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Part Two. Legal activities of the United Nations and related intergovernmental organizations

Chapter VI. Selected legal opinions of the Secretariats of the United Nations and related intergovernmental organizations

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Chapter VI

SELECTED LEGAL OPINIONS OF THE SECRETARIAT OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Legal opinions of the Secretariat of the United Nations

(Issued or prepared by the Office of Legal Affairs)

1. EXEMPTION OF UNITED NATIONS PUBLICATIONS, UNDER ARTICLE 105 OF THE CHARTER, FROM A REQUIREMENT IN THE PRESS LAW OF A MEMBER STATE THAT THEY CARRY A RECORD OF THE NAME AND SURNAME OF THE EDITOR

Memorandum to the Chief of the Policy and Programme Section, External Relations Division, Office of Public Information

1. It appears that a new press law passed in a Member State requires that "all periodical publications shall carry a record of", among other things, the "name and surname of the editor". The Director of the United Nations Information Centre in the Member State concerned has requested an "opinion concerning the use of his name on press releases, the Weekly Newsletter and other United Nations material that may be put out by the Centre from time to time".

2. I noted that all publications put out by the Centre clearly identify the Centre as the source of the information. I understand, furthermore, that the policy of the Secretary-General with regard to United Nations publications is to refrain from showing thereon the name of any staff member.

3. The purpose of the provision referred to above of the press law in question is obviously to identify the author of any periodical publication so as to hold him responsible under the law of the Member State concerned. In the distribution of United Nations publications in that State, the Director of the United Nations Information Centre would be performing a United Nations function in his capacity as a United Nations official. He cannot be held accountable to the Government concerned, or for that matter, to any other authority external to the United Nations, in virtue of Article 105 of the Charter and section 18 (*a*) of the Convention on the Privileges and Immunities of the United Nations. The said provision of the law in question obviously has no application with respect to United Nations publications including those issued by the Information Centre.

4. Accordingly, the Director of the Centre should take the necessary steps to request recognition of the exemption from the application of the law in question.

16 January 1970

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2. USE OF A SYMBOL RESEMBLING THE UNITED NATIONS EMBLEM BY A NATIONAL ORGANIZATION ESTABLISHED IN CONNEXION WITH THE UNITED NATIONS TWENTY-FIFTH ANNIVERSARY—USE OF THE UNITED NATIONS EMBLEM ON THE STATIONERY OF SUCH AN ORGANIZATION

Memorandum to the Office of the Under-Secretaries-General for Special Political Affairs

1. You have requested legal advice concerning a proposal from a national committee, established in a Member State for the United Nations Twenty-fifth Anniversary.

2. The National Committee has forwarded an official symbol which the Committee intends to use in the Member State concerned and has suggested that the symbol "merits much wider usage", apparently implying that it could be used in other countries, and by the United Nations itself, if approved by the competent authorities of the United Nations. The symbol consists of the initials "UN" above the number 25, within a circle and a wreath of olive leaves.

3. You have said that the Preparatory Committee for the Twenty-fifth Anniversary of the United Nations discussed the question of the symbol for the Anniversary and did not favour the adoption of any symbol for the occasion. This fact readily disposes of the question whether the symbol might be approved as a United Nations symbol for use in all Anniversary activities. The question arises, however, whether the National Committee should be permitted to use a symbol of their own creation, which includes the initial letters of the name of the Organization within a wreath of olive leaves, similar to that of the United Nations emblem. In general as you know, under General Assembly resolution 92 (1), no authorization has been given in recent practice for the use of the emblem, or variations of it, by organizations acting in support of the United Nations (as distinguished from organizations acting as agents of the Organization), with only one exception. Nevertheless, the present case is somewhat special in that the proposed symbol has only a very slight resemblance to the United Nations emblem, and is intended for use only for the duration of the Twenty-fifth Anniversary year by a reputable organization under the direction or auspices of various prominent members of the Government and Parliament of a Member State.

4. Under resolution 92 (1) of the General Assembly, the practice in authorizing the use of the name or the emblem of the United Nations for non-commercial purposes has been to prevent their use in a manner which would be undignified, inconsistent with the spirit of General Assembly resolutions or susceptible of creating the impression of endorsement of activities by the United Nations or the impression that the user is the United Nations itself. The application of these criteria to the present case would raise no difficulty for the authorization of the use of the symbol by the National Committee, except perhaps as regards the last mentioned criterion. We are inclined therefore, to consider the present case as not falling within the type of cases in which authorization has not been granted, if in using their own symbol, the Committee does not, by implication, convey the impression that it is an integral part of the United Nations. Such implication might be avoided if the symbol is used with a legend bearing a clear identification of the Committee.

5. In expressing this view, we have taken into account the very important and independent role which Member States and non-governmental organizations are to play in the Anniversary celebrations, a role recognized in General Assembly resolution 2499 (XXIV), paragraph 16, in which such States and organizations, *inter alia*, are invited "to formulate such plans and programmes as seem to them appropriate for promoting the purposes of the observance". We have also noted that the Preparatory Committee has recommended to Member States the issuance of postage stamps in commemoration of the Anniversary, and that the choice of the sign and color of the stamps be left to the Governments. The Prepara-

tory Committee added: "It was hoped that mention would be made in these stamps of the United Nations as well as of its Twenty-fifth Anniversary".[1] Stamps thus issued are likely to bear, in some cases, either the United Nations emblem or a modified version of it. Here, again, however, there would be no possibility of confusion since the stamps will, of course, be issued with an inscription bearing the name of each of the issuing countries.

6. In your memorandum, you also call to our attention the use of the United Nations emblem on the stationery of the National Committee. In our opinion, such use on the stationery of the Committee or on its publications is objectionable. It is true that in the early years of the Organization, we did authorize the use of the emblem in a few cases for activities in support of the United Nations of some private organizations on the condition that a disclaimer be made on the stationery or publications of the organization that the organization was not an integral unit of the United Nations. At the present time, however, the United Nations emblem is widely known throughout the world and even if a disclaimer is made, the possibility of confusion might not be avoided as instant recognition of the emblem would divert attention from any disclaimer. It will be recalled that the United Nations Flag Regulations (which, in effect, also deals with the emblem since the flag is the emblem centered on a United Nations blue background) prohibits under Section IV (*b*), the use of the flag or its replica "stamped, printed, engraved or otherwise affixed on any stationery, books, magazines, periodicals or other publications of any nature whatsoever, in a manner such as could imply that any such stationery, books, magazines, periodicals or other publications were published by or on behalf of the United Nations unless such is in fact the case . . .". Although the National Committee will undoubtedly be acting in support of the United Nations, it cannot be said that it will be acting "on its behalf".

20 February 1970

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3. Scope of credentials in rule 27 of the rules of procedure of the General Assembly

Statement by the Legal Counsel submitted to the President of the General Assembly at its request[2]

1. The rules of procedure of the General Assembly do not contain a definition of credentials.[3] Rule 27, however, provides:

> "The credentials of representatives and the names of members of a delegation shall be submitted to the Secretary-General if possible not less than one week before the date fixed for the opening of the session. The credentials shall be issued either by the Head of the State or Government or by the Minister for Foreign Affairs."

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[1] *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, agenda item 25, document A/7690, para. 30.

[2] Circulated as document A/8160: see *Official Records of the General Assembly, Twenty-fifth Session, Annexes*, agenda item 3.

[3] In bilateral diplomatic relations credentials may be defined as the document officially attesting that the person named is the duly appointed envoy accredited by the sending State to the receiving State. While the actual phraseology may differ, the essential part is said to be a phrase asking that credit may be given to all the agent may say in the name of his sovereign or government (Satow, *A Guide to Diplomatic Practice*, Fourth Edition, p. 79, para. 122; B. Sen, *Diplomatic Handbook of International Law and Practice* (1965), p. 40; M. Hardy, *Modern Diplomatic Law* (1968), p. 20, foot-note 3). By adaptation, credentials of a representative to an international organization may be defined as the document attesting that the person or persons named are entitled to represent their State at the seat of or at meetings of the Organization.

2. From this rule one may derive three essential elements with respect to credentials to the General Assembly:

(*a*) "Credentials" designate the representatives of the Member State to the General Assembly;

(*b*) They are to be submitted to the Secretary-General; and

(*c*) They are to be issued by the Head of the State or Government or by the Minister for Foreign Affairs.

3. Thus credentials for the General Assembly may be defined as a document issued by the Head of State or Government or by the Minister for Foreign Affairs of a State Member of the United Nations submitted to the Secretary-General designating the persons entitled to represent that Member at a given session of the General Assembly. Unlike the acceptance of credentials in bilateral relations, the question of recognition of a Government of a Member State is not involved, and substantive issues concerning the status of Governments do not arise except as examined in the following paragraph.

4. While normally the examination of credentials, both in the Credentials Committee and in the General Assembly, is a procedural matter limited to ascertaining that the requirements of rule 27 have been satisfied, there have nevertheless been a few instances involving rival claimants where the question of which claimant represents the true government of the State has arisen as a substantive issue. This issue of representation may, as in the case of the Republic of the Congo (Leopoldville) at the fifteenth session and Yemen at the sixteenth session, be considered in connexion with the examination of credentials, or it may, as in the case of China, be dealt with both in connexion with credentials and as a separate agenda item.

5. Questions have also been raised in the Credentials Committee with respect to the representatives of certain Members, notably South Africa and Hungary, where there was no rival claimant. There has, however, been no case where the representatives were precluded from participation in the meetings of the General Assembly. The General Assembly, in the case of Hungary from the eleventh to the seventeenth session and in the case of South Africa at the twentieth session, decided to take no action on the credentials submitted on behalf of the representatives of Hungary and South Africa. Under rule 29 any representative to whose admission a Member has made objection is seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the General Assembly has given its decision.

6. Should the General Assembly, where there is no question of rival claimants, reject credentials satisfying the requirements of rule 27 for the purpose of excluding a Member State from participation in its meetings, this would have the effect of suspending a Member State from the exercise of rights and privileges of membership in a manner not foreseen by the Charter. Article 5 of the Charter lays down the following requirements for the suspension of a Member State from the rights and privileges of membership:

(*a*) Preventive or enforcement action has to be taken by the Security Council against the Member State concerned;

(*b*) The Security Council has to recommend to the General Assembly that the Member State concerned be suspended from the exercise of the rights and privileges of membership;

(*c*) The General Assembly has to act affirmatively on the foregoing recommendation by a two-third vote, in accordance with Article 18, paragraph 2, of the Charter, which lists "the suspension of the rights and privileges of membership" as an "important question".

The participation in meetings of the General Assembly is quite clearly one of the important rights and privileges of membership. Suspension of this right through the rejection of credentials would not satisfy the foregoing requirements and would therefore be contrary to the Charter.

11 November 1970

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4. Question of votes by correspondence—Procedure applied by the Commission on Narcotic Drugs

Letter to the Deputy Secretary-General, World Meteorological Organization

1. You have enquired about the experience of the United Nations in regard to votes by correspondence. The closest parallel that we know of in the United Nations to the system of votes by correspondence of WMO which you describe is in the Commission on Narcotic Drugs. That Commission, at its twentieth session in 1965, adopted its resolution 1 (XX) to deal with the problem of placing new narcotic substances under international control, pursuant to article 3 of the Single Convention on Narcotic Drugs, 1961,[4] during periods when the Commission was not in session.[5] This resolution provides as follows:

"*The Commission on Narcotic Drugs,*

"*Considering* the importance of ensuring that new narcotic substances are brought under control as quickly as possible,

"*Sharing* the concern of the World Health Assembly (resolution WHA 18.46) about the dangers to public health which may arise if the control of such substances is delayed,

"*Taking into account* the provisions of the Single Convention on Narcotic Drugs, 1961, under which decisions on the control of narcotic substances are taken by the Commission on Narcotic Drugs,

"*Considering* also that the Commission on Narcotic Drugs meets not more than once a year,

"*Believing* that steps can be taken under the present terms of the 1961 Convention to speed up the process of placing new substances under control,

"1. *Resolves* that if a recommendation is made by the World Health Organization for the control of a new narcotic substance, and the Commission is not, or will not within a period of three months be in session, a decision should be taken by the Commission before its next session; and

"2. *Requests* the Secretary-General, for that purpose, to arrange in these exceptional circumstances for a decision of the Commission to be taken by a vote of the Commission by mail or telegram, and for a report to be made to the Commission at its next session."

2. Various decisions have been taken by the foregoing procedure. In its report on the work of its twenty-first session in 1966, the Commission made the following observation:

"The Commission noted that the procedure it had adopted at its twentieth session regarding voting by mail, on a recommendation of WHO under article 3 of the 1961 Convention, had worked satisfactorily that year. It agreed with the representative of the United Kingdom that in future cases when that procedure was applied, a request by any member of the Commission for further discussion in the Commission regarding any such recommendation of WHO would automatically place the matter on the agenda of the Commission session immediately following."[6]

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

[5] See *Official Records of the Economic and Social Council, Fortieth Session, Supplement No. 2* (E/4140), para. 60.

[6] *Ibid., Forty-second Session, Supplement No. 2* (E/4294), para. 335.

Further observations concerning the procedure were made in the report of the Commission's twenty-second session. In particular, the Commission expressed the hope that Commission members would reply promptly to requests for votes by mail in accordance with its resolution 1 (XX). [7]

3. We do not believe that any other United Nations organ has adopted a similar form of procedure for taking decisions by correspondence, but it not infrequently happens that the report of a body is approved by the members by correspondence after the end of the session. Mention may also be made of the rules of procedure of the General Assembly, which provide in rule 4 that regular sessions shall be held away from Headquarters if a majority of Members concur within thirty days in a request to that effect, and in rules 8 and 9 that a special session or emergency special session shall be held if a majority of Members similarly concur; in such cases concurrence is expressed by correspondence. Moreover, the Economic Commission for Africa now meets only every second year, and in the years when it does not meet, it approves draft reports which are circulated by mail. The procedure is described in one of the Commission's reports. [8]

2 April 1970

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5. Question of the participation of intergovernmental organizations as observers in the Fourth Conference on the Peaceful Uses of Atomic Energy—Procedure to be followed for the submission to the General Assembly of a recommendation on the matter

Memorandum to the Chief of the Science Applications Section, Office for Science and Technology, Department of Economic and Social Affairs

1. The Fourth Conference on the Peaceful Uses of Atomic Energy is to be convened in accordance with General Assembly resolutions 2309 (XXII) of 13 December 1967, 2406 (XXIII) of 16 December 1968 and 2575 (XXIV) of 15 December 1969. In its resolution 2309 (XXII) the General Assembly decided to invite "the States Members of the United Nations and members of the specialized agencies or of the International Atomic Energy Agency to participate in the conference" and requested the Secretary-General, "with the assistance of the United Nations Scientific Advisory Committee, in co-operation with the International Atomic Energy Agency and in consultation with appropriate specialized agencies", to prepare for the conference. That resolution was adopted by the General Assembly after consideration was given to the recommendations of the United Nations Scientific Advisory Committee, one of the recommendations being that "there should be a fourth international Conference on the peaceful uses of atomic energy under the auspices of the United Nations with the fullest co-operation of the IAEA. The specialized agencies should be invited to participate as appropriate." In accordance with that resolution and in line with the practice established at the three previous conferences, invitations were sent to the States referred to in resolution 2309 (XXII) and to the specialized agencies to participate in the fourth conference.

2. It should be noted that there was no provision for invitation of intergovernmental organizations in the resolutions of the General Assembly convening the four conferences, nor was there any evidence in the published proceedings of the three previous conferences that an intergovernmental organization had been invited to participate in any of those conferences.

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[7] See *Official Records of the Economic and Social Council, Forty-fourth Session, Supplement No. 2* (E/4455), para. 40.

[8] *Ibid., Forty-fifth Session, Supplement No. 5* (E/4497), paras. 1 and 231-235.

3. In its resolution 2406 (XXIII) the General Assembly again requested the Secretary-General, "with the assistance of the United Nations Scientific Advisory Committee, in close co-operation with the International Atomic Energy Agency and in consultation with appropriate specialized agencies", to undertake preparations for the Fourth Conference and to provide for a conference which would fully achieve the objectives stated in General Assembly resolution 2309 (XXII). This mandate of the Secretary-General was once more confirmed in General Assembly resolution 2575 (XXIV). The United Nations Scientific Advisory Committee, while providing advice to the Secretary-General, has been performing a function similar to that of a preparatory committee for the Conference and its meetings have been attended by representatives of IAEA and of interested specialized agencies.

4. In view of the functions thus entrusted to the Secretary-General, the United Nations Scientific Advisory Committee and the IAEA by the General Assembly in the relevant resolutions, it would be appropriate that the question of invitation of intergovernmental organizations as observers at the Fourth Conference be considered at the meetings of the Scientific Advisory Committee and a recommendation thereon could then be submitted by the Secretary-General to the General Assembly for its approval.

5. Intergovernmental organizations, such as the Organisation for Economic Co-operation and Development (OECD) and the Council for Mutual Economic Assistance (CMEA), were designated by the Economic and Social Council in accordance with Council resolution 963 (XXXVI) to participate in the UNCTAD conferences.

28 August 1970

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6. Extent of the participation of associate members of the Economic Commission for Asia and the Far East in the work of the Commission and its subsidiary organs under paragraphs 6 and 7 of the Commission's terms of reference—Historical survey of the question of membership of regional commissions, in particular ECAFE and ECE

Memorandum to the Chief of the Regional Commissions Section, Department of Economic and Social Affairs

1. I fully agree with you that in order to enable the associate members of ECAFE to vote in the Commission or its Committee of the Whole, it will be necessary to amend paragraph 6 of ECAFE's terms of reference. It would be for the Economic and Social Council to consider such an amendment, although the Commission may, should it so desire, make recommendation to the Council on this matter.

2. I also agree with you that if the associate members are more interested in being elected to certain subsidiary bodies of the Commission, the matter is provided for in paragraph 7 of ECAFE's terms of reference, according to which the representatives of associate members are eligible to be appointed as members of any subsidiary body, and to vote and hold office in such body once they become members thereof.

3. On several occasions in the past, discussion took place on the question of membership of regional economic commissions and, in particular, membership of ECAFE and ECE. In this connexion there was also discussion on the question of whether the Council had the authority under the Charter to grant full membership with voting rights in its commissions of States which are not members of the United Nations. Those discussions, in so far as they may be of interest as background information to any future consideration of the subject-matter of the present memorandum, are summarized below.

I. *Origin of paragraph 6 of ECAFE's terms of reference*

4. The Economic and Social Council in its resolution 37 (IV) of 28 March 1947 establishing ECAFE made the following provision:

> "The members of the Commission shall, in the first instance, consist of Australia, China, France, India, Netherlands, Philippine Republic, Siam, Union of Soviet Socialist Republics, United Kingdom, and United States of America, provided that any State in the area which may hereafter become a Member of the United Nations shall be thereupon admitted as a member of the Commission.
>
> "The Commission shall invite any Member of the United Nations not a member of the Commission to participate in a consultative capacity in its consideration of any matter of particular concern to that non-member".

5. In the same resolution the Council requested ECAFE to appoint a committee of the whole to consider provisions for associating non-self-governing territories in the region with the work of the Commission.

6. The question of membership in ECAFE of non-member States of the United Nations was taken up by the ECAFE Committee of the Whole at the Commission's first session held in July 1947, in connexion with the question of membership of the non-self-governing territories. [9] The Committee considered proposals for the non-self-governing territories ranging from full membership to consultative status on matters of particular concern to them. In a statement made to the Committee, the Assistant Secretary-General for Legal Affairs concluded that, "while there was no explicit provision in the Charter of the United Nations on the subject, the Charter, in spirit and in principle, envisaged a clear difference between Members and non-members and that this difference rested upon the fundamental principle that rights of membership should not be granted unless obligations of membership were also assumed." Consequently, he considered that full membership should only be granted to non-member States "in very exceptional circumstances". With regard to the non-self-governing territories, he stressed that "full membership would be contrary to the special régime prescribed for those territories in Chapters XI, XII and XIII of the Charter". He noted, however, that the Economic and Social Council had full power to provide for the co-operation of those territories with the consent of the metropolitan power but such co-operation must fall short of full membership.

7. The Committee rejected a proposal to admit as full members of the Commission countries and territories within the geographical scope of the Commission which are not members of the United Nations. Instead, the formula of associate membership was adopted, by which such countries and territories could participate without voting rights in meetings of the Commission.

8. The report of ECAFE on the question of its membership was considered by the Economic and Social Council at its fifth session. As a result of this consideration, the Council on 31 July 1947 adopted resolution 69 (V) adding to the terms of reference of ECAFE provisions relating to the concept of associate membership for the non-self-governing territories in the region as well as for countries responsible for the conduct of their own international relations which were not members of the United Nations. The provision relating to participation, which has become paragraph 6 of ECAFE's terms of reference, reads as follows:

> "Representatives of associate members shall be entitled to participate without vote in all meetings of the Commission, whether sitting as Commission or as Committee of the Whole."

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[9] *Official Records of the Economic and Social Council, Fifth Session, Supplement No. 6*, pp. 17-23.

II. *Consideration by ECAFE and the Economic and Social Council of the question of admission to full membership of associate member of ECAFE*

9. At its ninth session in 1953, ECAFE had before it a proposal to amend its terms of reference by adding a provision to the effect that "any associate member of the Commission that has applied for membership in the United Nations Organization and has received a number of votes which the Economic and Social Council considers sufficient shall thereon be admitted as a member of the Commission".[10]

10. After discussion, a resolution was adopted by which ECAFE recommended that the Council admit to membership". . . those associate members who are responsible for their own international relations and who apply to the Commission for such membership".[11]

11. The Council, at its fifteenth session, considered this recommendation of ECAFE and, in this connexion, had before it a draft resolution by which it would admit the following associate members to membership of ECAFE: Cambodia, Ceylon, Japan, the Republic of Korea, Laos, Nepal and Vietnam.[12] In the course of a lengthy discussion, questions were raised whether the Council had the power under the Charter to grant voting rights or full membership in its regional economic commissions to States not members of the United Nations and whether the Council should decide the question of membership for those States by means of a general rule applicable both to ECE and ECAFE or by means of a specific decision applying to one commission in particular. The Council decided to adjourn the debate on this matter to its sixteenth session. The question was not taken up until its seventeenth session when the Council adopted resolution 517A (XVI) of 22 April 1954 by which it noted that the General Assembly had determined that the countries mentioned in the ECAFE recommendation were eligible for membership in the United Nations, and decided to amend paragraphs 3 and 4 of the terms of reference of ECAFE to permit the inclusion of these countries as members, provided that they applied for membership and agreed to comply with certain conditions. A proposal to defer consideration of the admission of Cambodia, Laos, Vietnam and the Republic of Korea on the grounds that their international status required clarification was rejected by the Council.

III. *Consideration by ECE and the Economic and Social Council of the question of according voting rights to European States not members of the United Nations which are invited to take part in the work of ECE in a consultative capacity*

12. Paragraph 8 of the original terms of reference of ECE provided that "the Commission may admit in their consultative capacity European nations not Members of the United Nations and shall determine the conditions in which they may participate in its work". (See Economic and Social resolution 36 (IV) of 28 March 1967.)

13. At the sixth session of ECE in 1951 a draft resolution was submitted under which full voting rights in the Commission would have been accorded to States not members of the United Nations which took an active part in the work of the Commission in a consultative capacity. After discussion this draft resolution was rejected by the Commission which, instead, adopted a resolution referring the matter to the Economic and Social Council on the grounds that "a change of the Commission's rules relating to voting rights involves questions of principle which have a bearing upon the work of other United Nations organs and therefore are outside the competence of the Commission".

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[10] *Ibid., Fifteenth Session, Supplement No. 6* (E/2374), para. 175.

[11] *Ibid.*, para. 176.

[12] *Ibid., Annexes*, agenda item 5 (document E/L.504).

14. The Economic and Social Council considered this question at its thirteenth session. Some members pointed out that the States in question took an active part in the work of the Commission and its subsidiary bodies, and that the importance of their contribution to the expansion of the European economy and to the development of trade warranted their being granted voting rights in the Commission. Other members would favour granting voting rights in the subsidiary bodies of the Commission but not in the Commission itself for the time being. [13]

15. A draft resolution submitted to the Council under which voting rights in the Commission would have been accorded to countries not members of the United Nations was rejected. [14] The Council, in its resolution 414 (XIII) of 18, 19 and 20 September 1951, adopted the following provision:

> "*Noting* that the Economic Commission for Europe, at its sixth session, having had brought before it the question of according voting rights to European States, not members of the United Nations, which are invited to take part in the Commission's work in a consultative capacity, considered that a change of the Commission's rules relating to voting rights involves questions of principle which have a bearing upon the work of other United Nations organs and therefore are outside the competence of the Commission, and referred the matter to the Council,
>
> "*Being of the opinion* that, for the time being, no change should be made as to voting rights in so far as the Commission itself is concerned,
>
> "*Considering*, however, that the question has a different import in relation to the subsidiary technical bodies of the Commission,
>
> "*Decides* that point (8) of the terms of reference of the Economic Commission for Europe shall read as follows:
>
> " '(8). The Commission may admit in a consultative capacity European nations not members of the United Nations and shall determine the conditions in which they may participate in its work, including the question of voting rights in the subsidiary bodies of the Commission.' " [Section C.II of resolution 414 (XIII).]

16. At its seventh session, ECE adopted a resolution by which it took note of Council resolution 414 (XIII) and requested its subsidiary bodies to grant voting rights to European nations not members of the United Nations admitted to participate in the work of the Commission in a consultative capacity. In connexion with this resolution, the following paragraph was inserted in the annual report of the Commission to the Council:

> "In unanimously adopting the resolution on Voting Rights of European Nations not members of the United Nations the Commission has taken note of the fact that the decision of the Economic and Social Council concerning the granting of the right to vote in the Commission to countries not members of the United Nations was taken' for the time being'. The Commission concludes therefrom that the Economic and Social Council is keeping the question under constant review with regard to the importance of the problem of equal status of all countries participating in the Commission's activities. A number of delegations to the seventh session of the Economic Commission for Europe have expressed the wish that the Council will grant voting rights to non-members of the United Nations in the Commission itself at the earliest possible moment." [15]

17. The Council at its fourteenth session in connexion with the consideration of the annual report of ECE and in particular the resolution referred to above, rejected a draft resolution by which it would have accorded voting rights in the Commission to European nations not members of the United Nations. [16]

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[13] *Official Records of the Economic and Social Council, Thirteenth Session, Supplement No. 6* (E/2002), paras. 156-158.

[14] *Ibid., Annexes*, document E/L.280/Rev.1.

[15] *Ibid., Fourteenth Session, Supplement No. 5* (E/2187), para. 149.

[16] *Ibid., Annexes*, agenda item 3, document E/L.354.

18. The matter was raised again at the eighth session of ECE when a draft resolution by which voting rights would have been accorded to countries not members of the United Nations was rejected.[17]

19. Consideration of the question was postponed by the Council until its seventeenth session. At that session the agenda of the Council included the "Question of admission to membership in the regional economic commissions of States not members of the United Nations". The Council had also before it a legal study, prepared by the Secretariat at the Council's request, on the question whether the Council has the authority under the Charter to grant full membership with voting rights in its commissions to States which are not members of the United Nations (E/2458). After an examination of the proposals at Dumbarton Oaks, the proceedings of the Preparatory Commission in 1945, and the practice of the Council, as well as an analysis of Articles 69 and 4 of the Charter, it was concluded in this study "that the Council has authority by virtue of Article 68 of the Charter to grant full membership in the regional commissions to States which are not members of the United Nations".

20. After discussion, the Council rejected a proposal to grant membership to all countries not members of the United Nations participating in ECE in a consultative capacity. It adopted resolution 517 B (XVII) of 22 April 1954 by which it noted that the General Assembly had determined that Austria, Finland, Ireland, Italy and Portugal were eligible for membership in the United Nations, and decided to amend paragraph 7 of the terms of reference of ECE to include those countries as members of the Commission provided that they applied for membership and agreed to comply with certain conditions.

26 March 1970

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7. Question whether a non-Member State can be admitted to full membership in the Economic Commission for Asia and the Far East—Rights and obligations of full and associate membership in the Commission and its subsidiary bodies

Memorandum to the Chief of the Regional Commissions Section, Department of Economic and Social Affairs

1. We refer to your memorandum concerning the question of possible membership in ECAFE of the Kingdom of Tonga. It is our understanding that the Kingdom of Tonga, due to become independent on 4 June 1970, does not intend to apply for membership of the United Nations but wishes to be admitted to ECAFE as a full member.

2. From the legal point of view, the first question is whether a non-Member State can be admitted to full membership in a regional economic commission. The reply to this question was given in a legal opinion of 8 June 1953 contained in document E/2458. In that opinion, after a detailed analysis of the relevant provisions of the Charter, the *travaux préparatoires* and the practice of the Economic and Social Council, the conclusion was reached that "the Council has authority by virtue of Article 68 of the Charter to grant full membership in the regional commissions to States which are not Members of the United Nations". This conclusion made two points clear, namely, that a non-Member State may become a full member of a regional economic commission and that it is for the Economic and Social Council to decide on whether or not to grant such membership.

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[17] *Ibid., Sixteenth Session, Supplement No. 9* (E/2382), paras. 195-196.

3. It is a general principle that membership entails both rights and obligations. Thus in its resolution 517 (XVII) of 22 April 1954, the Economic and Social Council, in admitting certain non-Member States (Cambodia, Ceylon, Republic of Korea, Japan, Laos, Nepal and Viet-Nam) to membership in the ECAFE, decided that those States should, *inter alia*, agree "to contribute annually such equitable amounts as the General Assembly shall assess from time to time in accordance with procedures established by the General Assembly in similar cases". The same condition concerning financial contributions was laid down in Council resolution 594 (XX) of 15 December 1955, in which the Council admitted the Federal Republic of Germany as a member of ECE. However, no condition was imposed by the Council when by resolution 946 (XXXVI) of 5 July 1963 it admitted Western Samoa as a member of ECAFE. In this connexion it may be noted that, unlike the States admitted under resolutions 517 (XVII) and 594 (XX), Western Samoa has not been required to make annual contributions to the United Nations.

4. Another provision which may be considered is paragraph 5 of the terms of reference of ECAFE. That paragraph provides for application by dependent territories, through the members responsible for the international relations of such territories, for associate membership of ECAFE and further states that if a territory has become responsible for its own international relations, it may be admitted as an associate member of the Commission on itself presenting its application to the Commission. The expression "responsible for its own international relations" has been interpreted as referring to either an independent sovereign State or a territory which has not yet become fully independent. Thus, in Economic and Social Council resolution 187A (VIII) of 11 March 1949, Nepal was admitted to associate membership of ECAFE; and before the adoption of Council resolution 517 (XVII) of 22 April 1954, the countries listed in paragraph 3 above were all associate members of ECAFE. However, since the last mentioned date no independent State has become an associate member of the Commission.

5. It may be appropriate to make a further observation on the rights and obligations of full and associate membership. In accordance with paragraph 6 of ECAFE's terms of reference, an associate member participates in the meetings of the Commission, whether sitting as Commission or Committee of the Whole, in the same manner as does a full member except the right to vote. Under paragraph 7 of the terms of reference, an associate member is eligible to be appointed as a member of any subsidiary body of the Commission with the right to vote and to hold office therein. In so far as financial obligations are concerned, a full member is, as a rule, subject to annual assessment by the General Assembly, but no associate member has been required to make contributions to the United Nations budget solely on account of its associate membership. [18]

28 May 1970

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[18] By resolution 1604 (LI) of 20 July 1971, the Economic and Social Council approved the recommendation of ECAFE that the Kingdom of Tonga be included in the geographical scope of the Commission and admitted as a member of the Commission, and decided to amend paragraphs 2 and 3 of the terms of reference of the Commission accordingly.

8. PARTICIPATION OF INTERGOVERNMENTAL ORGANIZATIONS IN THE WORK OF THE ECONOMIC COMMISSION FOR ASIA AND THE FAR EAST UNDER PARAGRAPH 10 OF THE COMMISSION'S TERMS OF REFERENCE—PRACTICE OF THE ECONOMIC AND SOCIAL COUNCIL WITH RESPECT TO CO-OPERATION WITH NON-UNITED NATIONS INTERGOVERNMENTAL ORGANIZATIONS

Memorandum to the Chief of the Regional Commissions Section, Department of Economic and Social Affairs

1. With reference to your memorandum concerning the relations between ECAFE and the Asian Coconut Community, two questions seem to be involved, i.e , the participation by the Asian Coconut Community in ECAFE's meetings and contacts at the Secretariat level.

2. In so far as the first question is concerned, paragraph 10 of ECAFE's terms of reference is directly applicable. That paragraph reads:

> "The Commission . . . may invite representatives of any inter-governmental organization to participate in a consultative capacity in its consideration of any matter of particular concern to that . . . organization following the practice of the Economic and Social Council."

There is no question that the Asian Coconut Community is an "intergovernmental organization" within the meaning of this provision. Consideration should, however, be given to "the practice of the Economic and Social Council" which the Commission is required to follow. Since the Council has, in its resolutions 412B (XIII) of 10 August 1951, 678 (XXVI) of 3 July 1958, 1031 (XXXVII) of 13 August 1964, 1053 (XXXIX) of 30 June 1965 and 1267A (XLIII) of 3 August 1967, established contact and co-operation with certain non-United Nations intergovernmental organizations, and has also, in its resolution 1267B (XLIII) of 3 August 1967, provided for contacts with such intergovernmental organizations on a more systematic basis, it is clear that a decision by ECAFE to invite the Asian Coconut Community to participate in its meetings is fully in accordance with the practice of the Council.

3. A further relevant point to be examined is the scope of application of operative paragraph 3 of Part B of Economic and Social Council resolution 1267 (XLIII) by which the Council invited "its subsidiary bodies to make recommendations to it regarding the desirability of similar relationship between themselves and specific non-United Nations intergovernmental organizations active in fields of concern to them, on the basis of proposals by the Secretary-General". The term "similar relationship" used in this paragraph can only mean relationship similar to that set out in the preceding operative paragraph, namely, representation of those organizations by observers at sessions of the Council and participation in the Council's debates. In view of the fact that ECAFE has since its inception been empowered by the Economic and Social Council to decide on the representation and participation of intergovernmental organizations in its meetings, there is no need for ECAFE to make recommendations to the Council regarding the desirability of relationship between the Commission and an intergovernmental organization such as the Asian Coconut Community. Consequently, we do not consider that the term "subsidiary bodies" in operative paragraph 3 of Council resolution 1267B (XLIII) is meant to include such bodies as ECAFE which have already been authorized by the Council to deal with the matter.

4. It would also be within the competence of ECAFE to provide for the representation of the Asian Coconut Community on a lasting rather than *ad hoc* basis. Since the Community has been established under the auspices of and endorsed by ECAFE and in the spirit of Council resolution 1267B (XLIII), there would be no legal objection to the adoption by

ECAFE of a resolution concerning the relationship between the Commission and the Community along the lines of the operative paragraphs of Council resolution 1267A (XLIII).

5. As regards the second question, namely, contact at the Secretariat level, no resolution of ECAFE is required since the Secretary-General has already been invited by the Economic and Social Council to do so under operative paragraph 1 of Council resolution 1267B (XLIII).

16 April 1970

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9. Request that the Economic Commission for Latin America act as a technical adviser to a committee of a non-governmental organization—Such request should not be acceded to in the light of Economic and Social Council resolution 222 A (IX) and of the terms of reference of ECLA

Memorandum to the Chief of the Regional Commissions Section, Department of Economic and Social Affairs

1. You have requested the advice of the Office of Legal Affairs on the question whether the Economic Commission for Latin America should accede to a request of a committee of a non-governmental organization that the Commission act as technical adviser to that committee on all technical assistance matters.

2. It appears from a letter of the Acting Director of the committee concerned to ECLA that the technical advisers would be responsible for providing advice and assistance on the technical aspects of all phases of the programme for which ECLA's participation is requested. The services of the technical advisers would be rendered to the committee not to the Government concerned. In other words, the role of the technical advisers in the proposed framework would be to provide technical assistance to the non-governmental organization which, in turn, would include this assistance in its contributions to recipient Governments. That the non-governmental organization concerned does not look upon the proposed relationship with the technical advisers as commercial in character is clearly evidenced by the references to "honorarium" and "travel costs" as the basis on which payment would be made for services rendered.

3. In our opinion, the provision by ECLA of technical assistance to a non-governmental organization would be in contravention of the basic principle laid down in Economic and Social Council resolution 222A (IX) of 15 August 1949 that technical assistance by the United Nations and its organs may "be given only to or through Governments". (Annex I, paragraph 2 (*d*) (*ii*).) In so far as its terms of reference are concerned, we find nothing therein which empowers ECLA to provide such assistance to a non-governmental organization. Paragraph 1 (*e*) states that ECLA shall "assist the Economic and Social Council and its Technical Assistance Committee in discharging their functions with respect to the United Nations technical assistance programme . . .". It is evident, however, that the technical assistance programme of the Economic and Social Council or the UNDP does not include, or indeed envisage, any technical assistance to non-governmental organizations. In view of these considerations, we think it necessary that ECLA should give a negative answer to the request referred to above.

20 January 1970

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10. United Nations Conference on Trade and Development—Participation of the Commission of the European Economic Community in the deliberations of the Trade and Development Board and its subsidiary bodies

Letter to the Secretary-General, United Nations Conference on Trade and Development

1. You have asked our advice with regard to the recent request made by EEC that it be represented by the Commission of EEC at certain UNCTAD meetings. We agree that this raises questions different from those relating to EEC's participation at commodity conferences, such as the 1968 Sugar Conference. In the latter regard, we confirm that the guidance which we provided in the legal opinion TD/Sugar 7/4 and Corr.1-3 [19] would be equally applicable at the 1970 Trade Conference.

2. With respect to the representation of EEC at meetings of UNCTAD organs, we wish to point out that the extent of EEC's participation in meetings of the Trade and Development Board or of a subsidiary organ is governed by the rules of procedure of the Board, particularly rule 78 (and the similar rules of the Committees); failing action by the Board to amend or suspend rule 78 of the rules of procedure in respect of its own proceedings or those of a subsidiary organ, EEC's participation cannot go beyond the letter and spirit of rule 78 in its present form.

3. The EEC has, of course, already been designated for the purpose of rule 78 as one of the intergovernmental bodies which may participate, without the right to vote, in the deliberations of the Board and its subsidiary organs upon the invitation of the President or Chairman, as the case may be, on questions within the scope of its activities. The desire of EEC to speak on a particular subject would be indicated to the President or Chairman either by the representative of EEC or by a member State of EEC which is also a member of the UNCTAD organ concerned. Should the representative of EEC, having been invited by the President or Chairman to speak, state that he is speaking on behalf of members of EEC, it would be open to a representative of one of these States to confirm this to be the case either before or after the EEC statement. As regards seating arrangements, I believe that EEC representatives should be seated with representatives of specialized agencies, of the IAEA and of other intergovernmental organizations.

10 March 1970

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11. Question whether a two-thirds majority is required for the reconsideration of decisions of the Governing Council of the United Nations Development Programme

Internal memorandum

1. It is our view that under the rules of procedure of the Governing Council of the United Nations Development Programme a two-thirds majority is not required for the reconsideration of decisions of the Governing Council. On the contrary, General Assembly resolution 2029 (XX) of 22 November 1965 on the "Consolidation of the Special Fund and the Expanded Programme of Technical Assistance in a United Nations Development Programme" provides in its operative paragraph 4 that "decisions of the Governing Council shall be made by a majority of the members present and voting". This is repeated in rule 27 of the rules of procedure of the Governing Council.

[19] See *Juridical Yearbook*, 1968, p. 201.

2. A two-thirds majority for the reconsideration of a proposal which has been adopted or rejected is required only in the General Assembly and in its Main Committees (rules 83 and 124 of the rules of procedure of the General Assembly) and does not apply in regard to other organs, including the Economic and Social Council and the functional commissions of the Council. In the case of the Economic and Social Council, the absence of a provision requiring a two-thirds majority is, of course, based on Article 67, paragraph 2 of the Charter. It is to be noted in that respect that the Council Committee on Procedure in drawing up a revised version of the rules of procedure of the functional commissions rejected as contrary to Article 67 of the Charter an amendment requiring a majority of one third of the members for the adoption of a proposal. [20]

3. It is true that the Governing Council of UNDP appears to be a subsidiary organ of the General Assembly and that under rule 162 of the rules of procedure of the General Assembly "the rules relating to the procedure of committees of the General Assembly . . . shall apply to the procedure of any subsidiary organ unless the General Assembly or the subsidiary organ decides otherwise". It is our view however that rule 124 cannot apply to the Governing Council because both the General Assembly in resolution 2029 (XX) and the subsidiary organ in rule 27 of its rules of procedure have "decided otherwise".

29 June 1970

12. Eligibility of Muscat and Oman to receive assistance from the United Nations Development Programme

Memorandum to the Director of the Bureau of Administrative Management and Budget, United Nations Development Programme

1. With regard to the general question of the provision of UNDP assistance to Muscat and Oman, it is to be noted that Muscat and Oman is not at present a member either of the United Nations or of any of the specialized agencies or the IAEA. Under the applicable provisions [21] and in accordance with a long established and consistent practice only Governments of States Members of the United Nations or members of the specialized agencies or the IAEA are eligible to receive assistance from UNDP. Muscat and Oman therefore does not qualify for such assistance until such time as it becomes a member of the United Nations or of any of the specialized agencies or the IAEA.

2. With respect to the possibility of direct IMCO assistance to Muscat and Oman, we believe that this question can best be judged by IMCO itself, i.e. whether technical assistance under its regular programme is—and in the affirmative should remain—subject to restrictions similar to those which apply, for example, to assistance programmes, or to United Nations OPEX assistance; under the first of these programmes, assistance is, in accordance with operative paragraph 3 of General Assembly resolution 200 (III) of 4 December 1948, restricted to "Member Governments"; under the second only Governments participating in the United Nations technical assistance programmes in the field of public administration are eligible for assistance in accordance with operative paragraph 2 (*a*) of General Assembly resolution 1256 (XIII) of 14 November 1958.

[20] See *Official Records of the Economic and Social Council, Tenth Session*, 351st meeting, paras. 73-76.

[21] These provisions are contained in General Assembly resolution 1240 (XIII) (part B, paragraphs 7 and 31), which established the Special Fund and in Economic and Social Council resolution 222 A (IX) concerning the Expanded Programme of Technical Assistance; both resolutions continued in force within UNDP by virtue of General Assembly resolution 2099 (XX), operative paragraph 2.

3. It may be recalled in this connexion that the membership restriction was lifted on two occasions: one instance occurred when the General Assembly, by resolution 398 (V), requested the Economic and Social Council and the specialized agencies concerned to consider Libya as eligible to continue to receive technical assistance from the expanded programme of the United Nations as soon as it attained independence and before it had become a member of the United Nations or of a specialized agency participating in the expanded programme of technical assistance. A second instance was when Western Samoa was considered eligible for technical assistance under General Assembly resolution 200 (III), after the matter had been brought to the attention of the Technical Assistance Committee. It is to be noted however that the considerations which favoured waiving the restrictions in those instances (in the first case, special United Nations responsibility plus impending United Nations membership and in the second case status of former trust territory plus membership of a regional economic commission) do not apply to Muscat and Oman.

12 June 1970

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13. Declaration on the Construction of Main International Traffic Arteries, 1950 [22]—Question whether the status of a Declaration signed by several countries is affected by the fact that it contains no provision concerning ratification and no comprehensive provisions relating to its amendment or denunciation

Memorandum to the Director of the Transport Division, Economic Commission for Europe

1. I understand that during the forty-first session (24-28 November 1969) of the Sub-Committee on Road Transport, some representatives of the parties to the Declaration on the construction of main international traffic arteries, 1950 inquired into "how far the provisions of the Declaration were formally and permanently binding to the countries or governments which had signed it or had become parties thereto". The legal status of the Declaration was questioned mainly because the Declaration:

(*a*) did not include any reference to ratification; and

(*b*) did not contain any provision for its amendment.

You are asking for our views on the matter.

2. The first question which arises in distinguishing a treaty or international agreement from an international declaration which is not intended to be legally binding is whether the text of the instrument itself imposes legal obligations upon the States which express their consent to be bound by it. It is evident that the Declaration does impose legal obligations in its paragraphs 1 to 3. By those paragraphs the parties adopt a proposed road network as a concerted plan for construction and reconstruction; they declare that such construction or reconstruction shall be carried out in accordance with characteristics set out in chapter A of Annex II; they undertake to see that the road network shall be equipped with ancillary services provided for in chapter B of Annex II; and, finally, they undertake that the roads shall be identified by means of a special sign. Incidentally, no special significance should be attached, in so far as its status is concerned, to the fact that the Declaration refers to "countries" and not "Governments". That terminology, as in the case of several other conventions, was adopted to allow those territorial entities the international status of which could be questioned to become parties to the Declaration.

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[22] United Nations, *Treaty Series*, vol. 92, p. 91.

3. The Convention on the Law of Treaties, done at Vienna on 23 May 1969, is not yet in force, but the debates of the Conference and the overwhelming majorities by which most of its provisions were adopted are sufficient evidence that many such provisions are regarded as restating the customary international law of treaties. Article 11 of the Convention provides that "The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed". In other words, the States which draft an international agreement have a wide choice as to the methods by which it will be brought into force.

4. The Declaration in question provides for signature or for accession, and it further provides in paragraph 6 that "this Declaration shall enter into force on the date of its signature". It is, therefore, evident that the Declaration falls under the provision of article 12 of the Convention on the Law of Treaties, which provides in paragraph 1 that:

> "The consent of a State to be bound by a treaty is expressed by the signature of its representative when:
>
> "(*a*) the treaty provides that signature shall have that effect;"

It is established beyond question by international practice that, where a treaty provides for binding signature, ratification is not necessary and that the absence of ratification does not affect the legal force of the treaty.

5. Furthermore, the Declaration was registered *ex officio* by the Secretary-General, and published in the United Nations Treaty Series (vol. 92, p. 91), as a "treaty or international agreement, whatever its form and descriptive name", pursuant to articles 1, 4 and 12 of the Regulations adopted by the General Assembly to give effect to Article 102 of the Charter (General Assembly resolutions 97 (I), 374 B (IV) and 482 (V)). This action was taken in accordance with the clear legal implications of the text of the instrument, and with the understanding of its effect which was shared by delegations and by your Division at the time.

6. The Declaration refers to a procedure of amendment for its Annexes in its paragraph 8, although it does not completely specify the mode in which amendments are to become binding, nor does it make provision for amending the main text. It does not refer to denunciation. Nevertheless, the absence of a conventional type of amendment clause and of a denunciation clause does not cast any doubt upon the legal status of the Declaration as a treaty. In the absence of any provisions in the treaty, amendment and denunciation are governed by customary international law. This law is resumed in article 39 of the Vienna Convention on the Law of Treaties, which provides that "A treaty may be amended by agreement between the parties", and article 54 which provides that:

> "The termination of a treaty or the withdrawal of a party may take place:
>
> ". . .(*b*) at any time by consent of all the parties after consultation with the other contracting States".

It is, therefore, not true that in the absence of complete provisions on amendment or denunciation the parties would necessarily be bound forever by the original text. As regards the possibility of a complete revision of the Declaration which you mentioned in your last paragraph, such a revision could be accomplished either by an amendment agreed to between parties, or by the conclusion of a new treaty dealing with the same subject-matter. In the latter case, the application of the old Declaration and the new treaty would be governed by article 30 of the Vienna Convention, which provides as follows:

> "1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

"2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

"3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

"4. When the parties to the later treaty do not include all the parties to the earlier one:

"(*a*) as between States parties to both treaties the same rule applies as in paragraph 3;

"(*b*) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations."

2 July 1970

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14. Registration with the Secretariat of the Convention Establishing the World Intellectual Property Organization (WIPO) and certain other multilateral treaties—Question whether an intergovernmental organization other than the United Nations or a specialized agency can register a treaty to which it is not itself a party—Practice of the Secretariat in that respect

Letter to the Head of the External and Public Relations Division, United International Bureaux for the Protection of Intellectual Property

I refer to your letter concerning the registration with the Secretariat of the Convention Establishing the World Intellectual Property Organization (WIPO)[23] and certain other multilateral treaties, which were concluded at the Intellectual Property Conference held in Stockholm in 1967 and which will enter into force next April and May.

Informing me that each of these treaties contains a provision requiring the Director General of the World Intellectual Property Organization to register it with the Secretariat of the United Nations, and a further provision under which the duties of the Director General are to be performed, until the first Director General assumes office, by the Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI), you inquired about the procedure for submission of the treaties concerned for registration and asked me for any relevant documentation.

In this regard, I draw your attention to the Regulations to give effect to Article 102 of the Charter of the United Nations, adopted by General Assembly resolution 97 (I) of 14 December 1946, as modified by resolutions 364 B (IV) and 482 (V) of 1 December 1949 and 12 December 1950, respectively.

Under those Regulations, registration may be effected by any party to the treaty or international agreement (article 1, paragraph 3) and, in specified cases, by the United Nations *ex officio* or by a specialized agency (article 4). There are no provisions in the Regulations for registration by other intergovernmental organizations, except of course where such organization is itself a party to an agreement falling within the scope of application of Article 102 of the Charter of the United Nations, in which case it may effect the registration under article 1, paragraph 3.

However, a practice has developed whereby the Secretariat has accepted for registration multilateral treaties submitted by an intergovernmental organization, other than a specialized agency, in cases where such organization in its capacity as depositary of a treaty was authorized by the contracting parties, either in the treaty itself or in some other appropriate form,

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[23] United Nations, *Treaty Series*.

to effect the registration. The acceptability of this procedure, within the terms of the existing Regulations, has been based on the view that such authorization allows the Secretariat to treat the submission of a treaty by an intergovernmental organization as being tantamount to registration by the States parties themselves.

Inasmuch as the required authorization has been included in the treaties in question, the Secretariat shall be glad, pursuant to the practice described above, to accept their submission for registration by the Director General of the World Intellectual Property Organization or, pending his appointment, by the Director of the United International Bureaux for the Protection of Intellectual Property.

Reference is made, in this connexion, to paragraph 2 of article 1 of the Regulations, according to which registration shall not take place until the treaty has come into force. It will be noted, however, that in adopting this rule at the first session of the General Assembly, the Sub-Committee which drew up the Regulations generally agreed that, in practice, treaties which by agreement were being applied provisionally by two or more parties were in force for the purpose of the provision of the said paragraph 2.

The documentation required for the purpose of registration is described in article 5 of the Regulations.

Finally, I should like to call your attention to article 2 of the Regulations which provides for registration with the Secretariat of any subsequent actions relating to a registered treaty, such as additional ratifications, accessions, denunciations, etc., as well as any instrument amending it. Your Organization, in its capacity of depositary of the treaties in question, will be expected of course to carry out the registration of any of such subsequent actions.

31 March 1970

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15. AGREEMENTS CONCLUDED BY THE WORLD FOOD PROGRAMME—UNDER ARTICLE 102 OF THE CHARTER, ONLY TREATIES AND INTERNATIONAL AGREEMENTS ENTERED INTO BY A MEMBER OF THE UNITED NATIONS ARE SUBJECT TO REGISTRATION WITH THE SECRETARIAT

Letter to the Office of the Legal Counsel, Food and Agriculture Organization of the United Nations

In connexion with the registration of the World Food Programme agreements, you raised the following two questions:

(*a*) whether the agreements which are no longer in force should be transmitted for registration and whether in selecting the agreements for registration, a distinction should be made in this connexion between the agreements that have been superseded by new agreements covering the same matter and others that have not been so superseded;

(*b*) whether the World Food Programme agreements will be registered *ex officio* or whether they will be filed and recorded by the Secretariat.

As regards your first question, it would seem to us that, in principle, having regard to the provisions of articles 4 and 10 of the Registration Regulations (General Assembly resolutions 97 (I), 374 B (IV) and 482 (V)) and the existing precedents, the agreements concerned would have to be registered or filed and recorded. We would appreciate it, therefore, if you would include such agreements among those selected for registration, providing pertinent information regarding their entry into force and termination.

As regards your second question, you will note that Article 102 of the Charter of the United Nations limits the obligation of registration to treaties and international agreements

entered into by *any Member of the United Nations* after the coming into force of the Charter. Thus, treaties and international agreements to which no Member is a party are not subject to registration. The latter agreements are susceptible to filing and recording if they fall within the categories of treaties and international agreements specified in article 10 of the Registration Regulations and, among them, agreements entered into by the United Nations or a specialized agency with a non-member State. Accordingly, the World Food Programme agreements will be either registered or filed and recorded, depending on whether they were concluded with a Member State of the United Nations or a non-member State.

12 October 1970

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16. Constitution of the West Africa Rice Development Association—Policy of the Secretary-General with regard to the assumption of depositary functions

Letter to the Legal Counsel of the Food and Agriculture Organization of the United Nations

I wish to acknowledge the receipt of your letter concerning the draft Constitution of the West Africa Rice Development Association (WARDA), which, pursuant to the decision of the Conference of representatives of Governments of West African countries held at Monrovia in September 1969, has been prepared by the FAO Secretariat and which is now being dispatched for comments to the governments and agencies that participated in the said Conference. I have noted that a Conference of Plenipotentiaries to consider and adopt the proposed Constitution is expected to be held in 1970.

You mentioned that, in drafting the Constitution, the question of the authority to act as depositary had been left open, the introduction to the draft Constitution merely stating the FAO view "that it should be left to the Conference of Plenipotentiaries to decide whether these functions should be entrusted to a government or to an international organization (United Nations or FAO)", and you asked me whether the United Nations would be prepared to assume these functions in the event that the Conference should express a preference for this solution.

As you may be aware, our policy in this regard has been to restrict the assumption of depositary functions by the Secretary-General to open multilateral treaties of world-wide interest, usually adopted by the General Assembly or concluded at the plenipotentiary conferences convened by the appropriate organs of the United Nations, and, in so far as regional treaties are concerned, to those drawn up within the framework of the United Nations Economic Commissions and open for participation to their entire membership.

Accordingly, we would be reluctant to assume depositary functions in respect of the above-mentioned Constitution, unless the Conference, for some justifiable reason which I could hardly foresee, should insist on such a solution. It seems to me that both from the point of view of the subject-matter of the proposed Constitution and the extent of contribution to its conclusion, your Organization would appear to be a more appropriate choice for assuming depositary functions, should the Conference express a preference for entrusting them to an international organization rather than to the government of the country where the Conference will be held. [24]

9 March 1970

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[24] The Constitution of the West Africa Rice Development Association was adopted by a Conference of Plenipotentiaries which met at Dakar, Senegal, from 1 to 4 September 1970. Pursuant to its provisions, it was deposited with the Government of Liberia.

17. Question whether arrears due under the 1958 International Sugar Agreement [25] constitute "Contributions to the Administrative Budget" under article 23 of the International Sugar Agreement 1968 [26]

Letter to the Executive Director, International Sugar Agreement

1. It is our view that arrears in contributions due under the 1958 International Sugar Agreement do not constitute "contributions to the administrative budget" under article 23 of the International Sugar Agreement, 1968, and therefore the sanction of suspension of voting rights provided in paragraph (2) of that article is not applicable in the case of such arrears.

2. As the parties to the 1958 Agreement adopted a resolution on 21 November 1969 transferring the assets and liabilities of the old Sugar Council to the new International Sugar Organization, arrears in contributions under the 1958 Agreement are undoubtedly assets of the Organization, which is entitled to assert claims for payment of them. Nevertheless, such claims do not fall within the scope of articles 22 and 23 of the 1968 Agreement, as is shown by its text. Article 22 provides for approval of the annual administrative budget by the new Council, and for the mode of calculating contributions of members to that budget. Article 23 goes on to specify how and when such contributions shall be paid by members, and the consequences which ensue if they are not so paid. These provisions, however, relate only to contributions to administrative budgets approved by the new Council under article 22 of the new Agreement, and not to sums which may be owed by members to the Organization on any other account. Contributions under the old Agreement were not assessed under article 22 of the 1968 Agreement, and hence do not fall under article 23 of the latter.

4 March 1970

B. Legal opinions of the Secretariat of intergovernmental organizations related to the United Nations

1. International Labour Office

The following memoranda concerning the interpretation of certain international labour Conventions were prepared by the International Labour Office at the request of the Government of Norway: [27]

(*a*) Memorandum on the Equality of Treatment (Social Security) Convention, 1962 (No. 118), and on the Medical Care and Sickness Benefits Convention, 1969 (No. 130), 18 August 1970. Document GB.183/20/1; 183rd session of the Governing Body, Geneva, May-June 1971.

(*b*) Memorandum on the Holidays with Pay Convention (Revised), 1970 (No. 132), 12 February 1971. Document GB.183/20/1; 183rd session of the Governing Body, Geneva, May-June 1971.

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

[26] *Ibid.*, vol. 654, p. 3.

[27] These memoranda will be published in the *Official Bulletin*, vol. LIV, No. 4, 1971.

2. Food and Agriculture Organization of the United Nations

Question of the law applicable to employment relationship between the Organization and its General Service staff

Opinion of the Legal Counsel

1. This legal opinion is submitted pursuant to a request made by the Special Committee on Management/Staff Relations [28] for the views of the Legal Counsel on the question whether Italian labour and social security legislation applies to the relationship between the Organization and its staff, with particular reference to the General Service staff.

I. *Views of the Staff Council Consultant*

2. In a study dated 15 April 1970, published under cover of a Staff Council "FLASH", the consultant on salary matters retained by the Staff Council deals *inter alia* with the legal status of the General Service staff of FAO. In this study it is asserted that the employment relationship between FAO and its staff is of a private law nature—similar to that of Italian publicly owned corporations with their employees—and is governed by Italian labour and social security legislation. While recognizing that special rules of international law apply to staff described as "Dirigenti", the consultant concludes that "the vast majority of the General Service staff is not subject to any special régime of international law".

3. The distinction made in the study between staff members said to be subject to rules of international law and staff members to whom it is asserted that Italian legislation should apply, does not correspond to the categories of staff indicated in the relevant provisions of the Organization's Staff Regulations, Staff Rules and Manual Sections, i.e. (i) Professionals and above and (ii) General Service, the latter being either local or non-local staff. Even if it is assumed that the expression "Dirigenti" was meant to correspond to "Professionals and above", it is not clear whether it was intended by the consultant that Italian law should apply only to local staff of the General Service category or to all General Service staff.

II. *FAO texts governing the status of the staff*

4. The Constitution of the Organization—which has become part of Italian Law by virtue of Law No. 546 of 16 May 1947—stresses the "exclusively international" character of the responsibilities of the staff (Article VIII-2) and provides that disputes relating to "conditions and terms of appointment" are to be determined by an administrative tribunal in accordance with arrangements to be made by the FAO Conference. Pursuant to this provision the Conference decided by Resolution 71/53 [29] that the Organization would accept the jurisdiction of the ILO Administrative Tribunal with respect to "complaints of alleged non-observance of the terms and conditions of appointment of FAO staff members". In this way the Conference clearly excluded the competence of any national court to hear such disputes.

5. In accordance with Staff Regulation 301.1411, the letter of appointment of *every* staff member expressly states "that the appointment is subject to the provisions of the Staff Regulations and of the Staff Rules applicable to the category of appointment in question. . .". Under Staff Regulation 301.019 *every* staff member takes an oath expressly referring to his status as an "international civil servant". No distinction by category or nationality is made in this respect.

[28] Established by the Director-General in June 1970 and consisting of three officers nominated by himself and three nominated by the Staff Council under the chairmanship of Ambassador Brynolf Eng of Sweden. See the Report of the fifty-fifth session of the Council of FAO, Appendix D, p. 5.

[29] Report of the seventh session of the Conference, paragraph 341.

6. All the aspects of the relationship between the Organization and all groups of staff are determined by the Staff Regulations approved by the Council and the Staff Rules and Administrative Manual Sections promulgated by the Director-General under the authority vested in him by the governing bodies. It is true that in Staff Regulation 301.134 the Organization has decided, in accordance with the "common system" adopted by most agencies in the United Nations family, to fix the salary scales of General Service staff "normally on the basis of the best prevailing conditions" at the duty station. However the reference to the "best prevailing conditions of employment" merely indicates a criterion to be followed in establishing salary scales for this group of personnel, it does not in any way make labour law applicable to their contracts of employment. The criterion of the best prevailing conditions is not an exception to, but on the contrary a confirmation of the fundamental principle—common to the whole United Nations family—that employment relationships are governed by the employing Agency's Staff Regulations to the exclusion of any national laws and regulations.

III. *International and national precedents*

7. International tribunals as well as national courts have on several occasions stated expressly that the employment relationship entered into by international organizations with their staff is not subject to national law and is subject only to the internal law of the organization concerned.

8. An early statement of the general principle that the conditions of service of officials are not governed by the municipal law of any country is to be found in the Opinion of the Committee of Jurists appointed by the League of Nations in 1932.[30] League officials, the opinion stated, "form part of an international civil service and the legal relationship which exists between them and the Secretariat, the International Labour Office or the Registry, as the case may be, is not a legal relationship of private law within the meaning of the civil law of any country".

9. The principle was re-stated by the ILO Administrative Tribunal in 1957 in the *Waghorn case.*[31] In a dispute concerning an employment contract, the Tribunal held that "the Complainant wrongly alleges that English law is applicable as his national law, whereas the Tribunal is bound exclusively by the internal law of the Organization".

10. In Italy the same principle was recognized in particularly clear terms by the Corte di Cassazione, Sezioni Unite, Judgement of 13 May 1931, *International Institute of Agriculture v. Profili.*[32] In this case between the predecessor of FAO and an Italian staff member who had been terminated, the Court not only confirmed the immunity of the Institute from the jurisdiction of Italian courts but also emphasized the general autonomy of international organizations of which the immunity from jurisdiction is only one aspect:

> "This Supreme Tribunal holds that the sovereign power of the Italian State, of which the power of jurisdiction is one aspect, cannot be exercised against the International Institute of Agriculture insofar as that International Agency carries out activities relating to its own organization and consequently to the establishment of a system governing the Organization's relationship with its employees . . . .
>
> ". . . its power of self-determination or autonomy, which includes that of organizing and regulating its own activities (both those performed in the ordinary course of its responsibilities and those of an exceptional character), rules out any interference by the State and any penetration by either substantive or procedural provisions of national law."

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[30] League of Nations, *Official Journal, Special Supplement No. 107*, pp. 206-208.

[31] Judgement No. 28, ILO *Official Bulletin*, vol. XL, No. 8, 1957, p. 416.

[32] Foro Italiano 1931, p. 1424; Annual Digest of Public International Law Cases, 1929-1930, Case No. 254, p. 413.

11. An application of this principle to FAO itself is to be found in a recent decision of the Pretura di Roma, Sezione del Lavoro, Judgement of 25 June 1959, *Porru v. FAO.*[33] In dismissing the action brought against FAO by a former staff member (employed as a messenger and in other similar positions) of Italian nationality who had based his claim on certain provisions of Italian social security legislation, the Court pointed out:

> "There cannot be any reasonable doubt that the internal activity concerning the organizational establishment, being immediately and directly linked to the exercise of the Organization's institutional purposes, must be deemed to be a public law activity. . . ."

Having examined various aspects of the employment relationship between the staff member and the Organization, the Court held that this relationship belonged to the category of activities described in the above quotation and therefore fell outside the jurisdiction of the Italian courts.

12. Among the decisions of other national courts, there is a case decided on 17 July 1931 by the Conseil d'Etat, the highest French administrative tribunal (*in re Dame Adrien and others*).[34] On a petition by certain French employees of the Reparation Commission, the Conseil d'Etat held that the petitioners belonged to an international organization and that "their position was determinable only by international public law".

13. Similarly, the Tribunal Civil of Versailles in a decision of 27 July 1945 *Chemidlin v. The International Bureau of Weights and Measures*[35] recognized the inapplicability of national labour law to the relationship between the Bureau and a French employee:

> "International civil servants, it is generally admitted, exercise their functions in the public interest but under international authority and outside the legal system to which they belong. . . it would appear that the conventions and rules to which recourse is to be had . . . must lie outside the framework of French law so that they retain their purely international character."

14. The Supreme Court of Mexico in a judgement of 28 April 1954,[36] recognized the immunity from legal process of the United Nations Economic Commission for Latin America which was sued by a former staff member and rejected the affirmation of a lower court that international commissions in order to operate in Mexico must be subject to Mexican law.

15. The principle has recently been re-stated in the work of the International Law Commission. The Study prepared by the Secretariat on the Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency concerning their Status, Privileges and Immunities, summarizes the situation as follows:

> "Except for cases in which express reference is made to a given system of municipal law, contracts of employment are governed exlusively by international administrative law, including in particular, the terms of the contract itself and of any statutory rules adopted by the organization concerned."[37]

16. To these examples may be added the statement of a leading authority in the field: C. Wilfred Jenks (now Director-General of the ILO) in *The Proper Law of International Organizations*, London and New York, 1962, p. 44, speaking of the non-applicability of national law to the conditions of service of international organizations observes:

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[33] Published in Temi Romana, 1969, pp. 531-533. For a summary see *Juridical Yearbook*, 1969, p. 238.

[34] Annual Digest of Public International Law Cases, 1931-1932, Case No. 1, p. 33.

[35] Annual Digest and Reports of Public International Law Cases, 1943-1945, Case No. 94, p. 281.

[36] Reported in the Annual Report of the Secretary-General of the United Nations on the work of the Organization, 1 July 1953-30 June 1954, *Official Records of the General Assembly, Ninth Session, Supplement No. 1* (A/2663), p. 105.

[37] *Yearbook of the International Law Commission, 1967*, vol. II, p. 300.

"The principle is so generally accepted that occasions for its application in specific cases have been relatively infrequent."

IV. *Interpretation of Section 6* (b) *of the Headquarters Agreement*

17. In support of his thesis that Italian labour law is applicable to the contractual relationship between the Organization and part of its staff, the Staff Council consultant relies exclusively on Article III, Section 6 of the Headquarters Agreement [38] the relevant parts of which read as follows:

"*Extraterritoriality of the Headquarters Seat*

"*Section 6*

"(*a*) The Government recognizes the extraterritoriality of the Headquarters seat which shall be under the control and authority of FAO as provided in this Agreement.

"(*b*) Except as otherwise provided in this agreement, the laws of the Italian Republic shall apply within the headquarters seat."

18. The purpose of Section 6 (*b*) is to qualify the concept of "extraterritoriality" and to exclude any interpretation to the effect that the seat of the Organization should be considered, for all purposes, to be outside the territory of the Italian State and therefore not subject to its law. Section 6 (*b*) of the Headquarters Agreement recognizes that acts performed on "extraterritorial" grounds cannot by that mere fact escape the application of the appropriate laws of the host State.

19. Thus it is clear for example, that crimes committed on the FAO Headquarters site (e.g. the recent bank robbery) are covered by the provisions of Italian penal law and are subject to the jurisdiction of Italian courts. Italian law will similarly govern tort liability resulting from car accidents on the Headquarters grounds and business transactions such as sales in the various shops operated on Headquarters grounds or the relations between the Banca Commerciale Italiana and its customers.

20. The inapplicability of national labour and social security legislation to FAO, on the other hand, in no way derives from the fact that contracts of employment between the Organization and staff members may have been concluded on the headquarters grounds [39]—they may, in fact, also have been concluded elsewhere or by correspondence—but from the fact that FAO, as an intergovernmental organization which is a subject of international law, enjoys full autonomy with respect to matters pertaining to its internal administration. All the judgements cited above in Part III recognizing the inapplicability of national labour law are based on the nature of the legal personality of an international organization; a principle which applies regardless of the place where an employment contract may be concluded or a staff member may carry out his duties.

21. Consequently, the limitation of the concept of "extraterritoriality" expressed in Section 6 (*b*) of the Headquarters Agreement cannot in any way detract from the well-established international law principle that the employment relationships between a United Nations agency and its staff are governed exclusively by the internal law of the organization and are not subject to the provisions of any municipal law.

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[38] See United Nations Legislative Series, *Legislative Texts and Treaty Provisions Concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (ST/LEG/SER.B/11), p. 187.

[39] In fact, should certain entities or firms other than FAO, e.g. the Photoshop, Amexco, the bookshop, the catering service, the bank, etc., conclude contracts of employment on FAO Headquarters grounds, those employment relationships would remain subject to Italian labour and social security legislation, notwithstanding the "extraterritoriality" of the Headquarters seat.

22. It may be added that it was obviously not the intent of the Parties to the Headquarters Agreement that the wording of Section 6 (*b*) should have the effect of subjecting FAO to Italian labour legislation. This would have been a fundamental departure both from the legal principle of autonomy of intergovernmental organizations as it had already been recognized before the conclusion of the Headquarters Agreement by courts of various countries including the Supreme Court of Italy, and from the consistent practice of the United Nations, FAO and other specialized agencies.

23. There is no indication whatsoever that FAO, when negotiating with the Italian Government the conditions of an eventual transfer of its Headquarters to Rome had any intention or reason to break with the common principles of the United Nations family and to effect a fundamental change of its own law on conditions and terms of employment. Nor is there any evidence that the Italian Government expected the Organization to abandon such principles which had in fact been recognized in Italy with respect to the Organization's predecessor, the International Institute of Agriculture (see para. 10 above). Further evidence of the Contracting Parties' understanding of Section 6 (*b*) is the 20-year practice of FAO since 1950, unchallenged by the Italian Government, under which the employment relations of all staff has been determined not by Italian law but exclusively by the Organization's internal legal provisions.

V. *Conclusions*

24. It has been a well established principle that the employment relationship between intergovernmental organizations and their staff is not subject to national law but rather to the organizations' own system of rules. This principle has seen a particularly wide application since the creation of the United Nations and its specialized agencies which operate in numerous countries of the world and employ large numbers of staff of almost all nationalities. For 25 years these organizations have developed and applied to all their staffs, independently of any national legal system, their own staff regulations and rules based on the common policies that they have developed over the years.

25. In the light of the above considerations it is concluded that the employment relationship between the Organization and its staff irrespective of category or nationality, is governed exclusively by the FAO Staff Regulations and Rules and Manual provisions, and is not subject to Italian labour and social security legislation.

4 September 1970