Extract from:

UNITED NATIONS
JURIDICAL YEARBOOK

1997

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

Copyright (c) United Nations

CONTENTS (*continued*)

CONTENTS (*continued*)

Chapter VI

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

A. Legal opinions of the Secretariat of the United Nations

(Issued or prepared by the Office of Legal Affairs)

COMMERCIAL ISSUES

1. USE OF THE UNITED NATIONS NAME AND EMBLEM

Memorandum to the Acting Deputy United Nations High Commissioner for Human Rights

1. *Introduction*

1. The purpose of the present paper first is to examine the Organization's rules and policy in respect of the use of the United Nations name and emblem by outside entities as well as the rules and policy concerning acceptance and publicizing of private donations. That examination is offered in section 2 of this note, which sets out the rules concerning the use of the United Nations name and emblem by outside entities. The rules and policy concerning the use of the United Nations name and emblem derive from a General Assembly resolution. Section 3 of the note addresses the most recent and relevant practice of the Organization raising these issues: the fiftieth anniversary commemoration, including the activities of the Foundation for the 50th Anniversary of the United Nations. Section 4 briefly addresses the practice of UNICEF in these areas. Section 5 contains the conclusions resulting from the analysis of the rules, policy and practices of the Organization.

2. *General overview of the rules and policy*

2.1 *Use of the United Nations name and emblem by outside entities*

2. The legislative basis for the use of the United Nations name and emblem derives from General Assembly resolution 92 (I) of 7 December 1946, entitled "Official Seal and Emblem of the United Nations". That resolution reserves the use of the United Nations name and emblem for official purposes of the Organization, and prohibits its use by outside entities without the authorization of the Secretary-General. The relevant part of the resolution reads as follows:

"*The General Assembly,*

. . .

"2. *Considers* that it is necessary to protect the name of the Organization and its distinctive emblem and official seal;

"*Recommends therefore*:

(*a*) That Members of the United Nations should take such legislative or other appropriate measures as are necessary to prevent the use, without authorization by the Secretary-General of the United Nations, and in particular for commercial purposes by means of trademarks or commercial labels, of the emblem, the official seal and the name of the United Nations, and of that name through the use of initial letters;

(*b*) That the prohibition should take effect as soon as practicable".

3. The Organization's policy is that the use of the United Nations name and emblem, as well as any abbreviations thereof, is reserved for official purposes of the Organization; commercial use, as such,[1] is prohibited; and any use of the United Nations name for other, non-commercial purposes requires the explicit authorization of the Secretary-General. In this respect, it is important to note that while the terms of the resolution could be construed to simply express a particular concern regarding the use of the name or emblem for commercial purposes, the Office of Legal Affairs, consistent with such an interpretation, has often referred to the established policy of the Organization not to grant permission for such use or, on a number of occasions, has indicated that such use is prohibited.

4. It is important to note also that the United Nations name and emblem are protected worldwide free of charge under article 6ter of the Paris Convention for the Protection of Industrial Property, on the assumption that they are not used for commercial purposes. Accordingly, the long-standing policy of the Organization is not to authorize the commercial use of its name or emblem.

5. Article 6ter protects the names and emblems of "international intergovernmental organizations" in a privileged manner, i.e., worldwide and very inexpensive, provided that those names and emblems have been registered with the World Intellectual Property Organization and have been communicated to its member States. The Paris Convention allows any international intergovernmental organization to take action in countries party to it to prevent the unauthorized use of both its name and its emblem. Notably, in 1979, the Governing Body of WIPO decided that organs or bodies of "international intergovernmental organizations" that used their names and emblems in commercial activities lost the privileged protection provided by article 6ter. In that case, protection under the Paris Convention would have to be sought, and an appropriate fee be paid, in each country, for each individual product on which the name and emblem registered would be used, as in the case of any other commercial entity.

6. If the Organization changed its policy concerning the commercial use of the United Nations name and emblem, it would clearly run the risk of eventually losing the privileged, inexpensive protection provided under the Paris Convention, requiring it to obtain protection on a country-by-country basis. Moreover, granting authorizations for clearly commercial uses of the United Nations name or emblem might expose the Secretary-General to a multitude of demands for such use of the emblem by private entities. Granting such authority might also expose the Secretary-General to possible Member State criticism in view of the particular concern regarding commercial use reflected in General Assembly resolution 92 (I).

7. The Organization's policy on the use of the United Nations name and emblem is reflected in the internal Guidelines, developed in 1972, for considering cases involving the use of the United Nations emblem. According to those Guidelines, continuing use of the United Nations name, through its inclusion in the title of an entity, may be authorized for United Nations Associations with national and local coverage and for non-commercial organizations, provided that such inclusion is genuinely descriptive of the organization, will not imply official connection with the United Nations and will serve to foster support for or interest in the United Nations or in certain of its programmes.

8. If an outside entity is authorized to include the United Nations name in its title, it may also be authorized to use the United Nations emblem on stationery and publications in addition to its own logo.[2] However, the Organization routinely requires that the emblem be modified by adding the words "United Nations" or "UN" above and the words "We believe" or "Our hope for mankind" below the emblem. The appearance of those words together with the emblem makes it clear that no official use of the United Nations emblem is involved and that it is being reproduced as a demonstration of support for the United Nations. The emblem should appear separately, and some distance away from the insignia of the outside body. Notably, the policy and practice generally have been to limit this authorization to not-for-profit entities.

9. When outside entities are authorized to continuously use the United Nations emblem on their stationery and other materials, it is realized that, being not-for-profit entities, they have to carry out fund-raising to sustain themselves and that, accordingly, fund-raising materials (e.g., leaflets requesting donations) would be printed on their stationery depicting, inter alia, the United Nations emblem. This is viewed as acceptable provided that the funds to be raised are used for the main purposes of the entity.[3]

10. In conclusion, it should be noted that, on the basis of General Assembly resolution 92 (I), the Secretary-General has developed a policy concerning the granting to outside entities of the right to use the United Nations emblem and name.

2.2 *Use of name and emblem for fund-raising*

11. As regards the recognition by the United Nations of private donors, the United Nations has not promulgated a specific regulation, rule or procedure to regulate the manner in which private donors may be acknowledged.[4] A determination of the appropriateness of a proposed form of acknowledgement is undertaken on a case-by-case basis and must take into account the policy concerning the use of the United Nations name and emblem and the rules governing such use by outside entities.

12. Based on the established strict policy prohibiting the commercial use of the United Nations name and emblem, the Organization has prohibited individuals or entities doing business with the Organization from publicizing contracts with the Organization.[5] Of course, the Organization could establish a similar policy in regard to private donations, although it has not yet done so.

13. In principle, having regard to the fact that the acceptance of a private donation is conditional on the donation being "consistent with the policies, aims and activities of the Organization" (financial regulation 7.2), publicizing a donation to the United Nations may be acceptable if such action itself is "consistent with the policies, aims and activities of the Organization". This would be the case

if such publicizing is not aimed at promoting products or services offered by a donor (in case the donor is a commercial entity), or at otherwise soliciting its business opportunities, but rather at support for the United Nations and its activities.

14. Specific forms and ways of publicizing a donation consistent with the policies, aims and activities of the Organization may differ depending on specific circumstances on each particular occasion. Prior concurrence of the Organization provides an opportunity to monitor such activities to protect the interests of the Organization.

15. As regards the extent to which the United Nations name or emblem could be authorized for use in publicizing activities, an analysis of the policy and practice of the Organization reflects the discretion that the Secretary-General has in this regard. What constitutes commercial use or, alternatively, what may be deemed to be consistent with the policies, aims and activities of the Organization is, in many instances, judgemental. It may be argued that all activities of a commercial firm are commercial in nature. On the other hand, it may also be argued that the use of the United Nations name or the emblem under certain terms and conditions does not constitute a commercial use as such, but is aimed at support for the United Nations and its activities. Notably, commercial entities making donations or sponsoring United Nations projects on occasion have been authorized by the Organization to use the United Nations name and emblem.

16. A difficult issue in this context is the possible use of the United Nations emblem by such an entity for fund-raising purposes. Although the 1972 Guidelines in principle view the use of the United Nations emblem for such purposes as acceptable, on numerous occasions the Office of Legal Affairs has advised against United Nations involvement in third-party fund-raising arguing that, except in very narrowly circumscribed circumstances where the General Assembly has authorized the funding of United Nations projects through private organizations and individual sources, the United Nations does not engage in private fund-raising activities. This is so because such activities often involve direct dealings with commercial firms and the use of the United Nations name and emblem which, as indicated above, may not be used for commercial purposes. In addition, there exists the risk of jeopardizing the Organization's privileges and immunities.

17. The underlying concern is that, should problems arise during the course of fund-raising activities (for example, the improper solicitation or management of funds, third-party claims or difficulties with the taxation authorities of the State in which the company conducting fund-raising is incorporated), the Organization would be exposed to the risk of litigation, including challenges to its privileges and immunities. Accordingly, this Office has expressed concern in regard to proposals that the Organization become involved with third-party fund-raising activities where the operational decisions on seeking and disbursing funds would be taken by individuals not accountable to the Secretary-General but using the Organization's name and reputation to raise money. Notably, fund-raising activities by individuals or entities involving the use of the United Nations name or emblem, where they occur, normally occur in close consultation with the Organization, often under the terms of formal agreements with the Organization.

2.3 *Role of the United Nations in the development of promotional material for private entities*

18. The parameters of the use of materials by private entities to promote their relationship with the United Nations, and the role of the United Nations in

the development of such materials, must be considered in the light of the United Nations policy concerning whether—and if so, the extent to which—the United Nations name and emblem can be used in such promotional materials. In assisting private entities in developing appropriate promotional materials in support of the United Nations and its activities, the following criteria should be kept in mind:[6]

—The promotional material must clearly indicate that the entity's collaboration with the United Nations is non-exclusive and does not constitute an endorsement by the United Nations of the entity's business or services;

—The dignity of the name and emblem (and programme trademark as appropriate) of the United Nations is protected;

—The promotional material must provide information and visibility on the United Nations, its work and the particular programme;

—The names and logos of the private entities must be appropriately reproduced in terms of size and colour and sufficiently separated so as not to be confusing to the viewer/reader.

19. Past practice may be instructive as to the parameters for United Nations involvement in the development of promotional materials, including the use of the emblem. However, in this respect, it must be understood that each situation must be examined in the light of the particular circumstances.

3. *Fiftieth anniversary commemoration*

3.1 *UN50 Trust Fund*

20. UN50 global activities were focused on communications and education about the work and the goals of the United Nations and sought to create new support for the work of the Organization. To that end, the Secretary-General established a UN50 Trust Fund to receive voluntary contributions from Member States and from the private sector, including from a limited number of global sponsors and international licensees (see report of the UN50 Preparatory Committee (A/48/48, 17 September 1993)). The General Assembly took note of this financing method in its adoption of the resolution proposed by the Preparatory Committee.

3.2 *The UN50 emblem and the guidelines for its use*

21. With the approval of the General Assembly, the UN50 emblem was designed as a separate and distinct emblem. Its use in the commemoration of the anniversary was regulated by guidelines which had been prepared by the 50th anniversary secretariat within the general parameters of General Assembly resolution 92 (I) of 7 December 1946. The guidelines provided, inter alia, that the emblem was to be used only until the end of the anniversary, i.e., until 31 December 1995, and solely to publicize events to benefit the United Nations or endorse one of its programmes. The guidelines also emphasized that the UN50 emblem should not be used in connection with any commercial activity. All uses of the UN50 emblem were subject to clearance from the UN50 secretariat and on the basis of terms and conditions set forth in detailed licensing contracts/agreements concluded with authorized users and actively monitored by the 50th anniversary secretariat.

3.3 *The UN50 Foundation*

22. In order to ensure tax deductibility for contributions and donations from the private sector in the United States, a foundation with tax-exempt status under United States law was established with the approval of the Organization to accept United States tax-deductible donations for UN50 programmes otherwise not available to the United Nations itself: the UN50 Foundation. The UN50 Foundation was constituted under New York State law and a Relationship Agreement was concluded between it and the United Nations. Pursuant to the Relationship Agreement, the Foundation would not initiate any fund-raising without the prior consent of the United Nations. The Foundation's use of the UN50 emblem was limited to the Foundation's support of the United Nations, its goals and objectives, or the UN50 commemoration; it was further provided that the emblem could not, in any event, be used in any way that conveyed or suggested any direct or indirect United Nations endorsement or support of any products or services. The use of the UN50 emblem could only be used in conjunction with the words: "A project in honour of the United Nations fiftieth anniversary" or similar language.

3.4 *UN50 fund-raising: global sponsors and licensees*

23. On an exceptional basis, limited fund-raising by the United Nations in the name of its 50th anniversary, and using the UN50 emblem, has been authorized by the Secretary-General to secure funds and other resources from a limited number of global sponsors and licensees, whereby the United Nations would grant permission for limited supportive use of the UN50 emblem for non-commercial use in return for substantial donations. The resources raised in this manner were to be used solely to fund UN50 projects, primarily educational and communications activities.

24. Any global sponsor use of the UN50 logo would be granted and controlled by a contract, which would require that the use of the emblem must be non-commercial, tied to expressions of support by the global sponsor for the UN50 commemoration. Prior to signing, each global sponsor contract was submitted to the Committee on Contracts for review. Attached is a description of global sponsorships and licensing agreements entered into under this authority.

4. *UNICEF practice*

4.1 *UNICEF*

25. The International Children's Emergency Fund was established by the General Assembly in its resolution 57 (I) of 11 December 1946 at the request of the Economic and Social Council at its third session, in accordance with Article 55 of the Charter of the United Nations. The Fund was established as a subsidiary body of the General Assembly in accordance with Article 22 of the Charter. General Assembly resolution 802 (VIII) of 6 October 1953 changed the name of the Fund to "United Nations Children's Fund", although the acronym UNICEF was retained.

26. Although the UNICEF name and emblem are not explicitly mentioned in General Assembly resolution 92 (I), it has been the consistent policy of the Office of Legal Affairs to interpret it as applicable to the use of the UNICEF name and emblem, since UNICEF is a subsidiary body of the United Nations and its name and emblem contain the United Nations acronym. Thus, in addition to the

protection of the General Assembly resolution and the national measures that individual Member States may take, the UNICEF name and emblem (with the Organization itself) are protected under article 6ter of the Paris Convention.

4.2 *Use of the UNICEF name and emblem for fund-raising*

27. The use of the UNICEF name and emblem is therefore limited to the official purposes of UNICEF, and its commercial use is prohibited.[7] Accordingly, for example, contractors providing services for UNICEF are prevented from using the UNICEF name and emblem for their own benefit.[8] However, UNICEF was authorized by General Assembly resolution 57 (I) to receive funds, contributions and other assistance not only from Governments but also from "voluntary agencies, individuals and other sources".[9]

28. The above-mentioned authorization has been consistently interpreted, and applied, as permitting UNICEF to undertake fund-raising activities, which normally include the use of the UNICEF name and emblem. As we understand it, the use of the UNICEF name and emblem for fund-raising purposes is currently limited to: (*a*) the cards and other products created by the UNICEF Greeting Card Operation; (*b*) the National Committees for UNICEF; and (*c*) partnerships with commercial corporations.

(*a*) *Greeting Card Operation (GCO)*. The history of the GCO dates back to 1949, when UNICEF first sold greeting cards as a modest fund-raiser (the first card was designed on the basis of a watercolour card sent by a Czechoslovakian girl in thanks for the help UNICEF provided to her destroyed village after the Second World War). In 1951, the UNICEF Executive Board established a UNICEF Greeting Card project, first as a Fund, later as a Division and then as the current Greeting Card Operation. In 1959, National Committees for UNICEF assumed the responsibility of distributing and selling within their territory UNICEF greeting cards and other products (e.g., pins, teddy bears, T-shirts, pens, calendars). The use of the UNICEF name and emblem in greeting cards and any other GCO product is not considered to be commercial, as only UNICEF's programmes benefit from their sale.[10]

(*b*) *National Committees for UNICEF*. Such committees are independent of and separate from UNICEF. The legal status of National Committees falls within the internal competence of the State of their respective nationality. National Committees undertake advocacy activities and organize fund-raising activities for UNICEF, including the sale of UNICEF greeting cards and other products. They relieve UNICEF of the burden of selling and distributing GCO products and allow donors to obtain tax-exempt benefits for their donations to UNICEF.[11] The relationship between UNICEF and National Committees is governed by Recognition Agreements. The current standard Recognition Agreement was presented to the UNICEF Executive Board in 1995. Article 2 authorizes National Committees to use the UNICEF name and emblem as part of their own emblem[12] "for the sole purpose of accomplishing the objectives" of the Recognition Agreement. Subcommittees or regional committees established by National Committees are also allowed to do so with the same restrictions. Although the main fund-raising activity of the Committees is related to the sale of GCO products, they undertake a great variety of other fund-raising activities, such as concerts, dinners, plays and movies, and the sponsorship of their credit cards.

(*c*) *Partnerships with commercial corporations*. Such partnerships may be undertaken directly by UNICEF or through National Committees. No official

guidelines have been issued on the criteria for concluding these partnerships. However, it appears to be a widely acceptable principle that they should not imply an endorsement of the products of the commercial corporation with which the partnership is concluded, although the political implications for UNICEF as a result of the association with the corporation are still evaluated (e.g., landmine manufacturers, corporations engaging child labour). Each situation is therefore assessed on an ad hoc basis.

29. Thus, on a number of occasions, the Organization has authorized the use of the UNICEF emblem and name for fund-raising purposes by commercial entities. The attached provides examples.

30. In addition to the above, the UNICEF name and emblem are used in materials and supplies provided by UNICEF for its programmes of cooperation. Even though ownership of the foregoing is immediately transferred to the Government upon arrival in the country, UNICEF places thereon its name and emblem to indicate that they are provided by UNICEF.[13]

4.3 *Acceptance by UNICEF of private donations*

31. Acceptance of private donations is subject to their consistency with the policies and objectives of UNICEF and their compliance with the UNICEF Financial Regulations and Rules. Acceptance also involves an assessment of the political implications for UNICEF which may result from the association with the organization or individual (e.g., landmine manufacturers, corporations engaging child labour).

32. Recognition of private donations received by UNICEF is done on an ad hoc basis, depending on the level of the contribution and the nature of the donor. Such recognition may vary from a simple letter of appreciation from the programme manager or the Executive Director to a press release, a picture, a gift or a public announcement on TV and radio. It seems, however, that there are no established rules or consistent practice on how recognition by UNICEF is expressed. It is normally left to the good judgement of the appropriate UNICEF official. Nevertheless, it appears to be an accepted principle that such recognition should not imply an endorsement of the activities of the donor.

33. No rule or official policy exists concerning the use that donors may make of such recognition. However, the generally accepted principle seems to be that donors should not make use of such recognition in a manner that would imply any endorsement of the donor's products.

34. As for the National Committees for UNICEF, their practice is also unregulated. They follow local customs regarding the recognition of philanthropic donations.

5. *Conclusion*

35. The use of the name and emblem of the Organization is governed by General Assembly resolution 92 (I) and the policy and practice of the Organization in applying the terms of that resolution. On occasion, the Office of Legal Affairs has previously indicated that the resolution prohibits the use of the name and emblem for commercial purposes. However, we believe a sounder reading of the provision is that it does not prohibit such use, but expresses a particular concern in the matter. In that respect, we believe that the issue is principally one of policy, as indeed the Office of Legal Affairs has also suggested.

36. As the practice indicates, it is the long-standing policy of the Organization to prohibit the use of the name and emblem for commercial purposes. This policy is based on the need to maintain the protection provided to name and emblem under international law as long as they are not used for commercial purposes. This policy also protects the Organization from financial risks that are associated with the commercial use of the name and emblem and, more generally, the risks to the financial or other interests of the Organization that may result from the use of the name and emblem in a manner or by individuals or entities that may not be consistent with the aims, policies and activities of the Organization. For these reasons, we recommend that the Organization maintain a strict policy prohibiting the commercial use of the name and emblem. Of course, as the practice of the Organization reflects, this policy allows for the use of the name and emblem in a wide variety of circumstances, including their use by commercial entities where the principal aim is to support the United Nations and where measures are taken to avoid the suggestion that the United Nations is endorsing the products or services of such entities.

26 November 1997

LIABILITY ISSUES

2. CLAIMS FOR COMPENSATION FOR INJURY, ILLNESS OR DEATH BY MILITARY OBSERVERS OR CIVILIAN POLICE OBSERVERS IN PEACEKEEPING OPERATIONS: DETERMINATION WHETHER THE INJURY, ILLNESS OR DEATH SUSTAINED BY OBSERVERS IS "ATTRIBUTABLE TO THE PERFORMANCE OF OFFICIAL DUTIES ON BEHALF OF THE UNITED NATIONS"

Memorandum to the Chairperson,
Advisory Board on Compensation Claims

1. This is in response to your 1 November 1996 and 24 June 1997 memoranda seeking our advice on how to determine whether the injury, illness or death sustained by a military observer or a civilian police observer (the "observer/s") was attributable to the performance of official duties on behalf of the United Nations, for purposes of compensation.

2. In your memorandum, you have explained that, while the facts of most cases presented to the Advisory Board on Compensation Claims are straightforward enough to permit a determination as to whether injury, illness or death of observers was attributable to the performance of official duties on behalf of the Organization, the Advisory Board has recently been confronted with several "borderline" cases in which it is difficult to make such a determination. You have mentioned, in this regard, that compensation claims have been submitted to the United Nations from, e.g., an observer who drowned while swimming on an official break; an observer who sustained an eye injury while playing squash in a club mini-competition; an observer who sustained dental injuries while playing soccer; and an observer who was killed in an ambush while escorting a friend home after a social outing. Having regard to such "borderline" cases, you seek our advice on: (*a*) how broad an interpretation should be given to the relevant provisions in the Notes for Guidance of Observers; (*b*) whether such observers should be considered to be on official duty at all times while they are

in the mission area; and (*c*) what specific questions the Advisory Board should be raising when it considers these types of claims, particularly in view of the United Nations Administrative Tribunal judgement in the *Davidson* case (Judgement No. 587) in relation to "special hazards". Our views on the issues you raise are set out below.

A. *Notes for the Guidance of Military/Police Observers on Assignment*

3. As stated in your memorandum, the issue of compensation for injury, illness or death of observers is dealt with in the mission-specific Notes for the Guidance of Military/Police Observers on Assignment (hereafter "the Notes"). Pursuant to the Notes, the United Nations provides compensation for the injury, death or illness determined by the Secretary-General to be "attributable to the performance of official duties on behalf of the United Nations".[14] The Notes also provide that no compensation shall be awarded when the injury, illness or death has been occasioned by the wilful misconduct of the observer, or the wilful intent of the observer to bring about the injury, illness or death on himself or another.

4. The Notes further provide that an injury, illness or death sustained by an observer "will be deemed to be attributable to the performance of official duties on behalf of the United Nations" *in the absence of any wilful misconduct or wilful intent* when:

> "(*a*) The death, injury or illness was the result of a natural incident when performing official duties in the course of a United Nations assignment;
>
> "(*b*) The death, injury or illness was a direct result of the presence of the observer or monitor in accordance with a United Nations assignment in an area involving special hazards to the observer's or monitor's health or security, and occurred as a result of such hazards; or
>
> "(*c*) The death, injury or illness occurred as a direct result of travelling by means of transportation provided by, or at the expense of, the United Nations in connection with the performance of official duties only. This provision shall not extend to motor-vehicle transportation provided by the observer/monitor or sanctioned or authorized by the United Nations solely at the request and for the convenience of the observer or monitor."[15]

Accordingly, death, injury or illness will be deemed to be "attributable to the performance of official duties on behalf of the United Nations", and therefore compensable (in the absence of wilful misconduct or wilful intent) in any one of these three circumstances.

B. *Examination of criteria*

5. The following paragraphs examine the criteria set forth in the Notes (and reproduced in paragraph 4 above) for determining whether an injury, illness or death sustained by an observer "will be deemed to be attributable to the performance of official duties on behalf of the United Nations".

Criterion A

6. The criterion quoted under (*a*) in paragraph 4 above (hereafter "criterion A") provides that an injury, illness or death sustained by an observer "will be deemed to be attributable to the performance of official duties on behalf of the United Nations" in the absence of any wilful misconduct or wilful intent when "the death, injury or illness was the result of a natural incident when performing official duties in the course of a United Nations assignment".

7. That criterion requires a causal connection between the injury sustained by the observer and his performance of official duties. In other words, the specific facts and circumstances of a particular case must establish a causal connection between the injury and the functions of the observer. To find such a connection, relevant questions could include whether the cause of the injury (*a*) occurred during a time when the observer was discharging his functions, (*b*) occurred while the observer was at the location where he was expected to be when discharging his functions, and (*c*) arose from an activity related or incidental to the performance of his functions.

8. Concerning the requirement of a causal nexus between the injury and the employment for purposes of compensation, we refer by analogy to national workers' compensation statutes. A common form of expression used to depict this requirement is that the injury be one "arising out of and in the course of the employment". The terms "arising out of" and "in the course of the employment" in this context are not synonymous. The words "arising out of" refer to the origin of the cause of the injury. For example, an accident "arises out of" employment when it occurs while the employee is engaged in some activity or duty which he is authorized to undertake and which is calculated to further, directly or indirectly, the employer's business. The term "in the course of" employment, as used in workers' compensation statutes, refers to the time, place and circumstances under which the accident or injury occurred. For example, an injury occurs "in the course of" the employment when it takes place within the period of the employment, at a place where the employee reasonably may be in the performance of his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto.

Criterion B

9. The criterion quoted under (*b*) in paragraph 4 above (hereafter "criterion B") provides that an injury, illness or death sustained by an observer will be compensable in the absence of any wilful misconduct or wilful intent when "the death, injury or illness was a direct result of the presence of the observer or monitor in accordance with a United Nations assignment in an area involving special hazards to the observer's or monitor's health or security, and occurred as a result of such hazards".

10. In accordance with criterion B, when the death, injury or illness was the direct result of the presence of an observer in an area involving special hazards *and* occurred *as a result of* such hazards, then the presence of the observer in that area is sufficient for purposes of compensation. A causal connection must, therefore, exist between the "special hazards" that exist in the mission area and the death, injury or illness that resulted from those special hazards. However, in accordance with the Notes, as well as the Tribunal's ruling in the *Davidson* case (see paras. 15-18 below), the determination of whether such "special hazards" exist in a particular mission and whether the death, injury or illness resulted from those special hazards should be viewed rather liberally. Pursuant to that case, where special hazards exist which could have contributed to the observer's death, injury or illness, the burden should be on the Administration to prove that the death, injury or illness did not result from such special hazards. Absent such proof, compensation should be payable.

Criterion C

11. The criterion quoted under (*c*) (hereafter "criterion C") provides that an injury, illness or death sustained by an observer will be compensable in the absence of any wilful misconduct or wilful intent when "the death, injury or illness occurred as a direct result of travelling by means of transportation provided by, or

at the expense of, the United Nations in connection with the performance of official duties only". Criterion C further excludes from its ambit injury, illness or death sustained by observers during transport (*a*) on vehicles provided by the observers themselves or (*b*) sanctioned or authorized by the United Nations solely at the request and for the convenience of the observers.

C. *How broadly should the Notes be interpreted?*

12. With respect to your question as to how broadly the Notes should be interpreted, the Notes provide that:

> "[D]oubtful cases will be given sympathetic consideration, taking into account all relevant factors, including the possibility that such injury, illness or death could have occurred during the performance of official duties".[16]

13. While each claim must be examined against the criteria set forth in paragraphs 3 and 4 above, the above-quoted provision requires an examination of an observer's claim which gives the claimant the benefit of the doubt; in other words, unless a claim is clearly outside the criteria in the Notes (set forth in section B above), it should be accepted since the observers are risking their lives in the service of the Organization. This is in accord with the workmen's compensation schemes of many countries.

14. This view is borne out by the judgement of the United Nations Administrative Tribunal in the *Davidson* case (Judgement No. 587). While that case concerned a claim by a staff member under Appendix D, rather than a claim by an observer under the Notes, the case involved an interpretation of the criteria for compensation under article 2 (*b*) of Appendix D, which are essentially the same as the criteria under the Notes. Therefore, the judgement provides important guidance in interpreting the Notes.

15. In that case, the staff member suffered a fatal heart attack in Bangui, in the Central African Republic. The reason for the heart attack was not clear, as he received limited medical attention prior to his death. However, the files clearly established that he had worked extremely long hours and that even elementary medical facilities were lacking in Bangui. After the widow's claim was denied by the Advisory Board on Compensation Claims, the widow appealed to the Joint Appeals Board, which recommended that the case be reopened and that the claim not be assessed so narrowly. The matter was reopened and a Medical Board constituted. The Medical Board, inter alia, found that the absence of medical facilities in Bangui was a special hazard but, in the absence of medical evidence as to the impact of this on the death (since there was very little in the way of records other than a few comments from a local doctor), the Board could not find that this was a cause of death. The Advisory Board, without specifying reasons, again denied the claim in the light of the Medical Board report.

16. The Tribunal was very critical of the operation of the Medical Board because, rather than dealing with the *medical* causes of death, it made findings as to whether the cause of death was compensable, which the Tribunal held was a legal function. The Tribunal also found that the Medical Board should not have concluded that excessive workload was not of sufficient weight for the death to be considered as a result of performing official duties, as required by Appendix D, since such a conclusion on the meaning of the provisions of Appendix D was not a medical assessment of the condition of the deceased but a legal interpretation of a statutory provision (see judgement, paras. V-VIII).

17. Most important for the purposes of the issue under consideration, the Tribunal made it clear that if staff are assigned to areas of special hazards they, or their dependants, should not have to bear the onus to establish that death or injury occurred as a result of those hazards. In the words of the Tribunal:

> "XV. The consent of a staff member, such as the Applicant's husband, to assignment to an area of special hazards provides no basis for a contention by the Respondent that the staff member thereby assumed the risks involved. Article 2 (*b*) (ii) of Appendix D would make no sense at all if consent to an assignment that the Secretary-General is authorized to make under the Staff Regulations were held to be tantamount to assumption of the risk of special hazard by the staff member. Nor, when a staff member is assigned to an area of special hazards, would it be fair to shift the associated risks to the staff member by establishing unreasonably restrictive standards for the application of article 2 (*b*) (ii). The Tribunal does not understand that provision to be aimed at creating unreasonably difficult barriers under Appendix D in cases such as this. *If, as here, a Medical Board properly finds the existence of a special hazard, constituting an aggravating factor, which decreased the chances of survival, that is tantamount to a finding that the special hazard played enough of a role in the chain of causation to determine that death occurred as a result.* The Tribunal concludes that, in the circumstances of this case, the death occurred under article 2 (*b*) (ii), as a result of the special hazard of unavailability of adequate facilities and personnel in Bangui for dealing with cardiac emergencies. Accordingly, the Respondent's decision must be rescinded and the Applicant is entitled to compensation under staff rule 106.4 and Appendix D." (emphasis added)

18. The basic premise of the judgement is that, while the Secretary-General may assign staff to any duty station, including difficult duty stations, such staff must be taken care of if they fall ill and their dependants must be compensated if the staff die in service. The same premise should apply, by analogy, to observers who are sent to difficult field missions in hostile and stressful environments. Another important aspect of the judgement relates to the burden of proof in cases where the cause of death, illness or injury is not apparent, in particular because of the lack of medical evidence. In missions or other difficult areas, and in all other areas where modern medical facilities are not immediately available and where the staff must work long hours under stress, the Administration should not rely on narrow interpretations of the Notes, in the case of observers, or of Appendix D, in the case of staff members, which is designed to provide a social benefit.

D. *Specific questions to be raised by the Advisory Board on Compensation Claims when it considers such claims*

19. We have given much thought to your request that we provide you with the specific questions the Advisory Board on Compensation Claims should be raising when it considers these types of claims. As you can appreciate, however, every case must be determined on the basis of its particular facts and circumstances, and there is no fixed formula or set of questions on the basis of which such a determination may be made.

20. Accordingly, the determination of whether compensation is warranted in the cases set forth in paragraph 2 of your memorandum (and reproduced in paragraph 2 of this memorandum) would have to depend on an analysis of the particular circumstances and facts of every case. However, a review of the three cri-

teria should enable you to apply those criteria to the facts of a particular case, bearing in mind that such criteria should be considered liberally and not in an unduly restrictive manner. Should the Advisory Board on Compensation Claims so request, we would be pleased to review any of these cases and give you our views.

7 August 1997

PERSONNEL

3. Acceptance of gifts by United Nations staff members—Staff regulation 1.6—Staff rule 101.9

Memorandum to the Chef de Cabinet of the Secretary-General

1. This is with reference to your note of 15 July 1997 requesting advice, from the Under-Secretary-General for Management and the Legal Counsel on a priority basis, concerning the rules and practice of the Organization regarding acceptance of gifts by United Nations staff members. The Legal Counsel set out below the legal framework, leaving it to the Under-Secretary-General for Management to provide you with information on how the rules are administered.

Summary advice

2. In accordance with the staff regulations and staff rules described below, acceptance of gifts from governmental sources is absolutely prohibited. Acceptance of gifts from other sources may be authorized (prior authorization is required) in exceptional cases.

Detailed reasons for advice

3. Staff regulation 1.6 provides as follows:

"No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government excepting for war service; nor shall a staff member accept any honour, decoration, favour, gift or remuneration from any source external to the Organization, without first obtaining the approval of the Secretary-General. Approval shall be granted only in exceptional cases and where such acceptance is not incompatible with the terms of regulation 1.2[17] of the Staff Regulations and with the individual's status as an international civil servant".

4. Staff rule 101.9 provides as follows:

"(*a*) No staff member shall accept any honour, decoration, favour, gift or remuneration from an external source without first obtaining the approval of the Secretary-General.

(*b*) Approval shall not be granted if the honour, decoration, favour, gift or remuneration is from a Government, excepting for decorations for war service earned before the appointment.

(*c*) If the honour, decoration, favour, gift or remuneration is from a non-governmental source, approval shall be granted only in exceptional

cases and where such acceptance is not incompatible with the terms of staff regulation 1.2 or with the individual's status as an international civil servant.

(*d*) The provisions of subparagraphs (*b*) and (*c*) above do not preclude approval of the acceptance of:

(i) Academic awards;

(ii) Reimbursement of travel and subsistence expenses for activities otherwise authorized;

(iii) Tokens of a commemorative or honorary character, such as scrolls and trophies".

5. Thus, there exists an absolute prohibition for staff from accepting any honour, decoration, favour, gift or remuneration from any Government except for war service prior to joining the Organization. This prohibition is expressly established by staff regulation 1.6 adopted, as are all other staff regulations, by the General Assembly, and the Secretary-General has no authority to grant exceptions to this provision.

6. Staff regulation 1.6 provides that acceptance of any honour, decoration, favour, gift or remuneration from a non-governmental source may be authorized only in exceptional cases and where such acceptance is not incompatible with the terms of staff regulation 1.2 or with the individual's status as an international civil servant.

7. Pursuant to the administrative instruction on the subject of "Administration of the Staff Regulations and Staff Rules" (ST/AI/234/Rev.1 of 22 March 1989), the administration of staff regulation 1.6 concerning approval of acceptance of an honour, decoration, favour, gift or remuneration from any source external to the Organization is within the authority of the Assistant Secretary-General for Human Resources Management.

16 July 1997

4. CONDITIONS OF SERVICE OF LOCALLY RECRUITED STAFF—ARTICLE 101 OF THE CHARTER OF THE UNITED NATIONS—ARTICLES II AND V OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Memorandum to the Chief of the Legal Section, Office of Human Resources, United Nations Development Programme

1. This refers to your memoranda dated 17 June 1997 and 2 July 1997 seeking our advice on a note verbale dated 3 June 1997 from the Ministry of Foreign Affairs of a Member State concerning conditions of service of locally recruited staff in, inter alia, international organizations in that Member State.

2. The note verbale advises that the Member State legislation establishes the following requirements for locally recruited staff:

(*a*) Such staff must be engaged through a contract which complies with the labour law of the Member State;

(*b*) Priority must be given to Member State nationals over other nationals;

(*c*) The Organization must pay the employer contribution to the national social security system, for locally recruited staff;

(*d*) At the end of each year, a list of locally recruited staff must be provided to the Ministry of Foreign Affairs, indicating their nationality, the date of their recruitment and their social security number.

Executive summary

3. For the reasons stated below, the above-stated requirements, with the exception of the fourth requirement, are not consistent with the clear language of Article 101, paragraph 3, of the Charter of the United Nations, which sets forth the standards in the employment of staff; the principle, which has been universally recognized, that the conditions of service of United Nations staff members are established exclusively by the Staff Regulations promulgated by the General Assembly and the Staff Rules promulgated by the Secretary-General to implement those Regulations; and the position which the Organization has consistently maintained that mandatory contribution to a national social security scheme should not be applicable to staff members, irrespective of nationality and duty station.

Detailed reasons for opinion

I. *United Nations legislative background*

4. The Charter of the United Nations provides as follows:

Article 101, paragraph 1:

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

Article 101, paragraph 3:

"The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible."

5. Pursuant to Article 101, paragraph 1, of the Charter, the authority to establish regulations governing the conditions of service of the staff rests with the General Assembly. Staff regulation 4.1 promulgated by the Assembly pursuant to Article 101, paragraph 1, of the Charter provides that:

"[a]s stated in Article 101 of the Charter, the power of appointment of staff members rests with the Secretary-General. Upon appointment, each staff member . . . shall receive a letter of appointment in accordance with the provision of annex II to the present Regulations . . ."

Annex II to the Staff Regulations provides, inter alia, that the appointment of staff is subject to the provisions of the Staff Regulations and the Staff Rules applicable to the category of appointment in question.

6. Article II, section 7 (*a*), and article V, section 18 (*b*), of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 ("General Convention"), to which the Member State became a party in 1957 without reservation, provide as follows:

Article II, section 7

"The United Nations, its assets, income and other property shall be:

(*a*) Exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services".

Article V, section 18

"Officials of the United Nations shall:

. . .

(*b*) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations".

By its resolution 76 (I) of 7 December 1946, the General Assembly approved that the provisions in articles V and VII (the latter provides for the issuance of the United Nations laissez-passer to "officials") of the General Convention should apply to all staff members of the United Nations, with the exception of those "recruited locally and assigned to hourly rates". Therefore, locally recruited staff of the Organization, with the exception of those paid at hourly rates, are entitled to the privileges and immunities accorded to "officials" under articles V and VII of the General Convention.

7. The Standard Basic Assistance Agreement signed by the Government of the Member State and UNDP on 13 May 1982 provides, in relevant part and in the English translation, as follows:

"*Article IX. Privileges and immunities*

"1. The Government shall apply to the United Nations and its organs, including UNDP and United Nations subsidiary organs acting as UNDP Executing Agencies, their property, funds and assets, and to their officials, including the resident representative and other members of the UNDP mission in the country, the provisions of the Convention on the Privileges and Immunities of the United Nations".

"*Article II. Forms of assistance*

"4. (*b*) The UNDP mission in the country shall have such other staff as UNDP may deem appropriate to its proper functioning. UNDP shall notify the Government from time to time of the names of the members, and of the families of the members, of the mission, and of changes in the status of such persons".

II. *Application to Member State legislation*

8. Pursuant to the above provisions in the Charter and the Staff Regulations, the United Nations has maintained the position, which has been universally recognized, that the conditions of service of United Nations staff members are established exclusively by the Staff Regulations promulgated by the General Assembly and the Staff Rules promulgated by the Secretary-General to implement those Regulations and that, consequently, the conditions of service of staff members are not subject to national labour legislation.

9. Although local conditions of employment are taken into account in determining General Service emoluments and although the Charter requires that due consideration must be given to geographic distribution in the recruitment of staff (see para. 4 above), a condition requiring the Secretary-General to give *priority* to one nationality over another runs counter to the clear language of Article 101, paragraph 3, of the Charter. Moreover, the new Member State legislation is not consistent with article II, paragraph 4 (*b*), of the Standard Basic Assistance

Agreement (see para. 7 above), in which the Government of the Member State recognized the right of UNDP to have such staff in the country as it deems appropriate for its proper functioning. In practice, however, locally recruited staff are often nationals of the State in which the United Nations office is located, as locally recruited staff occupy positions which usually require fluency in the local language.

10. Moreover, as the Staff Regulations and Rules provide for comprehensive pension and social security schemes for staff members,[18] the Organization has consistently maintained the position that mandatory contribution to a national social security scheme should not be applicable to the staff members.[19] The Organization has also maintained the position that such mandatory contribution to a national social security scheme is not consistent with article V, section 18 (*b*), of the General Convention and article II, paragraph 4 (*b*), of the Standard Basic Assistance Agreement (see para. 9 above). It has thus been the long-standing policy and practice of the Organization, which has been universally recognized, not to contribute to national social security schemes, at least in those Member States which did not enter a reservation to article V, section 18 (*b*), of the General Convention.

11. We consider that the supply of information required under the new legislation is consistent with article II, paragraph 4 (*b*), of the Standard Basic Assistance Agreement.

12. Lastly, we emphasize that our response relates to staff of the Organization, i.e., to individuals holding a Letter of Appointment under the 100, 200 or 300 series of the Staff Rules. Individuals on special service agreements are not staff members of the Organization, but independent contractors, and they thus must comply with local law regarding independent contractors and pay appropriate taxes and social security contributions.

13. We have prepared and attach herewith a draft of a note verbale which the UNDP Resident Representative in the Member State may wish to send to the Ministry of Foreign Affairs of the Member State.

12 September 1997

PRIVILEGES AND IMMUNITIES

5. Question whether a Member State has an obligation to grant the most favourable legal rate of exchange—Article II, sections 3 and 5, of the Convention of 15 February 1946 on the Privileges and Immunities of the United Nations

Facsimile to the legal adviser at the headquarters of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

1. This is with reference to your facsimile of 7 January 1997 concerning the Member State exchange rate. Our comments are as follows.

2. The information provided indicates not only that UNRWA does not enjoy the most favourable rate of exchange in the Member State but also that the central commercial bank of the Member State has frozen UNRWA assets and that Member State authorities have restricted the right of UNRWA to hold and freely transfer its funds in violation of the Convention on the Privileges and Immunities

of the United Nations (the Convention) of which the Member State has been a party since 29 September 1953 without reservation.

3. With respect to the rate of exchange, it should be noted that the Convention does not explicitly provide that Member States have an obligation to grant the Organization the most favourable legal rate of exchange. On the basis of Article 105 of the Charter of the United Nations (discussed in para. 8 below), however, it is the established policy and practice of Member States to grant the United Nations, its organs and subsidiary organs, the most favourable legal rate of exchange. In this connection, the Government of the Member State has itself undertaken a legal obligation to do so in article X (1) (*e*) of its Agreement with the United Nations Development Programme signed on 12 March 1981.

4. We note that the Government of the Member State has implicitly contested the status of UNRWA as an international organization in its effort to exclude UNRWA from the most favourable rate of exchange applicable to other regional and international organizations. The competent Member State authorities should be reminded that UNRWA was established by the General Assembly in its resolution 302 (IV) of 8 December 1949 and is therefore a subsidiary organ of the United Nations, which is clearly an international organization.

5. As to the freezing of UNRWA assets by the central commercial bank of the Member State, reference should be made to article II, section 3, of the Convention, which provides that "the property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action".

6. Finally, with respect to restrictions on the right of UNRWA to hold and freely transfer its currency, reference should be made to article II, section 5, of the Convention, pursuant to which, "without being restricted by financial controls, regulations or moratoria of any kind,

"(*a*) The United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;

(*b*) The United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency."

7. As a subsidiary organ of the United Nations, UNRWA enjoys the privileges and immunities provided for in the Convention. Furthermore, in accordance with section 34 of the Convention, the Government of the Member State has an obligation to be "in a position under its own law to give effect to the terms of this Convention".

8. Any interpretation of the provisions of the Convention on the Privileges and Immunities of the United Nations must be carried out within the spirit of the underlying principles of the Charter of the United Nations, and in particular Article 105 thereof, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. Measures which might, inter alia, increase the financial or other burdens of the Organization have to be viewed as being inconsistent with that provision.

9. The privileges and immunities discussed above are of fundamental interest to the United Nations as a whole.

10 January 1997

6. Legal status of Goodwill Ambassadors for the United Nations

Note to the Office of the Secretary-General

This refers to your informal request for advice on the legal status accorded to Goodwill Ambassadors for the United Nations in the light of the proposed candidature of The Artist as a United Nations Goodwill Ambassador. In this connection, you forwarded to me a copy of a letter dated 4 April 1997 from The Artist to the Secretary-General, as well as a copy of a letter dated 11 April 1997 from the Director of the United Nations Information Centre (UNIC)-France to you. In his letter, The Artist reiterated the wish he expressed to the Secretary-General during their meeting in Paris on 1 March 1997 to promote the ideals and objectives of the United Nations, particularly in the field of human rights. The Director of UNIC-France recommended in his letter that The Artist should be designated by the Secretary-General as "Messager de la paix" or "Ambassadeur de bonne volonté des Nations Unies".

A review of our files shows that Goodwill Ambassadors for UNICEF, UNHCR and UNIFEM have included artists such as Sophia Loren, Julie Andrews and Audrey Hepburn. Goodwill Ambassadors in the past were appointed on the basis of a decision taken by the Secretary-General on the recommendation of the executive head of UNICEF, UNHCR or UNIFEM. While the Director of UNIC-France has recommended The Artist as United Nations Goodwill Ambassador, any such decision falls within the discretion of the Secretary-General.

With respect to their status, Goodwill Ambassadors are not considered staff members of the United Nations and are therefore not subject to the Staff Regulations and Rules. Accordingly, Goodwill Ambassadors should not be granted a United Nations Letter of Appointment. Instead, a letter of designation is usually issued by the competent authority (in the case of UNICEF by the Executive Director, and in the case of UNHCR by the High Commissioner) setting out the duties of the Goodwill Ambassadors, specifying their status and the duration of their term as well as the nature of their entitlements. Letters designating Goodwill Ambassadors are usually submitted to the Office of Legal Affairs for review and clearance.

Goodwill Ambassadors are not paid a salary but receive a symbolic payment (the practice of UNICEF is to pay a dollar a year).

Goodwill Ambassadors are considered as having the status of "expert on mission" for the United Nations within the meaning of article VI of the Convention on the Privileges and Immunities of the United Nations adopted on 13 February 1946 ("the General Convention", a copy of which is attached for your ease of reference).

Goodwill Ambassadors are not entitled to a United Nations laissez-passer which, under section 24 of the General Convention, is issued to United Nations officials only. As experts on mission, however, they are entitled to a certificate that they are travelling on official business for the United Nations and, as such, should be accorded facilities for speedy travel similar to those accorded to holders of the United Nations laissez-passer (sections 25 and 26 of the General Convention).

Goodwill Ambassadors may be given travel and per diem allowances when they are travelling on United Nations business.

Even though Goodwill Ambassadors are not staff members, they are covered, while on assignment for the United Nations, by the provisions of Appendix D to the Staff Rules, which is applicable to experts on mission in the event of injury, illness or death.

From a legal point of view, a letter of designation issued to a Goodwill Ambassador should include the following provisions:

"As a Goodwill Ambassador for the United Nations, you will receive a symbolic compensation of ____ per annum. When engaged in approved travel for the United Nations, you may receive, as specified in advance in connection with any particular trip, travel and per diem allowances and have the costs of transportation reimbursed. [Alternatively, it may also be specified that costs relating to travel will not be reimbursed.]

"You will be considered by the United Nations as an expert on mission for the United Nations within the meaning of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations adopted on 13 February 1946. In this capacity, you are entitled to such privileges and immunities as are necessary for the independent exercise of your functions in connection with your mission. Pursuant to article VI, section 23, thereof, these privileges and immunities are granted to you in the interests of the United Nations and not for your personal benefit. The Secretary-General of the United Nations has the right and the duty to waive the immunity in any case where, in his opinion, the immunity would impede the course of justice and where it can be waived without prejudice to the interests of the United Nations.

"In the event of death, injury or illness attributable to the performance of duties in your capacity as Goodwill Ambassador for the United Nations, you, or your dependants, as appropriate, shall be entitled to compensation equivalent to that which would be payable to an official of the United Nations at the P-4, step I,[20] level pursuant to Appendix D to the Staff Rules. Such compensation shall be the sole compensation payable by the United Nations in respect of death, injury or illness."

1 May 1997

7. Status of funds awarded and tranferred by the United Nations Compensation Commission to Governments

Letter to the Executive Secretary of the United Nations Compensation Commission

This is in reply to your telefax of 9 May 1997, in which you sought my views concerning the status of the funds awarded and transferred by the United Nations Compensation Commission to Governments for distribution to successful claimants. Your query originates from a request by a Government which has received from the Commission funds corresponding to the proceeds of a number of successful claims. Some unsuccessful claimants have apparently sought to attach these funds, and the Government is enquiring whether funds originating from the Compensation Fund continue to enjoy the privileges and immunities of the United Nations while in the custody of recipient Governments.

As you note in your communication, the Compensation Fund is a fund of the United Nations within the terms of article II of the Convention on the Privilege and Immunities of the Unites Nations (the "General Convention") and of the Financial Regulations and Rules. As such, funds deposited in accounts of the Compensation Fund enjoy the jurisdictional immunities provided for the Convention. This is clearly set out in part I, paragraph 3, of the report of the Secretary-General of 2 May 1991 (S/22559), in accordance with which the Security Council, by its resolution 692 (1991), decided to establish the Fund and the Commission.

The status of monies awarded by the Governing Council of the Commission to successful claimants has to be ascertained on the basis of the rules and decisions governing the activities of the Commission, as well as of the General Convention.

By section E, paragraphs 18 and 19, of its resolution 687 (1991), the Security Council decided that the function of the Fund would be "to pay compensation" for certain claims against Iraq. The Secretary-General, in paragraph 28 of the above-mentioned report, recommended that payments should be made exclusively to Governments, which would then be responsible for distributing the amounts awarded to successful claimants. The Security Council, by paragraph 5 of resolution 692 (1991), directed the Governing Council to implement the provisions of section E of resolution 687 (1991) taking into account the recommendations of the Secretary-General. The Governing Council, at its 41st meeting, held on 23 March 1994 (S/1994/409, annexes I and II), confirmed that payments would be made to the Governments which had consolidated and submitted successful claims; Governments would be responsible for distributing payments to successful claimants subject to a number of provisions specified in the decision to ensure the transparency of the process.

It is clear from the foregoing that, in accordance with the mandate of the Commission, amounts awarded by the Governing Council are disbursed from the Compensation Fund and transferred by the Secretariat to Governments, which appear, in cases such as that of the Government in question, to exercise the functions of custodians of those monies for the ultimate benefit of the actual claimants on behalf of which the claims were submitted.

Pursuant to article II, section 5, of the General Convention, the United Nations "may hold funds, gold or currency", which shall enjoy the immunities provided for in section 3 of the same article. The condition for the enjoyment by funds of the privileges and immunities of the United Nations is precisely their quality as funds of the Organization, i.e., held under the custody and control of the Secretary-General as Chief Administrative Officer of the United Nations, in accordance with the Financial Regulations and Rules. In the case of the Compensation Fund, however, funds are, upon a decision by the Governing Council, disbursed and transferred from the Fund to the control and custody of the Governments concerned for the payment of claims submitted by them, either on their own behalf or on behalf of their nationals. It is our view that, once such disbursement and transfer have taken place, the funds in question can no longer be considered funds of the United Nations and are no longer protected by the privileges and immunities of the United Nations. This is obviously without prejudice to the status that the monies in question may enjoy under national legislation while in the custody of the Governments.

It should also be noted that the transfer of the funds in question is not necessarily final and irreversible. Paragraph 1 (*g*) of the decision of the Governing

Council referred to above makes it clear that, should Governments be unable to pay certain claims because the claimants cannot be found, the corresponding amount is to be reimbursed to the Compensation Fund unless otherwise decided by the Governing Council. In the latter case, the funds in question would again be covered by the privileges and immunities of the United Nations once they were deposited into an account of the Compensation Fund.

21 May 1997

8. IMMUNITY OF REPRESENTATIVES AND OBSERVERS OF NON-GOVERNMENTAL ORGANIZATIONS AT UNITED NATIONS MEETINGS

Memorandum to the Senior Legal Officer, United Nations Office at Geneva

1. This is in reply to your telefax of 21 August 1997, with attachments, concerning a query from the Swiss Permanent Mission as to whether the provisions of article VI, section 19, of the 1946 Interim Arrangements on Privileges and Immunities of the United Nations concluded between the United Nations and Switzerland apply by analogy to a representative of a non-governmental organization participating in the meeting of the Subcommission on Prevention of Discrimination and Protection of Minorities. By way of background to the request, you explain that a Government has requested the Swiss authorities, directly and through Interpol, to prosecute or extradite one of its nationals accused of murder and terrorist crimes who is an accredited representative of an NGO.

2. Whether the above-mentioned provisions may be applied by analogy to NGO representatives participating in United Nations meetings depends on whether the functions discharged by the two categories of persons, and their relationship with the United Nations, justify the extension of the privileges and immunities of experts on mission for the United Nations to NGO representatives or observers. In this connection, it might also be recalled that experts performing missions for the United Nations enjoy broader immunities than those enjoyed by officials of the United Nations, including precisely immunity from personal arrest.

3. A quick review of the practice of the Organization does not reveal any precedent in which the United Nations has claimed that NGO representatives participating in official meetings should be equated to experts on mission for purposes of privileges and immunities. The term "experts on mission for the United Nations" applies to persons performing a mission for the United Nations on the basis of an assignment from either the Secretary-General or a political or perhaps expert organ who are neither representatives of Governments nor officials of the Organization but who, for the independent exercise of their functions in connection with United Nations, must be able to rely on certain privileges and immunities. Examples of such "experts on mission" would be members of, or rapporteurs for, certain commissions and committees serving in their personal capacity, or military observers in peacekeeping operations.[21]

4. In the practice of the Organization and considering the nature of their functions, representatives of NGOs participating in or attending United Nations meetings on the basis of a general invitation from the body concerned fall into a different category. The only immunities required by those attending United Nations proceedings in this capacity are those necessary to enable them to perform

their functions in connection with the meeting they are attending, in particular to enter and leave the country concerned and to speak freely at these meetings. They have no need for, and therefore should not be entitled to, immunities related to other activities, and especially not covering prior alleged criminal enterprises. Even though the Host Country Agreement with Switzerland is entirely silent in this respect, a number of more recent agreements concluded by the United Nations expressly mention representatives of NGOs or persons invited to United Nations premises on official business, for example article IV of the Headquarters Agreement with the United States.

5. In view of the foregoing and without prejudice to the limited privileges and immunities mentioned in the preceding paragraph, it is the position of the Office of Legal Affairs that representatives of NGOs participating in the meeting of a United Nations organ cannot be considered experts on mission.

25 August 1997

9. UNITED NATIONS POSITION ON CONTRIBUTIONS FOR SOCIAL SECURITY SCHEMES UNDER NATIONAL LEGISLATION—STATUS OF CONSULTANTS ENGAGED ON SPECIAL SERVICE AGREEMENTS—ARTICLE II, SECTION 7 (*e*), OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Memorandum to the Chief of the Legal Section, Office of Human Resources, United Nations Development Programme

1. This responds to your memorandum of 16 December concerning the position taken by the competent Member State authorities with respect to the payment of social security contributions by UNDP for locally recruited employees, be they staff members on fixed-term contracts or consultants engaged on special service agreements. Our comments are as follows.

2. It has been consistent United Nations practice and policy, pursued by the Organization for more than four decades, that mandatory contributions for social security schemes under national legislation are considered a form of direct taxation on the United Nations and therefore contrary to the Convention on the Privileges and Immunities of the United Nations (the 1946 Convention), to which the Member State became a party on 26 October 1949 without reservation.

3. Pursuant to the provisions of article II, section 7 (*a*), of the 1946 Convention, the United Nations, its assets, income and other property shall be exempt from all direct taxes. Furthermore, pursuant to article V, section 18, subparagraph (*b*), of the 1946 Convention, "officials of the United Nations shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations". It should be noted in this regard that General Assembly resolution 76 (I) of 7 December 1946 provides "the granting of the privileges and immunities referred to in article V. . . to all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates". Thus, locally recruited staff who are not assigned to hourly rates are entitled, irrespective of their nationality, to the exemption from such taxation. The latter applies to staff on permanent as well as fixed-term contracts.

4. As a party to the 1946 Convention, the Member State is not entitled to make use of United Nations emoluments for any tax purposes. The rationale of

the immunity from taxation of salaries paid by the United Nations is to achieve equality of treatment for all officials of the Organization, independently of nationality. These principles were clearly enunciated by the General Assembly in resolution 78 (I) as follows: "In order to achieve full application of the principle of equality among Members and equality among personnel of the United Nations, Members which have not yet completely exempted from taxation salaries and allowances paid out of the budget of the Organization are requested to take early action in the matter."

5. The Organization's exemption from national social security schemes is further evidenced by the fact that the United Nations has its own comprehensive social security scheme for United Nations staff members. The establishment of such a scheme is required under regulation 7.2 of the United Nations Staff Regulations, which are established by the General Assembly pursuant to Article 101, paragraph 1, of the Charter of the United Nations.

6. Consultants engaged on special service agreements are deemed to be experts on mission within the meaning of article VI of the 1946 Convention and do not enjoy immunity from taxation on the salaries paid to them by the United Nations. Thus, while the United Nations will not make contributions for social security schemes in respect of persons engaged on special service agreements, those persons must comply with any tax obligations imposed by the competent Member State authorities. However, as indicated above, the Organization will not withhold taxes due from such consultants, nor will it pay any taxes on their behalf.

7. Finally, any interpretation of the provisions of the 1946 Convention must be carried out within the spirit of the underlying principles of the Charter of the United Nations, and in particular Article 105 thereof, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. Measures which might, inter alia, increase the financial or other burdens of the Organization have to be viewed as being inconsistent with that provision.

8. Should you so request, we could bring the foregoing to the attention of the Permanent Mission of the Member State to the United Nations with a formal demand that they resolve the matter in a manner consistent with the privileges and immunities of the United Nations.

23 December 1997

PROCEDURAL AND INSTITUTIONAL ISSUES

10. DEFINITION OF THE TERM "DEVELOPING COUNTRIES" AS USED BY THE UNITED NATIONS—GENERAL ASSEMBLY RESOLUTION 47/187 OF 22 DECEMBER 1992

Letter to the Deputy Director of the United Nations Development Fund for Women

I am replying to your letter, with attachments, in which you seek my advice as to whether the United Nations Development Fund for Women, in the light of its legislative mandate, can carry out activities in Eastern European countries.

As you noted in your letter, General Assembly resolutions 31/133 of 16 December 1976 and 39/125 of 14 December 1984 indicate that UNIFEM is supposed to utilize its resources to supplement activities in areas designed to implement the goals of the United Nations Decade for Women, with priority being given to related programmes and projects of the least developed, landlocked and island countries among developing countries. The question is, therefore, whether Eastern European States fall within the definition of "developing countries" as used by the United Nations.

As you know, neither the General Assembly nor the Economic and Social Council has established any formal definition or list of developing countries. There are, however, a number of classifications and lists used by the United Nations for different purposes, which can be used as a guide in determining whether a particular country may be considered a "developing country". These include:

—The list of countries eligible to receive UNDP assistance and the allocation of technical assistance resources;

—The list of developing countries established by the United Nations Statistical Office to be found in the *Statistical Yearbook* or other publications by the Office;

—The lists of countries established in parts A and C of the annex to General Assembly resolution 1995 (XXIX) of 30 December 1964, as amended, which serve as a basis for election to the Trade and Development Board of UNCTAD;

—The tables appearing in the annual reports of the Committee on Contributions of the General Assembly, which are used for the purpose of determining abatements in calculating the scale of assessments to the regular budget of the United Nations;

—The lists of countries contained in document E/1995/L.11 (attached) and referred to in paragraph 2 of General Assembly resolution 50/8 of 1 November 1995, which will be used by the Economic and Social Council and the FAO Council for the election of members of the Executive Board of the World Food Programme.

As to the Eastern European States (which include some former Soviet Republics), they fall within the definition of countries with "economies in transition", a term introduced by the General Assembly in its resolution 47/187 of 22 December 1992. The resolution, entitled "Integration of the economies in transition into the world economy", addresses the problems faced by "the countries that are transforming their economies from centrally planned to market-oriented ones". In its operative part, the resolution does not equate economies in transition to developing countries as such. However, in paragraph 2, the Assembly refers to the fact that developing countries may figure among economies in transition, while in paragraph 1, the Assembly states that the full integration of economies in transition into the world economy should have a positive impact on world trade, economic growth and development, including that of the developing countries.

In view of the foregoing, the legislative mandate of UNIFEM appears to allow the Fund to carry out its activities in those Eastern European countries which are also developing countries according to United Nations practice. Thus, since UNIFEM is defined in the annex to General Assembly resolution 39/125 as "a separate and identifiable entity in autonomous association with [UNDP]", proj-

ects and programmes by the Fund could, logically, be envisaged in the same Eastern European countries which are eligible to receive UNDP assistance.

7 January 1997

11. Regulations regarding consultative relationships with non-governmental organizations—Economic and Social Council resolution 1996/31 of 25 July 1996

Facsimile to the legal office of the Secretary-General, United Nations Conference on Trade and Development

1. This is with reference to your facsimile of 8 January 1997 concerning the participation of non-governmental organizations and experts in the work of UNCTAD. Our comments are as follows.

2. Your first question, in two parts, refers to the interpretation of Economic and Social Council resolution 1996/31 of 25 July 1996 on arrangements for consultation with non-governmental organizations.

(*a*) Paragraph 5 of part I of the resolution explicitly states that "consultative relationships may be established with international, regional, subregional and national organizations, in conformity with the Charter of the United Nations and the principles and criteria established under the present resolution". Therefore consultative relationships may be established with national non-governmental organizations whose objects and purposes are in conformity with the Charter of the United Nations and which meet the requirements established in the resolution as a whole. Although paragraph 4 of Economic and Social Council resolution 1296 (XLIV) of 23 May 1968 does not appear in Council resolution 1996/31, most of the ideas expressed therein can be found, albeit in a different form, in paragraphs 9 to 12 of Council resolution 1996/31.

(*b*) Paragraph 8 of Council resolution 1996/31 refers to "consultation with the Member State concerned", not to the approval of the Member State concerned. You will also note that paragraph 8 further provides that "the views expressed by the Member State, if any, shall be communicated to the non-governmental organization concerned, which shall have the opportunity to respond to those views through the Committee on Non-Governmental Organizations". Accordingly, it is for the member States of the Committee on Non-Governmental Organizations and of the Economic and Social Council itself to approve or reject the establishment of a consultative relationship with a particular non-governmental organization on the basis of their own assessment of the views expressed by the Member State concerned *and* the information and responses submitted by the non-governmental organization concerned.

3. You have also proposed that the rules of procedure of the intergovernmental bodies of UNCTAD should be amended to include the participation as observers of experts acting in their personal capacity. Please be advised that General Assembly resolution 1995 (XIX) of 30 December 1964, as amended, by which the Assembly established both UNCTAD and the Trade and Development Board, refers to the participation, without the right to vote, only of representatives of intergovernmental organizations and non-governmental organizations. There is no reference to other categories of observers. Accordingly, any effort to expand observer participation in the work of UNCTAD beyond non-member States, the

specialized agencies and IAEA, other intergovernmental organizations and non-governmental organizations would require the approval of the General Assembly.

9 January 1997

12. MECHANISMS OF THE EXERCISE OF THE RIGHT OF SELF-DETERMINATION BY THE NON-SELF-GOVERNING TERRITORIES

Letter to the Chairman of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

I wish to acknowledge receipt of your letter dated 3 February 1997 by which, on behalf of the members of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (hereafter Committee of 24), you seek my views on the following questions:

> "What are the internationally acceptable mechanisms of the exercise of the right of self-determination by the Non-Self-Governing Territories and of the internationally acceptable means of ascertaining the wishes of their populations regarding their future political status?"

The principle of equal rights and self-determination of peoples is stated in Article 1, paragraph 2, of the Charter of the United Nations as a basis upon which to develop friendly relations among nations. In Article 55, it is stated that peaceful and friendly relations among nations are based on respect for the principle of equal rights and self-determination of peoples. Even though the term "self-determination" does not appear in Chapters XI and XII of the Charter, the United Nations has used it as one of the basic principles governing the implementation of the Declaration regarding Non-Self-Governing Territories as well as the trusteeship system. As one of the obligations arising from the sacred trust referred to in Article 73, Member States administering Non-Self-Governing Territories accept, inter alia, to develop "self-government, to take due account of the political aspirations of the peoples" (Article 73 *b*).

The General Assembly has pursued the realization of the principle of self-determination mainly in the context of the process of decolonization, and has expanded and elaborated the framework of the Committee of 24. A number of declarations and resolutions adopted by the General Assembly are of particular importance in this context and contain provisions relevant to your queries. In particular, I wish to recall the following instruments:

—Resolution 742 (VIII) of 27 November 1953, entitled "Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government";

—Resolution 1514 (XV) of 14 December 1960, entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples";

—Resolution 1541 (XV) of 15 December 1960, entitled "Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 *e* of the Charter";

—Resolution 2625 (XXV) of 24 October 1970, entitled "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations";

—Advisory opinion on Western Sahara, rendered by the International Court of Justice on 16 October 1975, in which the court reviewed the development of the principles of self-determination in the practice of the United Nations (paras. 54-59).

A review of the relevant provisions of the resolutions listed above reveals that the General Assembly did not set out specific modalities or mechanisms which would apply on a general basis to all Non-Self-Governing Territories for the exercise of their right of self-determination. However, those resolutions clearly emphasize as a general principle that the process of self-determination should be based on the exercise of an informed, free and voluntary choice by the peoples concerned. Thus, for example, in paragraph 5 of resolution 742 (VIII), the Assembly considered that the validity of any form of association of the Territory with another country "depends on the freely expressed will of the people at the time of the taking of the decision". In the second part of the annex to the resolution, the Assembly lists "the opinion of the population of the Territory, freely expressed by informed and democratic processes", as a factor indicative of the attainment of other separate systems of self-government. In the annex to resolution 1541 (XV), principle VII states that free association with an independent State, listed in principle VI as one of the forms of self-government, "should be the result of a free and voluntary choice by the peoples of the Territory concerned expressed through informed and democratic processes", and that "the associated Territory should have the right to determine its internal constitution". Similar expressions are used in principle IX concerning integration with an independent State. Moreover, in resolution 2625 (XXV), the General Assembly declared, inter alia, that "the establishment of a sovereign and independent State . . . or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people".

The International Court of Justice, in the above-mentioned advisory opinion, also pointed out that:

> "The validity of the principle of self-determination, defined as the need to pay regard to the freely expressed will of peoples, is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given Territory. Those instances were based either on the consideration that a certain population did not constitute a 'people' entitled to self-determination or on the conviction that a consultation was totally unnecessary, in view of special circumstances" (para. 59).

As to the specific manners by which the expression of the free will of the peoples concerned is to take place, the resolutions of the General Assembly referred to above provide no particular guidance. Thus, reference should be made to the practice of the General Assembly when considering individual Territories, especially for the determination of the cessation of the reporting obligations imposed upon administering Powers by Article 73 *e* of the Charter. The practice shows that the right of self-determination by Non-Self-Governing Territories has been exercised in a variety of ways, such as the holding of referendums or plebiscites in the Territories, negotiations or agreements between the representative bodies of the peoples living in the Territories, etc.

The practice reveals that the General Assembly has acted on a case-by-case basis in determining whether the modalities for the attainment of self-government by the peoples concerned satisfied the requirements of the Charter and of the relevant Assembly resolutions. In dealing with specific instances of decolonization in this fashion, the General Assembly decided at an early date that the determination as to whether a Territory fell within Chapter XI of the Charter of the United Nations—and this information under Article 73 *e* had to be submitted by the administering Power—could not be left to the sole discretion of the latter. By its resolution 334 (IV) of 2 December 1949, the Assembly considered that it was within its responsibility to express an opinion "on the principles which have guided or which may in future guide the Members concerned in enumerating" the Territories in question. In paragraph 3 of resolution 742 (VIII), the Assembly recommended that the factors annexed to the resolution "should be used by the General Assembly and the Administering Members as a guide in determining whether any Territory . . . is or is no longer within the scope of Chapter XI of the Charter in order that . . . a decision may be taken by the General Assembly on the continuation or cessation of the transmission of information required by Chapter XI of the Charter". The Assembly has continued consistently to affirm in general terms its authority to determine when a Non-Self-Governing Territory has exercised its right of self-determination. Resolutions adopted at subsequent sessions of the Assembly under the title "Information from Non-Self-Governing Territories transmitted under Article 73 *e* of the Charter of the United Nations" customarily contain an operative paragraph by which the Assembly reaffirms "that, in the absence of a decision by the General Assembly itself that a Non-Self-Governing Territory has attained a full measure of self-government in terms of Chapter XI of the Charter, the administering Power concerned should continue to transmit information under Article 73 *e* of the Charter with respect to that Territory" (see, for example, paragraph 2 of resolution 50/32 of 6 December 1995).

The General Assembly has also exercised this power in individual cases under its consideration, for example in the case of the Territories administered by Portugal, which were kept on the list of Non-Self-Governing Territories notwithstanding the denial by the administering Power that their status characterized them as such. Reference should thus be made to the specific cases dealt with by the Assembly. In this connection, if a more thorough review of the available practice is deemed necessary by your Committee, it should be undertaken by the competent unit of the substantive secretariat, namely, the Department of Political Affairs.

Also as regards your second query, namely, what the internationally acceptable means are of ascertaining the wishes of the populations of Non-Self-Governing Territories regarding their future political status, reference should principally be made to the practice of the General Assembly and to the circumstances under which it satisfied itself that the will of the peoples living in Non-Self-Governing Territories had indeed been ascertained, and their choices respected by the administering Powers. In several cases, for example, the Assembly reached this conclusion through an examination of the documentation supplied by the administering Power and its explanations (e.g., resolution 1469 (XIV) of 12 December 1959 concerning Alaska and Hawaii); in other cases, United Nations missions or representatives visited the Territories concerned to supervise the elections or referendums through which the future status of the Territory would be determined (e.g., resolutions 2005 (XIX) of 18 February 1965 and 2064 (XX) of 16 December 1965, concerning the Cook Islands). The approach followed by the General Assembly and the Committee of 24 has been to consider

specific situations on a case-by-case basis, within the general framework of the applicable General Assembly resolutions. Should the Committee also in this case deem it necessary to receive a thorough study on the basis of existing practice, such study should be undertaken by the competent unit of the substantive secretariat.

11 February 1997

13. SUBMISSION OF PROPOSALS BY INTERGOVERNMENTAL ORGANIZATIONS IN FUNCTIONAL COMMISSIONS OF THE ECONOMIC AND SOCIAL COUNCIL—RULES OF PROCEDURE 69 (3), 71 (*b*) AND 74 OF THE FUNCTIONAL COMMISSIONS OF THE COUNCIL—COUNCIL DECISION 1995/209

Facsimile to the Senior Legal Liaison Officer, United Nations Office at Vienna

1. This is with reference to your facsimile of 6 February 1997 concerning the submission of proposals by the European Community in the Commission on Narcotic Drugs. Our comments are as follows.

2. The rules of procedure of the functional commissions of the Economic and Social Council provide for the submission of proposals by States members of the Commission, by Members of the United Nations and any other States that are not members of the Commission, and by the specialized agencies. Rule 69 (3) provides that States not members of the Commission "shall not have the right to vote, but may submit proposals which may be put to the vote on request of any member of the Commission or of the subsidiary organ concerned". Pursuant to rule 71 (*b*), specialized agencies shall be entitled "to participate, without the right to vote, through their representatives, in deliberations with respect to items of concern to them and to submit proposals regarding such items, which may be put to the vote at the request of any member of the Commission or of the subsidiary organ concerned".

3. Rule 74 on the participation of other intergovernmental organizations merely provides that representatives of such organizations "may participate, without the right to vote, in the deliberations of the Commission on questions within the scope of the activities of the organizations". Representatives of the European Community do not therefore have the right to submit proposals.

4. As you will recall, however, in its decision 1995/201 of 8 February 1995, the Economic and Social Council adopted modalities for the full participation of the European Community in the Commission on Sustainable Development which provided, inter alia, that "the Community shall not have the right to vote but may submit proposals that shall be put to the vote if any member of the Commission so requests". In that decision, the Council indicated that, subject to its approval, similar arrangements shall apply to any other regional or subregional economic integration organization to which its member States have transferred competence over a range of matters within the purview of the Commission on Sustainable Development, including the authority to make decisions binding on its member States in respect of those matters. The latter provisions were referenced in a footnote to rule 74 of the rules of procedure of the functional commissions of the Council.

5. Therefore, if it so desires and by means of a separate decision relating to the participation of the European Community as a non-member of the Commis-

sion, the Economic and Social Council could also accord the European Community the right to submit proposals in the Commission on Narcotic Drugs.

11 February 1997

14. Restructuring of the Secretariat—Authority of the Secretary-General

Note to the Secretary-General

Summary

1. This note examines two issues concerning the authority of the Secretary-General to restructure the Secretariat: (*a*) whether the Secretary-General, on his own authority, may create, consolidate and abolish departments/offices and transfer resources among departments/offices without prior authorization by the General Assembly; and (*b*) whether Secretary-General's bulletins must be issued to create, consolidate and abolish departments/offices, in other words, the proper use of Secretary-General's bulletins within the context of restructuring exercises.

2. The actions taken by the Secretary-General in the 1992 restructuring of the Secretariat and the subsequent decisions by the General Assembly indicate that the Secretary-General has certain flexibility in his authority to streamline and rationalize the structure of the Secretariat without *prior* approval for taking such actions by the General Assembly. However, more flexibility is needed to enable the Secretary-General to administer the Secretariat rationally.

3. I recommend that the Secretary-General take the position that the Financial Regulations and Rules should not be interpreted to limit his authority to streamline and rationalize the Secretariat and that it is crucial that he have the authority to organize the Secretariat to deliver the programmes mandated by the General Assembly subject to the following limits:

(*a*) The Secretary-General cannot create or upgrade posts without Assembly authorization;

(*b*) The Secretary-General must, as soon as practicable, present to the General Assembly for its approval a budget proposal reflecting the changes in the Secretariat as a result of a restructuring exercise;

(*c*) The Secretary-General cannot reformulate entire subprogrammes or introduce new programmes in the programme budget without the prior approval of the General Assembly.

4. With respect to the procedure for restructuring work units, decisions to create, consolidate and/or abolish departments/offices must be made through the issuance of Secretary-General's bulletins.

Background

(a) *Power of the Secretary-General to restructure the Secretariat*

5. Article 97 of the Charter of the United Nations provides, inter alia, that the Secretary-General "shall be the chief administrative officer of the Organization". Article 101 of the Charter provides, inter alia, that "[t]he staff shall be appointed by the Secretary-General under regulations established by the General Assembly". As Chief Administrative Officer, the Secretary-General is responsi-

ble for the administration of the Secretariat and its staff and for the delivery of programmes and the implementation of policies laid down by the other organs of the United Nations. The Secretary-General also has authority to determine and to change the manner in which the functions entrusted to him and to the Secretariat are to be performed.[22]

6. Notably, the General Assembly, at its first session, explicitly recognized the authority of the Secretary-General to restructure the Secretariat. In its resolution 13 (I) of 13 February 1946 (see annex 1), the Assembly directed the Secretary-General to create principal units of the Secretariat, authorized the Secretary-General to appoint Assistant Secretaries-General (there were no Under-Secretaries-General at that time) and other officials and employees, and to "make such changes in the initial structure [of the Secretariat] as may be required to the end that the most effective distribution of responsibilities and functions among the units of the Secretariat may be achieved" (resolution 13 (I), para. 4).

7. However, the transfer of resources resulting from a restructuring exercise requires General Assembly approval as the structure of the Secretariat is, in effect, determined by the programme budget of the Organization, which is proposed by the Secretary-General and adopted by the General Assembly (articles III and IV of the Financial Regulations and Rules). In this regard, financial regulation 4.5 provides: "No transfer between appropriation sections may be made without authorization by the General Assembly."[23] Financial rule 104.4 provides that:

> "The General Assembly, in its biennial appropriation resolutions, has delegated to the Advisory Committee [on Administrative and Budgetary Questions] the authority contained in regulation 4.5 to make transfers between appropriation sections of the programme budget. When such a delegation exists, requests shall be made to that Committee for authority to make transfers between appropriation sections."

In addition, regulation 5.2 of the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation (ST/SGB/PPBME/Rules/1 (1987)) ("PPBME Rules") states:

> "An entire subprogramme shall not be reformulated nor a new programme introduced in the programme budget without the prior approval of an intergovernmental body and the General Assembly. The Secretary-General may make such proposal for review by the relevant intergovernmental body if he considers that circumstances so warrant."

Rule 105.1 (e) of the PPBME Rules further states that:

> "Changes in the programme of work requiring net additional resources may not be implemented before they are approved by the General Assembly".

Therefore, the authority of the Secretary-General to restructure the Secretariat is limited by the budget of the Organization.

8. In this connection, the Legal Counsel, in an opinion addressed to the Controller dated 30 September 1975, concluded that the General Assembly, in approving the regular budget, approves the number of established posts at the various levels as indicated in the reports of the Fifth Committee, rather than approving only the global sums expressed in the resolutions. From the above, the Office of Legal Affairs concluded in the 1982 Comprehensive Study that:

". . . while the Secretary-General has certain freedom in moving posts horizontally (intra-sectionally on his own authority, inter-sectionally with the concurrence of the Advisory Committee), from one office or department to another, he can only do so within the total number of posts indicated in the budget document whose totals were approved by the General Assembly; *he cannot on his own authority create or upgrade posts.*" (1982 Comprehensive Study, para. 28, emphasis added.)

These Regulations and Rules demonstrate that (*a*) the Secretary-General may move posts within an "appropriation section" on his own authority, (*b*) he may move posts between "appropriation sections" with the concurrence of the Advisory Committee, and (*c*) the creation and abolition of *posts* requires General Assembly approval. As a practical matter, in cases of any significant transfer of resources, the Secretary-General seeks the approval or acquiescence of the General Assembly. However, as noted in paragraph 20 of the Advisory Committee report (A/47/7/Add.1) of 7 October 1992 and paragraph 36 of the report (A/47/7/Add.15) of 24 March 1993, it appears that in recent years the authority for most transfers of resources has been done on an ex posto facto basis, through the submission of expenditure reports on each "section" after the accounts are closed (see para. 25 below).

9. A recent example of the Secretary-General's practice in restructuring the Secretariat is the exercise launched by Secretary-General Boutros-Ghali in 1992.[24] As indicated below, the first phase of the 1992 restructuring was introduced and implemented by the Secretary-General and was approved by the General Assembly after the changes were implemented (see para. 13 below).[25]

10. On 7 and 13 February 1992, as a first phase in the process of restructuring and streamlining the Secretariat, the Secretary-General announced certain changes in the structure of the Secretariat. The release announced, inter alia, the abolition, consolidation and establishment of departments and offices and changes in top-echelon appointments.

11. In his note to the General Assembly dated 21 February 1992, entitled "Restructuring of the Secretariat of the Organization" (A/46/882), the Secretary-General reported on the regrouping and consolidation of departments and offices that he had announced previously.

12. The establishment of new departments and changes in the top echelon, both of which became effective as of 1 March 1992, were announced by Secretary-General's bulletins ST/SGB/248 and ST/SGB/249 of 16 March 1992 (see annexes 2a and b).[26]

13. By its resolution 46/232 of 2 March 1992 (see annex 3), the General Assembly, inter alia, approved the launching by the Secretary-General of a further process of restructuring and streamlining of the Secretariat; took note of the actions undertaken by the Secretary-General as set out in his note of 21 February 1992 (A/46/882); set forth the aims of the restructuring; and requested the Secretary-General to submit to the Assembly at the earliest opportunity a report on the programmatic impact as well as the financial implications of organizational changes involved in his initiatives.

14. The restructuring initiated by Secretary-General Boutros-Ghali was endorsed by the General Assembly in subsequent resolutions; see, for example, resolutions 47/212 A and B of 23 December 1992 and 6 May 1993, respectively (see annexes 4a and b).

15. By those resolutions, the General Assembly, while approving and endorsing the restructuring and streamlining of the Secretariat, affirmed its role in the restructuring process. In section II of resolution 47/212 A, the Assembly stated that it:

> "2. *Reaffirm[ed]* the role of the General Assembly with regard to the structure of the Secretariat, including the creation, suppression and redeployment of posts financed from the regular budget of the Organization, and request[ed] the Secretary-General to provide the Assembly with comprehensive information on all decisions involving established and temporary high-level posts, including equivalent positions financed from the regular budget and extrabudgetary resources" (see also resolution 47/212 B, second preambular paragraph).

In section II of resolution 47/212 B, the Assembly stated that it:

> "2. *Emphasize[d]* that the *restructuring of the Secretariat should be carried out in accordance with the guidance given by the General Assembly*, and with the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation and the Financial Regulations and Rules of the United Nations" (emphasis added).

16. As requested by the General Assembly in paragraph 5 of its resolution 46/232 (see para. 13 above), the Secretary-General, by his report dated 31 July 1992 (A/C.5/47/2) (see annex 5), submitted revised estimates for the programme budget for the biennium 1992-1993 to reflect the restructuring of the Secretariat.

17. Subsequently, in section II of its resolution 47/212 A, the General Assembly, inter alia, regretted that the report of the Secretary-General on revised estimates did not include information on the programmatic aspects and implications of the restructuring as requested in resolution 46/232; requested him to provide the Committee for Programme and Coordination and other concerned intergovernmental bodies with all relevant information on the programmatic aspects and consequences of the restructuring of the Secretariat in the areas of their competence for their comments and recommendations; and took note of the current revised estimates on the understanding that, in early 1993, the Secretary-General would submit revised estimates of the programme budget for the biennium 1992-1993 (see annex 4a).

18. The Secretary-General, in the requested report (A/C.5/47/88), submitted to the General Assembly revised estimates for the programme budget for the biennium 1992-1993. By section I of its resolution 47/212 B, the General Assembly approved revised appropriations for the biennium 1992-1993 as a consequence of the restructuring (annex 4b).

(b) *Requirement for Secretary-General's bulletins to implement restructuring of the Secretariat*

19. ST/SGB/100 of 14 April 1954 (see annex 6) states that Secretary-General's bulletins shall establish, inter alia, the organizational structure of the Secretariat.[27]

20. The procedure to establish changes in the structure of the Secretariat is set out in Secretary-General's bulletin ST/SGB/150/Rev.1 of 1 June 1977, entitled "Changes in the functions and organization of Secretariat units" (see annex 7). The bulletin provides, inter alia, that the "establishment of new major organi-

zational units shall be *announced* in the form of Secretary-General's bulletins . . . [and] appropriate statements relating to the new unit must be incorporated *subsequently* in the Organization Manual" and that "[c]hanges in functions and organization [which include the establishment of a new organizational unit] *shall take effect only after review of the draft revised text and justification for the change, and approval by the Secretary-General*" (annex 7, paras. 1 (*b*) and 5, emphasis added). Thus, it is clear that the establishment and regrouping of new departments/offices require issuance of Secretary-General's bulletins.

21. The Organization Manual (ST/SGB/Organization), dated 8 August 1996, entitled "A Concise Guide to the Functions and Organization of the Secretariat—Introduction" (the "Manual"),[28] which superseded document ST/SGB/Organization of 8 June 1989, provides that the Organization Manual covers the functions and organization of the units within the Secretariat for which "the Secretary-General is directly responsible to the General Assembly" (Manual, para. 2) and the Manual "describes the functions and organization of those departments/offices whose work programmes are financed fully or partly from the regular budget of the United Nations" (ibid., para. 5). The Organization Manual is published in loose-leaf form for each department/office and "[t]he responsibility for initiating the revision of texts of the Manual following any changes that have been authorized lies with the department/office concerned" (ibid., para. 10).

22. In this connection, as noted in paragraph 12 above, the extensive restructuring announced by the Secretary-General in February 1992 was reflected in Secretary-General's bulletins ST/SGB/248 and ST/SGB/249 (see annex 2a and b).

23. As far as the Organization Manual is concerned, the recent practices seem to indicate that there is often a long delay in the issuance of a revision to the Organization Manual for a newly established department/office. For example, the Manual section for the Department of Political Affairs (ST/SGB/Organization, Section: DPA), which was established in March 1992, was issued on 15 February 1996, four years after its establishment.[29]

Analysis

(a) *Power of the Secretary-General to restructure the Secretariat*

24. It goes without saying that the General Assembly, as legislature, can limit the authority of the Secretary-General. From a purely legal point of view, there is no question about this. However, it must be realized that the requirement of a prior Assembly resolution to make changes in the Secretariat would have a very negative effect on its efficiency; even limited changes might take months, perhaps more than a year, to implement. In this respect, it must be emphasized that the structure of the Secretariat is designed for one purpose, namely to deliver the programmes approved by the General Assembly in adopting the budget of the Organization. From a managerial point of view it is therefore obvious that the Secretary-General, as the Chief Administrative Officer of the Organization, must have a considerable leeway to take action as necessary to rationalize and streamline the Secretariat functions. Recognition of this need is also demonstrated by the actions taken by the Secretary-General in 1992 and the way these actions were treated by the General Assembly.

25. Notably, the Secretary-General, in his report to the Fifth Committee on revised estimates for the programme budget for the biennium 1992-1993

(A/C.5/47/2) of 31 July 1992 (see annex 5), expressed the need for flexibility in his authority to transfer resources. In paragraphs 16 to 25 of the report, he stated, inter alia, that the current mechanisms for adjusting staff resources, under which transfers of posts and resources required the approval of the General Assembly or concurrence of the Advisory Committee in between sessions of the Assembly, "do not permit a rapid response by the Secretary-General to changing needs and circumstances" (see annex 5, para. 18). The Secretary-General stated further that he:

> "believes that efficient use of the resources appropriated by the General Assembly requires, inter alia, a certain degree of flexibility in the management of resources. The fundamental principles of programme budgeting, including the new features added by the reforms initiated through resolution 41/213, are hampered by an excessive rigidity in the administration of the human and financial resources put at the disposal of the Secretary-General for the fulfilment of the mandates adopted by the General Assembly". (See annex 5, para. 21.)

The Secretary-General further indicated that, in view of the above, an analysis was made of the staff resources available to departments affected by the restructuring and a limited number of posts were identified for redeployment, and that decisions concerning redeployment of those identified posts "would be taken in relation to the immediate needs of the various parts of the Secretariat. *The Assembly will be informed accordingly.*" (See annex 5, para. 21, emphasis added.)

26. The authority of the Secretary-General vis-à-vis the General Assembly brings to the forefront the issue of the rational administration of the Organization. A certain parallel can be drawn to the principal issue of separation of powers between a legislature and an executive. It goes without saying that it is natural for the General Assembly and the Secretary-General, who in effect is the personification of the Secretariat, to establish their own authority in accordance with the powers entrusted to them by the Charter, although, obviously, there is a grey area in the middle. However, infringement by either side on the functions of the other would have a serious negative effect on the functioning of the Organization. In our view the time has come for the Secretary-General to further clarify and assert his authority under the Charter of the United Nations vis-à-vis the General Assembly.[30] We also believe that the stance of the Secretary-General should be that the Assembly should recognize that, while it alone has the power to establish and modify programmes, the Secretary-General is accountable to it under Articles 97 and 98 of the Charter for programme delivery. Therefore, he needs to be able to organize the Secretariat in an appropriate manner to carry out those mandated programmes. The Secretary-General should note that he must, of course, report to the Assembly and take account of its views. However, the Secretary-General should urge the Assembly not to cripple his management authority.

27. In this regard, we consider it important that relevant regulations and rules of the Organization, e.g., the Financial Regulations and Rules, should not be interpreted to limit the authority and responsibility of the Secretary-General to streamline and rationalize the structure of the Secretariat. In other words, the *Secretary-General should take the position that it is crucial that he have the authority to organize the Secretariat to deliver the programmes mandated by the General Assembly.*[31]

28. Certainly, there are limits in the Secretary-General's authority to restructure the Secretariat. For example, the Secretary-General cannot, on his own

authority, abolish a department/office which is governed by a General Assembly resolution which sets out the precise provisions regulating the department/office in question, e.g., the Office of Internal Oversight Services. However, when it comes to the practical manner in which the Secretariat functions, the Secretary-General must be able to make changes and utilize the staff as necessary to implement Assembly-mandated programmes. Consequently, he must have the authority to transfer resources accordingly, without prior authorization by the Assembly, while respecting the role of the General Assembly under the Charter. This can be accomplished by recognizing the fundamental authority of the Secretary-General, under Articles 97 and 101 of the Charter, to administer the Secretariat and manage the staff, including transfer of staff, subject to the following limits:

(*a*) The Secretary-General cannot create or upgrade posts without Assembly authorization;

(*b*) The Secretary-General must, as soon as practicable, present to the General Assembly for its approval a budget proposal reflecting the changes in the Secretariat as a result of a restructuring exercise;

(*c*) The Secretary-General cannot reformulate entire subprogrammes or introduce new programmes in the programme budget without the prior approval of the General Assembly; *see* PPBME rule 105.2 (*e*).[32]

(b) *Requirement for Secretary-General's bulletins to implement restructuring of the Secretariat*

29. As discussed in paragraphs 19 to 23 above, the reform of the Secretary-General's bulletins and administrative instructions is in progress under the initiative of the Office of Legal Affairs and at the request of the Secretary-General. The revised Secretary-General's bulletin entitled "Procedures for the promulgation of administrative issuances", which will supersede Secretary-General's bulletin ST/SGB/100 of 14 April 1954 (see annex 6), Secretary-General's bulletin ST/SGB/150/Rev.1 of 1 June 1977 (see annex 7) and administrative instruction ST/AI/226 of 18 February 1973 and all amendments thereto, is expected to be issued at the end of April 1997. In addition, the issuance of a Secretary-General's bulletin entitled "Information circulars" is expected at the same time. A revised Secretary-General's bulletin entitled "Organization of the Secretariat", which will supersede ST/SGB/Organization of 8 August 1996 and administrative instruction ST/AI/409 of 4 August 1996, is expected to be issued in May 1997.

30. The proposed reform of the Secretary-General's bulletins will, inter alia, clarify the hierarchy of administrative issuances and establish a proper legal framework for the usage of administrative issuances.

Conclusion

31. The actions taken by the Secretary-General in the 1992 restructuring of the Secretariat are a reflection of the need for flexibility in his authority to manage the Secretariat and its human resources in order to carry out Assembly-mandated programmes. As discussed in paragraph 25 above, this need was expressed by the Secretary-General in 1992. As far as the organizational units are concerned, the creation and regrouping of departments/offices require decisions which are made through the issuance of Secretary-General's bulletins.

List of annexes

Annex 1	General Assembly resolution 13 (I) of 13 February 1946
Annex 2a	Secretary-General's bulletin ST/SGB/248 dated 16 March 1992
2b	Secretary-General's bulletin ST/SGB/249 dated 16 March 1992
Annex 3	General Assembly resolution 46/232 of 2 March 1992
Annex 4a	General Assembly resolution 47/212 A of 23 December 1992
4b	General Assembly resolution 47/212 B of 6 May 1993
Annex 5	Report of the Secretary-General to the Fifth Committee dated 31 July 1992 on revised estimates for the proposed programme budget for the biennium 1992-1993 (A/C.5/47/2) (pp. 1-15 only)
Annex 6	Secretary-General's bulletin ST/SGB/100 dated 14 April 1954
Annex 7	Secretary-General's bulletin ST/SGB/150/Rev.1 dated 1 June 1977

22 April 1997

15. INSTITUTIONAL ASPECTS OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Memorandum to the Senior Legal Officer, Office of the Secretary-General, UNCTAD

1. This responds to your facsimile of 13 May 1997 on the above subject, seeking our legal advice regarding several questions arising in the light of the decisions concerning the restructuring of the intergovernmental machinery of UNCTAD adopted on 27 May 1996 by the ninth session of the United Nations Conference on Trade and Development (UNCTAD IX) and incorporated in section III of the Midrand Declaration. The questions raised by you are the following:

—Does the General Assembly by its resolution 49/130 of 19 December 1994 incorporate the Intergovernmental Working Group of Experts on the International Standards of Accounting and Reporting into the intergovernmental machinery of UNCTAD?

—Do the Intergovernmental Group of Experts on Restrictive Business Practice and the Intergovernmental Working Group of Experts on the International Standards of Accounting and Reporting continue to exist after UNCTAD IX?

—Can the two aforementioned bodies be considered "expert meetings"?

—Should these two bodies be counted among the 10 expert meetings referred to in paragraph 114 of the Midrand Declaration?

—Can the Trade and Development Board establish bodies other than those referred to in paragraph 108 (Commissions) and paragraph 114 (expert meetings) of the Midrand Declaration?

2. In the opening paragraph of the facsimile you point out that you seek clarification on the above questions at the request of the President of the Trade and Development Board. This Office gives formal legal opinions only at the request of intergovernmental bodies of the Organization or at the request of United

Nations offices or programmes. Therefore, we respond to your questions on an informal basis and would appreciate your conveying this understanding to the President of the Board.

Midrand Declaration and its effect on the institutional structure of UNCTAD

3. By its resolution 1995 (XIX) of 30 December 1964, the General Assembly established UNCTAD as one of its subsidiary organs and decided that institutionally UNCTAD would consist of the United Nations Conference on Trade and Development (the Conference), the Trade and Development Board (the Board) and a full-time secretariat, functioning within the United Nations Secretariat and headed by the Secretary-General of the Conference, who is appointed by the Secretary-General of the United Nations and confirmed by the General Assembly. Paragraph 23 of the resolution defines the functions of the Conference and the Board, including the authority of the latter to establish such subsidiary organs as may be necessary for the effective discharge of its functions.

4. The principal functions of the Conference as formulated in General Assembly resolution 1995 (XIX) are quite broad. However, they do not empower the Conference to restrict the right of the Board to establish its subsidiary organs or to abolish the existing subsidiary organs of the Board.

5. According to the Midrand Declaration, the Conference, recognizing the need to revitalize and remodel the intergovernmental machinery of UNCTAD, decided to restructure it in accordance with the future work programme of UNCTAD (paras. 101 and 105). To that end, the Conference approved a new structure of the intergovernmental machinery which, inter alia, provides that "the Trade and Development Board can set up subsidiary bodies, known as Commissions . . . it can create new bodies and abolish existing ones, on the basis of the priorities of the organization and the work accomplished" (para. 107 (*f*)). The Conference further decided that at present the Board should have three such commissions: the Commission on Investment, Technology and Related Financial Issues; the Commission on Trade in Goods and Services, and Commodities; and the Commission on Enterprise, Business Facilitation and Development. Each commission may convene expert meetings of short duration, not exceeding three days. According to the Declaration, the total number of such meetings should not exceed 10 per year (paras. 108 and 114).

6. In a separate paragraph the Conference also confirmed the convening of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting.

7. It appears from the foregoing that the provisions of the Midrand Declaration concerning the power of the Board to establish its subsidiary organs and to regulate their activities are to some extent at variance with the relevant provisions of General Assembly resolution 1994 (XIX) concerning the establishment of UNCTAD. It is our understanding, however, that given the fact that the General Assembly in its resolution 51/167 of 16 December 1996 welcomed the adoption by UNCTAD of far-reaching reforms, as embodied in the Midrand Declaration, the power of the Board to establish its subsidiary organs is currently regulated as defined in the Midrand Declaration.

8. It should be observed at the same time that since UNCTAD is an organ of the General Assembly and the Board is required to report to the Assembly through the Economic and Social Council, the General Assembly has the author-

ity to establish subsidiary bodies of UNCTAD in addition to those referred to in the Midrand Declaration.

Intergovernmental Working Group of Experts on the International Standards of Accounting and Reporting

9. The above-named Working Group was established by the Economic and Social Council (resolution 1982/69 of 27 October 1982), acting on the recommendation of the Commission on Transnational Corporations. Members of the Working Group are elected by the Council. The most recent elections were held on 1 May 1997. Under the resolution of the Council, the Working Group is to report to the Commission on Transnational Corporations. The latter is required to review the work of the Working Group, including its mandate and achievements. Following the integration of the Commission (under the name of the Commission on International Investment and Transnational Corporations) into the institutional machinery of UNCTAD pursuant to a decision by the Economic and Social Council (resolution 1994/1 of 14 July 1994) endorsed by the General Assembly (resolution 49/130 of 19 December 1994), the Commission retained its authority over the work of the Working Group.

10. According to the Midrand Declaration, the Commission is now incorporated into a newly created Commission on Investment, Technology and Related Financial Issues. As noted above, the Midrand Declaration in a separate provision confirms the convening of the Working Group.

11. In the light of the foregoing, we are of the view that, since General Assembly resolution 49/130 clearly states that, after its transfer to UNCTAD, the newly named Commission on International Investment and Transnational Corporations should continue to keep under review the work of the above-named Working Group, the Assembly by that resolution also in effect incorporated the Working Group into the institutional machinery of UNCTAD. Consequently, we answer your first question in the affirmative.

12. With reference to your second question, we would like to point out that, since the Working Group has been established by the Economic and Social Council, it can be dissolved only by a decision of the latter. So far the Council has not taken such a decision. Quite the contrary, as noted above, on 1 May 1997 it elected new members of the Working Group. Thus, the Working Group continues to exist.

13. As to the question of whether meetings of the Working Group should be considered expert meetings and counted among the 10 expert meetings referred to in paragraph 114 of the Midrand Declaration, we are of the view that since the Working Group is an expert body subordinate to one of the commissions of the Board, its meetings can be considered expert meetings within the meaning of paragraph 114 of the Midrand Declaration. However, while the convening of expert meetings according to paragraph 114 is at the discretion of the Commission concerned, the continuation of the Working Group is mandatory. This requirement is reflected in paragraph 115 of the Midrand Declaration, which singles out the Working Group for special treatment.

Intergovernmental Group of Experts on Restrictive Business Practices

14. The Group of Experts was established by the Trade and Development Board in its resolution 228 (XXII) of 20 March 1981 pursuant to a recommendation of the United Nations Conference on Restrictive Business Practices, which

had been convened in 1980 by the General Assembly. The recommendation of the Conference was endorsed by the General Assembly in its resolution 35/63 of 5 December 1980.

15. The Conference on 22 April 1980 adopted "The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices" (Set of Principles and Rules), which states in section G that international institutional machinery is to be established and that an Intergovernmental Group of Experts on Restrictive Business Practices operating within the framework of a Committee of UNCTAD should act in that capacity. The Set of Principles and Rules provides, inter alia, that the Group should serve as a forum for multilateral consultations, discussions and exchanges of views between States on matters related to the Set of Principles and Rules and should make proposals to follow-up conferences on the improvement and further development of the Set of Principles and Rules.

16. Since 1980, The General Assembly has convened two follow-up conferences on the Set of Principles. The most recent, held in November 1995, made a number of recommendations regarding the working methods of the Group of Experts and proposed to the General Assembly to change the title of the Group to "Intergovernmental Group of Experts on Competitive Law and Policy". To date, neither the General Assembly nor the Trade and Development Board has acted on these recommendations of the Third Conference.

17. It appears from the above that, in the absence of any decision by the Board regarding the dissolution of the Group of Experts and taking into account the recommendations of the Third Conference emphasizing the importance of the work of the Group within the intergovernmental machinery of UNCTAD (para. 13 of the Conference resolution), we believe that the Group of Experts continues to exist after the adoption of the Midrand Declaration.

18. The Group of Experts is an expert body. At the time of its establishment it was decided that the Group should operate within the framework of the Committee on Manufactures of the Board (General Assembly resolution 35/63 of 5 December 1980, para. 3, and Board resolution 228 (XXII), para. 2). In the light of the foregoing, we are of the opinion that meetings of the Group should be considered expert meetings within the meaning of paragraph 114 of the Midrand Declaration and should be counted among the 10 expert meetings referred to in that paragraph.

Power of the Trade and Development Board to establish subsidiary bodies

19. As noted above, the Midrand Declaration, which received the approval of the General Assembly, states in paragraph 107 (*f*) that the Board "can set up subsidiary bodies, known as Commissions. It will set clear and specific terms of reference for the Commissions and examine and evaluate their work". The Declaration further provides in the same paragraph that the Board "can create new bodies and abolish existing ones, on the basis of the priorities of the organization and of the work accomplished". The reference to "new bodies" may be interpreted to imply that the power of the Board to establish new organs or bodies is not limited to Commissions. It should be observed, however, that the provisions of the Midrand Declaration concern modus operandi, frequency and duration of meetings of the Board, commissions and expert meetings, which are subsidiary organs of commissions. Thus, the Midrand Declaration leaves no room for the es-

tablishment by the Board of any subsidiary bodies other than commissions, and in effect limits its right to set up subsidiary bodies.

29 May 1997

16. Participation by Yugoslavia in international conferences—General Assembly resolutions 47/1 and 47/229

Letter to the Programme Management Specialist, Regional Bureau for Europe and the Commonwealth, United Nations Development Programme

1. This is in reply to your memorandum of 31 July 1997, which was received by this Office on 4 August. You ask whether, in the light of my memorandum of 21 July 1997 concerning the participation of representatives of the Federal Republic of Yugoslavia in the UNDP International Conference on Governance for Sustainable Growth and Equity, Yugoslav officials can be invited to participate in a number of events mentioned in your communication. You suggest that the events mentioned therein have been "initiated and organized by senior United Nations and UNDP officials without any specific instructions from the Executive Board", and thus would not fall under the restrictions provided for in General Assembly resolutions 47/1 of 22 September 1992 and 47/229 of 29 April 1993.

2. The General Assembly, by its resolutions 47/1 and 47/229, decided that the Federal Republic of Yugoslavia shall not participate in the work of the General Assembly and of the Economic and Social Council, respectively. The considered views of the Secretariat on the practical consequences of resolution 47/1 are set out in a letter dated 29 September 1992 by the then Legal Counsel, Mr. Fleischhauer, to the Permanent Representatives of Bosnia and Herzegovina and Croatia. Mr. Fleischhauer stated that, while the resolution did not terminate or suspend Yugoslavia's membership in the United Nations, it affected its participation in the work of the General Assembly. In particular, he stated that "representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) can no longer participate in the work of the General Assembly, its subsidiary organs, or conferences and meetings convened by it". Those considerations can be applied, pursuant to resolution 47/229, to the work of the Economic and Social Council, its subsidiary organs, and conferences and meetings convened by it.

3. The Secretariat has consistently applied the aforementioned policy set out in the above resolutions. Consequently, Yugoslavia has not participated either as a full member or as an observer in the meetings of the General Assembly and its Main Committees, or of the Economic and Social Council and its subsidiary organs such as the functional and regional commissions, nor has it been invited to participate in the numerous conferences convened by the General Assembly since 1992, such as the World Conference on Human Rights (Vienna, 1993).

4. Coming now to your queries, I will thus offer only some general observations on the question of whether the relevant General Assembly resolutions may be applicable to the events in question (the two workshops and the conference referred to on your telefax).

5. The two determining elements emerging from the clarifications provided by Mr. Fleischhauer in his letter are whether a meeting or conference has been convened or organized by the General Assembly, the Economic and Social

Council or a subsidiary organ thereof; and whether participants are invited in view of their representing their countries rather than as individuals.

6. As to the first question, it appears that the resolutions in question should be interpreted in the light of their object and purpose, and thus apply not only to meetings and conferences directly convened by the intergovernmental organs referred to in resolutions 47/1 and 47/229, but also to individual meetings and conferences the organization and convening of which, even though originating from the Secretariat, have been approved or endorsed by such organs. If, however, the events in question have been organized and convened by the Secretariat within its function to implement general decisions taken or programmes established by those organs, then the specific events should not be considered as "convened or organized" by the latter and thus would not fall within the purview of resolutions 47/1 or 47/229.

7. In the second respect, it was the clear intent of the General Assembly to exclude representatives of the Federal Republic of Yugoslavia from the meetings and conferences referred to above. However, the applicability of that decision needs to be determined in the light of its object and purpose. While it is obvious that the decision applies to delegates accredited by the Government of the Federal Republic of Yugoslavia, it is our view that it also applies to any person holding public office in the Federal Republic of Yugoslavia who has been invited in view of his or her position in that country rather than in an exclusively personal capacity as an expert or a trainee. If nationals of the Federal Republic of Yugoslavia who do not hold public office are invited to a meeting in their exclusive personal capacity, it seems that this will not be inconsistent with the aforementioned resolutions.

8. The foregoing observations are of a strictly legal nature and are based on the literal interpretation of the resolutions of the General Assembly and the advice provided by Mr. Fleischhauer. At the same time, it should not be overlooked that those decisions lay out a clear policy of the Organization to exclude the Federal Republic of Yugoslavia from a broad range of United Nations activities. It should also be kept in mind that the presence of representatives of the Federal Republic of Yugoslavia has been successfully challenged by other States also in meetings which were not directly affected by the decisions of the General Assembly, e.g., meetings of States parties to a number of treaties deposited with the Secretary-General. The Secretariat has occasionally been criticized for having invited Yugoslav representatives to those meetings. The Secretariat should thus carefully evaluate also, in the light of the aforementioned policy, of the relevant practice and of the specific nature of the United Nations activities concerned, whether it is appropriate to extend an invitation to nationals of the Federal Republic of Yugoslavia.

11 August 1997

17. Practice of the United Nations in cases of challenged representation of a Member State—General Assembly resolution 396 (V) of 14 December 1950

Memorandum to the Under-Secretary-General for Political Affairs

Introduction

1. This is in reply to your memorandum of 5 August 1997, with attachments, in which you seek our advice on the legal aspects of the current situation in Cambodia, in order to advise the Secretary-General on the position that the Secretariat should take in this respect.

2. The question of accreditation involves two interrelated aspects: accreditation to the General Assembly and other United Nations organs; and accreditation to the United Nations as an organization. The events of 5-6 July 1997 and their subsequent developments have produced a situation of confusion about the status of the Cambodian authorities, as well as contradictory requests addressed by those authorities to the Secretary-General and conflicting information in terms of the representation of Cambodia in the United Nations. In this situation, account must be taken of General Assembly resolution 396 (V) of 14 December 1950, by which the Assembly, faced at that time with the conflict about the representation of China, adopted the following guidelines:

> "*The General Assembly*,
>
> ". . .
>
> "1. *Recommends* that, whenever more than one authority claims to be the Government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case;
>
> "2. *Recommends* that, when any such question arises, it should be considered by the General Assembly . . .
>
> "3. *Recommends* that the attitude adopted by the General Assembly . . . concerning any such question should be taken into account in other organs of the United Nations and in the specialized agencies".

Previous practice of the United Nations

3. This policy decision by the Assembly established the way for dealing with cases of competing or challenged representation of a Member State. We wish to recall a few relevant cases by way of illustration, in which competing authorities purported to be the legitimate government of a certain country, or the credentials of the representative of a State were challenged by another State in favour of a competing regime:

(*a*) *Congo*. The Congo (Leopoldville) was admitted to membership on 20 September 1960. As a result of the political instability within the country, two rival delegations were appointed, respectively, by the Head of State and the Head of Government (who had mutually "deposed" each other), to represent the Congo at the fifteenth session of the General Assembly as well as before the Security Council. The Security Council, at its 899th meeting, held on 14 September 1960, was confronted with letters from the Head of State and the Head of Government

appointing different delegations to participate in the proceedings of the Council. This took place before the Assembly could deal with the matter, and thus the Council could not rely on an Assembly decision on credentials. The Council voted on a proposal by Poland to accept the credentials issued by the Prime Minister, which was rejected. No representative of the Congo was invited to address the Council.

The General Assembly decided, on the proposal of its President, to refer the question of the representation of the Congo to the Credentials Committee, which awaited a clarification of the situation in the Congo and did not report back to the Assembly until the middle of November 1960. In that report, the Committee recommended acceptance of the credentials issued by the Head of State, a recommendation adopted by the Assembly (resolution 1498 (XV) of 22 November 1960). It should be noted that the initial decision of the General Assembly resulted in leaving the Congolese seat vacant; the displacement of an incumbent was not at issue.

(*b*) *Dominican Republic.* At the 1207th meeting of the Security Council, held on 13 May 1965, immediately prior to the beginning of its debate on the situation in the Dominican Republic, the Council was faced with competing requests by two persons to be heard as the representative of the Government of the Dominican Republic. One of the competing representatives was the current Permanent Representative of the Dominican Republic to the United Nations, while the other based his authority on a cable signed by the Minister for Foreign Affairs of that country. The Secretary-General submitted a report pursuant to rule 15 of the provisional rules of procedure of the Security Council, in which he stated that he was not in a position to formulate any opinion on the adequacy of the conflicting credentials received. After a lengthy procedural debate, the Council decided to invite both representatives to make statements under rule 39, i.e., as "other persons . . . competent . . . to supply it with information", and not as representatives of a Member State. No competing credentials from the Dominican Republic were submitted to the General Assembly at its subsequent session, so the Assembly never considered the matter.

(*c*) *Kampuchea.* As in the case of the Congo, the Security Council was the first United Nations organ to be faced with the question of the representation of Kampuchea after the Vietnamese invasion. On 3 January 1979, the Council was requested by the Foreign Minister of Democratic Kampuchea to hold an urgent meeting to consider the situation in that country. The Council received requests from the delegation of Democratic Kampuchea, as well as from the President of the Kampuchean People's Revolutionary Council, for participation in the Council's debate pursuant to Article 31 of the Charter. At the 2108th meeting of the Council, held on 11 January 1979, the debate focused on the two competing requests for participation in the discussion under rule 37 of the provisional rules of procedure of the Council. The Secretary-General was requested to submit a report on the credentials of the two delegations pursuant to rule 15. He stated that the credentials of Democratic Kampuchea were considered in order, on the basis of the approval, at the thirty-third session of the General Assembly, of credentials that had been issued by the same authorities. The Council approved the report of the Secretary-General without a vote and invited the representative of Democratic Kampuchea to participate in the proceedings of the Council.

As indicated, the credentials of the delegation of Democratic Kampuchea had been approved by the General Assembly at its thirty-third session, by its reso-

lution 33/9 A of 3 November 1978. The credentials were not formally challenged at the resumed thirty-third session in 1979, although several delegations reserved their position on the representation of Kampuchea. Consequently, the representatives of Democratic Kampuchea continued to be seated in the Assembly and its Main Committees. At its thirty-fourth session, the General Assembly received credentials issued by Democratic Kampuchea as well as by the People's Republic of Kampuchea. The Credentials Committee met to consider exclusively the credentials of Democratic Kampuchea, which had been challenged by Viet Nam, and recommended their approval by the Assembly. India proposed that, instead of approving the report of the Credentials Committee, the Assembly should suspend its consideration of it and keep the seat of Kampuchea vacant. After some procedural manoeuvres, the Assembly voted first on the recommendation of the Credentials Committee and adopted it, thereby accepting the credentials of the delegation of Democratic Kampuchea for that session. Attempts made at subsequent sessions to introduce an amendment to similar recommendations of the Credentials Committee, which amendments would have excluded the credentials of Democratic Kampuchea from the Assembly's approval of the report of the Credentials Committee, were defeated at each session.

(*d*) *Afghanistan.* At the first meeting of the Credentials Committee of the fifty-first session of the General Assembly, held on 23 October 1996, the Legal Counsel reported that he had received formal credentials signed by President Rabbani, who had also signed the credentials accepted at the fiftieth session, as well as communications issued by the "Ministry for Foreign Affairs, Kabul, Afghanistan", challenging the legitimacy of those credentials but not submitting credentials for an alternative delegation. The Committee, at its 1st as well as at its 2nd meeting, held on 12 December 1996, deferred a decision on the credentials of Afghanistan. The General Assembly approved the reports of the Credentials Committee by resolutions 51/9 A and B of 29 October and 17 December 1996, respectively. As a result of those decisions and pursuant to rule 29 of the rules of procedure of the General Assembly, the delegates representing the Rabbani Government continue to exercise their rights fully as representatives of Afghanistan unless and until the General Assembly decides otherwise.

(*e*) *Sierra Leone.* The elected Government of President Ahmad Tejan Kabbah was overthrown on 25 May 1997 in a military coup d'état. The Security Council, in three presidential statements made on 27 May (S/PRST/1997/29), 11 July (S/PRST/1997/36) and 6 August 1997 (S/PRST/1997/42), condemned the military junta, requested it to restore unconditionally the legitimate Government and supported regional and subregional initiatives to put an end to the current situation and restore constitutional order. The Chairman of the "Armed Forces Revolutionary Council and Head of State", Major Johnny Paul Koroma, wrote to the Secretary-General on 6 and 9 June 1997, inter alia, notifying him of the recall of the Permanent Representative and the Deputy Permanent Representative who remained loyal to the Government of President Kabbah. However, the credentials have not been challenged in the General Assembly. In the light of the foregoing statements by the Security Council, the Secretariat did not take any action on the communications from Major Koroma.

Cambodia

4. Beginning on 5 and 6 July 1997, a number of events took place in Cambodia whose legitimacy under the Cambodian Constitution is questionable. However, although the internal legitimacy of a Government may be a factor taken into

account by States in determining whether to recognize it, the United Nations itself is not in a position to consider the constitutionality of a regime in deciding whether or not to accept persons accredited by it; this is true even if the international community, and indeed the United Nations itself, had a hand in formulating the Constitution, as was indeed the case with Cambodia.

5. The validity of the credentials of the Permanent Representative of Cambodia has not been challenged in the General Assembly, in spite of at least four meetings held since the recent events, including a meeting on 4 August 1997, nor has the question of the credentials of the Cambodian representatives been raised in the Security Council.

6. In recent separate meetings with the Permanent Representative and the Deputy Permanent Representative of Cambodia, we have maintained the line that, in view of the current confused situation in Cambodia, the Secretary-General is not in a position to take account either of the letter sent by the Foreign Minister recalling the Permanent Representative and appointing his Deputy as Chargé d'affaires a.i., or of the letter by Prince Ranariddh, confirming the credentials of the Permanent Representative. We have also advised them that, while awaiting a decision by the General Assembly or an unequivocal indication of the position taken by the international community, no further communications from Cambodian authorities will be published as official documents of the United Nations. However, for the moment, both representatives will continue to be received by the Secretariat.

7. In the light of the foregoing, it is the view of the Office of Legal Affairs that, even if the situation in Cambodia may appear to have been resolved or at least clarified by the turn of events of the past few days, the Secretariat should maintain the line foreseen in the preceding paragraphs, which should be changed only if the General Assembly takes a decision in terms of credentials.

14 August 1997

18. Question whether the Pan American Health Organization (PAHO) could be considered part of the United Nations system—Agreement of 24 May 1949 between WHO and PAHO—Agreement of 23 May 1950 between the Organization of American States and PAHO

Letter to the Counsel of the World Bank

1. This is in response to your two facsimiles dated 6 October 1997 on the above-referenced subject. In your first facsimile, you requested our opinion on whether PAHO would be considered part of the United Nations system. In your second facsimile, you explained your request as follows:

> "by reason of a standard form of contract negotiated between the Bank and the United Nations (and also under the Bank's Consultants' Guidelines), the Bank accords the United Nations (and its specialized agencies) certain benefits when the United Nations is hired as a consultant under Bank-financed contracts. PAHO claims that it should be accorded these benefits accruing from its relationship with the United Nations . . . However, PAHO's links/relationships to the United Nations seem not to be so clear-cut."

2. Your question raises a number of important issues, which would have required the careful review and analysis of the definition of the "United Nations system" in the present context, of the constitutive documents of PAHO and of those establishing its legal relationships with the United Nations and the World Health Organization (WHO). We could not do the careful review and analysis of these issues that we would like, given the urgency you have attached to your request.

3. We had not found, at the time of writing this letter, any express agreement or other formal arrangement between the United Nations and PAHO. Our preliminary opinion on this matter, as set out in paragraph 4 below, is based on the information provided in your facsimiles and our initial review of the relevant provisions of the Basic Documents of WHO and PAHO, in particular the following:

(*a*) Chapter XI of the Constitution of WHO, which provides that the WHO Assembly may establish regional organizations to meet the special needs of particular areas, that each such regional organization shall be an integral part of WHO and shall consist of a regional committee and a regional office (articles 44-46) and that the Pan American Sanitary Organization[33] shall in due course be integrated with WHO as soon as possible through common action based on mutual consent of the competent authorities expressed through the organizations concerned (art. 54);

(*b*) The Agreement dated 24 May 1949 concluded between WHO and PAHO, which provides that the Pan American Sanitary Conference and the Pan American Sanitary Bureau, both organs of PAHO, shall serve, respectively, as the Regional Committee and the Regional Office of WHO for the western hemisphere, within the provisions of the Constitution of WHO (art. 2). The Agreement also provides, inter alia, that: (i) health and sanitary conventions and programmes adopted or promoted by the Pan American Sanitary Conference must be compatible with the policy and programmes of WHO (art. 3); (ii) the Director of the Pan American Sanitary Bureau serves as Regional Director of WHO and must be appointed in accordance with articles 49 and 59 of the Constitution of WHO (art. 4); and (iii) a portion of the WHO budget shall be allocated to the regional work of PAHO and shall be managed in accordance with the financial policies and procedures of WHO (arts. 6 and 8);

(*c*) Articles I and II of the Agreement of 23 May 1950 between the Council of the Organization of American States and the Directing Council of PAHO which provide, respectively, that "the Pan American Health Organization is recognized as an inter-American specialized organization" and that "the Pan American Sanitary Organization acts as regional organization of the World Health Organization in the western hemisphere";

(*d*) Rule 5 of the rules of procedure of the Pan American Sanitary Conference, which provides that "all meetings of the Conference shall at the same time be meetings of the Regional Committee of the World Health Organization, except when the Conference is considering constitutional matters, the juridical relations between the Pan American Health Organization and the World Health Organization or the Organization of American States, or other questions relating to the Pan American Health Organization as an inter-American specialized organization".

4. From the organizational, financial and operational arrangements embodied in the above provisions, we would conclude that PAHO, when acting as the regional organization of WHO, serves as the operational arm of WHO, through which the mandated activities of WHO can be pursued in the region. To

that extent, when PAHO is acting as a regional organization of WHO, we believe that there is sufficient basis for the Bank to grant PAHO the benefits it extends to WHO as an organization of the United Nations system.

16 October 1997

NOTES

[1] *Black's Law Dictionary* described "commercial use" as follows: ". . . term implies use in connection with or for furtherance of a profit-making enterprise".

[2] The exceptions to this rule are The Business Council for the United Nations and The Foundation for the Support of the United Nations, which have been allowed to use the modified United Nations emblem alone, without their own logos.

[3] As indicated above, entities authorized continuously to use the United Nations emblem must first be authorized to use the United Nations name in their titles, which is allowed only when such inclusion is genuinely descriptive of the entity, i.e., it is established to support the United Nations or certain of its programmes/activities.

[4] The acceptance of voluntary contributions, gifts or donations by the United Nations is governed by United Nations financial rules 107.5 to 107.7, which have been promulgated under financial regulations 7.2 to 7.4. Regulation 7.2 stipulates expressly that "voluntary contributions, whether or not in cash, may be accepted by the Secretary-General provided that the purposes for which the contributions are made are consistent with the policies, aims and activities of the Organization". Rule 107.7 further specifies that "voluntary contributions, gifts or donations which directly or indirectly involve an immediate or ultimate financial liability for the Organization may be accepted only with the approval of the General Assembly".

[5] For this purpose, the consistent practice of the United Nations has been to include in its commercial contracts a standard clause preventing any entity contracting with the United Nations from using the United Nations name (or its abbreviation), emblem or official seal for any purpose, and from advertising or making public the fact that the entity has provided services to the Organization. The aim of such clauses is to prevent public solicitation for business on the basis of connection with the United Nations.

[6] Mr. George Parker, Chief, News Coverage and Accreditation Section, has indicated that the Department of Public Information does not have a policy or particular practice in respect of the issuance of press releases for donors.

[7] The use of the UNICEF name and emblem on UNICEF products for sale, other than the Greeting Card Operation materials, which are analysed below, such as publications, publicity materials or stamps, are considered to be "official" and "non-commercial".

[8] Article 12 of the UNICEF General Conditions for Services reads as follows:

> "The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with UNICEF, nor shall the Contractor, in any manner whatsoever, use the name, emblem or official seal of UNICEF or the United Nations, or any abbreviation of the name of UNICEF or the United Nations in connection with its business or otherwise."

[9] UNICEF financial regulation 4.3 reads as follows:

> "Contributions to UNICEF may be paid or pledged on an annual basis or for a number of years. They may be pledged to UNICEF at special pledging conferences or in response to a specific request or appeal by the Executive Director or the Secretary-General. They also may be received by UNICEF, unsolicited or as a result of fund-raising activities, through the National Committees for UNICEF and otherwise."

[10] Any contractor involved in the production of the cards and other GCO products does not benefit from the UNICEF name, since the GCO products are sold as "UNICEF materials" and those contractors are prohibited from making public the fact that they are providing

services for UNICEF. On the other hand, National Committees are entitled to retain a percentage of the income raised for UNICEF in order to cover their overhead costs.

[11]Not every country exempts direct donations to UNICEF from tax. For example, the United States does not, but Panama does. National Committees, however, as non-profit organizations, normally enjoy tax-exempt status for donations received by them.

[12]The emblem of National Committees normally includes the UNICEF name and emblem together with the legend "[name of the country] Committee for".

[13]See article VII, paragraph 2, of the UNICEF standard Basic Cooperation Agreement to be concluded with countries which receive UNICEF assistance. Paragraph 2 reads as follows:

> "UNICEF may place on the supplies, equipment and other materials intended for programmes of cooperation such markings as are deemed necessary to identify them as being provided by UNICEF."

[14]See, e.g., paragraph 90 of the United Nations Protection Force Notes for the Guidance of Military Observers and Police Monitors, and paragraph 78 of the United Nations Mission in Haiti Notes for the Guidance of United Nations Civil Police on Assignment.

[15]See, e.g., paragraph 92 (*c*) of the United Nations Protection Force Notes for the Guidance of Military Observers and Police Monitors.

[16]See, e.g., United Nations Protection Force Notes for Guidance of Military Observers and Police Monitors, para. 96, and United Nations Mission in Haiti Notes for Guidance of United Nations Civilian Police on Assignment, para. 84.

[17]Logically the reference should be to staff regulation 1.4, which deals with standards of staff members' conduct. Unfortunately, the text of staff regulation 1.6 with the reference to regulation 1.2 was approved by the General Assembly.

[18]See staff regulations 6.1 and 6.2 and the Regulations of the United Nations Joint Staff Pension Fund. With respect to medical insurance for locally recruited staff, the General Assembly approved at its forty-first session, in accordance with staff regulation 6.2, a Medical Insurance Plan (MIP) for locally recruited staff at designated duty stations away from Headquarters, other than those designated in annex II to the rules governing the Plan (ST/AI/437 of 31 July 1987). We note that the Member State is not listed in annex II.

[19]Exemption from mandatory contribution to national social security schemes has been obtained under, inter alia, the Headquarters Agreements between the United Nations and some Member States. See, e.g., the Headquarters Agreement between the United Nations and the Netherlands for the International Tribunal for the Former Yugoslavia concluded in 1994; the Headquarters Agreement between the United Nations and the Government of Germany for the United Nations Volunteers concluded in 1995; and the Headquarters Agreement between the United Nations and Lebanon for ESCWA concluded in early September 1997. In the case of Switzerland, such exemption was confirmed through an exchange of letters between the Swiss Federal Council and the United Nations in 1994.

[20]This is the level of compensation used in special service agreements.

[21]This is the consistent position of the United Nations on the scope of the term "expert on mission", as set out in more detail in the written statement submitted on behalf of the Secretary-General to the International Court of Justice during the proceedings of the "Mazilu Case". See *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, Pleadings, Oral Arguments, Documents, p. 173 et ss., especially pp. 185-188.

[22]See a comprehensive study prepared by the Office of Legal Affairs dated 26 February 1982 entitled "The Secretary-General's role as Chief Administrative Officer of the United Nations" (hereinafter referred to as "1982 Comprehensive Study"); copy available in the Office of Legal Affairs. See also a memorandum of 23 March 1994 from the Legal Counsel to the Chief of Staff concerning the division of responsibilities between the principal organs of the United Nations; copy also available in the Office of Legal Affairs.

[23]An "appropriation section" is a unit with specific purposes for which appropriations were voted by the General Assembly, e.g., peacekeeping operations, Department of Politi-

cal Affairs and legal activities. In this regard, "appropriation sections" generally correspond to departments/offices.

[24]See also a study dated 30 May 1986 prepared by the Management Advisory Service entitled "Evolution of the major units, and Under-Secretary-General and Assistant Secretary-General posts in the United Nations Secretariat"; copy available in the Office of Legal Affairs. Table 3 of the study shows the evolution, up to 1986, of the major units and top-echelon posts of the Secretariat.

[25]The 1992 restructuring was preceded by a restructuring in 1986. That restructuring was begun in response to General Assembly resolution 41/213 of 19 December 1986. By that resolution, the General Assembly had endorsed the recommendations contained in the report of the Group of High-Level Intergovernmental Experts to review the efficiency of the administrative and financial functioning of the United Nations (*Official Records of the General Assembly, Forty-first Session, Supplement No. 49* (A/41/49)), and the Assembly requested the Secretary-General to implement the recommendations contained therein in the light of the findings of the Fifth Committee and subject to a number of clarifications concerning several recommendations. Recommendation 15 of the report proposed, inter alia, a 15 per cent reduction of the overall number of regular budget posts within a period of three years. A final report on the implementation of resolution 41/213 is contained in the report of the Secretary-General to the General Assembly (A/44/222) of 26 April 1989.

[26]In the view of the Office of Legal Affairs, bulletin ST/SGB/249 represents an example of an inappropriate use of bulletins. An information circular is the appropriate medium for such announcement.

[27]In March 1995, the Legal Counsel proposed that this bulletin should be replaced by a modernized bulletin. This was endorsed by Secretary-General Boutros-Ghali, but no action was taken. The reform is absolutely necessary and the Office of Legal Affairs has now taken the initiative at the Secretary-General's request. A draft of a new bulletin on administrative issuances was circulated to members of the Steering Committee for Reform on 9 April 1997.

[28]This document was published without consultation with the Office of Legal Affairs. It is framed in the same manner as was severely criticized by the Office of Legal Affairs in its March 1995 proposal and in a subsequent memorandum of 13 October 1995. The Office would have advised against the Secretary-General's approval. The publication represents an ex post facto issuance which does not fulfil the requirements of a document promulgating legal norms.

[29]This example shows that the Manual in its present form is ineffective as an instrument for *the establishment* of "the organizational structure of the Secretariat" (see para. 19 above). It is a meaningless bureaucratic burden on the Organization.

[30]We note that the actions taken by Secretary-General Boutros-Ghali in the 1992 restructuring suggest that the authority of the Secretary-General vis-à-vis the General Assembly has, in practice, been asserted with more determination in comparison to what was indicated in the 1982 Comprehensive Study.

[31]In this regard, the apparent notion that it is improper for the Secretary-General to defend vigorously a proposed programme budget in the Fifth Committee (see the 1982 Comprehensive Study, para. 26 (*b*)-(*c*)) is, in the view of the Office of Legal Affairs, not acceptable. The Secretary-General and his representatives have the duty to defend the proposed programme budget unless, of course, the Secretary-General has changed his mind. It is another matter that the decision on the budget lies with the Fifth Committee and the General Assembly. General principles for division of power between a legislature and an executive indicate, however, that it is not appropriate for the Advisory Committee and the Fifth Committee to make decisions that are so detailed that they may encroach on the Secretary-General's fundamental authority under Articles 97 and 101 of the Charter.

[32]In this context we must indicate that I question the utility of the medium-term plan, which is required by article III of the PPBME Rules, and suggest that it be reconsidered. The two-year budget is sufficient for planning purposes. There is nothing to prevent the Secretary-General from "looking further ahead" in the budget proposal if he so wishes. The present

restructuring of the Secretariat will require *not only* a revised budget for the biennium 1996-1997 *and* a revised budget for the biennium 1998-1999. If the rules are properly applied, the reform *would also require* adjustments to the medium-term plan for 1998-2001 (and maybe also to the current plan for 1994-1997). What purpose do these extraordinary bureaucratic requirements serve?

[33]Renamed "Pan American Health Organization" by decision of the XVth Pan American Sanitary Conference in September-October 1958.