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UNITED NATIONS JURIDICAL YEARBOOK

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

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



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Chapter VI

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

A. Legal opinions of the Secretariat of the United Nations

(Issued by the Office of Legal Affairs)

1. MEMBERSHIP OF MALAYSIA IN THE UNITED NATIONS

Note to the Secretary-General

1. On 16 September 1963 the Secretary-General received a letter from H. E. Dato'Ong Yoke Lin, who was accredited to the United Nations as Permanent Representative of the Federation of Malaya, notifying him that by the constitutional process of amendment the name of the "Federation of Malaya" had been changed to Malaysia. While not dealt with in this letter, the change of name had been accompanied by the addition of Singapore, Sabah (North Borneo) and Sarawak to the Federation of Malaya. Changes in the Constitution of the Federation of Malaya were also made "so as to provide for the admission of those States and for matters connected therewith" (Preamble to Malaysia Bill)¹.

2. The Federation of Malaya became a Member of the United Nations on 17 September 1957. It comprized at that time the following eleven States—Johore, Pahang, Negri Sembilan, Selangor, Perak, Kedah, Perlis, Kelantan, Trengganu, Penang and Malacca—which have a total area of approximately 50,700 square miles and a total population of approximately 7,400,000. Singapore has an area of 224 square miles and a population of approximately 1,700,000. Sabah (North Borneo) has an area of 29,388 square miles and a population of 500,000 and Sarawak an area of 47,500 square miles and a population of 800,000. North Borneo and Sarawak had been British Crown Colonies while Singapore was listed in the Statesman's Yearbook 1962 as a self-governing territory within the British Commonwealth.

3. The question may be considered whether the changes which have taken place in any way affect the membership of the Federation of Malaya in the United Nations. A careful examination of these changes in the light of relevant principles of international law and United Nations practice would clearly indicate a negative answer. There is no basis for considering a possible effect on United Nations membership as long as the identity of the Federation as an international person has not been substantially affected. None of the changes which have taken place in themselves, either singly or collectively, affect the international personality of the Federation. In international law it is clear that the acquisition of territory by a State does not destroy the international personality or legal identity of the State acquiring the territory. Neither does a change in name or a change in the Constitution affect the international personality or legal identity of a State in international law.

4. In Oppenheim, International Law, vol. I (8th ed., by Lauterpacht, pp. 153-154), it is stated:

¹ See paragraph 9 below.

“A State remains one and the same International Person in spite of changes in its headship, in its dynasty, in its form, in its rank and title, and in its territory. . . whatever may be the importance of such changes, they neither affect a State as an International Person, nor affect the personal identity of the State concerned.”

5. Among the precedents in United Nations practice are the following:

(a) The Federation of Ethiopia and Eritrea, which was brought about under United Nations auspices in 1952, did not alter in any way Ethiopia's membership in the United Nations.

(b) On 1 June 1961 the Northern Cameroons under British administration joined the Federation of Nigeria as a separate province of the Northern Region of Nigeria. Nigeria's membership in the United Nations was unaffected.

(c) On 1 October 1961 the Southern Cameroons under British administration and the Cameroon Republic combined in the Federal Republic of Cameroon. In this case the “Republic of Cameroon”, with the addition of the Southern Cameroons, became the “Federal Republic of Cameroon”, but there was no effect on the United Nations membership of the Republic.

(d) The admission of Alaska and Hawaii as States in the federation of the United States of America in 1959 had no effect on the United Nations membership of the latter.

(e) When Egypt and Syria formed a union under the name of the United Arab Republic in 1958 under a new Constitution, the United Arab Republic continued as a Member of the United Nations. When in 1961 the Union was dissolved, Syria automatically resumed its separate and original membership in the United Nations, and the United Arab Republic continued its membership.

(f) Siam was admitted to membership in the United Nations by General Assembly resolution 101 (I). The change of name to Thailand did not affect its membership.

(g) Other changes in name include Union of South Africa to Republic of South Africa, Czechoslovak Republic to Czechoslovak Socialist Republic, Kingdom of Yemen to Arab Republic of Yemen, etc. Changes in constitutions or the adoption of completely new constitutions have been too numerous to require enumeration.

6. It may also be noted that at the time of the division of British India into India and Pakistan, India was considered as continuing its membership while Pakistan was admitted as a new State under Article 4 of the Charter. At that time the Sixth Committee of the General Assembly was requested to indicate the rules applicable for future cases where new States were formed through division of a Member. The Sixth Committee replied (A/C.1/212):

“1. That, as a general rule, it is in conformity with legal principles to presume that a State which is a Member of the Organization of the United Nations does not cease to be a Member simply because its Constitution or its frontier have been subjected to changes, and that the extinction of the State as a legal personality recognized in the international order must be shown before its rights and obligations can be considered thereby to have ceased to exist.

“2. That when a new State is created, whatever may be the territory and the populations which it comprises and whether or not they formed part of a State Member of the United Nations, it cannot under the system of the Charter claim the status of a Member of the United Nations unless it has been formally admitted as such in conformity with the provisions of the Charter.

“3. Beyond that, each case must be judged according to its merits.”

7. An examination of the instruments relating to the establishment of Malaysia and the constitutional processes followed indicate that what has occurred is (1) an enlargement of the Federation of Malaya by the “admission” of Sabah (North Borneo), Sarawak and Singapore; (2) consequential amendments to the Constitution which leave the existing governmental structure intact; and (3) a change of name to “Malaysia”.

8. Article I of the Agreement relating to Malaysia of 9 July 1963 between the United Kingdom of Great Britain and Northern Ireland, the Federation of Malaya, North Borneo, Sarawak and Singapore² provides as follows:

“The Colonies of North Borneo and Sarawak and the State of Singapore shall be federated with the existing States of the Federation of Malaya as the States of Sabah, Sarawak and Singapore in accordance with the constitutional instruments annexed to this Agreement and the Federation shall thereafter be called ‘Malaysia’.”

9. In article II the Government of the Federation of Malaya undertook to secure enactment by its Parliament of an act in the form set out in annex A of the Agreement. Annex A, known as the “Malaysia Bill”, consisted of amendments to the Constitution of the Federation of Malaya. The first two paragraphs of the preamble state:

“WHEREAS on behalf of the Federation it has been agreed, among other things, that the British colonies of North Borneo and Sarawak and the State of Singapore shall be federated with the existing States of the Federation as the States of Sabah, Sarawak and Singapore, and that the name of the Federation should thereafter be Malaysia;

“AND WHEREAS, to give effect to the agreement, it is necessary to amend the Constitution of the Federation so as to provide for the admission of those States and for matters connected therewith. . .”

10. It will be noted that the Constitution of the Federation of Malaya is amended to provide for the “admission” of the three States, who shall be “federated with the existing States of the Federation”, and that “the name of the Federation should thereafter be Malaysia.” The specific amendments maintain the governmental and legal structure of the Federation of Malaya but change its name to Malaysia, make the necessary additions to provide for the new States, and contain special provisions relating to the new States.

11. The assumption throughout the amendments is that the three States are admitted to the Federation of Malaya which continues under the new name of Malaysia. Thus the Government and Parliament of the Federation of Malaya, with additional representation from the new States, continue as the Government and Parliament of Malaysia (see, for example, sections 8, 9 and 93–96). The laws of the Federation of Malaya consistent with the Constitution continue in effect but their application does not extend to the new States unless or until it is so extended by law (section 73). Special provision is made concerning succession of the Federal Government to public lands in the three new States but no provision concerning succession to the public lands in the Federation of Malaya was deemed necessary presumably since a continuity exists between the Federation of Malaya and Malaysia (See section 75).

12. An examination of the Agreement relating to Malaysia of 9 July 1963 and of the constitutional amendments, therefore, confirms the conclusion that the international personality and identity of the Federation of Malaya was not affected by the changes which have taken place. Consequently, Malaysia continues the membership of the Federation of Malaya in the United Nations.

13. Even if an examination of the constitutional changes had led to an opposite conclusion that what has taken place was not an enlargement of the existing Federation but a merger in a union or a new federation, the result would not necessarily be different as illustrated by the cases of the United Arab Republic and the Federal Republic of Cameroon. However, since in the present case it is clear that what has taken place is an enlargement of the Federation by the “admission” of Sabah, Sarawak and Singapore, it is not necessary to examine the more complicated problems which arose in the case of the United Arab Republic,

² Cmnd. 2094 (1963).

or which might be raised in the case of a merger of an existing State in a completely new federation.

14. On the basis of relevant principles of international law, United Nations practice and a study of the international and constitutional instruments involved, it may therefore be concluded that membership in the United Nations was not affected by (a) the admission of three additional States to the Federation of Malaya (b) the change of its name to Malaysia and (c) the constitutional changes connected therewith. The only actions which would therefore appear necessary would be the routine notifications and administrative arrangements normally followed when the Secretary-General is advised of a change in the name of a Member State. The enlarged Federation of Malaya continues its United Nations membership under its new name of Malaysia.

19 September 1963

2. RIGHT OF TRANSIT TO THE HEADQUARTERS DISTRICT—INTERPRETATION OF SECTIONS 11 AND 13 OF THE HEADQUARTERS AGREEMENT³

*Note to the Fourth Committee of the General Assembly*⁴

1. At its 1475th meeting on 11 November 1963 the Fourth Committee requested an opinion as to the legal implications of the possible appearance before it of Mr. Galvão.

2. The Committee will wish to take into account the limited character of the legal status of an individual invited to the Headquarters for the purpose of appearing before a Committee of the General Assembly or other organ of the United Nations.

3. Section 11 of the Headquarters Agreement between the United Nations and the United States of America provides that the federal, state or local authorities of the United States shall not impose any impediments to transit to or from the Headquarters district of (among other classes of persons) persons invited to the Headquarters district by the United Nations on official business. While such a person is in transit to or from the Headquarters district, the appropriate American authorities are required to accord him any necessary protection.

4. Apart from police protection, therefore, the obligations imposed on the host Government by the Headquarters Agreement are limited to assuring the right of access to the Headquarters and an eventual right of departure. The Headquarters Agreement does not confer any diplomatic status upon an individual invitee because of his status as such. He therefore cannot be said to be immune from suit or legal process during his sojourn in the United States and outside of the Headquarters district.

5. Two other provisions of the Headquarters Agreement serve to reinforce the right of access to the Headquarters. Section 13(a) specifies that the laws and regulations in force in the United States regarding the *entry* of aliens shall not be applied in such manner as to interfere with the privilege of transit to the Headquarters district. This provision, however, clearly assures admission to the United States without conferring any other privilege or immunity during the sojourn. Similarly, section 13(b) interposes certain limitations on the right of the host Government to require the departure of persons invited to the Head-

³ United Nations, *Treaty Series*, vol. 11, p. 11.

⁴ This opinion was given in accordance with a decision taken by the Fourth Committee at its 1475th meeting in connexion with a request for a hearing concerning Territories under Portuguese administration. It was originally made available as a conference room paper and was subsequently circulated as document A/C.4/621 in accordance with a decision taken by the Fourth Committee at its 1481st meeting.

quarters district while they continue in their official capacity; but this plainly relates to restrictions on the power of deportation and not, conversely, on a duty to bring about departure. Moreover, section 13(d) makes clear that, apart from the two foregoing restrictions, "the United States retains full control and authority over the entry of persons or property into the territory of the United States and the conditions under which persons may remain or reside there."

6. It is thus clear that the United Nations would be in no position to offer general assurances to Mr. Galvão concerning immunity from legal process during his sojourn in the United States. It might be that individual citizens of the United States might have civil causes of action against him and could subject him to service of process. While the Federal Government might have no intention, and might lack jurisdiction, to initiate any criminal proceedings against him, it is a known fact that there are legal limitations on the powers of the executive branch of the United States Government to ensure against any type of proceeding by another branch of the Government, including the judicial branch.

7. Moreover, apart from general restrictions in the Federal Regulations on the departure of an alien from the United States when he is needed in connexion with any proceeding to be conducted by any executive, legislative, or judicial agency in the United States, the attention of the Committee has already been invited to the possibility that extradition proceedings might be instituted against Mr. Galvão during his presence in this country. By an Extradition Convention⁵ of 7 May 1908 between Portugal and the United States persons may be delivered up who are charged, among other crimes, with piracy or with mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the captain of the vessel, or by fraud or violence taking possession of the vessel, or with assault on board ships upon the high seas with intent to do bodily harm, or with abduction or detention of persons for any unlawful end. The extradition is also to take place for the participation in any of such crimes as an accessory before or after the fact. The Convention contains the usual exception for any crime or offence of a political character, or for acts connected with such crimes or offences (Articles II and III).

8. Whenever there is an extradition convention between the United States and any foreign government, any federal or state judge of the United States may issue a warrant for the apprehension of any person found within his jurisdiction who is properly charged with having committed within the jurisdiction of any such foreign government any of the crimes provided for by the convention. If, after hearing and considering the evidence of criminality, the judge deems it sufficient to sustain the charge under the convention, he must certify this conclusion to the Secretary of State of the United States in order that a warrant may issue upon the requisition of the proper authorities of the foreign government for the surrender of the person according to the terms of the convention.⁶

9. There is no precedent in the history of the Headquarters Agreement which would indicate whether an application of Federal Regulations restricting departure of an alien, by reason of proceedings against him not related to his presence at the United Nations, would constitute an impediment to transit "from the Headquarters district" within the meaning of section 11 of the Agreement. There is likewise no precedent which would indicate whether compliance by the Federal Government with the terms of an extradition treaty would conflict with the right of transit of an invitee from the Headquarters district. In this connexion it is important to note that what the United States Government has undertaken not to do,

⁵ Malloy, *Treaties and Conventions between the United States of America and other Powers*, vol. II, p. 1469.

⁶ 18 U.S. Code 3184.

by the terms of section 11, is to "impose" any impediment to transit from the Headquarters. To the extent that the presence of Mr. Galvão in the United States might in one manner or another give rise to proceedings against him by operation of existing law in relation to pre-existing facts (such as previous activities on his part), it could be argued that this did not constitute an action taken by the Government to impose an impediment on his departure.

10. The Legal Counsel is of course not in a position to pass upon the internal operations of United States law, much less upon the relations between the executive and judicial branches of the Government. Even if it should prove possible that the executive branch could, in the exercise of its authority over foreign affairs, certify and allow to the judicial branch that the freedom of Mr. Galvão to depart without impediment should override the authority of the courts to detain him, it is not clear on what basis an advance assurance could be given him. Likewise, even if a dispute were to arise between the United Nations and the United States on such an issue, it might eventually require referral to a tribunal of arbitrators under the terms of section 21 of the Headquarters Agreement.

11. In these circumstances, it must be recognized that a situation could arise by which the Fourth Committee was deprived of the advantage of receiving oral testimony from Mr. Galvão. Should he not be prepared to attend because of the inability of the host Government to confer upon him a general immunity, it is clear that his abstention from appearing would be his own, and not the affirmative imposition of an impediment to his transit. For it might only be at the moment of his attempted departure from the United States that an arbitrable dispute could arise as to whether he was entitled to depart notwithstanding proceedings which might in the meantime have been instituted against him.

12. Two other points of law were raised in the 1475th meeting of the Committee. It was suggested that, in the event of a conflict between the obligations of the United States under its Extradition Treaty with Portugal and the Charter, the obligations under the Charter would prevail by virtue of its Article 103. The difficulty here is that such rights as enure to Mr. Galvão stem directly from the Headquarters Agreement and not from any provision of the Charter, which does not cover invitees. The question was also raised as to whether the Treaty could be invoked before the General Assembly under Article 102 of the Charter. The sanction in the second paragraph of that Article, however, relates to treaties required to be registered with the Secretariat under that Article. The Extradition Treaty in question dates from the year 1908, whereas the duty to register relates only to treaties entered into by a Member after the coming into force of the Charter. It is also true that, in the hypothetical situation dealt with above, the risk is that the Extradition Treaty would be invoked in the United States courts rather than in the General Assembly.⁷

⁷ The following statement was made by the Legal Counsel at the 1479th meeting of the Fourth Committee on 13 November 1963 (A/C.4/SR. 1479):

Mr. Stavropoulos (Legal Counsel) said that he had asked to speak, not in order to correct the paper in which he had given his opinion or to give any additional information, but in order to provide some necessary clarification. It seemed to him that his paper was being called the Legal Counsel's "thesis", whereas it was promoting no thesis, and he did not want the Committee to go on discussing the matter under some misunderstanding.

He realized that the Legal Counsel's paper was most unpopular in the Committee. He could assure the Committee that it was equally unpopular with him, but it was his duty to give the Committee his honest opinion and that was what he had done.

The opinion he had given was not intended as an advocate's brief, because it did not press any particular argument. It reviewed the problem and the only conclusion it gave—which had been disregarded in the discussion of the law—was to be found in the first sentence of paragraph 6, viz: "It is thus clear that the United Nations would be in no position to offer general assurances to Mr. Galvão concerning immunity from legal process during his sojourn in the United States." Several delegations had stated that they disagreed with the arguments and conclusions of the Legal Counsel of the Secretary-General. He would repeat: he was not pleading a particular case, for he made one point only. Could the United Nations give the man assurances and then let him come to New York

3. RIGHT OF ACCESS TO UNITED NATIONS MEETINGS AND OFFICES

Note to the Under-Secretary for Economic and Social Affairs

It is a fundamental principle of the United Nations that representatives of the Members of the United Nations and officials of the Organization have the right of access to all meetings of the United Nations organs and to the offices of the United Nations to the extent necessary for the independent exercise of their functions in connexion with the Organization.

This right is recognized as included in the privileges and immunities which Article 105 of the Charter prescribes in paragraph 2 thereof:

“Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.”

It is also a corollary of the principle of sovereign equality expressed in Article 2, paragraph 1, that all Members of the United Nations are entitled to participate in the work of the Organization irrespective of the relations of their governments and the government on whose territory the United Nations meetings or activities are being held.

2. In implementation of these basic principles, the Convention on the Privileges and Immunities of the United Nations⁸ accords to “representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations” an exemption (in respect of them and their spouses) from immigration restrictions in the State they are visiting or through which they are passing in the exercise of their functions (Section 11. d). A similar exemption is accorded to officials of the Organization (Section 18. d). In addition, a number of “site” agreements have been entered into by the United Nations with host governments which stipulate in more detail the extent and definition of the right of access. Such agreements have been concluded, for example, with the United States in regard to the Headquarters and with the governments which act as hosts of the regional economic commissions and sub-regional offices.

3. The essential element in the right of access is that representatives of governments, officials of the Organization and other persons invited on official business shall not be impeded

and see him go to prison? If that happened, the matter could of course be submitted to arbitration, but meanwhile the man would be in prison.

He had said truthfully that the relevant treaty provisions were not clear on that particular point. The Committee was thus confronted with two problems. One was the Galvão problem and on that problem the Committee would have to take a decision. The other was whether the legal question should be clarified in the future; in other words, whether some additional work should be done by the Secretary-General on the underlying principle regardless of the Galvão case—though it could of course be done for the Galvão case too if the Committee was prepared to postpone that issue. For the present, the question was whether the Committee could assure a petitioner that he could come to Headquarters safely so long as there was some uncertainty about the law. In his opinion, that could not be done—unless the petitioner were brought by boat and, from a position outside the territorial sea, were flown by helicopter to land at the Headquarters site, where he could certainly not be arrested. Since that, however, was quite impracticable, there was no way of assuring him that he would not be arrested.

In short, the Legal Counsel had not said that the case was clear and that the matter should be resolved one way or another. On the contrary, he had himself raised the possibility of arbitration. He had said one thing only: that it was impossible in all good conscience to give a man assurances that if he came to New York he would not be arrested.

He would add one further comment: his opinion as a lawyer was that, whether or not the text was unclear, the United Nation should be in a position to bring anyone to Headquarters in special conditions. That, however, was not the point: the point was whether it could be done or whether a way of doing it should be found. He shared the apprehensions expressed by several delegations that the Committee might be prevented from hearing a petitioner because he might be afraid to come to Headquarters.

⁸ United Nations, *Treaty Series*, vol. 1, p. 15.

in their transit to or from the United Nations offices in connexion with meetings or other activities in which they are entitled to participate. Although this does not mean that the representatives of Member States have a right of entry to every United Nations office at any time, it clearly means that such right of access to United Nations premises must be granted to representatives of Members at least when they are entitled to attend meetings held in such premises or are invited to such premises in connexion with the official business of the Organization. This also implies that representatives of Member States and other persons having official business with the Organization should have the right to communicate freely with United Nations offices by mail, telephone or telegraph.

4. The Secretary-General has on several occasions emphasized the importance of compliance with the foregoing principles of access. He has noted that any derogation from these principles would be disruptive to the functioning of United Nations organs and contrary to the clear obligations of Member States under the Charter.

26 November 1963

4. PRIVILEGES AND IMMUNITIES OF PERMANENT MISSIONS IN RESPECT OF THEIR BANK ACCOUNTS

Memorandum to the Deputy Chef de Cabinet

...It is our view that it is not permissible for the host Government to interfere with the legitimate activities of the permanent missions to the United Nations by preventing these missions or their personnel from using funds on deposit in this country. From the legal standpoint, this is a matter covered by paragraph 2 of Article 105 of the Charter, which provides that representatives of Members shall enjoy in the territory of each Member such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization. It is also relevant that in resolution 257 (III) the General Assembly recognized that the presence at the seat of the Organization of permanent missions serves to assist in the realization of the purposes and principles of the United Nations...

15 July 1963

5. ESTABLISHMENT OF JOINT BODIES BY THE UNITED NATIONS AND OTHER INTER-GOVERNMENTAL ORGANIZATIONS

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

1. In reply to your letter of 14 December 1962 regarding provisions which may govern the establishment by the United Nations, acting in conjunction with other inter-governmental organizations, of joint bodies whose membership would be open to Member States of the United Nations and of the other inter-governmental organizations concerned, we would like to inform you that there exist no general provisions in the United Nations Charter or in the rules of procedure of the principal organs of the United Nations referring specifically to the establishment of such bodies.

2. The setting up of committees jointly with other international organizations would be considered as permissible in appropriate circumstances by application of the provisions of the United Nations Charter relating to the establishment of subsidiary organs of the Organization. Article 7, paragraph 2 of the Charter states "Such subsidiary organs as may be found necessary may be established in accordance with the present Charter". As regards the General Assembly, Article 22 of the Charter grants the Assembly specific authority to set up such subsidiary organs "as it deems necessary for the performance of its functions". Article 29 grants identical powers to the Security Council. Article 68 provides that the

Economic and Social Council "shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions". Rule 71 of the Council's rules of procedure specifies that the Council "shall define the powers and composition of each of them". The Council is also empowered by rule 26 of its rules of procedure to set up "such committees as it deems necessary". Rule 66 of the rules of procedure of the Trusteeship Council states that the Council "may set up such committees as it deems necessary", and "define their composition and their terms of reference".

3. Acting under these provisions the principal organs of the United Nations have established during the years a great number of commissions and committees. These subsidiary organs are frequently composed of States. Their membership may include all Member States as in the case of the Committee on arrangements for a conference for the purpose of reviewing the Charter (General Assembly resolution 992 (X)), or a number of specified Member States, in which case commissions or committees are often designated as special or *Ad Hoc* commissions or committees. As is the case of the Executive Board of UNICEF (General Assembly resolution 417 (V)), or the Governing Council of the Special Fund (General Assembly resolution 1240 (XIII)), certain non-Member States may also be included when appropriate. Other subsidiary organs consist of several individuals, or of a single individual, appointed in their individual expert capacity. In some instances, as in the case of the Technical Assistance Board (Economic and Social Council resolution 222 A (IX)), a subsidiary organ is composed of the executive heads, or their representatives, of the United Nations and the specialized agencies. The Administrative Committee on Co-ordination established by Economic and Social Council resolution 13 (III), which is a subsidiary organ of the Council, also consists of the executive heads of the United Nations and of the specialized agencies.

4. As you know, the joint United Nations FAO Inter-Governmental Committee for the World Food Programme, which consists of 20 nations members of FAO and the United Nations, was established on behalf of the United Nations by General Assembly resolution 1714 (XVI).

4 January 1963

6. ENLARGEMENT OF THE ECONOMIC COMMITTEE, THE SOCIAL COMMITTEE AND THE
CO-ORDINATION COMMITTEE OF THE ECONOMIC AND SOCIAL COUNCIL

Memorandum to the Secretary of the Economic and Social Council

1. The distinction you have made in your memorandum between standing and sessional committees of the Economic and Social Council is, of course, perfectly correct, but we do not think that it is necessary to draw therefrom necessarily rigid consequences. The Council's rules of procedure make a distinction between "Commissions" (chapter XII), which correspond to those referred to in Article 68 of the Charter, and "Committees of the Council" (chapter V). The latter are set up at each session but they "may be authorized to sit while the Council is not in session" (rule 26). Their members are "nominated by the President, subject to approval of the Council, unless the Council decides otherwise" (rule 27). It is not required that they should consist solely of representatives of members of the Council.

2. The draft resolution contained in document A/C. 2/L.735 is therefore incomplete in the third paragraph of its preamble when it refers only to Article 68 of the Charter. The article which is relevant to the composition of sessional committees would be Article 72, which relates to the procedure of the Council. It might therefore be advisable to add a reference to Article 72 in the third paragraph of the preamble of the draft resolution.

3. There would appear to be no legal objections to the Assembly requesting the Council to enlarge the membership of three of its sessional committees. It remains, however, the prerogative of the Council, under the Charter, to decide on the setting up as well as on the composition of its committees. It would therefore be preferable, in our opinion, that the draft resolution use in its operative part the words "Recommends to the Council" rather than "Invites the Council". The operative part might then be worded as follows:

"Recommends to the Council to give, at its thirty-sixth session, prompt and favourable consideration to the desirability of enlarging the membership of its Economic, Social and Co-ordination Committees and to carry out forthwith necessary elections so as to permit that the composition of these committees should better reflect the present membership of the Organization."

4. The action of the Council in response to this request might merely consist in the adoption of a resolution relating to the composition of the three committees for such a period of time as the Council may decide. Because, however, of the present wording of rule 26 of its rules of procedure ("At each session, the Council may set up such committees. . ."), a more appropriate action might be for the Council to add to its rules of procedure a new provision stating that the three committees will consist of representatives of all members of the Council and of representatives of a certain number of States not members of the Council which may be elected by the latter.

9 December 1963

7. COMPOSITION OF THE INTER-SESSIONAL WORKING GROUP OF THE COMMITTEE FOR INDUSTRIAL DEVELOPMENT—CONTINUATION OF MEMBERSHIP OF PERU AND POLAND

Memorandum to the Secretary of the Economic and Social Council

1. Although there are no specific rules governing the membership of working groups it has been the general practice of the Economic and Social Council and its subsidiary organs to limit the membership of such working groups to the members of the Council or the respective committee. This has been so even in the case of working groups established to function in between sessions of the parent body. In line with this practice, the membership of Peru and Poland would normally terminate with the cessation of their membership in the parent committee.

2. However, we would see no great objection if in the present circumstances they continued to take part in the working group at its forthcoming session until the committee itself opened its new session. At that time, of course, they would be replaced by two new members. This suggestion is put forward on the assumption that the members of the committee desired to have a certain balanced representation in the working group and that it would probably frustrate this purpose if the two members in question dropped out without equivalent replacements.

3. Consequently, if there appears to be no substantial objection it seems to us that it would be permissible as a matter of discretion to maintain the membership of Peru and Poland until the next meeting of the Committee for Industrial Development.

17 January 1963

8. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT—QUESTION OF INVITING THE FEDERATION OF RHODESIA AND NYASALAND

Memorandum to the Deputy Under-Secretary for Economic and Social Affairs

In response to your memorandum of 19 February, we wish to say that it is clear that the Federation of Rhodesia and Nyasaland should not be considered as a "State" for the purpose

of an invitation to the Conference under paragraph 4 (a) of General Assembly resolution 1785 (XVII). While it is true that the Federation is a member of ITU, this in itself is not decisive of its status as a "State" since under the ITU Convention "groups of territories" can be and are full members. Our practice in regard to other conferences for which invitations are extended under the same formula as that in resolution 1785 (XVII) has been in accord with this position, namely that the Federation of Rhodesia and Nyasaland is not to be considered as a State. The fact that the Federation has been invited to commodity meetings and is a party to GATT is attributable, as you know, to the initial invitation extended to its predecessor, Southern Rhodesia, for participation in the Havana Conference of 1947. This circumstance or the subsequent history would not change the conclusion that the Federation is not to be regarded as a State.

21 February 1963

9. PARTICIPATION IN THE 1964 LATIN AMERICAN SEMINAR OF EXPERTS ON FOREIGN TRADE—
INTERPRETATION OF ECONOMIC COMMISSION FOR LATIN AMERICA RESOLUTION 221 (X)
OF 16 MAY 1963

Memorandum to the Secretary of the Economic and Social Council

1. With reference to your memorandum of 10 October, we are of the opinion that there would be no legal barrier to a decision by the Secretariat of ECLA to conduct the seminar in "closed" meetings which would be restricted to the participants and would exclude observers from Governments of the non-Latin American countries. A restriction of this kind which is based on the geographical factor and not on a political ground would not be contrary to United Nations principles or practice. There are several precedents for the regional commissions holding meetings of governments or experts which are limited to participants from the countries of the region rather than the full membership of the commission in question.

2. Moreover, in the case at issue a decision by the Secretariat to limit the meeting to designated "specialists" from the region would not be inconsistent with the purpose and language of the ECLA resolution. The resolution as such does not require such restriction since it only calls for the "co-operation of specialists appointed by the Governments of all the Latin American countries"; consequently, a decision to proceed on a "closed" basis would clearly be the responsibility of the Secretariat. Such a decision may, however, be justified on the basis of the indication in the resolution that the Secretariat studies (and by implication the seminar) should have the objective of assisting the Latin American countries to adopt a concerted position at the United Nations Conference on Trade and Development and on the assumption that the Latin American Governments and their specialists can best attain the objective through meetings which are not open to non-participants.

18 October 1963

10. PARTICIPATION OF FOUNDATIONS IN SOME OF THE ECAFE SEMINARS

Memorandum to the Secretary of the Economic and Social Council

1. This is in reference to the request for advice on whether participation of foundations (such as the Ford Foundation and Asia Foundation) in ECAFE seminars is permissible within the rules of procedure of the Commission or within the practices established for the United Nations as a whole.

2. In our opinion, non-governmental organizations which do not enjoy consultative status with the Economic and Social Council are not entitled to participate in ECAFE seminars or to be given the legal status of observers under existing rules and practices. As

you know, principles adopted by the Economic and Social Council in resolution 288 (X) on consultative arrangements with non-governmental organizations apply specifically to ECAFE under paragraph 11 of its terms of reference and chapter XI of its rules of procedure.

3. However, we see no legal objection to the attendance of representatives of foundations to ECAFE seminars as "guests" in public meetings without having the right to participate in the discussions or to have written statements distributed by the Secretariat. No official status, of course, would be accorded to them. There would be no objection to providing such representatives with documents of the seminar which are not restricted.

4. As regards those seminars where participants act in their individual capacity and are selected primarily by the Executive Secretary, he may of course designate a representative of a foundation who is an expert in the field to participate in the meeting in his personal capacity.

17 September 1963

11. ELIGIBILITY OF WESTERN SAMOA FOR TECHNICAL ASSISTANCE UNDER THE REGULAR PROGRAMME—INTERPRETATION OF GENERAL ASSEMBLY RESOLUTION 200 (III) OF 4 DECEMBER 1948

Memorandum to the Director of the Bureau of Technical Assistance Operations, Department of Economic and Social Affairs

1. You have requested our advice in regard to the question whether Western Samoa would be eligible to receive assistance under the provisions of General Assembly resolution 200 (III).

2. The question of Western Samoa's eligibility for assistance under resolution 200 (III) was considered in the memorandum dated 27 March 1962 addressed by this Office to the Bureau of Technical Assistance Operations, paragraph 4 of which noted that resolution 200 (III) provided for the grant of assistance "when requested. . . by Member Governments" and that the intention of the Assembly to so limit eligibility was further evidenced by the substitution, in the draft resolution on the subject, of the expression "Member Governments" for the expression "Governments participating in the work of the United Nations" which would have made non-member countries participating in the work of the regional commissions eligible for assistance. And, as you will note, after some further reference to certain considerations of a general nature in paragraph 7, the opinion was expressed in the memorandum that it was doubtful whether Western Samoa would be eligible for assistance until such time as it did become a Member of the United Nations.

3. We also refer to certain resolutions and discussions of the Economic Commission for Asia and the Far East and of the Economic and Social Council that appear to be pertinent. There is in the first instance the ECAFE resolution on technical assistance for certain associate member countries (E/CN.11/226) which was adopted on 29 October 1949 at the fifth session of the Commission in light of Assembly resolution 200 (III). Having taken "note that, under paragraph 3 [of resolution 200 (III)], the technical assistance programme is limited to Member nations of the United Nations", the ECAFE resolution requested the Economic and Social Council to draw the attention of the General Assembly to the need for technical assistance in certain associate member countries of the Commission which are responsible for their own international relations, and recommended that the needs of such countries be represented to the Assembly with a view to its considering the desirability of making an exception to the limitations set forth in resolution 200 (III), such exception to apply to those countries which hold associate membership in a regional economic commission.

4. In response to the ECAFE resolution a draft resolution (E/AC.6/L.1 and Corr. 1) was submitted on 9 February 1950 by the delegation of Chile to the Economic Committee of the Economic and Social Council at its tenth session (see E/AC.6/SR.82). The draft resolution contained the recommendation that the Assembly should take account of the fact that several self-governing countries which participated as associate members in the work of the regional economic commissions were not now eligible to request technical assistance from the United Nations under resolutions 200 (III) and that the Assembly should decide to amend the first clause of paragraph 3 of resolution 200 (III) by inserting after the words "Member Governments" the words "and any non-member country which is responsible for its international relations and participates as an associate member in the work of any of the regional economic commissions of the United Nations". The draft resolution was not considered by the Council at its tenth session and consideration thereof was deferred to the next session of the Council.

5. At the eleventh session of the Council, however, the delegation of Chile informed the Council at its 412th meeting that it was withdrawing its draft resolution in view of the fact that the expanded programme of technical assistance had been put into operation. With reference to the withdrawal of the draft resolution statements were made by the representatives of France and of the United Kingdom in which they intimated that had the draft resolution been maintained they would have expressed themselves in its favour. At that stage the President of the Council drew the attention of the members to the draft resolution that had been proposed by the Secretariat, contained in a footnote to paragraph 3 of the Secretary-General's report on activities under General Assembly resolution 200 (III) (E/1700)⁹, which among other things recommended that the requests for technical assistance for economic development received by the Secretary-General in accordance with resolution 200 (III) which could not be financed with funds provided in the regular budget of the United Nations should be financed with funds received by the Secretary-General from the special account for technical assistance for economic development established in accordance with General Assembly resolution 304 (IV).¹⁰ Shortly thereafter the Assistant Secretary-General in charge of the Department of Economic Affairs also made a statement in which he informed the Council that "the administration of technical assistance under General Assembly resolutions 200 (III) and 222 (III)¹¹ would be unified. The Secretary-General had already made arrangements for all work in response to requests for technical assistance to be carried out by a single unit at Headquarters. Circularization of information regarding requests made under those resolutions would be similarly treated." The Council then unanimously adopted a resolution [resolution 291 A(XI) on technical assistance for economic development under Assembly resolution 200 (III)] which recommended to the General Assembly, with one amendment which is not of immediate relevance, the draft resolution proposed in the report of the Secretary-General.

⁹ The report does not specifically relate the proposed draft resolution to the ECAFE resolution. However, there is the following passage in the earlier report of the Secretary-General to the tenth session of the Economic and Social Council (E/1576), paragraph 66: "The Council also has before it another resolution submitted for its consideration by the Economic Commission for Asia and the Far East. . . The Council will further wish to be reminded of the fact that its own resolution 222 A (IX) dealing with the expanded programme of technical assistance for economic development of under-developed countries contemplates the extension of technical assistance to any country which is a member of either the United Nations or of any of the 'participating organizations'. . . Thus some fourteen non-members of the United Nations which are not now eligible for technical assistance under resolution 200 (III) will become eligible for such assistance when the special account authorized under resolution 222 A (IX) is established."

¹⁰ In resolution 304 (IV) on the expanded programme of technical assistance for economic development of under-developed countries, the General Assembly approved the principles of the expanded programme as set out in resolution 222 A (IX) of the Economic and Social Council.

¹¹ The reference in the summary records to resolution 222 (III) should read resolution 222 (IX) (of the Economic and Social Council).

6. The draft resolution submitted to the fifth session of the General Assembly by the Economic and Social Council was considered by the Second Committee and adopted without further discussion on the point, and was then adopted by the Assembly in plenary session, without discussion, as resolution 399 (V) on technical assistance activities under General Assembly resolution 200 (III).

7. In light of the express provisions of General Assembly resolution 200 (III) and of the other considerations referred to in our memorandum dated 27 March 1962 and of the resolutions and discussions of ECAFE and of the Economic and Social Council we have noted above, it would not in our opinion be proper to consider Western Samoa as eligible to receive assistance under resolution 200 (III) until such time as it becomes a Member of the United Nations. However, should it be considered necessary that requests of this nature should in the future be met under resolution 200 (III), we would suggest as a possible solution that in the course of the next report to be made by the Secretariat on the technical assistance programme for ultimate submission to the General Assembly, an appropriate reference might be made to the advisability of interpreting resolution 200 (III) so as to apply to requests for assistance from associate members of regional economic commissions. Thereafter the consideration and noting of the report by the General Assembly should provide the Secretariat with a basis for the grant of such assistance to countries participating in the membership of the regional economic commissions. For the present, however, the immediate requests from Western Samoa should be dealt with for financing under the expanded programme of technical assistance.

11 April 1963

12. ELIGIBILITY OF WESTERN SAMOA FOR TECHNICAL ASSISTANCE IN PUBLIC ADMINISTRATION
—INTERPRETATION OF GENERAL ASSEMBLY RESOLUTION 1256 (XIII) OF 14 NOVEMBER 1958

Memorandum to the Officer-in-Charge of the Division of Public Administration, Department of Economic and Social Affairs

1. In your memorandum of 15 February 1963, you requested our advice on certain questions which you raised on the basis that Western Samoa would not be eligible to receive assistance under the provisions of General Assembly resolution 1256 (XIII) which established the programme for the provision of operational, executive and administrative personnel (OPEX programme).

2. The memorandum dated 27 March 1962 addressed by this Office to the Bureau of Technical Assistance Operations, to which your memorandum refers, considered the general subject of the eligibility of Western Samoa to receive technical assistance under the United Nations regular technical assistance programme; and the opinion was there expressed that there was an uncertainty as to whether Western Samoa was eligible for such assistance unless it became a Member of the United Nations. In regard to resolution 1256 (XIII) itself, to which our memorandum contained a reference, we noted that the resolution did not specifically limit the grant of assistance thereunder to Members of the United Nations. We had also referred to the provisions of General Assembly resolution 52 (I), the resolution which initially established the United Nations programme of technical assistance, which were to the effect that in general only Members of the United Nations were eligible for such assistance.

3. We have now examined specifically the question of the eligibility of Western Samoa to receive assistance under resolution 1256 (XIII) and it would appear to us, in light particularly of certain statements made in the Second Committee at the thirteenth session of the Assembly which pertain to the relevant provisions of resolution 1256 (XIII), that it should be permissible to consider Western Samoa as eligible to receive assistance under that resolution.

4. The first statement in the Second Committee which is of relevance is the statement of the representative of Tunisia, at the 545th meeting, that the recommendation in operative paragraph 2 of the draft resolution (A/C.2/L.379) with as amended was adopted as resolution 1256 (XIII) confined itself to "Member Governments", whereas some of the countries he had in mind were not yet Members of the Organization, and that the sponsors of the draft resolution might perhaps bear that point in mind. The relevant provisions of the draft resolution were as follows:

"1. Takes note with satisfaction of the results already achieved by the United Nations Technical Assistance programmes in the field of public administration;

"2. Recommends that these programmes be supplemented with a view to:

(a) Assisting Member Governments at their request to secure on a temporary basis. . ."

In response to this statement the word "Member" was deleted by the sponsors of the draft resolution, and the representative of Sudan so informed the Committee at its 546th meeting. The representative of Pakistan, also a sponsor, informed the Committee shortly thereafter that the sponsors "had decided to delete the word 'Member' from operative paragraph 2 (a) in order to bring their text more closely into line with that of Economic and Social Council resolution 681 (XXVI)".¹² "It was obvious", he stated, "that the reference was to Governments participating in technical assistance programmes". Speaking again towards the end of the 546th meeting, the representative of Pakistan referred to various suggestions that had been made at that meeting and stated among other things that "in order to make the text perfectly clear, the words 'Member Governments' in operative paragraph 2 (a) would be replaced by the words 'Governments participating in these programmes'." A revised draft resolution (A/C.2/L.379/Rev.1) was introduced by the sponsors at the 547th meeting of the Committee which contained the following provisions, which are to be found in the resolution as finally adopted, with the exception of the words in parenthesis:

"1. Takes note with satisfaction of the results already achieved by the United Nations Technical Assistance programmes in the field of public administration;

"2. [Recommends that these programmes be supplemented] with a view to:

(a) Assisting Governments participating in these programmes, at their request, to secure on a temporary basis. . ."

After the adoption of the draft resolution, the representative of Tunisia, at the Committee's 549th meeting, "thanked the sponsors of the draft resolution for having taken into account his suggestions regarding the language of operative paragraph 2 (a)", and stated that he "had voted for the draft resolution in the hope that the Technical Assistance Administration would take into consideration requests for assistance in public administration from independent countries—such as Guinea—which were not yet Members of the United Nations".

5. In light of these proceedings a conclusion that the grant of assistance under the provisions of resolution 1256 (XIII) should be restricted solely to Members of the Organization would not in our opinion be a proper one. Indeed, that the resolution was not so understood by the Secretariat is evident from its reports to the Economic and Social Council and to the General Assembly on the progress of the OPEX programme in which reference is made to the grant of OPEX assistance to certain countries which are not or which at the date of such assistance were not Members of the United Nations.

¹² The relevant provisions of resolution 681 (XXVI) were as follows :

"1. Recommends to the General Assembly that the Secretary-General be authorized, on a limited and experimental basis, and as a supplement to the existing United Nations programmes of technical assistance, but without increase in administrative costs:

(a) To aid Governments, on request, to obtain the temporary services of. . ."

6. On the other hand, through use of the words "Assisting Governments participating in these programmes" in operative paragraph 2(a) the resolution sets a qualification for the eligibility of governments to assistance under the resolution, namely their participation "in these programmes", viz., the "United Nations technical assistance programmes in the field of public administration" referred to in its operative paragraph 1. It would seem to us, however, that Western Samoa could be considered as having satisfied such requirement for eligibility in view of the fact that it appears to have already received some assistance under the United Nations programme of technical assistance in public administration, as is evident from the statement of 7 February 1963 on 1962 contingency authorizations, submitted by the Executive Chairman of the Technical Assistance Board to the Organizations represented on the Board, which contains a notation on an authorization made in respect of a public administration project in Western Samoa under the United Nations Technical Assistance Administration (TAB/WCR/751, p. 13).

7. It would seem to us for these reasons that Western Samoa might properly be regarded as eligible to receive assistance under the provisions of resolution 1256 (XIII) and accordingly that a request from Western Samoa for assistance under the Agreement of 5 November 1962 between the United Nations and the Government of Western Samoa would be one which the United Nations might properly grant. In these circumstances the questions in your memorandum which were posed on the basis that Western Samoa would not be eligible to receive assistance under resolution 1256 (XIII) should not in fact arise.

13 March 1963

13. SPECIAL TRAINING PROGRAMME FOR TERRITORIES UNDER PORTUGUESE ADMINISTRATION—
IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 1808 (XVII) OF 14 DECEMBER
1962

*Memorandum to the Senior Director, Office of the Executive Chairman,
Technical Assistance Board*

1. In response to your memorandum of 1 February 1963, we have reviewed the TAB Secretariat note on a special training programme for Territories under Portuguese administration established by the General Assembly in resolution 1808 (XVII).

2. The note in question raises three basic issues: (1) whether it was the intention of the General Assembly to amend existing legislation and principles governing the expanded programme to enable it to finance the special training programme; (2) whether the forms of assistance contemplated in the resolution fall within the usual fields of assistance covered by the expanded programme; and (3) whether the TAB policy regarding the grant of fellowships to expatriates should apply to fellowships for persons normally resident in a Portuguese territory but temporarily residing elsewhere.

3. We agree with the conclusion in the note concerning the second issue, namely, that the forms of assistance envisaged in the resolution fall within the normal scope of the expanded programme of technical assistance activities and are thus eligible for financing from expanded programme funds. In our opinion, however, resolution 1808 (XVII) requires an approach to the other two questions different from that taken in the note. The resolution, in expressing the General Assembly decision "to establish. . . a special training programme for Territories under Portuguese administration" and its desire that the Secretary-General resort to existing assistance programmes in implementing such a special programme, manifests an intention to set up a new programme which would not necessarily be coterminous with those already in existence. What is more, the resolution has highlighted certain features of that special programme which do not conform to the normal requirements of the Expanded

Programme of Technical Assistance and which emphasize its novel character. The extension of the benefits of existing assistance programmes to the indigenous inhabitants of Portuguese territories temporarily residing outside those territories, and the provision of assistance to the peoples in question rather than to the entity exercising the powers of government in the Portuguese territories, constitute a departure from a basic principle of the expanded programme to which reference is made in your note, namely, that assistance should be given only to or through governments and on the basis of requests received from them. It will also be observed that the Secretary-General is requested by the resolution "to establish appropriate machinery for dealing with applications from Territories under Portuguese administration for education and training outside the Territories", which might be construed as envisaging a procedure for dealing with applications outside of the usual Resident Representative and country programme arrangements.

4. Since the resolution lays down a mandate for the Secretary-General, it is obviously necessary that its terms be carried out. To the extent required to give effect to its terms, therefore, General Assembly resolution 1808 (XVII) should be considered as providing authority to utilize expanded programme funds for its purposes without regard to conditions which would normally apply but which cannot be met in view of the nature of the circumstances which led to the establishment of the special training programme. In this regard, resolution 1808 (XVII) may be deemed as enabling legislation adopted for special purposes, similar to the decision which the General Assembly took in the case of Libya in resolution 398 (V), which made Libya eligible to receive assistance under the expanded programme even prior to the time it met the requirement of membership in either the United Nations or one of the participating specialized agencies. It may be contrasted to the action taken by the General Assembly in resolutions 439 (V) and 444 (V), in which the Assembly merely drew the attention of metropolitan Powers to existing possibilities for technical assistance to Non-Self-Governing and Trust Territories and invited such Powers to make full use of such resources, without waiving any of the normal requirements of the basic resolutions governing those programmes.

5. Although we agree that it was not the intention of the General Assembly permanently to amend existing general legislation relating to the Expanded Programme of Technical Assistance, it is our view that General Assembly resolution 1808 (XVII), in order to make it possible to implement the special training programme for Territories under Portuguese administration, implies an exception to certain general rules laid down in other resolutions. With respect to the third issue, the considerations stated above lead to the conclusion that the policy adopted by the TAB for the award of fellowships to expatriates, which policy was adopted in 1961 prior to the establishment of the special training programme in question by the General Assembly in a resolution adopted on 14 December 1962 and without taking the latter resolution into account, should not be applied to fellowships for persons indigenous to a Portuguese territory but temporarily residing elsewhere. The TAB policy in question was obviously adopted to give effect to the general principle that assistance should be given only to the government of a territory, whereas the special training programme, as already pointed out above, implies a departure from this principle. If the General Assembly had not taken the decision reflected in resolution 1808 (XVII), application of the TAB policy in this case could be deemed appropriate and a grant of fellowships for persons normally resident in Portuguese territories but temporarily residing outside could be restricted to situations where such persons are in the employment of the government of the territory in which they reside and no national candidates are available for the same fellowships. However, this policy is at variance in important respects with the General Assembly decision, and there can be little doubt in the circumstances that the latter should prevail.

13 February 1963

14. STATUS OF THE AGREEMENTS OF 7 JANUARY 1960¹³ AND 25 JULY 1961¹⁴ BETWEEN THE UNITED NATIONS SPECIAL FUND AND, RESPECTIVELY, THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF THE FEDERATION OF MALAYA, AS REGARDS SINGAPORE AND SABAH (NORTH BORNEO)

Memorandum to the Director of the Bureau of Operations, United Nations Special Fund

1. This refers to your memorandum of 15 October 1963 requesting advice in regard to certain questions involving the relations between the Special Fund and Malaysia and arising out of the change in the name of this Member State and its acquisition of territories which formerly were represented in international affairs by the United Kingdom.

2. We note that the Special Fund has projects in what was formerly North Borneo and in Singapore and that these projects will terminate in December 1964 and July 1968, respectively. Before replying to the specific questions raised in your memorandum, the question of the status and the applicability of the Special Fund Agreements with the United Kingdom and with Malaya should first be examined in relation to the territories concerned.

3. As you know, the Agreement between the United Kingdom and the Special Fund was intended to apply to Special Fund projects in territories for the international relations of which the United Kingdom is responsible (see, e.g., the first paragraph of the preamble to the Agreement). In view of the recent changes in the international representation of Sabah (North Borneo) and Singapore, the United Kingdom Agreement may be deemed to have ceased to apply with respect to those territories in accordance with general principles of international law,¹⁵ and this would be true notwithstanding that the Plans of Operation for the projects technically constitute part of the Agreement with the United Kingdom under article I, paragraph 2, of that Agreement. Although the Special Fund could take the position that the United Kingdom Agreement has devolved upon Malaysia and that it continues to apply to Singapore and Sabah (North Borneo), this could well result in two separate agreements becoming applicable within those territories (i.e., the United Kingdom Agreement for projects already in existence and, as explained below, the Agreement with Malaya with respect to future projects), a situation which could give rise to confusion and should be avoided if possible.

4. As regards the Agreement between the Special Fund and Malaya, it continues in force with respect to the State now known as Malaysia since the previous international personality of the Federation of Malaya continues and has no effect on its membership in the United Nations. Similarly, the Agreement between the Special Fund and the Federation of Malaya should be deemed unaffected by the change in the name of the State in question. Moreover, we are of the opinion that the Malayan Agreement applies of its own force and without need for any exchange of letters to the territory newly acquired by that State, and to Plans of Operation for future projects therein,¹⁶ in the absence of any indication to the contrary from Malaysia.

5. Turning now to the specific questions posed in your memorandum, we think it would be useful for the Special Fund to have an exchange of letters with the Government of Malaysia confirming that the Special Fund Agreement with Malaya now applies to the existing Special Fund projects in Singapore and Sabah (North Borneo) and that the Government of Malaysia therefore accepts responsibility for the fulfilment with respect to such projects of the obligations laid down on a Recipient Government under the Agreement be-

¹³ United Nations, *Treaty Series*, vol. 348, p. 177.

¹⁴ *Ibid.*, vol. 401, p. 159.

¹⁵ McNair, *Law of Treaties*, Oxford, 1961, p. 638.

¹⁶ *Ibid.*, p. 633.

tween the Special Fund and Malaya. This would be desirable in view of the specific reference to the United Kingdom Agreement in the Plans of Operation relating to these projects. As regards future projects, no similar exchange of letters is necessary. It would suffice for the Plans of Operation for future projects to refer in the usual way to the Agreement between the Special Fund and Malaya. Since requests to the Special Fund for projects in Singapore and Sabah (North Borneo) would presumably emanate in the future from the central Government of Malaysia, this position would be completely consistent with the Agreement with Malaya, which by its terms applies to assistance provided by the Special Fund in response to requests received from the Government of Malaya. For reasons already given above, we would not recommend that the Special Fund regard the Government of Malaysia as successor to the United Kingdom under the United Kingdom Agreement for these territories, whether for existing or future projects in those territories.

20 November 1963

15. WAIVER OF PRIVILEGES AND IMMUNITIES OF A SPECIALIZED AGENCY PARTICIPATING IN A SPECIAL FUND PROJECT AS A SUB-CONTRACTOR

*Memorandum to the Associate Director of the Bureau of Operations,
United Nations Special Fund*

1. You have raised the question of who should have the right to waive the privileges and immunities of a specialized agency which has been retained by another specialized agency to assist the latter in the execution of a project.

2. Article XI of the standard Agreement between the Special Fund and FAO¹⁷ and other specialized agencies acting as executing agency was intended to apply only to cases where the sub-contractor concerned is a firm or organization other than a specialized agency. Where the sub-contractor is another specialized agency, article XI would not apply and would therefore not provide a basis for the executing agency to waive the immunities of the second specialized agency.

3. We are of the opinion that any waiver of the privileges and immunities of a specialized agency serving as a sub-contractor should be effected by the specialized agency itself. Under section 22 of the Convention on the Privileges and Immunities of the Specialized Agencies,¹⁸ the right and the duty to waive the immunity of an official rests with "each specialized agency", and the mere fact that the specialized agency concerned happens to be acting in the capacity of a sub-contractor in regard to a particular project cannot vary the terms of the Convention. A problem, however, would arise where the country recipient of Special Fund assistance is not a party to the Convention and is bound to apply its terms solely on the basis of article VIII, paragraph 2, of the standard Special Fund Agreement with governments.¹⁹ As you know, this provision requires that the Government apply the Convention "to each specialized agency acting as an Executing Agency"; where the specialized agency concerned is acting as a sub-contractor, it would not meet the literal requirement of the provision in question. However, this problem could be solved by a clause in the Plan of Operation stipulating that any specialized agency retained by the executing agency to assist it in the project shall be entitled to the privileges and immunities of a specialized agency acting as an executing agency as envisaged in paragraph 2 of article VIII of the Agreement between the Special Fund and the Government. In this way, a specialized agency would not be treated less favourably when acting as a sub-contractor than it would when filling the role of an executing agency.

7 January 1963

¹⁷ United Nations, *Treaty Series*, vol. 341, p. 353.

¹⁸ *Ibid.*, vol. 33, p. 261.

¹⁹ See p. 31 of this *Yearbook*.

16. VESSELS TO BE USED IN THE UNITED NATIONS SPECIAL FUND CARIBBEAN FISHERY PROJECT

*Memorandum to the Associate Director of the Bureau of Operations,
United Nations Special Fund*

1. We refer to your memorandum of 7 May in which you have raised several questions related to the ships to be used in the United Nations Special Fund Caribbean Fishery Project.

2. You state that it is contemplated that the vessels will be provided through (a) voluntary contributions of participating governments, and (b) purchase by the Special Fund of new or used vessels, most probably from Japan. Your first question is whether the Special Fund should take title for the duration of the project to vessels of either or both categories.

3. This is a question which should be resolved on the basis of financial policy and the requirements of the project. We note that on this basis the United Nations Special Fund Caribbean Fishery Mission has recommended in its report (SF/310/REG.16) that the Special Fund purchase the vessels to be used in the project.

4. No immediate legal consideration seems to favor ownership as against charter although there may be some advantages discussed later in this memorandum if the vessels being owned by the Special Fund are registered in the participating countries. This would not be achieved in the event the only suitable vessels available for charter are registered in countries not participating in the project, since the charter of a vessel does not affect its existing registration.

5. As regards vessels contributed by participating governments no need appears to arise for their purchase by the Special Fund. We assume that government vessels suitable for the project will be placed under the general direction of the project manager, although responsibility for their operation would remain with the governments concerned.

6. Your second question is whether the vessels should fly the flag of the countries in which they are registered or an international flag and in the latter case what the legal implications would be.

7. The main difficulty of using flags of international organizations in lieu of a national maritime flag arises from the question of jurisdiction over the vessel and its crew. A maritime flag symbolizes the nationality of the ship and nationality determines the applicable jurisdiction. International organizations unlike States are not in a position to exercise civil or criminal jurisdiction and for many events on board there would exist a jurisdictional gap. On one or two occasions international organizations have indeed used their flag as the sole flag on their ships but in these cases the circumstances have been different from the circumstances in this project mainly because the voyages were of short duration and in limited areas. The Caribbean Fishery project will have a duration of four years and the vessels will be used primarily on the high seas. For these reasons we do not think it appropriate in this case to use the flag of an international organization as the sole maritime flag.

8. In your question you assume that the vessels obtained by the Special Fund would have a national registration and the right to fly the flag of the country of registration. As indicated earlier, if the vessels are chartered the existing registration and flag would not change. But if the vessels are purchased, requirements governing registration will have to be met by the Special Fund, as new owner. In general, registration is subject to a variety of requirements such as the ship's national build, national ownership and corporate management, owner's domicile in national territory, and national crew and officers. Requirements of this kind would equally apply to used ships already registered which are purchased by the Special Fund and to new ships not yet registered anywhere which are built according to the specifications of the project. It would then appear that it would be difficult to secure a registration

and the right to fly a flag which goes normally with it for new or used ships acquired by the Special Fund, unless a country is found which is prepared to waive its normal legal requirements for registration. Apart from this difficulty it may not be desirable to have associated with the project vessels flying the flags and subject to the jurisdiction of countries which are not in the area of the project. In the circumstances it seems that a waiver should appropriately be requested from recipient countries since the project is for their exclusive benefit. Insofar as possible, each vessel could be registered in the country where it will be based and in whose territorial waters it will in part operate. This will facilitate other waivers considered necessary by the Caribbean Fishery Mission which has said:

“The Governments should submit to the Special Fund a statement to the effect that territorial waters of their countries can be fished freely by all exploratory vessels, that the exploratory vessels are exempt from all harbour dues, and that all exploratory vessels can land and sell catches in their countries” (SF/310/REG.16, para. 108).

In the event the vessels are so registered a statement should be included in the Plan of Operation whereby the participating governments shall take no measures as regards the vessels registered in their national registry and flying their flags which may interfere with the operations of the project or the disposition of the vessels by the Special Fund upon completion of the project.

9. What we have said before concerning the use of the flag of an international organization as the sole maritime flag does not apply to the use of such flag worn in addition to a national flag. No problem or jurisdiction arises in this case since the vessel has a nationality. The purpose of flying the flag of an international organization is simply to identify the vessel as being in the service of that organization and to indicate its entitlement to the applicable privileges and immunities. Article 7 of the Convention on the High Seas of 29 April 1958 authorizes in general the use of the flags of international organizations, as follows:

“The provisions of the preceding articles [on grant of nationality, use of two flags, etc.] do not prejudice the question of ships employed on the official service of an inter-governmental organization flying the flag of the organization.”

10. According to the United Nations Flag Code the use of the United Nations flag on the vessels of the project will be permissible. Under paragraph 4 (2) of the Code, “the flag shall be used by any unit acting on behalf of the United Nations. . . in such circumstances not covered in this Code as may become necessary in the interests of the United Nations”. The United Nations flag could as well be used in government ships taking part in the project if they are in fact “acting on behalf of the United Nations” on a permanent basis and are generally under the direction of the project manager. We strongly recommend that for purposes of identification all ships taking part in the project fly the United Nations flag in addition to their maritime flag.

31 July 1963

17. CONVENTION OF 28 JULY 1951 RELATING TO THE STATUS OF REFUGEES²⁰—SUCCESSION BY JAMAICA TO RIGHTS AND OBLIGATIONS

*Memorandum to the Regional Representative of the United Nations
High Commissioner for Refugees*

1. We have reached the conclusion that the High Commissioner may consider that Jamaica has become a party to the 1951 Convention by assuming the obligations and responsibilities of the United Kingdom under that Convention insofar as it may be held to have application to Jamaica.

²⁰ United Nations, *Treaty Series*, vol. 189, p. 150.

2. In support of this conclusion we call your attention to the Exchange of letters²¹ between the United Kingdom and Jamaica dated 7 August 1962, in which the two Governments agreed to the following provisions:

“(i) all obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument (including any such instrument made by the Government of the Federation of the West Indies by virtue of authority entrusted by the Government of the United Kingdom) shall as from 6th August, 1962 be assumed by the Government of Jamaica, in so far as such instrument may be held to have application to Jamaica;

“(ii) the rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Jamaica shall as from 6th August, 1962 be enjoyed by the Government of Jamaica.”

3. In our opinion this exchange of letters constitutes an international agreement and in accordance with the established practice of the Secretariat it should be assumed that Jamaica has succeeded to the rights and obligations of the 1951 Convention. The fact that Jamaica has not yet replied to the general inquiry sent by the Secretary-General on 18 December 1962 inquiring about its succession to multilateral treaties does not invalidate the above conclusion based on its agreement.

4. We also refer to the fact that the United Kingdom, in a notification²² addressed to the Secretary-General under article 40, paragraph 2 of the 1951 Convention, stated expressly that the Convention was extended to Jamaica and to other territories subject to the following reservations made under the terms of article 42, paragraph 1 of the Convention:

“(i) The Government of the United Kingdom understand articles 8 and 9 as not preventing the taking by the above-mentioned territories, in time of war or other grave and exceptional circumstances, of measures in the interests of national security in the case of a refugee on the ground of his nationality. The provisions of article 8 shall not prevent the Government of the United Kingdom from exercising any rights over property or interests which they may acquire or have acquired as an Allied or Associated Power under a Treaty of Peace or other agreement or arrangement for the restoration of peace which has been or may be completed as a result of the Second World War. Furthermore, the provisions of article 8 shall not affect the treatment to be accorded to any property or interests which, at the date of entry into force of the Convention for the above-mentioned territories, are under the control of the Government of the United Kingdom by reason of a state of war which exists or existed between them and any other State.

“(ii) The Government of the United Kingdom accept paragraph 2 of article 17 in its application to the above-mentioned territories with the substitution of “four years” for “three years” in subparagraph (a) and with the omission of subparagraph (c).

“(iii) The Government of the United Kingdom can only undertake that the provisions of subparagraph (b) of paragraph 1 of article 24 and of paragraph 2 of that article will be applied to the above-mentioned territories so far as the law allows.

“(iv) The Government of the United Kingdom cannot undertake that effect will be given in the above-mentioned territories to paragraphs 1 and 2 of article 25 and can only undertake that the provisions of paragraph 3 will be applied in the above-mentioned territories so far as the law allows.”

Jamaica would have the right to avail itself of these reservations which were made by the United Kingdom under the terms of the Convention and it may be that in due course your office will wish to obtain a declaration by Jamaica which would withdraw these reservations. However, we think your main inquiry at present is answered by the conclusion that Jamaica is under the obligations of the Convention subject to the reservations made by the United Kingdom.

5 March 1963

²¹ Cmnd. 1918 (1963).

²² United Nations, *Treaty Series*, vol. 252, p. 354.

18. PUBLICATION OF A COMMUNICATION RECEIVED FROM A NON-GOVERNMENTAL ORGANIZATION
—INTERPRETATION OF GENERAL ASSEMBLY RESOLUTION 1779 (XVII) OF 7 DECEMBER 1962

Memorandum to the Director of the Division of Human Rights

1. In your memorandum of 16 August 1963 you requested our advice as to the inclusion, in an addendum to the report (A/5473) which the Secretary-General has submitted to the General Assembly under resolution 1779 (XVII), of the communication received from the International Confederation of Free Trade Unions dated 17 July 1963.

2. From a legal point of view, it may be noted that there are only three references to non-governmental organizations in resolution 1779 (XVII). Under paragraph 1, non-governmental organizations are invited "to make sustained efforts to educate public opinion with a view to the eradication of racial prejudice and national and religious intolerance and the elimination of all undesirable influences promoting these. . .". Under paragraph 4, non-governmental organizations are invited "to co-operate fully with the Governments of States in their efforts to prevent and eradicate racial prejudice and national and religious intolerance". Under paragraph 5, they are invited to inform the Secretary-General of "action taken by them in compliance with the present resolution".

One of the tasks which the General Assembly invited the non-governmental organizations to undertake under the resolution is therefore of educating public opinion, the other is that of co-operating with governments in the efforts of the latter to eliminate racial, national and religious prejudice and intolerance.

3. The concept of education is, of course, a broad one and, as far as non-governmental organizations are concerned, it would presumably pertain to providing to their members and other sectors of public opinion, through special courses and otherwise, relevant data and arguments which may influence them in favour of the purposes of the resolution.

It is a somewhat doubtful question whether this concept can be considered to extend further to the effects which protests and complaints by non-governmental organizations against governmental action may have upon public opinion. In the present context, this question should, in our view, only be answered in the affirmative if it can be clearly demonstrated that this was the intention of the authors of the resolution.

The records of discussion of the resolution throw no light on the subject. The reference to article 26 of the Universal Declaration of Human Rights in paragraph 1 of resolution 1779 (XVII) would indicate, however, that a restrictive meaning was to be given to the concept of "education".

4. "Co-operation with Governments" as expressed in paragraph 4 of the resolution would relate to assistance given to the latter, in particular with respect to actions under paragraphs 1, 2 and 3 of the resolution, and would obviously not extend to criticism, protest and other accusations against governmental measures to eradicate discrimination or absence thereof.

5. Compared with reports on action taken by non-governmental organizations which are contained in Part III of the report of the Secretary-General as submitted to the General Assembly (A/5473), the communication from the ICFTU presents the following characteristics:

(1) While the other non-governmental organizations seem to have limited their reporting to action taken by them shortly before or since the adoption of resolution 1779 (XVII), the ICFTU communication relates to a number of statements issued by the ICFTU long before resolution 1779 (XVII) was adopted.

(2) The report of the ICFTU consists essentially of a reminder of statements presented to the United Nations and to specialized agencies and of "criticism", "protests", "complaints", etc., to governments against situations in their countries.

6. The non-governmental organizations are, of course, free to communicate to the Secretary-General such information as they consider to be of interest to the latter. It is, however, the Secretary-General's responsibility, under paragraph 6 of resolution 1779 (XVII), to present his report to the eighteenth session of the General Assembly within the framework prescribed by that resolution.

7. Account being taken of the observations made previously, it would seem doubtful to us that the ICFTU's communication should be submitted in the present form as an addendum to document A/5473.

(1) As stated earlier many of its parts relate to long past action which obviously could not have been taken "in compliance with the present resolution".

(2) One clear case of "co-operation... with Governments of States in their efforts..." may be found in the last paragraph of page 5, in which it is stated: "In June 1963, the AFL-CIO pledged to President Kennedy its unstinting assistance in the prompt achievement of a fully enforceable civil rights programme on every front. President Kennedy asked the trade unions to create a working committee..." The rest of the material does not appear to fit within that category.

(3) As to the task of education of public opinion, there is little if anything at all said about how the various branches of the Confederation have tried to educate their members or the public at large.

(4) As you indicate, the question of references to, and in particular "complaints" against, individual governments presents a special problem in the light of past understandings in the Economic and Social Council as to the extent of the role non-governmental organizations may play in their relationship to United Nations organs.

8. It is true that the present communication does not by itself constitute a list of complaints against governments, but is rather a relation of past accusations and complaints addressed by the ICFTU, either directly or through international organizations. Its impact is, however, one of criticism of specific governments in relation to current situations. To permit its circulation under resolution 1779 (XVII), it would not be sufficient, in our opinion, to invoke resolution 6 (XVI) of the Commission of Human Rights, which is not mentioned by the Assembly. It would appear to us that any exception that the Assembly would have wished to make in the existing procedures and practices governing complaints against governments and other communications from non-governmental organizations amounting to complaints, would have been made specifically in the resolution.

9. It would, therefore, be our view that the communication of the ICFTU should not be circulated in its present form as an annex to document A/5473. The attention of the ICFTU may possibly be drawn to the possibility of sending another communication following more closely the requirements of resolution 1779 (XVII).

9 September 1963

19. INTERNATIONAL DRIVING PERMIT—INTERPRETATION OF ARTICLE 24 OF THE CONVENTION OF 19 SEPTEMBER 1949 ON ROAD TRAFFIC²³

Memorandum to the Officer-in-Charge of the Resources and Transport Branch, Department of Economic and Social Affairs

1. This is in reply to your memorandum of 10 July 1963 concerning the inquiry made by the South African Mission to the United Nations on behalf of the South African Department of Transport as to whether the authority which issues an international driving permit to a person who has been disqualified from driving a motor vehicle in another Contracting State, in terms of paragraph 5 of article 24 of the Convention on Road Traffic, is required to

²³ United Nations, *Treaty Series*, vol. 125, p. 22.

make an appropriate endorsement under the heading "Exclusion" on any other international driving permit issued to such person during the period of disqualification.

2. The Convention, it is evident, does not explicitly require the authority which issues such a permit to make an endorsement of this kind, but it would seem to us that a requirement to this effect is to be implied from the relevant provisions of the Convention.

3. Article 24 of the Convention provides in paragraph 2 that "A Contracting State may . . . require that any driver admitted to its territory shall carry an international driving permit conforming to the model contained in annex 10" and in paragraph 3 that "The international driving permit shall . . . be delivered by the competent authority of a Contracting State . . ." and that "The holder shall be entitled to drive in all Contracting States without further examination . . ."

4. It is thus clearly a requirement under the Convention that an international driving permit, in order to be valid for the purpose for which it is issued (which is that of meeting what each of the other Contracting States are entitled under the Convention to require, namely, that a driver admitted to its territory shall carry a permit which conforms to the model in annex 10), must conform to the model in annex 10 and should, it follows, include, as does the model, a section on "Exclusion" which would provide information as to countries in which the "holder of [the] permit is deprived of the right to drive". It may be pertinent to note in this connexion that paragraph 5 of article 24 provides that a Contracting State which withdraws from a driver the right to use such a permit may in that event record such a withdrawal of use on the permit and communicate the name and address of the driver to the authority which issued the permit.

5. Moreover, in terms of paragraph 3 of article 24, an international driving permit issued by the appropriate authority in a Contracting State would entitle its holder to drive in all Contracting States without further examination. A provision to this effect is also included in the model permit in annex 10: "This permit is valid in the territory of all the Contracting States with the exception of the territory of the Contracting State where issued . . .". Accordingly, a permit that does not contain a record of the countries in which its holder is excluded from driving would purport to authorize him to drive in a Contracting State in which he is excluded, and such an anomalous situation would of course not be consistent with the provisions of the Convention and should if possible be avoided.

6. We consider therefore that the requirement that the competent authority in a Contracting State should record on an international driving permit the countries in which its holder is excluded from driving should be regarded as implicit in the Convention.

26 July 1963

20. NEW YORK-GENEVA SUBMARINE CABLE LEASED BY THE UNITED NATIONS—USAGE BY SPECIALIZED AGENCIES FOR TRANSMISSION OF CABLES—RESOLUTION NO. 26 OF THE PLENIPOTENTIARY CONFERENCE OF THE INTERNATIONAL TELECOMMUNICATION UNION (BUENOS AIRES, 1952)—TELEGRAPH REGULATIONS (PARIS REVISION, 1949), RESOLUTION NO. 9—TELEGRAPH REGULATIONS (GENEVA REVISION, 1958), ARTICLES 86 AND 87

Memorandum to the Under-Secretary, Director of General Services

1. In your memorandum of 30 October 1963 you refer to resolution No. 26 adopted at the 1952 Plenipotentiary Conference of the International Telecommunication Union opposing the use of the United Nations telecommunication network for carrying cable traffic of the specialized agencies except in emergency, a policy with which the United Nations complies. You mention that in the first period after the adoption of the resolution we con-

tinued to carry specialized agency messages between New York and Geneva on the ground that this link was at that time still operated on a commercial basis, whereas the resolution of ITU was directed only against United Nations network "competition with existing commercial telecommunication networks". In 1955, however, we began to apply the terms of the resolution also to the New York-Geneva link after installation of our own transmitters and receivers.

2. As we returned to a commercial arrangement through submarine cable lease in 1961, you now ask whether the specialized agencies could be permitted to use this link. You express doubt whether ITU resolution No. 26 is applicable, on the grounds that (i) a link by commercial lease may not constitute a part of the United Nations network in the ITU sense, and (ii) transmission of specialized agency messages over the leased cable would represent a use of, rather than a competition with, existing commercial channels.

3. We agree that it is probably doubtful that this link should technically be defined as fitting into our telecommunication network, since we use the link as a commercial lessee under private contract with a corporate operating agency and not in our capacity as a telecommunication Administration under the International Telecommunication Convention. Nevertheless, it does not seem essential to decide this point for the present.

4. As to your second question, it is true that resolution No. 26 seems to have been directed by ITU against competition by the United Nations network with commercial channels, since there are repeated references to this aspect throughout its text and not to any other policy aspect. It would also be true that a renewed sharing by the specialized agencies of a commercial cable leased by the United Nations would not represent the kind of complete diversion from commercial channels which we have always understood the Plenipotentiary Conference to have had in mind. You would not necessarily be immune, however, from some criticism on this score. In this connexion you do not state in your memorandum what advantage to the specialized agencies has caused the proposal of a sharing arrangement to be made. Since you indicate that arrangements similar to ours could be made with the cable companies by the specialized agencies, one advantage of having the United Nations handle their Geneva-New York traffic would no doubt be the convenience to be derived from common services in the handling of telegrams. Nevertheless we assume that if you have been pressed on the point, it must be because the cost to the specialized agencies of a joint use with the United Nations would be appreciably lower than the per-word charges presently paid. It must also be because we have available transmission time, not using the leased cable to its full capacity. Naturally, it could be argued that, to the extent that we reduce their commercial costs on traffic which has apparently not been sufficient in amount to justify a lease in their own names, we are diverting specialized agency messages from ordinary telegraph channels into one which will bring no additional revenue to the private operating agencies.

5. In our view this point brings us to the real problem. On the facts available we could not be charged with violation of resolution No. 26 if joint use by the United Nations and the specialized agencies of the particular commercial facility is otherwise permissible under more general ITU requirements. This raises the question of the rules limiting the use of the leased telegraph circuit service. You will recall that there was attached to the previous Telegraph Regulations (Paris revision, 1949) a resolution (No. 9) which stated that "a circuit may be leased jointly by two or more users only when these users are *directly* engaged in the same or correlated type of undertaking" and that "the telegraph correspondence passed over such circuits may be transmitted only by a user sharing in the lease and must be intended only for another user sharing in the lease; it must concern only the undertaking or undertakings for which the circuit has been leased." In October 1952 (*prior* to the adoption of ITU resolution No. 26) this Office rendered an opinion that the international organizations concerned were directly engaged in a correlated type of undertaking. Before the resolution was adopted we

also felt that the organizations could even be considered a single user, avoiding absolute necessity of a joint lease. Nevertheless, we had no objection to a re-negotiation of the lease to include the names as joint lessees of any interested specialized agencies. Neither the present Telegraph Regulations (Geneva revision, 1958) nor the resolutions attached thereto exactly repeat the terms of resolution No. 9, and we cannot say whether it is considered still to be in force. Article 86 of the Regulations, on the leased telegraph circuit service, does, however, give Administrations the right to authorize a service for making telegraph circuits available "for the exclusive use of a user or group of users, the conditions for this service to be determined by agreement between the Administrations or recognized private operating agencies concerned, taking into account the recommendations" of the International Telegraph and Telephone Consultative Committee (CCITT). It is most probable, therefore, that a formal decision on the question which you raise would require an examination of the CCITT recommendations, which would extend beyond the purview of this Office. In the alternative, it may be possible to learn from precedents and practice what are the agreements or understandings governing the Swiss and United States private operating agencies concerned.

6. If you felt advisable, you could of course have inquiries made in Geneva to determine the practice or sound out ITU attitudes on joint users. If you consider this undesirable, you might wish, at least for your interim guidance, to be governed by the precedents to which your memorandum refers. If ITU was in any way put on notice in 1952 that we considered our then commercial Geneva-New York link to be outside the terms of the Plenipotentiary resolution No. 26 or the Telegraph resolution No. 9, or if in any case it was well known to ITU that we were expecting and intending to continue to carry specialized agency messages on that particular link, you could fairly consider yourself entitled, in the absence of contrary indications, to return to the same type of arrangement. If you do not find from your records that a firm precedent was established, it seems at least necessary to know whether the CCITT has adopted relevant limitations on joint user of leased circuits.

7. The uncertainties mentioned above as to the purposes behind the new proposal to carry specialized agency traffic on this link suggest one or two concluding observations. We assume that the new arrangement would not be intended to confer on specialized agency telegrams any higher priorities or privileges or more favourable treatment than they are at present accorded in their separate commercial channels. You recall that denial of government privileges to specialized agency communications has always been a strong article in the ITU faith. We also note the assurance in your memorandum that the arrangement would be on the understanding that cables thus transmitted will not be reforwarded beyond Geneva or New York on the United Nations network. This would be proper, taking into account resolution No. 26, but it raises a further serious doubt in our mind. What is the advantage to FAO, for example, if the bulk of its New York traffic is addressed to or from its Rome Headquarters? The fact that FAO messages from Rome to Geneva were commercially routed would not seem to alter the fact that we would be engaging in the reforwarding of such messages by passing them to New York. This would raise the problem whether we were a reforwarding agency in the sense prohibited by article 87 of the Telegraph Regulations. If so, commercial offices handling the FAO messages would have the obligation to "stop telegrams addressed to a telegraphic reforwarding agency well known to be organized with the object of enabling the correspondence of third parties to evade the full payment of the charges due for transmission, without intermediate reforwarding, between the office of origin and the office of ultimate destination." No doubt we could hardly be said to be "well known to be organized with the object of enabling" the specialized agencies "to evade the full payment of the charges due for transmission" over the full distance to the ultimate destination. It could be argued (although we have some doubt whether it would be) that to the extent of this particular arrangement now proposed, its obvious motive was such that we were *pro tanto* serving as such a telegraphic reforwarding agency. Again this is a question which requires

a greater degree of contact with ITU and knowledge of its current practices, though we assume that you could, in this instance too, be guided by your previous precedents, if they clearly met the reforwarding problem at the time.

8. Before you settle your final policy, we therefore suggest you have an examination made of (1) the correspondence or other understandings with ITU in 1952 concerning carriage of specialized agency traffic on the New York–Geneva link; (2) the rules on joint user of leased telegraph circuits; and (3) the 1952 understandings, if any, and otherwise the current ITU interpretations, on reforwarding.

2 December 1963

21. IMMUNITY FROM LEGAL PROCESS OF UNITED NATIONS OFFICIALS

Memorandum to the Deputy Chef de Cabinet

1. With reference to your inquiry we should like to confirm that the Secretary-General has, on a number of occasions, informed delegations that United Nations Secretariat personnel do not enjoy immunity from arrest or prosecution for alleged acts which are not related to their official duties. The immunity accorded to Secretariat officials is expressed in section 18 of the Convention on the Privileges and Immunities of the United Nations²⁴ providing that officials of the United Nations—i.e. Secretariat staff members—shall be “immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity”. There is, of course, a clear distinction between Secretariat officials and officials of Member governments.

2. Needless to say, this position has been taken on many occasions and in a number of countries in which United Nations personnel work. For example, we are attaching a copy of a press release dated 24 June 1949 containing a statement by the Secretary-General on this point raised as a result of a case in regard to which the Secretary-General also considered that he could not assert immunity from arrest or interrogation where the alleged acts were not connected with the staff member’s official duties.

3. May we add that there should be no misunderstanding whatsoever by Secretariat personnel regarding this position. It is expressly stated in the Convention on the Privileges and Immunities and it has been repeated on various occasions in specific statements made by or on behalf of the Secretary-General.

11 July 1963

22. PROPOSED ACCESSION BY A MEMBER STATE TO THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS²⁴ SUBJECT TO A RESERVATION DENYING TO ANY UNITED NATIONS OFFICIAL OF THAT STATE’S NATIONALITY ANY PRIVILEGE OR IMMUNITY UNDER THE CONVENTION—INTERPRETATION OF ARTICLES IV, V AND VI OF THE CONVENTION

Aide-Mémoire to the Permanent Representative of a Member State

1. The first article of the Law approving accession by your country to the Convention on the Privileges and Immunities of the United Nations approves the Convention subject to the reservations set out in the second and third articles of the Law.

The third article of the Law sets forth a reservation to the effect that the proviso contained in article IV, section 15, of the Convention shall also apply in respect of articles V and VI.

²⁴ United Nations, *Treaty Series*, vol. 1, p. 15.

Section 15 of the Convention on the Privileges and Immunities of the United Nations reads:

“The provisions of sections 11, 12 and 13 are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative.”

Article IV of the Convention, in which not only section 15 is found but also the three sections cross-referenced therein, relates only to representatives which Member States delegate to represent them. Article V of the Convention, to which the proposed reservation seeks to apply the proviso contained section 15, specifies the privileges and immunities of officials of the Organization and the limitations under which they are intended to be enjoyed. Article VI does the same for experts on missions for the United Nations.

As section 15 of the Convention expressly relates only to the provisions of sections 11, 12 and 13 which, being contained in article IV, have no legal relationship to articles V or VI, it will be assumed that the intent of the reservation in the third article of the Law is to state that the privileges and immunities specified in articles V and VI are not applicable as between an official (or an expert on mission for the United Nations) of your country's nationality and the Government of your country.

2. In the opinion of the Secretary-General, a closer examination of the true legal operation of this reservation, as so interpreted, will leave no doubt that it is incompatible with the United Nations Charter. It may therefore be that you would wish to consider the possibility of suggesting to your Government that the actual deposit of any instrument of accession intended to embody the foregoing reservation be delayed pending an urgent reconsideration of its legal consequences. In this connexion it may be borne in mind that, should an instrument containing this reservation be submitted to the Secretary-General, he would be obliged to take action in two separate capacities, not merely as depositary of the Convention in question under its section 32, but also as the authority designated by section 36 for entering into negotiations with any Member Government as to any adjustments to the terms of the Convention so far as that Member is concerned.

In view of this dual responsibility the following analysis of the proposed reservation is offered for the consideration of your Government.

3. Numerous privileges and immunities specified in article V are not ordinarily understood to have practical application as between an official of the United Nations and his Government of nationality. Such an official will have no occasion, unless in rare circumstances, to require immunity from immigration restrictions in his own country, or privileges in respect of exchange facilities, or repatriation facilities in time of international crisis; he cannot by definition require immunity from alien registration, and it would be exceptional for him to have reason to claim duty-free entry for his personal effects on taking up his post in the country.

4. The situation is quite otherwise in the matter of his official acts, and it is here that the reservation cannot be reconciled with the Charter. Section 18(a) in article V requires that officials of the United Nations be “immune from legal process in respect of words spoken or written and all acts performed by them in *their official capacity*.” (Underscoring supplied.) It follows that your country, in proposing the reservation quoted above, has (no doubt unintentionally) reserved the right to prosecute United Nations officials of its nationality for words spoken or written or for any acts performed by them in their official capacity, indeed for actions which are in effect the acts of the Organization itself. It would equally be the consequence of the reservation that your country would be reserving jurisdiction to its national courts to entertain private lawsuits against its citizens for acts performed by them as officials of the United Nations.

5. Article 105 of the Charter provides in its second paragraph that officials of the Organization shall "enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization." Likewise, by the second paragraph of Article 100 each Member of the United Nations "undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff". It needs no argument to demonstrate that the reservation by a Member of the right, even in the abstract, to exercise jurisdiction over the official acts of United Nations staff, either through its courts or through other organs or authorities of the State, would be incompatible with the independent exercise and the exclusively international character of the responsibilities of such officials of the Organization. This derogation from the clear terms of the Charter would in no way be affected by the common nationality of the international official and the prosecuting authority. The Secretary-General cannot believe that the legal effect of the reservation in question, although indisputable when examined in this light, was consciously intended.

6. The situation is similar with regard to article VI of the Convention. Experts of your country's nationality would not normally perform their missions for the United Nations on national territory. On the other hand, the inevitable consequence of reserving article VI would be to permit the exercise over nationals of your country, who have performed or are performing official United Nations missions, of jurisdiction in respect of words spoken or written and acts done by them in the course of the performance of their mission. For example, an officer who might be seconded by your Government for service abroad as a United Nations Military Observer would technically be subject on his return to inculcation or sanction for some aspect of his activity on behalf of the Organization. This is particularly evident from the fact that one of the provisions reserved states (in section 22(b) of the Convention):

"This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations."

Papers and documents of the United Nations in his possession could likewise be deprived of their inviolability, while the confidential character of his communications with the United Nations could equally be overridden. In such circumstances the Organization itself could not be said to enjoy in the territory of the Member in question the privileges and immunities necessary for the fulfillment of its purposes, as required by Article 105, paragraph 1 of the Charter.

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

As article VI does not provide for tax exemption on any stipends paid to experts on missions for the United Nations, there is no tax implication for them in the proposed reservation.

8. In addition to the reservation stated in the third article of the Law, as examined above, the second article of the Law contains a reservation concerning the capacity of the United Nations under section 1 of the Convention to acquire immovable property. It subjects that capacity to the conditions established in the national Constitution and to any restrictions established in the Law therein provided for. According to the Constitution, the acquisition of real property by international organizations may be authorized only in accordance with conditions and restrictions established by law. The Secretariat of the United Nations has no information as to whether such a law has as yet been adopted.

9. It is unnecessary to re-emphasize the urgent desire of the United Nations to see an early accession by your country to the Convention on the Privileges and Immunities of the United Nations. The General Assembly itself has repeatedly stated in its resolutions on the subject that, if the United Nations is to achieve its purposes and perform its functions effectively, it is essential that the States Members should unanimously accede to the Convention at the earliest possible moment. The Secretary-General would only wish that the instrument of accession should not be subject to a reservation conflicting with the Charter, so as to avoid the necessity of placing the question before the General Assembly.

22 October 1963

23. RIGHT OF THE UNITED NATIONS TO VISIT AND CONVERSE WITH STAFF MEMBERS IN CUSTODY OR DETENTION

Internal memorandum

1. In connexion with the recent arrest of a staff member, the question has arisen of the extent of the right of the United Nations to visit and converse with staff members held in custody or detention by the authorities of a State.

2. It is established by the advisory opinion of the International Court of Justice of 11 April 1949, on Reparation for injuries suffered in the service of the United Nations (I.C.J. Reports, 1949, p. 174), that in the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, the United Nations has the capacity to bring an international claim against the responsible State (whether it is or not a Member of the Organization), with a view to obtaining the reparation due in respect of the damage caused both to the United Nations and to the victim or to persons entitled through him. The United Nations therefore has, beyond any doubt, a right of diplomatic protection of its staff, at least within the limits of the questions put to the Court in the request for the advisory opinion.

3. The right to visit and converse with the person in respect of whom a State may possibly have violated its international obligations is a necessary consequence of a right of diplomatic protection. The State or organization having such a right of protection cannot exercise it unless there is an adequate opportunity to find out the facts of a case, and where the person concerned is in custody or detention, the only such opportunity is through access to that person. This is recognized, for example, in the Vienna Convention on Consular Relations of 24 April 1963 (A/CONF. 25/12). Consuls are the usual channel through which States ascertain the facts about persons to whom they are in a position to afford diplomatic protection. Consequently the Convention provides in article 36:

“1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

...

“(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. . .”

4. It is therefore clear that the United Nations has the right to visit and converse with one of its staff members in custody or detention whenever there is any possibility that the United Nations or the staff member in the performance of his duties may have been injured through the violation by a State of any of its obligations either toward the United Nations or toward the person concerned. During such visits and conversations the United Nations representatives must have the right to pursue any line of discussion which would clarify the questions both whether an injury has occurred, and whether it was incurred in connexion with performance of the staff member's duties. The mere fact that there is no obvious connexion between the reason given for the detention by the State and the staff member's duties is insufficient to nullify the right of the United Nations to visit. If that were so, the right of protection of the United Nations would be made entirely dependent upon the reasons given by the detaining State, and that would make the right practically ineffective.

5. Even if in fact there is no connexion between the staff member's duties and the reason for the detention, the United Nations should nevertheless be allowed to visit a staff member under detention, and to ascertain through all appropriate discussions not only whether there has been any legal injury but also whether the person is being treated with humanity and with full observance of an international standard of human rights. This is particularly true when the presence of the staff member in what is to him a foreign country is due to his employment by the United Nations. In such cases it is inappropriate to apply narrowly the test of connexion with official duty, since the person's very presence in the country is the result of, and a necessary condition for, the performance of that duty, and hence, in a sense, is connected with it. This broader scope of protection by the United Nations follows from the undesirability—stressed by the International Court of Justice in its advisory opinion on *Reparation for injuries*—that staff members should have to rely on protection by their own States. The Court said (I.C.J. Reports, 1949, pp. 183-184):

“In order that the agent of [the United Nations] may perform his duties satisfactorily, he must feel that this protection is assured to him by the Organization, and that he may count on it. To ensure the independence of the agent, and consequently, the independent action of the Organization itself, it is essential that in performing his duties he need not have to rely on any other protection than that of the Organization (save of course for the more direct and immediate protection due from the State in whose territory he may be). In particular, he should not have to rely on the protection of his own State. If he had to rely on that State, his independence might well be compromised, contrary to the principle applied by Article 100 of the Charter. And lastly, it is essential that—whether the agent belongs to a powerful or to a weak State; to one more affected or less affected by the complications of international life; to one in sympathy or nor in sympathy with the mission of the agent—he should know that in the performance of his duties he is under the protection of the Organization. This assurance is even more necessary when the agent is stateless.”

6. It follows from the foregoing that, when a United Nations staff member is arrested or detained by the authorities of a State, the Organization always has a right to send representatives to visit and converse with him with a view to ascertaining whether or not an injury has occurred to the United Nations or to him through non-observance by the State concerned of its international obligations, and whether or not such injury is connected with the performance of his duties. Furthermore, at least when the staff member is not a national of the detaining State, there are reasons for recognizing a broader interest of the United Nations in the matter, so that the staff member will not have to rely exclusively on the protection of his own State.

10 July 1963

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

1. INTERNATIONAL LABOUR OFFICE

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

(a) Memorandum concerning the Seafarers' Identity Documents Convention, 1958 (No. 108), prepared at the request of the Government of the United Kingdom, 13 August 1962. *Official Bulletin*, vol. XLVI, No. 3, July 1963, p. 466. English, French, Spanish.

(b) Memorandum concerning the Equality of Treatment (Social Security) Convention, 1962 (No. 118), prepared at the request of the Government of the Republic of China, 10 May 1963. *Official Bulletin*, vol. XLVI, No. 3, July 1963, p. 467. English, French, Spanish.

2. SECRETARIAT OF THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Practice of UNESCO regarding the effect of independence on the participation of Associate Members

1. Paragraph 3 of Article II of the Constitution of UNESCO, which was inserted in the Constitution by the General Conference of UNESCO at its sixth session (1951), provides as follows:

"3. Territories or groups of territories which are not responsible for the conduct of their international relations may be admitted as Associate Members by the General Conference by a two-thirds majority of Members present and voting, upon application made on behalf of such territory or group of territories by the Member or other authority having responsibility for their international relations. The nature and extent of the rights and obligations of Associate Member shall be determined by the General Conference."

2. In accordance with the last sentence of the paragraph quoted above, the General Conference determined the nature and extent of the rights and obligations of Associate Members in the following resolution, which it also adopted at its sixth session (1951) (6C/Resolution 41.2):

"The General Conference,

Whereas Article II of the UNESCO Constitution has been amended to provide for the admission of territories or groups of territories which are not responsible for the conduct of their international relations as Associate Members of the Organization,

Whereas this same amendment provides that the nature and extent of the rights and obligations of Associate Members shall be determined by the General Conference,

Whereas reference is made in various Articles of the UNESCO Constitution, other than Article II, to the rights and duties of States Members of the Organization,

Resolves that the rights and obligations of Associate Members of the Organization shall be as follows:

That Associate Members shall have the right:

(i) to participate without voting rights in the deliberations of the General Conference and of its Commissions and Committees;

(ii) to participate equally with Members, subject to the limitation on voting in paragraph (i) above, in matters pertaining to the conduct of business of meetings of the Conference and such of its Committees, Commissions and other subsidiary organs as the General Conference may, from time to time, indicate in accordance with the Rules of Procedure of the Conference;

(iii) to propose items for inclusion in the provisional agenda of the Conference;

- (iv) to receive equally with Members all notices, documents, reports and records;
- (v) to participate equally with Members in the procedure for convening special sessions;

That Associate Members shall have the right, equally with Members, to submit proposals to the Executive Board, and to participate, in accordance with regulations established by the Board, in committees established by it, but they shall not be eligible for membership of the Board;

That Associate Members shall be subject to the same obligations as Members, except that the difference in their status shall be taken into account in determining the amount of their contribution to the budget of the Organization;

That the contribution of Associate Members shall be assessed at a proportion of the amount at which they would have been assessed had they been full Members, subject to such limitations as the General Conference may decide;

That the Executive Board be requested to submit a report with recommendations to the next session of the General Conference setting out the standards according to which Associate Members shall be assessed in respect of their financial contributions."

3. Pursuant to paragraph 3 of Article II of the Constitution, the following Territories were admitted to Associate Membership by the General Conference at its various sessions:

- (a) *Eighth session (1954)*
 - (i) Gold Coast;
 - (ii) Sierra Leone;
 - (iii) Sarawak, North Borneo, Brunei, Singapore and the Federation of Malaya (as one group known as Malaya/British Borneo Group);
 - (iv) Jamaica, Trinidad, Grenada, Dominica and Barbados (as one group known as the British Caribbean Group).
- (b) *Ninth session (1956)*
Federation of Nigeria.
- (c) *Tenth session (1958)*
 - (i) Kuwait;
 - (ii) Federation of West Indies;
 - (iii) Trust Territory of Somaliland under Italian Administration;
 - (iv) State of Singapore.
- (d) *Eleventh session (1960)*
 - (i) Ruanda-Urundi;
 - (ii) Mauritius;
 - (iii) Tanganyika.
- (e) *Twelfth session (1962)*
Qatar.

4. As of 20 March 1963, the following were Associate Members of UNESCO: Mauritius, Qatar and Singapore.

5. The Constitution of UNESCO does not contain any special provisions regarding the passage from Associate Membership to State Membership. The provisions regarding State membership are contained in Article II, paragraph 1 (States which are members of the United Nations) and paragraph 2 (States not members of the United Nations).

6. During the Ninth Session of the General Conference, an informal meeting of representatives of Associate Members (British Caribbean Group, Gold Coast, Malaya/British Borneo Group, Nigeria) and of the United Kingdom was held to discuss the legal implications of attainment of sovereignty in relation to associate membership of UNESCO. This meeting considered:

(a) that the normal procedures governing admission to membership of UNESCO applied to Associate Members wishing to become State Members of UNESCO.

(b) that during the interim period the new sovereign State would continue to enjoy the rights and assume the obligations of an Associate Member as defined by the General Conference at its Sixth Session (1951).

(c) that the new sovereign State would continue to have its contribution to the budget assessed on the same basis as an Associate Member until its admission as a full Member State of the Organization.

7. The only official action taken with respect to the various Associate Members was the following:

8. *Ghana (Gold Coast) and Sierra Leone* became State Members of UNESCO on 11 April 1958 and 28 March 1962, respectively, following their admissions to the United Nations on 8 March 1957 and 27 September 1961.

9. *Malaya/British Borneo Group and Singapore*. On 3 November 1958, the Government of the United Kingdom gave "formal notice of the withdrawal from Associate Membership of the former Malaya/British Borneo Group to take effect on the earliest possible date, i.e. 31 December 1959." At the same time, the Government of the United Kingdom made an application for the admission of the Government of Singapore as an Associate Member "from the date on which the former Malaya/British Borneo Group Associate Member ceases to exist" (Document 10C/53). On 2 December 1958, the General Conference adopted the following resolution (*10C/Resolution 0.54*):

"The General Conference,

Having considered the communication received from the Government of the United Kingdom concerning the change in the composition of the Malaya/British Borneo Group and the prospective change in status of Singapore,

Takes note of the notice of withdrawal which, in accordance with Article II, paragraph 6, of the Constitution, the Government of the United Kingdom has addressed to the Director-General on behalf of the Malaya/British Borneo Group whose composition had previously been altered as a result of the attainment by the Federation of Malaya of independence and the status of Member State of the Organization;

Decides that, from the date of 31 December 1959 on which the above-mentioned notice of withdrawal shall take effect and in accordance with the request made to the General Conference on its behalf, the State of Singapore alone shall exercise the rights and assume the obligations hitherto pertaining to the Malaya/British Borneo Group."

10. *British Caribbean Group and Federation of West Indies*. On 22 August 1958, the Government of the United Kingdom applied for Associate Membership on behalf of the Federation of the West Indies, stating that the acceptance of this application for membership "would cancel the Associate Membership of the British Caribbean Group as at present constituted, i.e. Trinidad, Barbados, Jamaica, Dominica and Grenada." These Territories were comprised in the Federation of the West Indies which also included the Cayman, Turks and Caicos Islands, Antigua, St. Christopher-Nevis-Anguilla, Montserrat, St. Lucia and St. Vincent. On 6 November 1958, the General Conference adopted a resolution (*10C/Resolution 0.52*) by which it admitted the Federation of the West Indies to Associate Membership of UNESCO. On 28 August 1962, the Government of the United Kingdom informed the Director-General that "since the Federation of the West Indies was dissolved by Order in Council on 1 June 1962, it must, in the view of Her Majesty's Government in the United Kingdom, be regarded as having ceased to be an Associate Member of UNESCO on that date." Trinidad and Tobago, on the one hand, and Jamaica, on the other, became States Members of UNESCO on 2 and 7 November 1962, respectively, following their admissions to the United Nations on 18 September 1962.

11. *The Federation of Nigeria* became a State Member of UNESCO on 14 November 1960, following its admission to the United Nations on 7 October 1960.

12. *Kuwait*. On 25 April 1960, the Government of Kuwait submitted an application for the admission of Kuwait to membership of UNESCO in accordance with Article II, paragraph 2 of the Constitution of UNESCO (Kuwait not being a member of the United Nations). In accordance with the then existing provisions of Article II of the Agreement between the United Nations and UNESCO,¹ this application was transmitted to the Economic and Social Council of the United Nations which decided at its thirtieth session to inform UNESCO that it had no objection to the admission of Kuwait to UNESCO. Following that decision, the Executive Board of UNESCO adopted at its 57th session a resolution recommending to the General Conference that Kuwait be admitted to membership of the Organization. On 15 November 1960, in the course of its 11th Session, the General Conference decided to admit Kuwait to membership of UNESCO (*11C/Resolution 0.51*). Article II of the Agreement between the United Nations and UNESCO has since been deleted, with effect on 10 December 1962.

13. *Somalia* became a State Member of UNESCO on 15 November 1960, following its admission to the United Nations on 20 September 1960.

14. *Tanganyika* became a State Member of UNESCO on 7 March 1962, following its admission to the United Nations on 14 December 1961.

15. *Rwanda and Burundi* became States Members of UNESCO on 7 and 16 November 1962, respectively, following their admissions to the United Nations on 18 September 1962.

20 March 1963

¹ United Nations, *Agreements between the United Nations and the specialized agencies and the International Atomic Energy Agency* (ST/SG/14), p. 23.