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UNITED NATIONS JURIDICAL YEARBOOK

1965

Part Two. Legal activities of the United Nations and related inter-governmental organizations

Chapter VI. Selected legal opinions of the Secretariats of the United Nations and related inter-governmental organizations

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Chapter VI

SELECTED LEGAL OPINIONS OF THE SECRETARIAT OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

A. Legal opinions of the Office of Legal Affairs of the United Nations

1. Inviolability of United Nations offices located in rented premises

Aide-Mémoire to the Permanent Mission of a Member State

1. With only a very few exceptions, notably in the United States and Switzerland, all offices of the United Nations throughout the world are located in rented premises comprising either whole buildings or parts thereof. These premises enjoy inviolability either directly under the Convention on the Privileges and Immunities of the United Nations[1] to which ninety Member States have acceded, or, where the State was not a party to the Convention, by special agreement with the government concerned.

2. Article II, section 3, of the Convention provides, *inter alia*, that "The premises of the United Nations shall be inviolable."

3. In those cases where the State is not a party to the Convention, agreements concerning privileges and immunities are included which incorporate all the provisions of the Convention or set forth those privileges and immunities considered essential including inviolability of premises. For example, agreements with the Republic of Korea, which is not a member of the United Nations, and with Japan, before it became a member of the United Nations, provided that the United Nations would enjoy, *inter alia*, the privileges and immunities defined in articles I, II and III of the Convention on the Privileges and Immunities of the United Nations. (See paragraph 1 of article IV of the Exchange of letters constituting an agreement between the United Nations and Korea regarding privileges and immunities to be enjoyed by the United Nations in the Republic of Korea,[2] signed at Pusan on 21 September 1951, and article I, paragraph (1) of the Agreement between the United Nations and Japan on privileges and immunities of the United Nations,[3] signed at Tokyo on 25 July 1952.) The Status of ONUC Agreement[4] concluded with the Congo, before it became a party to the Convention on the Privileges and Immunities of the United Nations, contained a special article on premises as follows:

"*Premises*

"24. The Government shall provide, in agreement with the United Nations accomodation service, such buildings or areas for headquarters, camps or other premises as may be necessary for the accommodation of the personnel and services of the United Nations and enable them to carry out their functions. Without prejudice to the fact that all such premises remain Congolese territory, they shall be inviolable and subject to the exclusive control and authority of the United

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

[2] *Ibid.*, vol. 104, p. 323.

[3] *Ibid.*, vol. 135, p. 305.

[4] *Ibid.*, vol. 414, p. 229.

Nations. This authority and control extend to the adjacent public ways to the extent necessary to regulate access to the premises. The United Nations alone may consent to the entry of any government officials to perform duties on such premises or of any other person. Every person who so desires for a lawful purpose shall be allowed free access to the premises placed under the authoritity of the United Nations.

"25. If the United Nations should take over premises previously occupied by private persons and thus represented a source of income, the Government shall assist the United Nations to lease them at a reasonable rental."

4. The Technical Assistance Board and the Special Fund concluded special agreements which follow a model text committing the government, where it is not already a party, to apply the provisions of the Convention on the Privileges and Immunities of the United Nations.[5]

5. In summary, the vast majority of the United Nations offices are in rented premises which are inviolable either under the Convention on the Privileges and Immunities of the United Nations or under special agreements.

6. Incidentally it may also be noted that the Vienna Convention on Diplomatic Relations, 1961,[6] makes no distinction with respect to rented premises. Article 1 (*i*) gives the following definition:

"The 'premises of the mission' are the buildings or parts of buildings and the land ancillary thereto, *irrespective of ownership*, used for the purposes of the mission including the residence of the head of the mission." (Italics added.)

Article 22 of the Vienna Convention provides:

"1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

"2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

"3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution."

While the Vienna Convention of course does not apply to international organizations, it is indicative of the fact that no distinction is made in the inviolability of those premises which are owned and those premises which are rented or otherwise held on a more temporary basis. In this respect it is declaratory of existing international law.

15 July 1965

2. Exemption of the United Nations from the New York State Sales and Compensating Use Tax

Memorandum to the Chief of the Purchase and Standards Section, Office of General Services

1. We wish to refer to your memorandum of 13 May 1965 in which you inquire concerning the position of the United Nations with respect to payment of the New York State Sales Tax on its purchases of equipment, supplies and services. The text of the New York Statute imposing the "sales and compensating use tax" provides, *inter alia*, that:

[5] See *Juridical Yearbook*, 1963, pp. 27 and 31.

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

"(*a*) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

...

"(3) The United Nations or any international organization of which the United States of America is a member where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons; and" (Article 28, section 1116 of the New York State Tax Law)

2. There is no exception which would apply to the United Nations as a purchaser, user or consumer. Consequently, the United Nations is exempt from the tax on its purchases of equipment, supplies and services.

26 May 1965

3. Prohibition of the use of the name of the United Nations for commercial purposes

Letter in answer to an inquiry by a private person

1. This is in reply to your letter of 25 March 1965 to this Office, which inquired whether there is any legal or other objection to the name "United Nations" being used as part of the corporate name of a corporation to be organized by one of your clients. The corporation, you point out, would be a business corporation organized for profit.

2. Use of the name "United Nations" is in fact restricted by resolution 92 (I) adopted by the General Assembly of the United Nations on 7 December 1946. The Assembly in the resolution stated that it considered it necessary to protect the name of the Organization and recommended that its Member States should take such legislative or other appropriate measures as are necessary to prevent the name of the United Nations or abbreviations thereof being used, particularly for commercial purposes, without authorization from the Secretary-General of the United Nations.

3. Thus use of the name "United Nations" without authorization from the Secretary-General would clearly be objectionable from the point of view of the United Nations. Such use within the United States would also, no doubt, be a matter which the United States Government would seek to prevent.

4. In New York State it has been made a penal offence (section 964—a of the New York Penal Code) to use the name "United Nations" as a part of a trade name, for advertising purposes or the purposes of trade, or for any other purpose, without express authority from the Secretary-General.

5. We should also add that it is the established policy of the United Nations not to grant permission for the use of its name in connexion with commercial purposes, and that accordingly it would not be possible for the United Nations to authorize the use of its name by the corporation to be organized by your client.

6 April 1965

4. Status of Permanent Representatives to the United Nations Office at Geneva—Legal basis—Requirements for appointing a Permanent Representative and members of a Permanent Mission

I

Letter to the Foreign Minister of a Member State

...

There are no provisions in the United Nations Agreement with Switzerland concerning the status of resident or permanent representatives similar to those contained in the Head-

quarters Agreement with the United States.[7] The Agreement on Privileges and Immunities concluded with Switzerland in 1946[8] provides only for representatives of Members of the United Nations on its principal and subsidiary organs and at conferences convened by the United Nations. On the other hand, the diplomatic status of resident representatives in Geneva has been unilaterally accorded by decree of the Swiss Federal Council of 31 March 1948[9] and the details relating to permanent missions have been dependent upon that decree and upon the practice which has developed. One of the requirements which has developed in practice is that in order to establish a permanent mission and to appoint a permanent representative entitled to the benefits of the decree of the Swiss Federal Council, a permanently functioning office and staff must be provided at the seat of the United Nations Office at Geneva. ...

17 June 1965

II

Letter to the Permanent Representative of a Member State

1. Following our discussion concerning the appointment of Mr. ... as a member of your Permanent Mission to the United Nations in Geneva, we should like to confirm the following.

2. The principle is, of course, that a Member State has the unquestionable right of appointing a member of its Permanent Mission. While this is the fundamental principle, there are in some cases certain practical difficulties which must be taken into consideration.

3. Under the existing arrangements, both at United Nations Headquarters in New York and at the European Office of the United Nations in Geneva, a member of a Permanent Mission enjoys diplomatic privileges and immunities. At the European Office the immunities are granted by the Swiss Government on the certification of the Head of the Geneva Office that the person is a member of a Permanent Mission accredited to that Office. In order to be in a position to deliver such a certification the European Office must be satisfied that the person concerned is to reside permanently in Geneva during the period of his assignment and is to work continuously for the Permanent Mission. A person who is in Geneva for the purpose of attending one or more conferences does not come within the concept of a member of a Permanent Mission.

4. The difficulties are somewhat enhanced when the person to be assigned is not a national of the country which he is appointed to represent. While the provisions relating to restrictions on the nationality of a diplomatic agent contained in the Vienna Convention of 1961 on diplomatic relations are not applicable for United Nations purposes, such cases are examined with greater care since in the past there have been attempts on the part of some Governments to appoint persons of other nationalities in an honourary capacity...

5. Under these conditions it would be very useful if we could be informed whether Mr. ... will take up residence in Geneva and whether his duties will be continuous or whether he will attend only certain conferences. In the latter case he would enjoy the privileges and immunities accorded to representatives of Members of the United Nations under the Agreement on Privileges and Immunities of the United Nations[10] concluded between the Secretary-General and the Swiss Federal Council on 11 June and 1 July 1946. The privileges and immunities provided in this agreement with Switzerland are similar to those for repre-

[7] United Nations, *Treaty Series*, vol. 11, p. 11.

[8] *Ibid.*, vol. 1, p. 163 and vol. 509, p. 308.

[9] See United Nations *Legislative Series, Legislative texts and treaty provisions concerning the legal status privileges and immunities of international organizations*, vol. I (ST/LEG/SER.B/10), p. 92.

[10] United Nations, *Treaty Series*, vol. 1, p. 163 and vol. 509, p. 308.

sentatives of Members under article IV of the Convention on the Privileges and Immunities of the United Nations.[11]

17 May 1965

5. Question of voting or representation by proxy in the United Nations and its specialized agencies

I

Letter to a resident representative of the Technical Assistance Board

1. We are replying to your letter concerning an enquiry which you received from one of the embassies in Addis Ababa as regards the question of one person acting as a delegate to a United Nations body for two or more countries.

2. The matter is one which has been raised from time to time in the past and one on which the Office of Legal Affairs has taken a consistent stand—that representation by one delegate of more than one country is improper and undesirable. There have been several instances where attempts at such representation at United Nations Conferences have been effectively discouraged and the position of the Organization on this matter could be regarded as a constant one.

3. The practice of one delegate representing two or more countries, if allowed to grow up, would be inconsistent with one of the basic concepts underlying deliberations in United Nations organs *i.e.* that the various members of these organs should be represented by different delegates who reach conclusions on the issues discussed only after considering the arguments advanced in debate as they affect the interests of their own respective countries. It would be undesirable and open to objections for one delegate to represent more than one country in an organ taking political decisions and thereby to have more voting power than other delegates.

4. The purely procedural implications of such a practice in relation to voting at the conclusion of debate are also to be kept in mind. To take as an example the rules of procedure of the Economic Commission for Africa itself, rule 55 provides that "Each member of the Commission shall have one vote" and rule 57 that "...the Commission shall normally vote by show of hands...". The practical difficulties alone that will be encountered in the application of these rules if one delegate were representing two Member States are self-evident.

5. The participation in a technical meeting through an expert already participating for another country does not seem to present much practical importance. The expert will not be able to bring any special technical contribution to the work of the organ because he represents two countries rather than one, and the political significance of being "represented" at such technical meetings by an expert from another country seems to be negligible.

6. Of course, the special difficulties facing some of the smaller Member States, particularly in Africa, in sending representatives of their own to meetings are understood and appreciated. You will recall, however, that under United Nations procedures and practices, Member States receive adequate information as to the proceedings of United Nations organs through the records and reports which are sent to them by the Secretariat. Members unable to participate in meetings can address written communications to the organs concerned, which are reproduced as official documents.

1 September 1965

[11] *Ibid.*, vol. 1, p. 15.

II

Memorandum to the Associate Director of the Joint Administration Division, Technical Assistance Board/United Nations Special Fund

1. In response to your memorandum of 11 October transmitting a copy of a letter from the regional representative in Dakar, we have the following observations on the question of voting by proxy in the United Nations and its specialized agencies.

2. The regional representative is quite right in his conclusion that there is no voting or representation by proxy at meetings or conferences of the United Nations. Although there is no such express prohibition, representation of more than one government by a single representative has never been permitted and interested governments have been so informed. However, representation of a member by a national of another State (or by a member of a different delegation) has been permitted in cases where the representative does not simultaneously serve as a representative of both States.

3. In the case of the specialized agencies we have found that two of the specialized agencies, the International Telecommunication Union and the Universal Postal Union, have provisions in their rules permitting representation of one delegation by another. The specific provisions are the following. Paragraph 7 of chapter 5 of the General Regulations annexed to the International Telecommunication Convention, Geneva, 1959 provides that "a duly accredited delegation may give a mandate to another duly accredited delegation to exercise its vote at one or more sessions at which it is unable to be present. In this case it must notify the Chairman of the Conference." Article 11, paragraph 2 of chapter II of the organic and general provisions concerning the Universal Postal Union, October 1957, provides that "each country is represented at the Congress by one or more plenipotentiary delegates, furnished with the necessary powers by their Government. It may, if necessary, be represented by the delegation of another country. However, it is understood that a delegation may represent only one other country besides his own."

4. It is our impression that none of the other specialized agencies permit "proxy representation". We have ascertained that in at least two of the specialized agencies, UNESCO and FAO, there are express provisions against representation by a delegate of more than one member. (For UNESCO see rule 79 of the rules of procedure of the General Conference and for FAO article 3, paragraph 3, of the Constitution).

22 October 1965

6. LEGAL POSITION OF THE SECURITY COUNCIL AND THE ECONOMIC AND SOCIAL COUNCIL DURING THE PERIOD BETWEEN THE TIME WHEN THE CHARTER AMENDMENT INCREASING MEMBERSHIP OF EACH COUNCIL COMES INTO FORCE AND THE TIME WHEN THE GENERAL ASSEMBLY ELECTS THE NEW MEMBERS

Memorandum to the Chef de Cabinet and to the Under-Secretary for Economic and Social Affairs

1. Several representatives and the Economic and Social Council secretariat have addressed inquiries to the Office of Legal Affairs as to the legal position of the Security Council and the Economic and Social Council during the period between the time when the Charter amendment concerning their membership comes into force and the time when the General Assembly elects the new members for each Council as provided in the amendment. Concern has been expressed that some delegates might question the legality of Council sessions on the ground that they would not be constituted as required by the amended Charter provisions. The provision in Article 108 of the Charter that amendments come into force upon ratification by two-thirds of the United Nations membership does not, of course, render an amendment self-executing and provides no guidance where, as is the case here, implementing action by the General Assembly is necessary after the coming into force of the amendment.

2. The amendment to Article 23, paragraph 2, makes provision for "the first election of the non-permanent members after the increase of the membership of the Security Council". In the amendment to Article 61, similarly, reference is made to the first election after the increase in the membership of the Economic and Social Council. Under these provisions no General Assembly election of the additional members could take place prior to the creation of the additional seats. Thus, by the terms of the amendment itself, a period of time would have to intervene between the coming into force of the amendment and compliance by the General Assembly with the provision to elect more members.

3. Neither the effect nor the permissible duration of the time-lag between the coming into force and the required elections was explicitly provided for in General Assembly resolution 1991 (XVIII). In the absence of such express provision, these two matters must be determined by inference.

4. One inference which has given rise to the concern mentioned above is that, pending the elections, neither Council can be legally constituted and no Security or Economic and Social Council proceedings can take place.

5. This interpretation would however result in a situation inconsistent with Article 28 which provides that the Security Council shall be so organized as to be able to function continuously. There is no basis in the *travaux préparatoires* or in the text itself for imputing to the General Assembly, when resolution 1991 (XVIII) was adopted, the intention to act inconsistently with Article 28 of the Charter. Accepted canons of interpretation of legal texts would, in such circumstance, preclude so interpreting the amendments.

6. Applied to the Economic and Social Council, this interpretation assumes a General Assembly intention that the Council should cease to perform its functions under the Charter for some period except in the event of the amendment's coming into force at so opportune a time as to permit General Assembly elections prior to the convening of the next Council session. It is more reasonable and consistent with applicable legal principles to assume that if such was its intention, the General Assembly would have provided for that result in express terms.

7. It is a well accepted principle of interpretation of legal texts that, as between two alternatives both possible under the explicit terms of one part of the instrument, the interpretation contravening other parts should be avoided and the interpretation to be adopted is the one most consonant with the terms and purposes of the instrument as a whole. An interpretation tending to so extreme a consequence as a break in the functioning of two major United Nations organs could not be accepted without clear support in the text itself or in the reports of the General Assembly. A close examination of the text and of the pertinent records of the organs concerned fails to reveal the slightest evidence for such an interpretation.

8. It is therefore our view that the time-lag between the amendment's coming into force and the elections will not render the Security and Economic and Social Councils incapable of performing their functions.

6 July 1965

7. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT—ELECTION OF THE MEMBERS OF THE COMMITTEES OF THE TRADE AND DEVELOPMENT BOARD—INCLUSION OF NEW MEMBER STATES OF UNCTAD IN LISTS A, B, C AND D OF THE ANNEX TO GENERAL ASSEMBLY RESOLUTION 1995 (XIX)

Note to the Trade and Development Board

1. The question has been raised as to the procedure to be followed in listing States which had become members of UNCTAD after the adoption of the lists of States in parts A,

B, C and D of the annex to resolution 1995 (XIX). Such new members are Malawi, Malta and Zambia, none of which has been listed in any of the annexes.

2. The only provision in resolution 1995 which relates to the question of changes in the lists of States contained in the annex is paragraph 6 which reads as follows: "The lists of States contained in the annex shall be reviewed periodically by the Conference in the light of changes in membership of the Conference and other factors." The responsibility given to the Conference to "review periodically" the lists of States seems to imply in this context that the Conference would have the right to make changes in the lists when new members enter the Conference. An alternative interpretation would require changes in the lists to be made by the General Assembly after review by the Conference, a result which could in some circumstances deprive a member of the opportunity to be elected to the Board.

3. The present question is whether such additions to the lists in the annex can only be made by the Conference itself and consequently whether the new States must wait until the next Conference before being entitled to take part in the groups established by the annex. In terms of the resolution, this question does not arise since the groups are listed in the annex only in regard to the election of the members of the Board under paragraph 5 (and for that event the Conference could modify the lists in time for the elections to the Board).

4. However, if the Board should decide (as seems to be the case) that the lists in the annex are to be employed as a basis for elections to subsidiary organs, provision would have to be made so that new members would be eligible for such elections. The Board could reach that result simply by deciding that the new members are to be treated as part of an appropriate group of the annex for purposes of the elections to subsidiary organs. This would solve the present problem without the Board changing the membership of the groups for purposes other than election to the subsidiary organs. It thus becomes legally unnecessary in this connexion for the Board to rely on paragraph 14 (which states that "When the Conference is not in session, the Board shall carry out the functions that fall within the competence of the Conference").

5. To sum up, it is concluded that, on the request of the member States concerned, the Board may associate those States with an appropriate list contained in the annex to the resolution for the purpose of selecting the membership of the subsidiary organs of the Board.

21 April 1965

8. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT—PARTICIPATION OF INTER-GOVERNMENTAL ORGANIZATIONS IN THE PROCEEDINGS OF THE SPECIAL COMMITTEE ON PREFERENCES

Memorandum to the Secretary-General of the United Nations Conference on Trade and Development

1. This is with reference to the question you raised with us as to whether inter-governmental organizations, such as GATT and the European Economic Community, are entitled to participate as a matter of right in the proceedings of the Special Committee on Preferences of UNCTAD. In our opinion, they have no such right for the following reasons.

2. The Special Committee on Preferences derives its origin from a resolution adopted by the 1964 Conference on Trade and Development and contained in Annex A.III.5 of the Final Act. The resolution, with the preamble omitted, reads as follows:

"*The Conference,*

"...

"*Recommends* that the Secretary-General of the United Nations make appropriate arrangements for the establishment as soon as possible of a committee of governmental representatives, drawn from both developed and developing countries, to consider the matter, with a view to

working out the best method of implementing such preferences on the basis of non-reciprocity from the developing countries, as well as to discuss further the differences of principle referred to above. The Committee should take into account the recommendations, documents and declarations considered by the Conference, as well as the relevant work of other international institutions. The Committee should report to the Secretary-General of the United Nations within a time limit to be set by him. The report of the Committee should be circulated to the Governments participating in this Conference and to the continuing machinery established following the United Nations Conference on Trade and Development."

3. In the absence of any comparable resolution of the Trade and Development Board, it would seem that the Special Committee on Preferences, having been established by virtue of a resolution of the Conference, is a subsidiary organ of the 1964 Conference rather than of the Board. The mere fact that it is required to report to the ensuing "continuing machinery", of which the Board forms a part, would not make it a subsidiary organ of the Board any more than of the Secretary-General of the United Nations to whom the Special Committee is also required to report. It would then follow that the rules of procedure recently adopted by the Board would not be applicable to the question and that the specialized agencies and other inter-governmental organizations in question cannot claim a right to participation in the Special Committee on Preferences on the basis of those rules of procedure. It would also follow that paragraph 11 of section II of resolution 1995 (XIX) of the General Assembly, which deals with the participation of inter-governmental bodies in the deliberations of the Board and its subsidiary bodies and working groups, would not give rise to such a right for inter-governmental bodies, since this provision of the resolution deals only with participation in the Board itself and in the "subsidiary bodies and working groups *established by it*". (Italics added.)

4. As regards the rules of procedure of the 1964 Conference, and even assuming that those rules still have some force, the right of specialized agencies and inter-governmental bodies to participate in proceedings of the Conference is expressly limited by those rules to the deliberations "of the Conference and its main committees and sub-committees", and even then only "upon the invitation of the President or Chairman" (rule 59, para. 1). The Special Committee on Preferences is clearly not a main committee of the 1964 Conference inasmuch as it is not included among the five main committees established as such by that Conference and enumerated in a footnote to rule 45 of its rules of procedure. Neither does the Special Committee appear to be a sub-committee of any of these main committees. The inter-governmental bodies in question thus have no right to participation in the Special Committee on Preferences under the rules of procedure of the 1964 Conference.

5. Finally, the question might be raised as to whether the specialized agencies have a right to participate under the Agreements on relationships with the United Nations. As already stated above, the Special Committee appears to be a subsidiary organ of the Conference. In any case, it is difficult to consider it to be a committee or subsidiary organ of the General Assembly or of the other United Nations organs in the deliberations of which those agencies are entitled to participate under the relevant provisions of the various Agreements on relationships with the United Nations.

7 May 1965

9. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT—RIGHT OF FAO AND GATT TO NOMINATE ONE MEMBER EACH OF THE ADVISORY COMMITTEE OF THE TRADE AND DEVELOPMENT BOARD

Memorandum to the Secretary-General of the United Nations Conference on Trade and Development

1. You have asked for our opinion with respect to the rights of FAO and GATT under the provision in resolution 8 (I) of the Trade and Development Board which specifies that the

Advisory Committee of the Board "shall consist of... a person... nominated by FAO [and] a person nominated by the Contracting Parties to GATT", among other members. The question is whether the rights of FAO and GATT to nominate members of the Advisory Committee should be deemed equivalent to an absolute right to select one member each of the Advisory Committee.

2. It is our view that an affirmative reply is in keeping with the text of the resolution and its background. The words "shall consist of", in the provision quoted above, would in their normal meaning indicate that whoever is nominated by the FAO or by GATT would be a member of the Advisory Committee. Moreover, the resolution in question explicitly gives the Board a role in the selection of the four other members of the Advisory Committee, without giving the Board the same function as regards members nominated by FAO and GATT, and this supports the inference that the resolution had no intention to confer a similar function on the Board with respect to the members to be nominated by FAO and GATT.

3. The foregoing conclusion finds support in the history of the establishment of the Advisory Committee. It will be recalled in this regard that the Advisory Committee is an outgrowth of paragraph 23 of section II of General Assembly resolution 1995 (XIX). In this provision the Assembly expressed an intention to maintain the Interim Co-ordinating Committee for International Commodity Arrangements (ICCICA), two of the members of which were similarly "nominated" by GATT and FAO [Economic and Social Council resolution 373 (XIII)] under selection arrangements which endowed in practice a nomination with the character of finality. The acceptance and observance of this practice over a period of more than a decade, taken together with the decision of the General Assembly to continue the existence of ICCICA now transformed into the Advisory Committee, indicates that the members of the Advisory Committee should continue to be selected in the same manner as the members of ICCICA, except where the resolution relating to the Advisory Committee prescribes a different procedure.

4. For the foregoing reasons, we are of the opinion that the two persons nominated by FAO and GATT should be included by the Board in the membership of the Advisory Committee, without subjecting them to the selection process applicable to the other members of the Advisory Committee.

13 October 1965

10. United Nations Conference on Trade and Development—Binding character of paragraph 4 of Trade and Development Board resolution 17 (II) concerning the procedure for voting on the question of the location of the secretariat

Memorandum to the Secretary-General of the United Nations Conference on Trade and Development

1. We refer to the question you raised with us recently concerning the binding character of paragraph 4 of Trade and Development Board resolution 17 (II) on the special meeting to be held by the Board on 28 October 1965 for the purpose of adopting a recommendation on the location of the UNCTAD secretariat.

2. In our opinion, there is nothing in the text of resolution 17 (II) which would legally commit the Board at its 28 October meeting to observe only the special voting procedure laid down in that resolution to the exclusion of any other procedure it may subsequently decide to follow. Although some statements were made in the discussion preceding the adoption of the resolution which suggest that some delegates to the Board understood it in that sense, it is always open to the Board to adopt a decision at variance with one previously adopted by it. Nor is there any provision in the rules of procedure of the Board which would constitute a legal bar to the adoption by the Board of a new decision on the voting procedure to be ap-

plied during the 28 October meeting. As you know, the rules of procedure of the Board, unlike those of the Conference, do not even contain a rule on reconsideration of proposals similar to rule 83 of the rules of procedure of the General Assembly, according to which a proposal, once adopted or rejected, "may not be reconsidered at the same session unless the General Assembly, by a two-thirds majority of the Members present and voting, so decides".

3. We might add that this conclusion is completely consistent with the statement made by the Acting Chairman on a directly parallel question at the 43rd meeting of the Board held on 11 September. In this ruling the Acting Chairman held in substance that the Board could adopt a new recommendation on the location of the secretariat the effect of which would be to supersede the resolution on the same subject adopted by the Board earlier on 28 April of this year. Similarly, several delegates (Argentina, Lebanon, Tanzania) expressed opinions to the effect that a decision or resolution could always be rescinded or modified, either explicitly or implicitly, by a new law or resolution on the same subject.

4. In the absence of any indication to the contrary in the resolution in question, the decisions forming resolution 17 (II) of the Board should in accordance with normal legal principles be considered divisible so as to enable the Board to give effect to some paragraphs of that resolution and at the same time take new decisions on matters dealt with in other paragraphs.

15 October 1965

11. Procedure for extending the duration of the 1963 Protocol[12] for the prolongation of the International Sugar Agreement of 1958[13]

Memorandum to the Acting Director of the Commodities Division, United Nations Conference on Trade and Development

1. This is in reply to your memorandum of 4 June 1965, which concerned the question of the procedure by which those provisions of the 1958 Sugar Agreement which had by reason of the 1963 Sugar Protocol continued in force, as between the parties to the Protocol, until 31 December 1965, might, if necessary, be continued in operation beyond 31 December 1965. This, you point out, would become necessary if a new sugar agreement is not negotiated at the September Sugar Conference in time for the new agreement to enter into force by 31 December 1965.

2. The 1963 Protocol does not provide for the possibility that the new sugar agreement might enter into force only after 31 December 1965 and, accordingly, as you have pointed out, makes no provision for continuing the operation of the relevant provisions of the 1958 Agreement beyond 31 December 1965. Nor, it might also be noted, does the Protocol provide for amendments to the Protocol. Even should the Protocol have included an amending procedure, it would have seemed to us, in the absence of a clear indication to the contrary, that such a procedure was intended for modifications of the Protocol rather than for the extension of the duration of the Protocol.

3. We are, accordingly, in agreement with your view that a new protocol would be the appropriate procedure for continuing the operation of the relevant provisions of the 1958 Agreement, as between the parties to the new protocol, beyond 31 December 1965. We see no reason why such a new protocol should not be similar in form to the 1963 Protocol, although of course the provisions of the new Protocol would have to be consistent with the provisions of the resolution that would be adopted by the Conference in regard to the new Protocol.

13 July 1965

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[12] Document E/CONF.48/2.

[13] United Nations, *Treaty Series*, vol. 385, p. 137.

12. Legality of the procedure followed in convening the United Nations Sugar Conference of 1965—Interpretation of Economic and Social Council resolution 296 (XI) of 2 August 1950 and of General Assembly resolution 1995 (XIX) of 30 December 1964

Memorandum to the Director of the Commodities Division, United Nations Conference on Trade and Development

1. The procedure followed in convening the present Sugar Conference differed in several respects from that of previous Sugar Conferences and from the provisions of Economic and Social Council resolution 296 (XI) of 2 August 1950. The purpose of this memorandum is to examine whether such deviations were legally permissible.

2. Under resolution 296 (XI):

(*i*) The list of States to be invited to the Conference was to be prepared by the Interim Co-ordinating Committee for International Community Arrangements (ICCICA) and was to include all Members of the United Nations, of the Interim Commission for the International Trade Organization (ICITO), of FAO and of the inter-governmental study group concerned; interested non-member States and specialized agencies could also be invited. In this instance, the list of States to be invited was prepared by the Secretary-General of the United Nations and, following the recommendation of the Committee on Commodities, was limited to the States members of UNCTAD;

(*ii*) Where a State invited so wishes, there may be separate representation for dependent territories in accordance with article 69 of the Havana Charter. In this instance, no provision was made in the rules of procedure for such separate representation;

(*iii*) The rules of procedure were to be prepared by ICCICA. In this instance they were prepared by the Secretary-General of UNCTAD.

Furthermore, differently from previous Sugar Conferences, ICITO/GATT has not been invited to participate.

3. Under paragraph 3 (*e*) of section II of General Assembly resolution 1995 (XIX) of 30 December 1964, UNCTAD was empowered "to initiate action, where appropriate, in co-operation with the competent organs of the United Nations for the negotiation and adoption of multilateral legal instruments in the field of trade, with due regard to the adequacy of existing organs of negotiation and without duplication of their activities". Furthermore, under paragraph 23 (*a*) the Committee on Commodities of the Trade and Development Board "will carry out the functions which are now performed by the Commission of International Commodity Trade and the Interim Co-ordinating Committee for International Commodity Arrangements. In this connexion, the Interim Co-ordinating Committee shall be maintained as an advisory body of the Board."

4. The authority given to UNCTAD to "initiate action... for the negotiation and adoption of multilateral legal instruments in the field of trade" implies that UNCTAD is empowered to convene Commodity Conferences. The functions previously performed by ICCICA in this connexion, including the preparation of the list of States to be invited and the rules of procedure, have been transferred to the Committee on Commodities.

5. While making these substantial changes in the procedure envisaged in the Economic and Social Council resolution, the General Assembly did not confirm the continuation in force of the provisions of the Council resolution not directly affected by these changes. Under the terms of reference approved by the Trade and Development Board, the Committee on Commodities was authorized "to make recommendations for the convening of international Commodity Conferences with the object of concluding international com-

modity arrangements". Again, no reference was made to the terms of the Council resolution. It may be inferred, therefore, that in discharging its responsibilities in connexion with Commodity Conferences, UNCTAD and its subsidiary organs are not necessarily bound by the provisions of Economic and Social Council resolution 296 (XI).

6. It is concluded that it was legally permissible to deviate, as indicated in paragraph 2 above, from the procedures followed in previous Sugar Conferences. In particular:

(*i*) The Committee on Commodities was within its authority in recommending that invitations to the Conference be limited to members of UNCTAD, and the Secretary-General of the United Nations properly issued the invitations accordingly;

(*ii*) The omission from the rules of procedure of any provision for separate representation for dependent territories was a justifiable interpretation of the Committee on Commodities' recommendation to invite only States members of UNCTAD;

(*iii*) In preparing the rules of procedure, the Secretary-General of UNCTAD was properly discharging his functions of servicing the Committee on Commodities, a subsidiary organ of the Board, in accordance with paragraph 26 of section II of General Assembly resolution 1995 (XIX).

As regards the failure to invite ICITO/GATT, this appears to be a discretionary matter because apart from the precedents at some other Commodity Conferences, there is no legal requirement to issue such an invitation.

20 September 1965

13. QUESTION WHETHER EXISTING TECHNICAL ASSISTANCE AND SPECIAL FUND AGREEMENTS SHOULD BE RENEGOTIATED AS A RESULT OF THE CONSOLIDATION OF THE SPECIAL FUND AND THE EXPANDED PROGRAMME OF TECHNICAL ASSISTANCE IN A UNITED NATIONS DEVELOPMENT PROGRAMME

Memorandum to the Director of the Joint Administration Division, Technical Assistance Board/United Nations Special Fund

1. The opinion of this Office has been requested on the question whether existing agreements with governments concerning Special Fund and technical assistance activities should be renegotiated in consequence of the forthcoming consolidation of the Special Fund and the Expanded Programme of Technical Assistance in the United Nations Development Programme.

2. The draft resolution proposed for adoption by the General Assembly on this subject, as embodied in the annex to resolution 1020 (XXXVII) of the Economic and Social Council, provides that ".. the special characteristics and operations of the two programmes as well as two separate funds" would be maintained notwithstanding the merger of those programmes into the new Development Programme (Paragraph 1). The same resolution "reaffirms the principles, procedures and provisions" governing the two programmes not otherwise inconsistent with the resolution and expressly confirms their continuing applicability to relevant activities within the new programme (paragraph 2). In our opinion, the term "provisions" as thus used in this resolution is sufficiently broad to include the agreements in question. Moreover, a conclusion that those agreements would be unaffected at this stage of the merger of the two programmes would be completely consistent with and might even be deemed required by the spirit of the draft resolution and its legislative history. For these reasons, it is our view that the agreements in question need not be renegotiated at this time and that activities under the programmes involved could continue to take place on the basis of the existing agreements without any further formal approaches to governments on this point even

after the merger of the two programmes upon adoption by the General Assembly of the draft resolution in the annex to Economic and Social Council resolution 1020 (XXXVII).[14]

3. It might of course be convenient if a sentence could be included in that General Assembly resolution stating that those agreements would be deemed to continue in force. To our knowledge, however, no doubts have been raised as to the propriety of continuing to operate under the existing agreements. In addition to the fact that such a provision is not strictly necessary, a proposal originating from the Secretariat to insert such a provision in the resolution might cause practical and formal difficulties since the draft resolution in question has already been considered by the Economic and Social Council, its Co-ordination Committee as well as its *ad hoc* Committee on Co-ordination of Technical Assistance Activities.

15 June 1965

14. Compatibility of a proposal to award a human rights prize with the United Nations Charter

Memorandum to the Deputy Director of the Division of Human Rights

1. This is in reply to your memorandum of 12 July 1965 by which you requested our opinion on certain questions raised at the 5th meeting of the Working Party on the International Year for Human Rights, held on 4 June 1965.

2. A representative expressed the wish to have the views of the Secretariat, after consultation with the Office of Legal Affairs, as to the "extent the award of a human rights prize would be compatible with the purposes and principles of the United Nations" (E/CN.4/AC.19/SR.5, p. 5).

3. Our observations are limited to the legal aspects of the proposal contained in the report of the *Ad Hoc* Committee on the Human Rights Prize (E/CN.4/AC.19/L.1) which was adopted by the Working Party at its 5th meeting. They do not deal with certain other questions also discussed by the Working Party, *e.g.* the substantive, political or other advisability of creating the proposed award, or the practical difficulties which the implementation of the proposal, if accepted by the General Assembly, might entail.

4. Three questions appear to be relevant from the legal point of view:

(*i*) Was the proposal consistent with resolution 1961 (XVIII) of the General Assembly relating to the International Year for Human Rights, which the Assembly adopted in pursuance of the provisions of the Charter concerning the promotion and encouragement of the respect for human rights?

(*ii*) Is the United Nations empowered to award prizes to individuals?

(*iii*) Can the Organization award prizes in the field of human rights?

(*i*) As regards the first question, we can see no legal inconsistency between the proposal for establishing the award, resolution 1961 (XVIII) of the General Assembly and the underlying Charter provisions.

In resolution 1961 (XVIII), one finds *inter alia* the expression of the General Assembly's belief "that the cause of human rights will be well served by an increasing awareness of the extent of the progress made" in the effective realization of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights; the General Assembly's conviction that an appropriate way of celebrating the 20th anniversary of the proclamation of the Declaration would be to devote the year 1968 to "intensified national and international efforts and undertakings in the field of human rights, and... to an international review of the

[14] See General Assembly resolution 2029 (XX) of 22 November 1965

achievements in this field"; and the request to the Commission on Human Rights, with the assistance of the Secretary-General, to prepare "a programme of measures and activities representing a lasting contribution to the cause of human rights, to be undertaken by the United Nations" as well as by Member States and by the specialized agencies.

The establishment of a prize "for outstanding achievements in the field of human rights" can reasonably be considered as one of possible measures and activities which the General Assembly might adopt in connexion with the celebration of the 20th anniversary of the proclamation of the Universal Declaration, within the more general framework of the Assembly's action as regards international co-operation prescribed by Articles 1 (3), 55 and 56 of the Charter for the promotion and encouragement of "respect for human rights and for fundamental freedoms for all...".

(*ii*) There seems to be little doubt that the United Nations can establish international awards for achievements in fields consistent with the purposes of the Organization under the Charter. Under Article 104 of the Charter and the Convention on the Privileges and Immunities of the United Nations, the Organization, in the exercise of its functions and the fulfilment of its purposes, may dispose of property in favour of individuals and it does so constantly.

"United Nations prizes" for the most outstanding scientific research work in the causes and control of cancerous diseases were instituted by the General Assembly in resolution 1398 (XIV). Another instance of United Nations awards is the medallion commemorating the International Co-operation Year and the 20th anniversary of the United Nations, created pursuant to a recommendation of the Committee for the International Co-operation Year (A/5836, para. 19) and presented this year to a number of personalities by the Secretary-General.

(*iii*) In the course of the discussions in the Working Party and other bodies which were concerned with the matter, mention was made by some representatives of certain special problems which may arise in the event it is decided to award United Nations prizes in the field of human rights and attention was drawn to obstacles which may exist in this connexion in the purposes and principles of the United Nations as expressed in the Charter. Reference was made in particular to the limits to United Nations' action contained in Article 2, paragraph 7, of the Charter under which "Nothing contained in the... Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State...".

Independently of the question of the extent of the applicability of Article 2, paragraph 7, of the Charter to the international protection of human rights, to which reference was also made in the Working Party, it would be difficult to maintain on legal grounds that the institution of a prize for outstanding achievements in such fields as human rights is a matter essentially within the domestic jurisdiction of a State as regards its nationals. As is well known, a number of prizes are periodically awarded by public or private institutions within States to nationals of other States.

5. We would conclude therefore that the provisions of Article 2, paragraph 7, would not constitute an obstacle to the institution of a human rights prize by the United Nations, but that if such a prize is granted, those responsible for deciding on the recipients of awards should bear in mind the relevant provisions of the Charter in such a manner that the application of the decisions of the General Assembly in this respect should be fully consistent with the principles and purposes of the Charter and past decisions of the United Nations organs concerning human rights.

19 August 1965

15. LEGAL EFFECTS OF THE DEPOSIT OF AN INSTRUMENT OF ACCESSION SUBJECT TO RATIFICATION[15]

Note verbale to the Permanent Representative of a Member State

1. The Secretary-General of the United Nations presents his compliments to the Permanent Representative and has the honour to acknowledge the receipt of his note... transmitting for deposit the instrument of accession, subject to ratification, by the Government of... to the International Convention for the Suppression of Counterfeiting Currency and the Optional Protocol regarding the Suppression of Counterfeiting Currency,[16] both done at Geneva on 20 April 1929.

2. In this connexion, it will be noted that under the recognized rules of international law, accession, like ratification, is an act by which a State establishes on the international plane its consent to be bound definitively by a treaty. Therefore, an instrument of accession which is expressed to be subject to ratification does not constitute accession to the treaty and its deposit has no legal effect. When such an instrument is transmitted for deposit, the Secretary-General, pursuant to the established depositary practice, considers it simply as a notification of the Government's intention to become a party to the treaty concerned and does not inform the other States of its receipt. Accordingly, the instrument referred to in the first paragraph above has been considered as constituting such a notification.

3. When the necessary constitutional requirements are completed permitting the Government to accede formally to the above-mentioned Convention and Optional Protocol, and either notification to this effect is received from the authority normally required to execute an instrument of accession, or a new instrument of accession containing no reference to subsequent ratification is deposited, the Secretary-General will notify all interested States of the accession to the said Convention and Protocol.

7 June 1965

16. PROPOSED ACCESSION BY A MEMBER STATE TO THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS[17] AND TO THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES[18] SUBJECT TO A RESERVATION DENYING FULL PRIVILEGES AND IMMUNITIES UNDER THESE CONVENTIONS TO UNITED NATIONS OFFICIALS WHO ARE NATIONALS OR RESIDENTS OF THAT STATE

Letter to the Permanent Representative of a Member State

1. ...We should like to refer to the proposed instrument of accession relating to the Convention on the Privileges and Immunities of the United Nations. This instrument contains a reservation to the effect that nationals and residents of your country shall be accorded such limited privileges and immunities as will enable them to carry out their work efficiently but shall not be accorded full privileges and immunities.

2. It has not been possible for us to determine from this wording exactly which privileges and immunities your Government would intend to accord, and which privileges and immunities it would intend to withhold, in respect of United Nations officials who are nationals and residents of your country. Moreover, while the terms are of a vague and general nature, the language would also appear to be more restrictive than that of Article 105 of the United Nations Charter. For this reason, the reservation might be considered as incompatible with the Charter.

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[15] For a survey of the depositary functions of the Secretary-General, see *Summary of the practice of the Secretary-General as depositary of multilateral agreements* (ST/LEG/7).

[16] League of Nations, *Treaty Series*, vol. CXII, p. 371.

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

[18] *Ibid.*, vol. 33, p. 261.

3. With respect to an instrument containing a reservation of this nature, the Secretary-General would be obliged to take action in two separate capacities, not merely as the depositary of the Convention under section 32 but also as the authority designated by section 36 for entering into negotiations with any Member Government as to any adjustments to the terms of the Convention so far as that State is concerned. In the latter capacity it might be necessary for the Secretary-General to bring a reservation of this character to the attention of the General Assembly before final action could be taken.

4. In the light of this situation you may wish to discuss with your Government whether it would like to reconsider the implications of this reservation before further steps are taken with respect to the deposit of the instrument. The following analysis may be of interest in this regard.

5. The reservation might have possible effects on articles V, VI and VII of the Convention. For the present we may note particularly the question of its application to section 18. Many of the privileges and immunities specified in section 18 are not ordinarily understood to have practical application as between an official of the United Nations and his government of nationality. Such an official will have no occasion, except in the rarest circumstances, to require immunity from immigration restrictions in his own country, or privileges with respect to exchange facilities or repatriation facilities in time of international crisis; he cannot, by definition, require immunity from alien registration and it would be very exceptional for him to have reason to claim duty-free entry for his personal effects at the time of first taking up his post in the country. Thus, with respect to these privileges and immunities, the reservation would have little or no practical effect.

6. On the other hand, the situation is quite different with respect to his official acts and it is primarily in this regard that the reservation casts doubt on its compatibility with the Charter. Section 18 (*a*) of the Convention requires that officials of the United Nations be "immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity". The Organization has never, and in fact could not, agree to any derogation from this provision regardless of the nationality of the official. Such derogation would be contrary to Articles 100 and 105 of the Charter. It may be noted that the situation is similar with respect to experts under section 22 (*b*) of the Convention.

7. A comment may also be in order with respect to the effect on a Member Government of its reserving the application of section 18 (*b*), should this have been intended by the present reservation. Section 18 (*b*) provides that officials of the United Nations shall "be exempt from taxation on the salaries and emoluments paid to them by the United Nations". Officials of the Organization, having been intended by the General Assembly and the Convention to be exempt from national taxation on their official salaries, are already subject to a staff assessment by the United Nations equivalent to national taxation. By resolution 973 (X), therefore, the General Assembly authorized the refund and reimbursement to the staff by the Secretary-General of the amount of any national income taxes to which they might be subjected on the same salary. By the same resolution, the General Assembly created a tax equalization fund and established thereby a procedure for charging against each Member State the total of any amounts which the Organization might thus feel obliged to refund to the staff. It should accordingly be understood that if it were the intention of your country to reserve its right to tax its nationals on their United Nations salary, the consequence would be to place upon the United Nations the administrative burden of reimbursing the income tax on such salaries while at the same time increasing your country's annual contributions to the expenses of the Organization by the full amounts so reimbursed.

8. In the light of the above, it is hoped that your Government might, upon re-examination of the question, consider withdrawing the reservation.

9. The instrument of accession to the Convention on the Privileges and Immunities of the Specialized Agencies presents a similar problem inasmuch as it contains a reservation

identical to that made by your Government in its instrument of accession to the Convention on the Privileges and Immunities of the United Nations. However, in this case the Secretary-General acts solely in his capacity as the depositary of the Convention. In accordance with the established practice under this Convention, the Secretary-General, when he receives an instrument of accession accompanied by a reservation, communicates its text to all States parties to the Convention and to all other States which are entitled to become parties thereto, as well as to the executive heads of the specialized agencies. He refrains, however, from stating in his communication the date of entry into force of the Convention as between the acceding State and the specialized agencies to which that State undertakes to apply the Convention. It will be noted that the specialized agencies have never accepted any reservation to the said Convention and have in every instance requested the Secretary-General of the United Nations to intercede on their behalf with the government concerned with a view to reconsideration and withdrawal of the reservations. Upon withdrawal of the reservation, the Secretary-General notifies all interested States of this action and proceeds with the registration of the accession. Since the reservation made by your Government in its instrument of accession to the Convention on the Privileges and Immunities of the United Nations and that made in its instrument of accession to the Convention on the Privileges and Immunities of the Specialized Agencies both present the same questions and your Government might wish to consider them together, we take the liberty of also deferring action on the latter instrument until we hear further from you on the matter.

5 May 1965

17. REQUEST BY THE GOVERNMENT OF A MEMBER STATE THAT LOCALLY RECRUITED UNITED NATIONS EMPLOYEES BE GIVEN EMPLOYMENT CONTRACTS IN ACCORDANCE WITH A "FORM OF AGREEMENT" PRESCRIBED BY THE GOVERNMENT—INCOMPATIBILITY WITH THE CHARTER AND WITH THE STAFF REGULATIONS APPROVED BY THE GENERAL ASSEMBLY

Memorandum to the Administrative Division, United Nations Children's Fund

1. We refer to your memorandum of 25 August asking advice on the request by the Government of a Member State that all locally recruited United Nations employees be given employment contracts in accordance with a "form of agreement" prescribed by the Government. We note that the request is for this form of agreement to be adopted by "foreign missions".

2. It is our view that the adoption of such a form of employment contract to govern the conditions of employment of United Nations staff would run counter to Articles 100 and 101 of the Charter and to the Staff Regulations adopted by the General Assembly.

3. Locally recruited personnel no less than internationally recruited personnel are staff within Article 101, paragraph 1, of the Charter which provides that:

> "The staff shall be appointed by the Secretary-General under regulations established by the General Assembly."

4. Staff Regulation 4.1 indicates that each United Nations staff member should receive a letter of appointment stating that the appointment is subject to the Staff Regulations and Rules. This does not mean that local conditions are irrelevant to the terms of appointment of locally recruited General Service personnel. Local conditions of employment are, in accordance with Annex I (paragraph 7) of the Staff Regulations, taken into account when wage rates for locally recruited staff are established by the Secretary-General. The legal regime, however, including the nature and duration of the employment contract itself, the obligations and duties of the staff member, the authority of the Secretary-General, the appeals procedure, etc., must be that established pursuant to the Charter by the General Assembly and the Secretary-General. Each Member State has, pursuant to Article 100, paragraph 2

of the Charter, undertaken to respect the exclusively international character of the responsibilities of the Secretary-General and the staff.

5. We have had previous occasion to decline government proposals for adoption of a prescribed employment contract for locally recruited staff, and have explained, on the one hand, the mandatory application of the United Nations Staff Regulations and, on the other hand, the consideration given to local conditions in applying these regulations. No Member State has failed to accept the application of United Nations Regulations and Rules to local personnel, of whatever nationality, within its territory.

7 October 1965

B. Legal opinions of the secretariat of inter-governmental organizations related to the United Nations

1. *International Labour Office*

The following memoranda concerning the interpretation of international labour Conventions were prepared by the International Labour Office at the request of Governments:

(*a*) *Memorandum concerning the Social Security (Minimum Standards) Convention, 1952 (No. 102)*, prepared at the request of the Government of France, 16 March 1965. *Official Bulletin*, vol. XLVIII, No. 4, October 1965, pp. 341-348. English, French, Spanish.

(*b*) *Memorandum concerning the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)*, prepared at the request of the Government of the Federal Republic of Germany, 25 November 1964. Document G.B. 165/13/1; 165th session of the Governing Body, Geneva, 27-28 May 1966.[1]

(*c*) *Memorandum concerning the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)*, prepared at the request of the Government of Sweden, 9 December 1965. Document G.B.165/13/1; 165th session of the Governing Body, Geneva, 27-28 May 1966.[1]

(*d*) *Memorandum concerning the Equality of Treatment (Social Security) Convention, 1962 (No. 118)*, prepared at the request of the Government of Canada, 22 December 1965. Document G.B.165/13/1; 165th session of the Governing Body, Geneva, 27-28 May 1966.[1]

2. *United Nations Educational, Scientific and Cultural Organization*

Organizational and procedural arrangements for the implementation of conventions and recommendations adopted by the General Conference of UNESCO

1. The purpose of the United Nations Educational, Scientific and Cultural Organization is, as laid down in its Constitution, "to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the people of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations".

2. It is mainly by carrying out a programme involving very many forms of direct action designed to deal with the complex problems encountered in the development of education,

[1] These memoranda will be also published in the *Official Bulletin*, vol. XLIX, No. 4, October 1966.

science and culture, and by promoting international co-operation for that purpose that UNESCO seeks to fulfil its objectives.

3. But the pursuit of UNESCO's aims also implies the formulation of principles and norms for regulating the activities of Governments in fields which come within the organization's purview. Thus the Constitution of UNESCO empowered the General Conference of the organization to adopt recommendations and international conventions. The relevant provision of the Constitution is article IV, paragraph 4, which reads as follows:

> "The General Conference shall, in adopting proposals for submission to the Member States, distinguish between recommendations and international conventions submitted for their approval. In the former case a majority vote shall suffice; in the latter case a two-thirds majority shall be required."

4. The General Conference of UNESCO has accordingly adopted several conventions and recommendations relating to human rights and, in particular, to those specified in articles 19, 26 and 27 of the Universal Declaration. The adoption by the General Conference of a convention or recommendation imposes on the States members of UNESCO specfic legal obligations which have been defined in the Constitution. Moreover, the General Conference has adopted rules of procedure and decisions of various kinds to govern the implementation of conventions and recommendations.

Submission to the competent national authorities

5. Under article IV, paragraph 4, each State is obliged to "submit recommendations or conventions to its competent authorities within a period of one year from the close of the session of the General Conference". Moreover, each Member State must report periodically to the organization, in a manner to be determined by the General Conference, on the action taken upon the recommendations and conventions referred to in article IV, paragraph 4 (article VIII).

6. The Rules of Procedure concerning Recommendations to Member States and International Conventions, which were adopted in 1950, stipulate that initial special reports relating to any convention or recommendation adopted shall be transmitted not less than two months prior to the opening of the first ordinary session of the General Conference following that at which such recommendation or convention was adopted (article 16, paragraph 2).

7. At its tenth session (1958), the General Conference determined the substance of the initial reports. They have to include: (*a*) a statement indicating whether the convention or recommendation has been submitted to the competent national authorities; (*b*) the name of that authority; (*c*) a statement indicating whether such authorities have taken any steps to give effect to the convention or recommendation; (*d*) the nature of such steps.

8. The General Conference was, however, obliged to note at its next session that the reports received did not contain all the information requested and that, furthermore, the particulars given by certain Governments suggested that the reporting States had taken differing views of the purport of the constitutional provision whereby they are obliged to submit any convention or recommendation adopted by the General Conference to the competent national authorities.

The General Conference therefore instructed the Director-General to submit to it, at its next session, a study of the matter with particular reference to the preparatory work for article IV of the Constitution and to the practice of other specialized agencies.

9. At its twelfth session, held in 1962, the General Conference endorsed the unanimous opinion of its Legal Committee on the question, as follows:

"The competent authorities, in the meaning of article IV, paragraph 4, of the Constitution, are those empowered under the Constitution or the laws of each Member State, to enact the laws, issue the regulations or take any other measures necessary to give effect to conventions or recommendations."

Moreover, in its comments on the reports received, the General Conference made the following observation:

"The General Conference also feels bound to draw attention once again to the distinction to be drawn between the obligation to submit an instrument to the competent authorities, on the one hand, and the ratification of a convention or the acceptance of a recommendation, on the other. The submission to the competent authorities does not imply that conventions should necessarily be ratified or that recommendations should be accepted in their entirety. On the other hand, it is incumbent on Member States to submit all recommendations and conventions without exception to the competent authorities, even if measures of ratification or acceptance are not contemplated in a particular case."

Submission and examination of the reports of Member States

10. The 1950 rules of procedure provide that, in addition to the initial special reports which are the subject of the developments described above, the General Conference may further request Member States to submit, by prescribed dates, additional reports giving such further information as may be necessary.

11. The obligation to report periodically, in a manner determined by the General Conference, is, as was indicated above, constitutional. It covers both recommendations and conventions and applies to all Member States without making any distinction, in the case of a convention, concerning whether or not they have ratified it.

12. Furthermore, several UNESCO conventions provide that States parties thereto should submit periodical reports on their application and implementation. Thus, the Convention concerning the International Exchange of Publications and the Convention concerning the Exchange of Official Publications and Government Documents between States contain a provision that Contracting States should send to the organization annual reports on the working of the Conventions and copies of bilateral agreements entered into for the purpose of supplementing the Conventions. More important, in all probability, and more explicit, is the following provision contained in the Convention against Discrimination in Education:

"The States Parties to this Convention shall in their periodic reports submitted to the General Conference of the ... Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, including that taken for the formulation and development of the national policy defined in Article 4 as well as the results achieved and the obstacles encountered in the application of that policy."

A similar provision appears in the Recommendation against Discrimination in Education.

13. According to the 1950 rules of procedure, the General Conference, having considered the reports of member States, has to submit its observations in one or more general reports to be circulated to Member States, to the National Commissions and to all other authorities designated by the General Conference. Thus, the observations are certain to receive wide publicity.

14. So far, the General Conference has only considered the initial special reports dealing with submission to the competent national authorities. However, at its next session in October 1966, the UNESCO General Conference will be asked to consider additional reports dealing with the actual implementation of a convention and a recommendation. As

a result of the decisions adopted by the General Conference at its thirteenth session and by the Executive Board at its seventieth session, the States members of UNESCO have been requested to submit a report to the organization on the implementation of the Convention or the Recommendation against Discrimination in Education. A detailed questionnaire with seven main headings enumerated the questions to which States were required to reply.

15. The reports from States will be considered in September 1966 by a twelve-member special committee of the Executive Board and transmitted, together with the committee's analysis and the Board's comments to the General Conference, which will then formulate its observations.

Conciliation and good offices procedure

16. Unlike the International Labour Organisation, UNESCO has no constitutional or statutory provision for appeals or for reviewing complaints concerning the implementation of its conventions. Consequently, no general procedure has been established for that purpose.

17. However, at its 1962 session, the General Conference adopted a Protocol instituting a Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States parties to the Convention against Discrimination in Education. The Protocol, which has already been ratified by Denmark, the United Kingdom, France, the Philippines and Madagascar, has not yet entered into force.

18. The Protocol is intended to facilitate the settlement of disputes concerning the application or interpretation of the Convention against Discrimination in Education, adopted by the General Conference two years earlier, and the Conciliation and Good Offices Commission it establishes should enable States to reach an amicable settlement of most of their disputes so that appeals to the International Court of Justice would become, so to speak, accessory.

19. The UNESCO General Conference has been guided in this respect by various precedents, especially that of the European Commission of Human Rights established by the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Fact-Finding and Conciliation Commission on Freedom of Association and the Human Rights Committee provided for in the draft Covenant on Civil and Political Rights which is before the United Nations General Assembly for approval.

20. The Commission established by the UNESCO Protocol is a permanent body. It consists of eleven members to be elected by the General Conference from among the candidates put forward by the States parties, but serving in their personal capacity.

21. The draft protocol prepared by the Director-General contained a proposal to the effect that two out of the eleven seats should be filled by candidates nominated by non-governmental organizations in consultative status and recognized by UNESCO's Executive Board as representing either the teaching profession or the interests of pupils and students at the various levels of education.

The proposal was not accepted.

22. The members of the Commission must be nationals of States parties to the Protocol, but the Commission may not include more than one national from any State. The General Conference will endeavour to include persons of recognized competence in the field of education and persons having judicial or legal experience, with due regard to equitable geographical representation of the different forms of civilization as well as the principal legal systems. Members are to be elected for six years and will be eligible for re-election if renominated.

23. In addition to the eleven members of the Commission, *ad hoc* members may be chosen if the Commission does not include a member of the nationality of one of the States parties to a dispute. The secretariat is to be provided by the Director-General of UNESCO.

24. For the time being, recourse to the Commission is limited to States parties to the Protocol. If one of those States considers that another of those States is not giving effect to the provisions of the Convention, it may, by written communication, bring the matter to the attention of that State. The receiving State has three months in which to reply. If the matter is not adjusted to the satisfaction of both States within six months, either State has the right to refer it to the Commission.

25. Subsequently, from the beginning of the sixth year after the entry into force of the Protocol, the Commission may also be made responsible for seeking the settlement of any dispute arising between States which are parties to the Convention but are not parties to the Protocol if the said States agree. Notwithstanding this possible broadening of the Commission's field of action, the fact is that its competence is limited (*a*) to disputes arising between States and (*b*) to disputes concerning the application or interpretation of the Convention.

26. In any matter referred to it, the Commission may call upon the States parties to the dispute to provide it with all pertinent information. However, it cannot deal with a matter until all available domestic remedies have been exhausted, within the meaning attributed to that expression in international law.

27. The function of the Commission, after it has obtained the information which it deems necessary, is essentially to ascertain the facts and make available its good offices to the States concerned with a view to an amicable solution of the matter "on the basis of respect for the Convention". In every case, the Commission has to draw up a report. If a solution has been reached, the report has to be brief and confine itself to a statement of the facts and of the solution agreed upon. If, on the other hand, a solution to the dispute is not reached, the report has to indicate, in addition to stating the facts, the recommendations which it made. Separate opinions are to be permitted.

28. The Commission may also recommend to the Executive Board or to the General Conference, as appropriate, that the International Court of Justice should be requested to give an advisory opinion on any legal question connected with a matter laid before the Commission. Moreover, it is specifically provided that the establishment of the Commission must not affect the right of States to have recourse to other procedures for settling disputes between them, including that of referring their disputes by mutual consent to the Permanent Court of Arbitration at the Hague.

16 December 1965