paragraph 11 that the emblem should only be used on official documents and publications of United Nations bodies.

. . .

13 July 1983

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50. USE OF THE UNITED NATIONS NAME AND EMBLEM BY THE UNIVERSITY FOR PEACE—GENERAL ASSEMBLY RESOLUTION 92 (I) OF 7 DECEMBER 1946

Memorandum to the Assistant Secretary-General, Office of Secretariat Services for Economic and Social Matters

1. We refer to your request for advice dated 13 September 1983 on whether the University for Peace may use the United Nations emblem. As we understand it, in a letter dated 19 August 1983, the President of the Council of the University requested the Secretary-General's permission for the use of the United Nations emblem by the University for Peace.

2. The use of the United Nations name and emblem is regulated by resolution 92 (I), adopted by the General Assembly of the United Nations on 7 December 1946 . . .

3. It has been United Nations practice to refrain from authorizing the use of the United Nations name and emblem in a manner implying that a non-United Nations entity is part of the United Nations or incorrectly suggesting an endorsement by the United Nations or United Nations participation in sales proceeds. The practice with respect to the emblem is more restricted than for the words "United Nations", because the emblem more strongly suggests an official connection to the United Nations. None the less, the use of the emblem in close conjunction with such words as "We believe", or "Our hope for mankind", "Our hope for the future", or "Our hope for peace" has been specially authorized in order to permit non-United Nations entities to demonstrate support for the United Nations.

4. We have reviewed the letter of the President of the Council of the University and agree that the University for Peace could appropriately be authorized so to use the United Nations emblem. Although it is an autonomous institution legally separate from the United Nations, the University was created by an international agreement which was specifically approved in General Assembly resolution 35/55 of 5 December 1980; and the Secretary-General of the United Nations, the Director-General of UNESCO, the Director of the United Nations University and the Executive Director of UNITAR appoint members of the University's Governing Body. It is therefore closely linked with the United Nations and the United Nations system.

5. Accordingly, we would authorize the University for Peace to use the United Nations emblem provided that the letters "U.N." are placed above the United Nations emblem and the words "OUR HOPE FOR PEACE" are placed below the United Nations emblem. In addition, the University for Peace's own distinctive symbol must be used in conjunction with the "U.N.—OUR HOPE FOR PEACE" emblem, in order to emphasize that the University for Peace and the United Nations are two separate and independent legal entities. (For example, if used in the letterhead, the University's symbol must be printed on the left side and the "U.N.—OUR HOPE FOR PEACE" emblem must be printed on the right side, or vice versa.) Permission to use the United Nations name and emblem in this manner would in our view be appropriate under the circumstances.

17 October 1983

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51. USE OF THE UNITED NATIONS FLAG—UNITED NATIONS FLAG CODE AND REGULATIONS IMPLEMENTING THE CODE—UNITED NATIONS SPONSORSHIP OF EVENTS ORGANIZED BY GROUPS OR INDIVIDUALS NOT OFFICIALLY CONNECTED WITH THE ORGANIZATION

Memorandum to an Officer, Executive Office of the Secretary-General

This is in response to your request for legal advice on the use of the United Nations flag and United Nations sponsorship of events organized by groups or individuals not officially connected with the Organization.

As far as the use of the United Nations flag is concerned, the General Assembly, by resolution 167 (II) of 20 October 1947, authorized the Secretary-General to adopt a flag code having in mind

the desirability of regulated use of the United Nations flag and the protection of its dignity. Under this authority the Secretary-General issued a Flag Code on 19 December 1947 and amended it on 11 November 1952. The Secretary-General has issued Regulations implementing the United Nations Flag Code the latest of which are those which became effective on 1 January 1967. The Code and the Regulations provide that the flag may be displayed "by Governments, organizations and individuals to demonstrate support for the United Nations and to further its principles and purposes".

As to the use of the flag by individuals, the practice shows that the provisions of the Flag Code and of the Regulations have been interpreted very liberally and it is only in clearly inappropriate cases that requests have been turned down (e.g., where the flag is to be used in place of a maritime flag on an ocean-going vessel) since we have always regarded the flying of the United Nations flag as a sign of support for the Organization. In these circumstances there is no obstacle to the use of the United Nations flag in the two cases under consideration . . .

The second question on which our advice has been requested concerns United Nations sponsorship of events organized by groups or individuals not officially connected with the United Nations. In this regard it should be noted that the Secretariat is not in a position to permit United Nations sponsorship of activities not officially related to the Organization, this being a matter within the competence of the appropriate intergovernmental body responsible for the particular area of activity concerned. In the case of the International Games for the Disabled, the request for United Nations support or sponsorship could perhaps be addressed to the Office of the Assistant Secretary-General for Social Development and Humanitarian Affairs for whatever action might be deemed appropriate.

21 July 1983

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52. IMPLEMENTATION OF THE IMMUNITY OF THE UNITED NATIONS FROM LEGAL PROCESS—PROCEDURES FOLLOWED BY THE UNITED NATIONS WHEN CONFRONTED WITH AN ATTEMPT TO SERVE PROCESS—POLICY OF THE ORGANIZATION AS REGARDS DEMANDS FOR INFORMATION ABOUT STAFF MEMBERS

Paper prepared for the Meeting of United Nations System Legal Advisers, New York, 14-16 September 1983

I. BASIS OF THE IMMUNITY OF THE UNITED NATIONS FROM LEGAL PROCESS

1. Section 2 of the Convention on the Privileges and Immunities of the United Nations provides for the immunity from every form of legal process of the United Nations, its property and assets, except in so far as in any particular case the immunity has been waived. Similar provisions are contained in all the other international agreements relating to the privileges and immunities of the United Nations.

2. The expression "every form of legal process" has been broadly interpreted to include every form of process before national authorities, whether judicial, administrative or executive and irrespective of whether the Organization itself is named as a defendant or is asked to provide information or to perform some ancillary role.

II. PROCEDURES FOLLOWED BY THE UNITED NATIONS WHEN CONFRONTED WITH AN ATTEMPT TO SERVE PROCESS

A. *Actions involving United Nations immunities*

3. In the first years of the Organization's history the United Nations entered *amicus curiae* briefs in cases which challenged United Nations immunities. The practice at the present time is to assert immunity from suit of the Organization in a written communication to the Ministry of Foreign Affairs of the State concerned, accompanied by the summons or other judicial notification. The Ministry is requested to take the necessary steps to inform the appropriate authority (Ministry of

Justice, Attorney General's Office) to appear or otherwise to move the court to dismiss the suit on the ground of the Organization's immunities. When the plaintiff is a staff member or a former staff member, the Organization will usually inform the Ministry of the internal recourse procedures available under the Organization's Staff Regulations and Rules.

B. *Actions involving garnishment or attachment of salaries of staff members*

4. In the execution of a judgement against a staff member for a debt owed by the staff member, attempts are sometimes made to require the Organization to pay a part of the salary of the staff member to the creditor. The policy of the Organization is that such a proceeding, which is sometimes referred to as garnishment or attachment of salary, is null and void as far as the Organization is concerned. Service of a garnishment or attachment order upon the Organization is a form of legal process from which the Organization is immune by virtue of section 2 of the Convention on the Privileges and Immunities of the United Nations. In addition, the proceedings would be tantamount to a seizure of assets of the Organization from which the United Nations is exempt under section 3 of the Convention; this is so because any salary to be seized, before it is actually paid to the staff member, forms part of the assets of the Organization.

5. However, since the Organization's immunities afford no justification for a staff member's failure to meet his or her legal obligations, the United Nations lives up to its obligations under the Convention by taking measures to prevent immunity from legal process from defeating creditors' rights. The Organization, therefore, returns garnishment orders to the creditor or to the court office with an explanation of the Organization's immunity and its policy concerning private legal obligations of staff members. The staff member is requested, usually by the Office of Personnel Services, to settle the matter in such a way, either by payment or by further court action, as to avoid embarrassment to the United Nations. Should the staff member disclaim the debt or intend to appeal the judgement, he or she is required, as a matter of proper conduct, to take whatever legal steps are necessary to delay any direct actions *vis-à-vis* his or her salary. The Organization tries to avoid involvement in the question of the validity of court judgements concerning staff in their unofficial capacity. It is against established policy to authorize deductions from regular salary checks for debts to judgement creditors; however, deductions from final salary or other terminal payments due to a staff member upon separation may be made in favour of judgement creditors upon satisfactory evidence being presented.

III. POLICY OF THE ORGANIZATION AS REGARDS DEMANDS FOR INFORMATION ABOUT STAFF MEMBERS

6. It is not the policy of the Organization to respond to demands for personal information concerning staff members. However, the Organization will confirm that a staff member is employed by it and, to the extent that the information requested is in the public domain, the party requesting the information may be referred to a particular source, such as the Staff Regulations and Rules. In some instances the information requested is formally made available to the staff member and the requesting party is notified thereof so that it can make appropriate demands therefor from that person.

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53. POTENTIAL CIVIL AND CRIMINAL LIABILITY OF MEMBERS OF THE SECURITY AND SAFETY SERVICE—APPLICABILITY OF FEDERAL, STATE AND LOCAL LAW WITHIN THE HEADQUARTERS DISTRICT—IMMUNITY OF UNITED NATIONS OFFICIALS FROM LEGAL PROCESS IN RESPECT OF ACTS PERFORMED BY THEM IN THEIR OFFICIAL CAPACITY

Memorandum to the Assistant Secretary-General for General Services

1. I wish to refer to your memorandum of 18 January 1983 on the potential civil and criminal liability of members of the Security and Safety Service. As your memorandum of the same date to the concerned staff members states, their request for advice on the applicability of the Penal Law

and the Code of Criminal Procedure of New York State and their relation to the Headquarters Agreement is redundant since the subject-matter was most carefully reviewed in 1976 at the time when the Handbook for Personnel of the Security and Safety Service was revised. For the benefit of the staff concerned, however, the following further clarifications may be useful.

2. As a general rule, federal, state and local law applies within the Headquarters District. The Handbook reflects this general rule by incorporating the appropriate standards and norms of local law. The exception which is provided for in section 8 of the Headquarters Agreement, the power to make regulations operative within the Headquarters District, has been utilized sparingly. Only three such regulations have been adopted: regulation No. 1 which deals with the United Nations Social Security System; regulation No. 2 which relates to qualifications for professional or other special occupational services with the United Nations; and regulation No. 3 which concerns the operation of services within the Headquarters District.

3. Of more relevance to the potential civil and criminal liability of the members of the Security and Safety Service is the question of immunity from legal process. Under section 18 (*a*) of the Convention on the Privileges and Immunities of the United Nations, to which the United States is a party, officials of the United Nations shall be immune from legal process "in respect of words spoken or written and all acts performed by them in their official capacity". The United Nations has consistently maintained that it is exclusively within the competence of the Secretary-General to determine when an act is carried out in an official capacity and that this is not a matter which is subject to review by the local authorities (see, for example, the letter dated 11 February 1976 from the Legal Counsel addressed to the Permanent Representative of the United States of America to the United Nations, commenting on a decision rendered in the Criminal Court of the City of New York in the case of *People of the State of New York* v. *Mark S. Weiner*[29]). The potential civil or criminal liability of members of the Security and Safety Service for acts carried out in the performance of their duties is no different from that of any other staff member falling within the purview of section 18 (*a*) of the Convention, that is to say that staff are *prima facie* immune from legal process in respect of such acts, such immunity, however, being subject to a waiver by the Secretary-General in any case where the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations (section 20 of the Convention). It should be noted that under section 29 (*b*) of the Convention the United Nations shall make provisions for appropriate modes of settlement of disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

5 April 1983

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54. ESTABLISHMENT IN A MEMBER STATE OF A PARALLEL EXCHANGE RATE PROVIDING FOR A MORE FAVOURABLE RATE OF EXCHANGE FOR THE UNITED STATES DOLLAR THAN THE OFFICIAL RATE—QUESTION WHETHER THE ORGANIZATIONS OF THE UNITED NATIONS SYSTEM ARE ENTITLED TO THE BENEFITS OF THE BEST PREVAILING RATE OF EXCHANGE

Memorandum to the Deputy Administrator, United Nations Development Programme

1. On 10 January 1983 the Government of [name of a Member State] established a parallel exchange rate which provided for a more favourable rate of exchange for the United States dollar than the official rate. The question has been raised whether the organizations of the United Nations system are entitled to the benefits of the best prevailing rate of exchange which is legally obtainable or whether they must be restricted to the official rate of exchange.

2. The general principle which derives from the law and practice of international immunities is that international organizations are entitled to the benefits of the most favourable legal rate of exchange. This principle, which ensures that any benefit arising from the existence of differential rates accrues to the organizations concerned in the interests of the most efficient use of international

funds, has been expressly incorporated in recent agreements such as the UNDP Standard Basic Assistance Agreement.

3. This principle applies to all organizations of the United Nations system notwithstanding the fact that earlier agreements such as the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies, which were adopted by the General Assembly in 1946 and 1947 respectively, contain no express provision of any kind with regard to exchange rates. At the time when these Conventions were adopted, differential exchange rates were considered to be inconsistent with the obligations of States members of the International Monetary Fund and, therefore, it was not considered necessary to make any provision for the most favourable legal rate of exchange. The persistence of the practice of differential exchange rates, however, has led the organizations to include such a provision in more recent agreements, and the UNDP Standard Basic Assistance Agreement is to be considered as codifying the more recent law of international immunities in this regard.

4. It is the view of this Office, therefore, that the organizations of the United Nations system in the State in question are entitled to the benefits of the most favourable legal rate of exchange, a conclusion which is the only one that would be consistent with the legal arrangements in force and the financial policies laid down by the legislative organs of the organizations concerned.

29 June 1983

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55. QUESTION OF THE USE OF EXEMPT SALARIES AND EMOLUMENTS OF INTERNATIONAL OFFICIALS TO ESTABLISH THE TAX RATE PAYABLE ON TAXABLE INCOME

Memorandum to the Executive Officer of the Executive Office, Department of Public Information

1. I wish to refer to your memorandum of 15 March 1983 requesting the advice of the Office of Legal Affairs as to whether the ministerial decision of 6 February 1963 of a Member State to suspend temporarily the application of an article of the national tax code applies to United Nations as well as UNESCO personnel.

2. The article in question provided that the tax rate payable by international organization officials of the nationality of the Member State concerned on taxable income be calculated on the basis of gross income, including the remuneration received from international organizations.

3. The United Nations and the agencies in the common system have consistently taken the position[30] that the use of exempt salaries and emoluments of international officials to establish the tax rate payable on taxable income is contrary to the provisions of sections 18 (*b*) and 19 (*b*) of the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies, respectively, which provide that such salaries and emoluments shall be exempt from taxation. The ministerial decision of 6 February 1963 which is referred to in paragraph 5 of the UNESCO circular tacitly recognizes the argument advanced by the international organizations at least in so far as their headquarters or other privileges and immunities agreements contain provisions on exemption from taxation. While the decision itself was made applicable to organizations having their headquarters in the State concerned, there is no doubt whatsoever that the decision applies *mutatis mutandis* to the United Nations since the State in question is a party to the Convention on the Privileges and Immunities of the United Nations.

4. On the basis of the foregoing, staff members of the United Nations whose duty station is in the State concerned should continue the practice of not declaring their United Nations salaries and emoluments and should continue to affix the appropriate extract from the *Official Gazette*.

15 April 1983

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56. PRIVILEGES AND IMMUNITIES OF EXPERTS ON MISSION FOR THE UNITED NATIONS—QUESTION OF THE NATIONAL INCOME TAXATION OF HONORARIUMS PAYABLE TO THE MEMBERS OF THE HUMAN RIGHTS COMMITTEE

Memorandum to the Controller

1. This is to respond to your memorandum of 17 August on taxation of honorariums payable to members of the Human Rights Committee.

2. The status of the members of the Human Rights Committee (HRC), established by article 28 of the International Covenant on Civil and Political Rights (which constitutes an annex to General Assembly resolution 2200 (XXI) of 16 December 1966), is substantially the same as that of members of the Committee on the Elimination of Racial Discrimination to which our opinion of 15 September 1969 relates.[31]

3. Accordingly, the members of HRC should be treated as "experts on mission" for the United Nations, within the meaning of article VI of the Convention on the Privileges and Immunities of the United Nations and of the corresponding provisions relating to experts in certain headquarters and conference agreements. Though it might be argued that exemption from national income taxation of the official emoluments of such experts is "necessary for the independent exercise of their functions" (cf. section 22, *chapeau*), they are not explicitly granted such immunity by the Convention. Consequently:

(*a*) Even though the General Assembly formulated the Convention, it cannot now unilaterally interpret that instrument, and thus any appeal it might issue for States not to tax the emoluments of certain experts on mission would merely constitute a non-binding recommendation;

(*b*) In principle, the General Assembly could allow the Secretary-General, under section 17, to specify that certain experts on mission (e.g., members of CERD, HRC and CEDAW) are "officials" to whom article V of the Convention applies (and thus are tax-exempt under section 18 (*b*)). However, though the introductory words of section 22 suggest that some experts may be officials within the scope of article V, such a decision would depart from the pattern so far set by the Assembly in only classifying as article V officials full-time employees of the Organization—i.e., members of the Secretariat, JIU inspectors and the full-time officers of ACABQ and ICSC; the classification of part-time experts as "officials" would raise a number of difficulties, including the method of applying the other exemptions and immunities specified in section 18.

4. Since article 35 of the Covenant provides that "the members of the Committee shall . . . receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide", it would seem that the General Assembly could (aside from issuing an appeal as mentioned in paragraph 3 (*a*) above) decide that if any national income taxes are imposed on the net emoluments it specifies under the Covenant, such taxes will be reimbursed to the HRC members concerned, from United Nations resources. Furthermore, it could decide, in exercise of its power under Article 17 (2) of the Charter of the United Nations, that in so far as such taxes are imposed by a United Nations Member State, such tax reimbursements will be charged to its share of the Tax Equalization Fund provided for in financial regulation 5.2 (*e*) and financial rules 105.2-5.

22 August 1983

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57. DECREE ISSUED IN A MEMBER STATE PROVIDING FOR A FOREIGN FISCAL CERTIFICATE—INCLUSION OF CITIZENS OF THAT STATE ON UNITED NATIONS OFFICIAL TRAVEL STATUS IN THE CATEGORY OF PERSONS REQUIRED TO ACQUIRE AND PAY FOR SUCH A CERTIFICATE—EXEMPTION OF THE UNITED NATIONS FROM ALL DIRECT TAXES UNDER THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Memorandum to the Chief, Office of the Administrator, United Nations Development Programme

1. This is a reply to your memorandum of 10 May 1983 concerning a decree issued in a Member State which provides for a foreign fiscal certificate and includes citizens of that Member State on

United Nations official travel status in the category of persons required to acquire and pay for such a certificate.

2. Article 105, paragraph 1, of the Charter of the United Nations states that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes. This general principle of the Charter was subsequently expanded in the 1946 Convention on the Privileges and Immunities of the United Nations which provides in particular, in its section 7 (*a*), that the United Nations shall be exempt from all direct taxes.

3. Under article 2 (*a*) of the decree in question, citizens of the State concerned are required to acquire and pay for a foreign fiscal certificate irrespective of whether they are travelling on United Nations business. Such travel tax, in our view, is a direct tax on the United Nations from which the Organization, as was indicated above, is exempt in accordance with section 7 (*a*) of the Convention on the Privileges and Immunities of the United Nations to which the State concerned is a party. A tax of this kind places a direct burden on United Nations funds, and its collection with respect to official United Nations travel is therefore precluded by the Charter and the Convention on Privileges and Immunities of the Organization.

4. In the light of section 7 (*a*) of the above-mentioned Convention, any citizen of the State concerned, whenever travelling on official United Nations business, i.e., having his travel expenditures borne by the Organization, should be exempt from the application of the provisions of the decree requiring the acquisition of a foreign fiscal certificate.

23 May 1983

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58. PROPOSED MODIFICATION TO THE LIABILITY CLAUSE IN THE HOST CONFERENCE AGREEMENT FOR THE SIXTH SESSION OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT—QUESTION OF POTENTIAL LIABILITY FOR DAMAGE CAUSED BY THE GROSS NEGLIGENCE OF UNITED NATIONS OFFICIALS

Memorandum to the Director of the Budget, Office of Financial Services

1. We wish to refer to your memorandum of 20 January 1983 regarding the proposed modification to the liability clause in the host conference agreement for the sixth session of the United Nations Conference on Trade and Development whereby the host Government would not be liable for property damage in the Sava Centre caused by the gross negligence of United Nations officials.

2. The Office of Legal Affairs notes that the Government has accepted, in all other respects, the standard liability clause and is of the view that the proposed modification merely states explicitly an implied condition of liability which the Organization has accepted on previous occasions. Insurance against the gross negligence of United Nations officials can hardly be considered to form part of the costs of holding a conference away from established headquarters, and to suggest to a host country that it should bear the cost of such liability insurance appears to this Office at least as not being in accordance with the letter or the spirit of General Assembly resolution 31/140 of 17 December 1976.

3. . . . To the extent that the gross negligence of United Nations officials may be considered a potential liability, which we doubt, it would be for the United Nations to bear the cost, either by obtaining a suitable policy or a rider to an existing policy, or by self-insurance.

25 January 1983

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59. Legal arrangements that might be required should the General Assembly decide to establish a world-wide United Nations short-wave network, in particular for broadcasts emanating from the Headquarters of the United Nations and the seats of the regional economic commissions

Memorandum to the Under-Secretary-General for Public Information

1. We wish to refer to your memorandum of 23 December 1982 requesting information on possible legal arrangements that might be required should the General Assembly decide to establish a world-wide United Nations short-wave network, in particular for broadcasts emanating from the United States and the seats of the four regional economic commissions.

2. The existing legal framework for short-wave radio broadcasting by the United Nations is based on the legislative action of the General Assembly expressed in its resolution 13 (I) of 13 February 1946 and relevant headquarters agreements concluded between the United Nations and the United States and the four countries which are host to the regional economic commissions.

3. Resolution 13 (I) approved the recommendations of the Technical Advisory Committee on Information contained in its annex I which stated that:

> "10. The Department [of Public Information] should actively assist and encourage the use of radio broadcasting for the dissemination of information about the United Nations. To this end it should, in the first instance, work in close co-operation with radio broadcasting organizations of the Members. The United Nations should also have its own radio broadcasting station or stations with the necessary wavelengths, both for communication with Members and with branch offices, and for the origination of United Nations programmes. The station might also be used as a centre for national broadcasting systems which desire to co-operate in the international field. The scope of the radio broadcasting activities of the United Nations should be determined after consultation with national radio broadcasting organizations."

4. In implementation of this recommendation, section 4 (*a*) (1) of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations of 1947[32] provides that the United Nations may establish and operate in the Headquarters District its own short-wave sending and receiving radio broadcasting facilities which may be used on the same frequencies (within the tolerances prescribed for the broadcasting service by applicable United States regulations) for radio-telegraph, radio-teletype, radio-telephone, radio-telephoto and similar services. Section 4 (*b*) of the Agreement further provides that the United Nations shall make arrangements for the operation of these services with the International Telecommunication Union, the appropriate agencies of the Government of the United States and the appropriate agencies of other affected Governments with regard to all frequencies and similar matters. Finally, section 4 (*c*) provides for the establishment, to the extent necessary for efficient operation, of facilities outside the Headquarters District.

5. Provisions similar to section 4 of the United Nations Headquarters Agreement are to be found in section 14 (*b*), (*c*) and (*d*) of the ESCAP headquarters agreement.[33]

6. Article 5, 4 (*b*), of the ECWA headquarters agreement, which was signed at Baghdad on 13 June 1979,[34] provides that the United Nations may establish and operate at the headquarters of ECWA its own short-wave broadcasting facilities, subject to the necessary authorization from the General Assembly and *with the agreement of the Government as may be included in a supplementary agreement* (emphasis added).

7. The headquarters agreements of ECLA[35] and ECA[36] do not contain an express provision with regard to short-wave broadcasting. In the case of ECLA there is no provision of any kind for the operation of radio services; the ECA agreement contains a provision for the exchange of radio traffic with the United Nations radio network (section 7 (*a*)).

8. While it is the view of the Office of Legal Affairs that the headquarters agreements referred to in paragraphs 4 and 5 above appear to confer upon the United Nations the right to establish and operate short-wave radio broadcasting facilities in those headquarters, subject to the arrangements on frequencies and similar matters with ITU and the appropriate government agencies, the recom-

mendations of the Technical Advisory Committee on Information read together with the headquarters agreements could be interpreted to mean that, with regard to radio programmes emanating directly from a United Nations headquarters, both the right to broadcast and the scope of the broadcasting activity are subject to consultation with the national radio broadcasting organizations. As a practical matter, however, it is assumed that such broadcasts would be made on the basis of decisions taken by the General Assembly which would lay down the necessary and appropriate guidelines for consultation with national broadcasting organizations.

9. In conclusion, it is possible to summarize the legal arrangements that might be required as follows. Subject to the technical arrangements on frequencies and similar matters with ITU and the appropriate government agencies and the guidelines on consultation with the national radio broadcasting organizations, the United Nations has the right, at the present time, to establish and operate short-wave broadcasting at United Nations Headquarters, New York, and ESCAP headquarters, Bangkok. At ECWA headquarters, Baghdad, the establishment and operation of short-wave facilities, while provided for in principle, is subject to the authorization of the General Assembly and the agreement of the Government. At ECA headquarters, Addis Ababa, and ECLA headquarters, Santiago, it would be necessary as a preliminary matter to negotiate the necessary basic agreement with the host country concerned for the right to establish and operate short-wave radio facilities.

10 January 1983

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60. Question of the application of section 205 of the United States Foreign Missions Act of 1982 to the permanent missions accredited to the United Nations

Opinion prepared at the request of the Committee on Relations with the Host Country [37]

1. The present document has been prepared in response to a request made by the Committee on Relations with the Host Country at its 95th meeting, on 28 March 1983. It was suggested at that meeting that it would be helpful for the Committee's work if a legal opinion were to be prepared by the Legal Counsel regarding the application of section 205 of the United States Foreign Missions Act of 1982 to the permanent missions accredited to the United Nations in New York.

2. The United States Foreign Missions Act was enacted on 24 August 1982 and became effective on 1 October 1982.

3. According to section 201 (*a*) of the Act, it is intended to regulate:

> "the operation in the United States of foreign missions and public international organizations and the official missions to such organizations, including the permissible scope of their activities and the location and size of their facilities".

4. Section 209 (*a*) of the Foreign Missions Act provides that the United States Secretary of State may make applicable any provision of the Act to an international organization to the same extent that it is applicable with respect to a foreign mission if the Secretary determines that such application is necessary to carry out the policy set forth in section 201 (*b*) and to further objectives set forth in section 204 (*b*).

5. The term "international organization" is defined by section 209 (*b*) of the Act as:

> "(1) a public international organization designated as such pursuant to the International Organizations Immunities Act (22 U.S.C. 288-288 f-2) or a public international organization created pursuant to a treaty or other international agreement as an instrument through or by which two or more foreign Governments engage in some aspect of their conduct of international affairs; and
>
> "(2) an official mission (other than a United States mission) to such a public international organization."

6. By a note verbale of 19 January 1983, the United States Mission to the United Nations informed all permanent missions and offices of permanent observers to the United Nations that, pursuant to the provisions of section 209 of the Act and a determination by the Secretary of State, the provisions of its section 205 are applicable to them.

7. Section 205 of the Act, now applied to the official missions to the United Nations, reads as follows:

"Section 205 (*a*) (1) The Secretary may require any foreign mission to notify the Director prior to any proposed acquisition, or any proposed sale or other disposition, of any real property by or on behalf of such mission. If such a notification is required, the foreign mission (or other party acting on behalf of the foreign mission) may initiate or execute any contract, proceeding, application or other action required for the proposed action—

"(*A*) only after the expiration of the 60-day period beginning on the date of such notification (or after the expiration of such shorter period as the Secretary may specify in a given case); and

"(*B*) only if the mission is not notified by the Secretary within that period that the proposal has been disapproved; however, the Secretary may include in such a notification such terms and conditions as the Secretary may determine appropriate in order to remove the disapproval.

"(2) For purposes of this section, 'acquisition' includes any acquisition or alteration of, or addition to, any real property or any change in the purpose for which real property is used by a foreign mission.

"(*b*) The Secretary may require any foreign mission to divest itself of, or forgo the use of, any real property determined by the Secretary—

"(1) not to have been acquired in accordance with this section or

"(2) to exceed limitations placed on real property available to a United States mission in the sending State.

"(*c*) If a foreign mission has ceased conducting diplomatic, consular and other governmental activities in the United States and has not designated a protecting power or other agent approved by the Secretary to be responsible for the property of that foreign mission, the Secretary

"(1) until the designation of a protecting power or other agent approved by the Secretary, may protect and preserve any property of that foreign mission; and

"(2) may authorize the Director to dispose of such property at such time as the Secretary may determine after the expiration of the one-year period beginning on the date that the foreign mission ceased those activities, and may remit to the sending State the net proceeds from such disposition."

8. As indicated in the above-mentioned note verbale, all official missions to the United Nations are requested, from the date of the note, to notify the United States Mission to the United Nations prior to any acquisition, sale or other disposition, by or on behalf of the mission, of real property which is located in the United States, its territories or possessions. This includes, according to the note, but is not limited to, any purchase, lease, rental, alteration, addition or change in the purpose for which real property is used by a mission. It also includes any real property made available to a mission for its use with the exception for the time being of single-family residential property leased by or on behalf of the mission.

9. The note indicates that the notifications will be reviewed during the 60-day period and that, where possible, this period will be reduced.

I. GENERAL INTERNATIONAL LAW ON PRIVILEGES AND IMMUNITIES

10. The Charter of the United Nations states, in its Article 105, that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

11. Pursuant to Article 105, paragraph 3, of the Charter, the detailed application of this general principle was effected *inter alia* through the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946 (to which the United States is a party) and, in the particular case of the United States, through the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations signed on 26 June 1947.

12. For the purposes of the present study the Headquarters Agreement is of particular importance as it sets forth the privileges and immunities to which the resident representatives to the United Nations and their staffs are entitled. From the very beginning the United Nations took the position, in the light of Article 105 of the Charter, that those representatives should enjoy the same privileges and immunities as are accorded to diplomatic envoys accredited to the Government of the United States. The text of the draft agreement approved by the General Assembly on 13 February 1946 as a basis of discussions with the competent United States authorities reflected this position very clearly. Subsequently it was confirmed in article V, section 15, of the Headquarters Agreement which reads as follows:

> "(1) Every person designated by a Member as the principal resident representative to the United Nations of such Member or as a resident representative with the rank of ambassador or minister plenipotentiary,
>
> "(2) such resident members of their staffs as may be agreed upon between the Secretary-General, the Government of the United States and the Government of the Member concerned,
>
> "(3) every person designated by a member of a specialized agency, as defined in Article 57, paragraph 2, of the Charter, as its principal resident representative, with the rank of ambassador or minister plenipotentiary, at the headquarters of such agency in the United States, and
>
> "(4) such other principal resident representatives of members of a specialized agency and such resident members of the staffs of representatives of a specialized agency as may be agreed upon between the principal executive officer of the specialized agency, the Government of the United States and the Government of the member concerned, shall, whether residing inside or outside the headquarters district, be entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it. In the case of members whose Governments are not recognized by the United States, such privileges and immunities need to be extended to such representatives, or persons on the staffs of such representatives, only within the headquarters district, at their residences and offices outside the district, in transit between the district and such residences and offices, and in transit on official business to or from foreign countries."

13. It follows from article V, section 15, of the Headquarters Agreement that the relevant provisions of general international law on the question of privileges and immunities also apply to the resident representatives to the United Nations and their staffs. International law concerning this question is codified in the 1961 Vienna Convention on Diplomatic Relations. The concept of diplomatic privileges and immunities embodied in the Vienna Convention sets forth *inter alia* rights and duties of a receiving or host State. Among these duties is the obligation to provide every assistance to foreign diplomatic missions for the performance of their functions (articles 21 and 25 of the 1961 Vienna Convention).

14. As far as real estate matters are concerned, international law does not prevent a receiving or host State from adopting national legislation dealing with such property belonging to foreign diplomatic missions. However, it is self-evident that the legislation or, to be more precise, its application should not be contrary to the relevant responsibilities of a receiving or host State under international law.

II. LEGAL IMPLICATIONS OF SECTION 205 OF THE UNITED STATES FOREIGN MISSIONS ACT

15. Inasmuch as the purpose of section 205 of the United States Foreign Missions Act seeks to regulate the future acquisition, sale or other disposition by or on behalf of the foreign missions' real estate property, that purpose seems to be consonant with the relevant provisions of international

law. However, certain elements in the section give rise to serious concerns from the point of view of existing international law.

1. *Sixty-day period*

16. Subparagraphs 1 A and 1 B of section 205 prescribe a 60-day period needed for the Department of State to review any mission's plans for the acquisition, lease or alteration of real property. It should be noted that, according to articles 21 and 25 of the 1961 Vienna Convention on Diplomatic Relations, "the receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way . . . and shall accord full facilities for the performance of the functions of the missions".

17. It is well known that the real estate market in New York City is extraordinarily tight, particularly in Manhattan, desirable properties remaining on the market for the briefest possible periods, and many Members of the United Nations find it increasingly difficult to secure suitable facilities for their missions on terms they can afford. Under the existing circumstances it has to be anticipated that the 60-day period would further aggravate the situation with respect to the acquisition of real estate property by missions, property owners being unwilling to hold the real estate in question for so long a period, and therefore insistence on so extensive a time-limit would not correspond to United States obligations under general international law not reflected in the 1961 Vienna Convention to facilitate such acquisitions and to accord full facilities for the performance by the missions of their functions. Even if the full 60-day period is possibly not insisted upon in practice, as the note of the United States Mission of 19 January 1983 indicates, the necessity of providing for a waiting period of up to 60 days would still lead to considerable additional complications in real estate transactions and therefore to the same conclusions under international law.

2. *Disposition of property*

18. Subparagraph (*c*) (2) of section 205 of the Act provides that the Secretary of State may authorize under certain conditions the disposition of property belonging to a foreign mission if such mission has ceased conducting diplomatic and other governmental activities in the United States. The conditions mentioned in subparagraph (*c*) (2) do not include the requirement of obtaining the consent of the Government whose mission ceased the activity for such disposition. Such consent is, however, required by international law. Article 45 of the 1961 Vienna Convention explicitly states that "if diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled, the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives".

3. *Issue of reciprocity*

19. Subparagraph (*b*) (2) of section 205 of the Act authorizes the Secretary of State to require any foreign mission to divest itself of, or to forgo the use of, any real property if he determines that it exceeds limitations placed on real property available to a United States mission in the sending State. The legal implication of the application of this provision to diplomatic missions accredited to the United Nations is that the Department of State will handle the situations envisaged by this subparagraph on the basis of reciprocity.

20. With respect to the application of section 205 (*a*) also the discretion of the Secretary of State is considerable and the reciprocity issue could emerge in this context as well. As a matter of fact, this issue underlies the whole Act, which gives rise to the possibility that missions could be treated differently on the basis of reciprocity. According to the above-mentioned section 209 (*a*) of the Act, determination by the Secretary of State to apply section 205 to the official missions accredited to the United Nations means that "such application is necessary to carry out the policy set forth in section 201 (*b*) and to further the objectives set forth in section 204 (*b*)".

21. Section 201 (*b*), from the chapter entitled "Declaration of Findings and Policy", is of a very broad nature. It states that

> "it is the policy of the United States to support the secure and efficient operation of the United States missions abroad, to facilitate the secure and efficient operation in the United States of foreign missions and public international organizations and the official missions to such organizations and to assist in obtaining appropriate benefits, privileges and immunities for those missions and organizations and to require their observance of corresponding obligations in accordance with international law."

22. The objectives of the Act as described in section 204 (*b*) are

"—to facilitate relations between the United States and a sending State,

"—to protect the interests of the United States,

"—to adjust for costs and procedures of obtaining benefits for missions of the United States abroad, or

"—to assist in resolving a dispute affecting United States interests and involving a foreign mission or sending State."

23. That both sections encompass the reciprocity concept follows clearly from section 201 (*c*) which equally belongs to the chapter entitled "Declaration of Findings and Policy" and which reads as follows:

> "(*c*) The treatment to be accorded to a foreign mission in the United States shall be determined by the Secretary after due consideration of the benefits, privileges and immunities provided to missions of the United States in the country or territory represented by that foreign mission."

In the section-by-section analysis of the United States Senate Report No. 97-329 of 8 April 1982, *U.S. Code Congressional* and *Administrative News*,[38] it is said that:

> "Section 201 (*c*) mandates the consideration of benefits, privileges and immunities accorded to United States missions abroad in determining the assistance to be accorded to foreign missions in the United States in the specific application of the general policy enunciated in subsection (*b*). This element of reciprocity, while not necessarily determinative in all cases, is a key feature of the system envisioned by this title. The concept requires the Secretary of State to be cognizant of the treatment of United States missions and personnel in foreign countries and to take that treatment into account in determining how foreign missions are to be treated in the United States. In making such determinations the Secretary will also take into consideration national security concerns."

24. The 1961 Vienna Convention on Diplomatic Relations does not address itself specifically to the question of reciprocity. Since the present paper studies only a particular case concerning the granting of certain privileges and immunities to the missions accredited to the United Nations, the question of reciprocity in general international law is not dealt with. Therefore the question to be examined by this study is whether there is room for application of reciprocity *vis-à-vis* missions accredited to the United Nations.

25. The Charter objectives contained in Article 105 stipulate the obligation of all Members to recognize the legal capacity of the United Nations and to accord to the Organization, the representatives of its Members and its officials all privileges and immunities necessary for the accomplishment of its purposes. It follows from this that privileges and immunities granted to the Organization and the representatives of Member States have to be granted unconditionally and on an equal basis.

26. This is the underlying purpose of article V, section 15, of the Headquarters Agreement, which deals specifically with the privileges and immunities to be accorded to "resident representatives" to the United Nations and which, according to its article IX, section 27, "shall be construed in the light of its primary purpose, to enable the United Nations at its Headquarters in the United States fully and efficiently to discharge its responsibilities and fulfil its purposes". The fact that by virtue of article V, section 15, the representatives of Member States to the United Nations and their staffs

shall be entitled "to the same privileges and immunities, subject to corresponding conditions and obligations, as it [i.e. the United States] accords to diplomatic envoys accredited to it" does not give room for unequal treatment on the basis of reciprocity. The legislative history of this article shows that the cited words were not inserted in order to introduce the reciprocity aspect but for the purpose of assuring the United States that the privileges and immunities granted to the representatives of Members would not be broader than those enjoyed by diplomatic envoys. In this connection the Legal Adviser of the United States Department of State, in a letter dated 29 April 1948, wrote the following:

> "It seems clear that the Charter of the United Nations does not permit the imposition of conditions of reciprocity on the granting of privileges and immunities under Article 105. Indeed the purpose of the Charter in respect of Article 105 is to provide for the granting unconditionally by Member States of certain privileges and immunities to the United Nations so that it may function effectively as a world organization untrammelled in its operation by national requirements of reciprocity or national measures of retaliation among States.
>
> "The background in the negotiation of section 15 of the Headquarters Agreement indicates that the phrase 'subject to corresponding conditions and obligations' was inserted by way of compromise to meet a desire on the part of the United States that persons covered by section 15 were not to receive privileges and immunities broader than those accorded to diplomatic envoys accredited to the President of the United States, and that, like diplomatic envoys, such persons might be found *personae non gratae* and made subject to recall. The negotiating background does not indicate that the quoted phrase was inserted for the purpose of permitting the United States to make the privileges and immunities provided for in section 15 dependent upon reciprocity. In the case of representatives of Members, and resident members of their staffs, the United States may be authorized under the Headquarters Agreement to bring about expulsion of personnel in cases where such action appears to be required. Except for this drastic weapon which the United States may under some circumstances use, the Headquarters Agreement does not provide for the cancelling of privileges and immunities." (Letter dated 29 April 1948 addressed to the Chairman of Subcommittee No. 6 of the Committee of Foreign Affairs, reprinted in *Structure of the United Nations and the Relations of the United States to the United Nations.* Hearings before the Committee on Foreign Affairs. House of Representatives, Eightieth Congress, second session, p. 50.)

27. The United Nations and its organs have pronounced themselves consistently in the same way, as is shown by the following citations.

(*a*) It is indicated in the *Yearbook of the International Law Commission* that:

> "it has been the understanding of the Secretariat that the privileges and immunities granted should generally be those afforded to the diplomatic corps as a whole, and should not be subject to particular conditions imposed, on a basis of reciprocity, upon the diplomatic missions of particular States."[39]

(*b*) The Legal Counsel, speaking as a representative of the Secretary-General at a meeting of the Sixth Committee during the twenty-second session of the General Assembly, made the following statement with regard to privileges and immunities:

> "The Organization had a clear interest in assuring the privileges and immunities. It therefore seemed elementary that the rights of representatives should properly be protected by the Organization and not left entirely to bilateral actions of the States immediately involved. Therefore, the Secretary-General would continue to feel obligated to assert the rights and interests of the Organization on behalf of representatives of Members as the occasion may arise."[40]

(*c*) In a letter of 26 August 1976 on a matter related to privileges and immunities, the Legal Counsel stressed that:

> "The interpretation of cardinal provisions of the Charter of the United Nations (Article 105) . . . is naturally of the greatest concern to the Secretary-General of the United Nations, who has an obvious responsibility in seeking to ensure that the rights of Member States are equally protected and that the functioning of the Organization is not impeded."

28. It might be noted that the conclusions reached above also find expression in commentaries on the Charter of the United Nations: Goodrich, Hambro and Simons advance the argument that "under the Charter, the General Convention and the Headquarters Agreement there is no basis for retaliatory or discriminatory treatment".[41] Leo Gross, in his article entitled "Immunities and privileges of delegations to the United Nations",[42] examines in a detailed survey the applicable international instruments and concludes that the Headquarters Agreement does not provide for reciprocity.

29. The Charter of the United Nations and the Headquarters Agreement therefore do not permit selective treatment of the representatives of Members to the United Nations on the basis of reciprocity. Permanent missions to the United Nations are accredited to the Organization and not to the United States. They all have equal rights and their treatment cannot depend on the treatment of the United States missions abroad. Section 210 of the Foreign Missions Act states the following:

> "Section 210. Nothing in this title shall be construed to limit the authority of the United States to carry out its international obligations, or to supersede or limit immunities otherwise available by law. No act or omission by any foreign mission, public international organization or official mission to such an organization in compliance with this title shall be deemed to be an implied waiver of any immunity otherwise provided for by law."

However, the United States note of 19 January 1983 does not mention section 210, either directly or indirectly, and it has to be noted that the reciprocity issue is referred to in subparagraph (*b*) (2) of section 205.

III. CONCLUSION

30. In summing up, it should be reiterated that international law does not prohibit, as such, the extension and application of United States domestic legislation on real property to the permanent missions accredited to the United Nations. On the other hand, the imposition of an obligation on permanent missions in New York to submit to a waiting period of up to 60 days in real estate transactions and the application of subparagraph (*c*) (2) of section 205 without having regard to the consent of the Government concerned and recourse to the reciprocity concept underlying the Foreign Missions Act in the application of section 205 would be at variance with the obligations of the host country under international law. It is, however, the intention of the Legal Counsel to seek the assurances from the host country that it will apply section 205 to permanent missions in New York in a manner consistent with the said obligations.

26 May 1983

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61. TAX EXEMPTIONS GRANTED IN NEW YORK TO OFFICERS OF A PERMANENT MISSION TO THE UNITED NATIONS—DISTINCTION BETWEEN MEMBERS OF A MISSION WITH DIPLOMATIC RANK AND MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFF

Note verbale to the Permanent Representative of a Member State

The Legal Counsel of the United Nations presents his compliments to the Permanent Representative of [name of a Member State] to the United Nations and has the honour to acknowledge the receipt of the note of 1 December 1982 concerning the exemptions granted in New York to diplomatic and non-diplomatic officers of the Mission of the State concerned to the United Nations.

The treatment for tax purposes of officers posted to New York differs according to whether they have diplomatic rank or are members of the administrative and technical staff. (It is assumed for present purposes that none of the officers are United States citizens or aliens in permanent resident status.)

While as a practical matter all members of the staff of a mission have the same type of visa (G), only those with diplomatic status enjoy full diplomatic immunity. Non-diplomatic officers under

United States law have a quasi-diplomatic status which, *inter alia*, relieves them from payment of United States social security and federal and state income tax on salaries and emoluments paid to them by their Government. However, they are liable for the payment of all other taxes. Officers with diplomatic status, on the other hand, have broader privileges and are exempt from most taxes which are more than service charges. Therefore, unlike non-diplomatic officers, diplomats are exempt from the tax on registration of motor vehicles in New York.

With regard to tax on life insurance, under New York law insurance companies are liable for a certain rate of tax on the volume of premiums paid to them. The insured would only be indirectly affected by the tax if and to the extent that such tax is passed on to him. Therefore, although in principle diplomats would be entitled to tax exemption, in practice a breakdown of the premium in order to establish the incidence, if any, of the tax is not made.

12 January 1983

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62. STATUS OF THE OBSERVER MISSION OF THE SOUTH WEST AFRICA PEOPLE'S ORGANIZATION TO THE UNITED NATIONS—QUESTION WHETHER IT ENJOYS IMMUNITY FROM SUIT IN AN ACTION BROUGHT IN A COURT OF THE UNITED STATES

Letter to an attorney

I wish to refer to your letter of 12 September 1983 requesting a legal opinion on the status of the Observer Mission of the South West Africa People's Organization and enquiring, in particular, whether it enjoys immunity from suit in an action brought in a court of the United States.

The international legal status of the Observer Mission of SWAPO to the United Nations derives from General Assembly resolution 31/152 of 20 December 1976, "Observer status of the South West Africa People's Organization", in which the General Assembly invited SWAPO to participate in the sessions and work of the General Assembly in the capacity of observer and requested the Secretary-General to take the necessary steps for the implementation of the resolution and to accord all the facilities as may be required.

The Permanent Observer of SWAPO to the United Nations and other members of the Observer Mission benefit from a number of provisions of the Headquarters Agreement between the United Nations and the United States (Public Law 80-357, 4 August 1947), specifically with regard to transit to and from the Headquarters of the United Nations. In addition to the privileges and immunities under the Headquarters Agreement, it is the view of this Office that it necessarily follows from the obligations imposed by Article 105 of the Charter of the United Nations that the Permanent Observer of SWAPO enjoys immunity from legal process in respect of words spoken or written and all acts performed by him or members of the Mission in their official capacity before relevant United Nations organs. Consequently, in as much as the suit alleges that SWAPO and persons within the United Nations have conspired to violate the laws of the United States with regard to the use of certain funds, it would be the view of this Office that SWAPO enjoys immunity from suit. This limited form of immunity is sometimes referred to as functional immunity to distinguish it from the broader diplomatic immunity which is enjoyed by representatives of Member States.

. . .

21 September 1983

NOTES

[1] League of Nations, *Treaty Series*, vol. XCIV, p. 57.

[2] *Ibid.*, vol. CLXIII, p. 393.

[3] *International Legal Materials*, vol. 14, p. 1292.

[4] In general, see for example H. Kelsen, *The Law of the United Nations* (London, Stevens, 1950); I. Brownlie, *International Law and the Use of Force by States* (Oxford, Clarendon Press, 1963), p. 113 *et seq.*

[5] See, for example, OAU resolution 1964 AHG/Res. 17(1).

[6] The Declaration, initiated by the State members of the Movement of Non-Aligned Countries, was approved by the General Assembly by its resolution 36/103 of 9 December 1981, which was adopted in a recorded vote of 120 to 22, with 6 abstentions; the Group of Western European and Other States and Venezuela voted against the resolution.

[7] A/520/Rev.14 (United Nations publication, Sales No. E.82.I.9).

[8] A/35/484/Add.2, para. 4.

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

[10] Reproduced in *Juridical Yearbook, 1979*, p. 164.

[11] General Assembly resolution 2200 A (XXI); see also United Nations, *Treaty Series*, vol. 999, p. 171.

[12] General Assembly resolution 34/180.

[13] General Assembly resolution 2106 A (XX), annex; see also United Nations, *Treaty Series*, vol. 660, p. 195.

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

[15] Reproduced in *Juridical Yearbook, 1978*, p. 167.

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

[17] United Nations, *Treaty Series*, vol. 276, p. 3.

[18] *Ibid.*, vol. 1155, p. 331.

[19] General Assembly resolution 3068 (XXVIII), annex; see also United Nations, *Treaty Series*, vol. 1015, p. 243.

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

[21] For a summary of the judgement, see *Juridical Yearbook, 1982*, p. 143.

[22] For summaries of the judgements, see *Juridical Yearbook, 1969*, p. 187; *Juridical Yearbook, 1974*, p. 108; *Juridical Yearbook, 1976*, p. 131; *Juridical Yearbook, 1977*, p. 148; and *Juridical Yearbook, 1982*, p. 143, respectively.

[23] At a subsequent stage it was decided to include in administrative instruction ST/AI/309/Rev.1 of 17 February 1984, entitled "Authority of United Nations Security Officers", the following paragraph 2:

> "Security officers are authorized to search persons, vehicles, handbags, briefcases or packages and to seize property if they have reason to believe that any person is carrying an unauthorized weapon, explosives or other dangerous substances or narcotics, or is removing property from the premises without proper authorization. The removal of United Nations and/or personal property from the premises of the United Nations is governed by administrative instruction ST/AI/193/Rev.1 on material and package passes."

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

[25] See JSPB/R.708(XXIX), para. 4.

[26] CCORD/CIVIL SERVICE/5, 1965 edition.

[27] ST/LEG/SER.E/1, p. 105: declarations by Iceland, Italy and Norway.

[28] Public Law, 291, 79th Congress; 59 Stat. 669.

[29] *Juridical Yearbook, 1976*, pp. 236-239.

[30] See *Juridical Yearbook, 1969*, p. 226.

[31] *Juridical Yearbook, 1969*, p. 207.

[32] United Nations, *Treaty Series*, vol. 11, p. 11.

[33] *Ibid.*, vol. 260, p. 35.

[34] *Juridical Yearbook, 1979*, p. 10.

[35] United Nations, *Treaty Series*, vol. 314, p. 49.

[36] *Ibid.*, vol. 317, p. 101.

[37] Subsequently reproduced as A/AC.154/R.1.

[38] No. 8A, October 1982, 97th Congress, Public Law.

[39] *Yearbook of the International Law Commission, 1967*, vol. II (United Nations publication, Sales No. E.68.V.2), document A/CN.4/L.118, para. 96.

[40] *Repertory of United Nations Practice, Supplement No. 4* (United Nations publication, Sales No. E.82.V.7), Article 105 (2), para. 43.

[41] *Charter of the United Nations*, 3rd rev. ed. (New York and London, Columbia University Press, 1969), p. 623.

[42] *International Organization*, vol. XVI, 1962, pp. 504-506.

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

[No decision or advisory opinion from international tribunals on questions relating to the United Nations and related intergovernmental organizations to be reported for 1983.]

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. Republic of the Philippines

INTERMEDIATE APPELLATE COURT

UNITED STATES LINES, INC. *v.* WORLD HEALTH ORGANIZATION: JUDGEMENT OF 30 SEPTEMBER 1983

Claim by an ocean shipping company against WHO for demurrage on cargo shipped by the company—Immunities of international organizations from local jurisdiction

The plaintiff claimed that a sum of money was payable by WHO owing to the latter's failure to withdraw its cargo from the port after 10 working days following arrival. WHO moved to dismiss the complaint on the ground that it was a specialized agency of the United Nations and was not subject to the jurisdiction of the court under the provisions of the Host Agreement between the Philippines and WHO of 1951. The plaintiff claimed (1) that the Host Agreement was not binding for lack of proper ratification in accordance with national requirements and (2) that WHO had waived any immunity by appearing voluntarily in court.

The court of the first instance dismissed the action and this was upheld on appeal on the grounds that (1) regardless of the status of the Host Agreement WHO was immune from all form of Philippine legal process because of the ratification by the Government *inter alia* of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations and (2) the appearance of WHO in the court of first instance to plead its immunity from legal process could not be construed as a waiver of its immunity.

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2. Italy

PRETURA DI ROMA

AZIZ *v.* CARUZZI: ORDER OF 12 NOVEMBER 1983

Eviction order on expiry of the private dwelling lease of a senior staff member of IFAD—Headquarters Agreement between Italy and IFAD of 26 July 1978—Immunity of the diplomatic agent from civil Italian jurisdiction and his exemption from any measures of execution in the sense of the Vienna Convention on Diplomatic Relations

The written evidence submitted to this Court, especially the official note from the Italian representative to FAO and IFAD, makes it quite clear that Mr. Sartaj Aziz is a senior official of the International Fund for Agricultural Development and also, as the head of protocol for IFAD has declared in a document of 15 July 1983, the Acting Director whenever the Director is absent.

Besides, according to article XV, section 33 (*b*), of the Agreement between IFAD and the Italian Government, signed in Rome on 26 July 1978, and approved by law No. 289 of 23 May 1980, the said official has the rank of ambassador and his status—as laid down in the Vienna Convention on Diplomatic Relations signed at Vienna on 18 April 1961 and ratified and implemented by law No. 804 of 9 August 1967—implies complete immunity from criminal and civil jurisdiction (art. 31, para. 1) and also immunity from all measures of execution.

Furthermore, these privileges are not subject to exception in the case at hand, in which Mr. Sartaj Aziz received an injunction to vacate the house in which he lived (the subject of the present suit), based on an order cancelling his tenancy agreement, for the following reasons: first, article XV of the aforementioned Agreement between IFAD and the Italian Government grants—and this is expressly laid down in section 36—the privileges in the interests of the Fund and not for the personal advantage of the interested persons; secondly, article 31, paragraph 1, of the Vienna Convention allows jurisdiction in civil suits when it is a case of "a real action relating to private immovable property situated in the territory of the receiving State . . . " On this last point it is worth noting the reference to the teleological element of immunity: if, on the one hand, it is not sufficient to exclude the privileges due to diplomatic agents and consisting in the protection afforded to their persons and their property on the territory of the receiving State, so as to allow them to be free to perform official business (*ne impediatur legatio*), on the other hand, it is the premise on which is based the power of the director of the international institution to waive the immunity of any agent who may take undue advantage thereof, thereby confirming the effects of diplomatic immunity until such time as it is waived by a decision taken within the organization itself. A "real action" should be taken to mean, in accordance with the terminology of Roman law, a claim for the protection of a right of property or usufruct, whereas the claim objecting to an eviction order relates to a tenancy agreement and therefore is of a personal nature.

In view of all these considerations, the Court finds that there are serious reasons for quashing the injunction.[1]

NOTE

[1] The summary is taken from *The Italian Yearbook of International Law*, vol. VI, 1985, p. 193. The original text was published in 107 *Il Foro Italiano* (1984), I, p. 601.

Part Four
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LEGAL BIBLIOGRAPHY OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

MAIN HEADINGS

A. INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW IN GENERAL
   1. General
   2. Particular questions

B. UNITED NATIONS
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   2. Particular organs
   3. Particular questions or activities

C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS
   Particular organizations

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