Extract from:

UNITED NATIONS
JURIDICAL YEARBOOK

1978

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

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

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

Chapter VI

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

A. Legal opinions of the Secretariat of the United Nations

(Issued or prepared by the Office of Legal Affairs)

1. QUESTION OF THE FINANCING OF UNIFIL DURING THE PERIOD BETWEEN ITS ESTABLISHMENT BY SECURITY COUNCIL RESOLUTION 425 (1978) OF 19 MARCH 1978 AND THE CONVENING OF THE THIRTY-THIRD REGULAR SESSION OF THE GENERAL ASSEMBLY—REQUIREMENT UNDER GENERAL ASSEMBLY RESOLUTIONS RELATING TO UNFORESEEN AND EXTRAORDINARY EXPENSES THAT, IN CASE COMMITMENTS SHOULD ARISE IN AN ESTIMATED TOTAL EXCEEDING $10 MILLION DURING THE INTERVENING PERIOD, A SPECIAL SESSION OF THE ASSEMBLY BE CONVENED TO CONSIDER THE MATTER—QUESTION WHETHER THE MATTER OF THE FINANCING OF UNIFIL COULD BE DEALT WITH THROUGH INCLUSION OF A SUPPLEMENTARY ITEM, AT THE SUGGESTION OF THE SECRETARY-GENERAL UNDER RULE 18 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY, IN THE AGENDA OF AN ALREADY PLANNED SPECIAL SESSION TO DEAL WITH A DIFFERENT QUESTION

Note prepared at the request of the Under-Secretary-General for Political and General Assembly Affairs

Introduction

1. The Security Council, by paragraph 3 of its resolution 425 (1978) of 19 March 1978, decided to establish immediately under its authority a United Nations interim force for southern Lebanon (UNIFIL) and, by paragraph 4 of the same resolution, requested the Secretary-General to report to the Security Council within 24 hours on the implementation of the resolution.

2. In paragraph 10 of his report to the Security Council (S/12611), the Secretary-General estimated that the cost of establishing a force of 4,000 all ranks for a period of six months would be $68 million. This figure is made up of initial setting-up costs (excluding the cost of initial airlift) of $29 million and ongoing costs for the six-month period of $39 million. Paragraph 11 of the Secretary-General's report states that "the costs of the Force shall be considered as expenses of the Organization to be borne by the Members in accordance with Article 17, paragraph 2, of the Charter". The Security Council approved the Secretary-General's report by its resolution 426 (1978) of 19 March 1978.

3. Consequently, paragraph 3 of General Assembly resolution 32/214 of 21 December 1977, relating to unforeseen and extraordinary expenses for the biennium 1978–1979, comes into operation. This paragraph provides

> "that if as a result of a decision of the Security Council commitments relating to the maintenance of peace and security should arise in an estimated total exceeding $10 million before either the thirty-third or the thirty-fourth session of the General Assembly, a special session of the Assembly shall be convened by the Secretary-General to consider the matter".

4. The question that arises is whether under the terms of the above-mentioned Assembly resolution the Secretary-General is required to convene a special session of the General Assembly solely for the purpose of considering the financial implications of the Security Council's decisions and to provide the necessary budgetary authorization for their implementation, or whether the matter could be referred to a conveniently timed special session already convened to deal with another matter.

5. On the basis of a review of the legislative history of the provisions of paragraph 3 of General Assembly resolution 32/214, and the purposes for which it was intended, it can be concluded

that the Secretary-General is not legally precluded from proposing, in accordance with the provisions of rule 18 of the rules of procedure of the General Assembly,[1] the inclusion of the question of the financing of UNIFIL as a supplementary item in the agenda of the special session to be convened in April to consider the situation in Namibia if (*a*) the expenditures to be incurred in connexion with establishment of the Force do not exceed $10 million before the General Assembly could consider the matter and (*b*) if this procedure by way of inclusion of a supplementary item is generally acceptable to Member States.

Legislative history and background

6. Wording similar to that used in paragraph 3 of General Assembly resolution 32/214, relating to unforeseen and extraordinary expenses, appeared for the first time in a resolution adopted by the Assembly at its resumed fifteenth session entitled "Review of the resolution relating to unforeseen and extraordinary expenses" (General Assembly resolution 1615 (XV) of 21 April 1961) after the Advisory Committee on Administrative and Budgetary Questions (ACABQ) had studied the question and reported thereon to the Assembly pursuant to General Assembly resolution 1585 (XV) of 20 December 1960. Since the sixteenth session of the General Assembly, the provision appears virtually unchanged in every resolution adopted by the Assembly relating to unforeseen and extraordinary expenses.

7. The language of the resolution as it had been adopted annually up to the first part of the fifteenth session appeared to vest in the Advisory Committee, on behalf of the General Assembly, the authority to concur in proposals from the Secretary-General for the incurring of practically unlimited unforeseen and extraordinary expenses provided that such expenses related to authorized activities. Indeed, it was the invoking of this resolution, in the absence of any other duly constituted procedure, to meet the substantial expenses of the United Nations operation in the Congo, pending action by the General Assembly at its fifteenth regular session, that prompted the request for a review of the terms of the customary annual resolution.

8. The purpose for which the provision in its present form was introduced is clear. The Charter vests in the General Assembly the authority to approve the budget of the United Nations. The nature of the Organization's responsibilities and activities is such that expenditures of an unforeseen and emergency nature for which provision has not been included in the approved budget arise between regular sessions of the General Assembly. Emergency expenses relating to the maintenance of peace and security arising as a result of Security Council decisions are an excellent example of such situations.

9. The course outlined by ACABQ[2] and approved by the General Assembly at its resumed fifteenth session, on the recommendation of the Fifth Committee, constitutes a controlled delegation of authority consistent with the financial prerogatives of the General Assembly and designed to provide prompt and effective financial support for the decisions of the Security Council pending appropriate financial action by the General Assembly at its next regular session in case of expenditures up to $10 million and at a special session convened for that purpose for estimated expenditures in excess of that amount.

10. It should be noted that at the time the provision was first adopted the calling of a special session was a rare and exceptional occurrence and it can be assumed that at that time it was never envisaged that special sessions would be convened between regular sessions as often as they have been in recent years. This assumption has been automatically carried over as the provision is each time repeated in successive resolutions on unforeseen and extraordinary expenses.

[1] Rule 18 reads as follows:

"Any Member or principal organ of the United Nations or the Secretary-General may, at least four days before the date fixed for the opening of a special session, request the inclusion of supplementary items in the agenda. Such items shall be placed on a supplementary list, which shall be communicated to Members as soon as possible."

[2] *Official Records of the General Assembly, Fifteenth Session, Annexes*, agenda item 50, document A/4715.

Concluding observations

11. The foregoing analysis establishes that the purpose of provisions of the nature of paragraph 3 of General Assembly resolution 32/214 is to ensure a flexible system permitting an immediate response to emergency situations, while preserving the financial prerogatives of the General Assembly. It can also be safely assumed that in adopting that paragraph the Assembly has not had in contemplation a situation where a special session of the General Assembly might already be planned, at an appropriate time, where the matter of unforeseen and extraordinary expenses could be taken up. It appears that being able to deal with this matter as part of a session already planned, rather than at a separate session, would result in very considerable savings to the United Nations in matters such as travel. In such circumstances, it is not unreasonable to conclude that the underlying purposes of paragraph 3 of General Assembly resolution 32/214 would be met by a suggestion from the Secretary-General that the question of the financing of the United Nations Interim Force in Lebanon might be dealt with as a supplementary item in accordance with rule 18 of the General Assembly's rules of procedure in the agenda of the forthcoming special session on Namibia, provided that (*a*) expenses incurred up to the time that the Assembly considers the matter do not exceed $10 million and (*b*) such inclusion is generally acceptable to Member States. In this latter connexion, it should be noted that under rule 19 of the General Assembly's rules of procedure, a decision to add supplementary items to the agenda during a special session requires a two-thirds majority of the members present and voting. With reference to the suggestion made in this paragraph, the Secretary-General could propose that the next special session, although bearing only a single number, could be divided into two parts, which could either immediately succeed each other, or even be conducted concurrently, one part dealing with the financing of UNIFIL, the other with Namibia.

12. If the two conditions stated in the previous paragraph cannot be met, the Secretary-General would have to proceed under the provisions of paragraph 3 of resolution 32/214 to convene a separate special session on the financing of UNIFIL.[3]

22 March 1978

---

2. Question of the participation in plenary meetings of the special session of the General Assembly devoted to disarmament of non-member States and specialized agencies

Memorandum to the Assistant Secretary-General, Centre for Disarmament, Department of Political and Security Council Affairs

1. You have requested our advice in connexion with requests received from two non-member States and UNESCO to participate in plenary meetings at the forthcoming special session of the General Assembly.

2. In this connexion, we are transmitting for your information the annexed extract from the "Guidelines on the procedure to be followed in matters relating to the General Assembly" dated 23 August 1977. These guidelines were prepared by the Secretariat. The extract contains references to precedents relating to the participation in plenary meetings of the General Assembly by non-member States, specialized agencies and the International Atomic Energy Agency, other organizations and liberation movements. There are clear precedents existing for participation in plenary by non-Member States.

3. The Director of the International Atomic Energy Agency has made statements in plenary at the outset of the consideration of the Agency's annual report to the General Assembly. In this connexion it should be borne in mind that unlike the specialized agencies, the International Atomic

[3] There was no general agreement to the inclusion of the question of the financing of UNIFIL in the agenda of the special session on the question of Namibia. As a result two separate special sessions were convened: the eighth special session, which took place on 20 and 21 April 1978, dealt with the financing of UNIFIL, and the ninth special session, held from 24 April to 3 May 1978, was devoted to the question of Namibia.

Energy Agency under its relationship agreement with the United Nations[4] subn its its reports to the General Assembly.

4. There is only one case where a representative of a specialized agen y has intervened in plenary—the occasion was of a ceremonial nature. At the twenty-fourth sessi n, the General Assembly placed in its agenda a special item entitled "Fiftieth anniversary of the International Labour Organisation" to mark the fiftieth anniversary of the founding of ILO. The Dire tor General of ILO made a statement at the 1793rd plenary meeting in connexion with this item.[5]

5. There is no legal basis at present for participation in plenary meetings l y representatives of UNESCO. The relationship agreement between UNESCO and the United Natio ns[6] approved by the General Assembly on 14 December 1946 makes no provision for such particip ation except for the purposes of consultation on educational, scientific and cultural matters at the ir vitation of the General Assembly. (See Article III, paragraph 3 of the relationship agreement.[7])

20 April 1978

ANNEX

Extract from the "Guidelines on the procedure to be followed in matters relating to the General Assembly"

I. Participation of non-member States

(a) *Main Committees*

31. When representatives of non-member States are invited to participate in discu ssions on items before Main Committees, they are permitted to take part in the debate without the right to vote On a number of such occasions representatives of non-member States have made more than one statement; t is has included statements in reply to speeches made by representatives of Member States. The question v hether they would be entitled to make procedural motions, such as the ones listed in rule 119, or motions relati g to the actual voting, has not been raised but would, in the Legal Counsel's opinion, have to be answered in the negative.

32. Non-member States have not submitted proposals, or co-sponsored draft resol itions, on the items in the discussion of which they have participated. The only exception to this occurred wh n Switzerland was invited to participate, without the right to vote, in the Sixth Committee discussions at the tw enty-third and twenty-fourth sessions of the General Assembly on the draft convention on special missions. Sw itzerland submitted an amendment to the draft convention which was voted upon. In this particular case, the Sixth Committee was preparing a Convention and thus was acting essentially as a codification conference. If uch a conference had instead been convened, certain non-member States, including Switzerland, would, accord ng to the normal practice, have been invited to participate. At the twenty-eighth session, however, during the discussion of the draft convention on the prevention and punishment of crimes against diplomatic agents and oth er internationally protected persons, the Sixth Committee decided to invite Switzerland to take part, witho t the right to vote, in the work of the Committee on the item, on the understanding that it could not subm t formal proposals or amendments.

(b) *Plenary meetings*

33. In accordance with General Assembly resolution 264 (III) of 8 October 1948, S tates which are parties to the Statute of the International Court of Justice but not Members of the United Nati ons participate, in the General Assembly, in electing members of the Court in the same manner as the Members of the United Nations. Likewise, in accordance with General Assembly resolution 2520 (XXIV) of 4 Decembe 1969, the same non-member States participate in the General Assembly in regard to amendments to the Stat ute of the Court in the same manner as the Members of the United Nations. These two instances where non-mem bers have full rights of

[4] United Nations, *Treaty Series*, vol. 281, p. 369 (article III).

[5] *Official Records of the General Assembly, Twenty-fourth Session, Plenary Mee tings*, vol. II, 1793rd meeting, para. 8.

[6] United Nations, *Treaty Series*, vol. 1, p. 238.

[7] Reading as follows: "Representatives of the United Nations Educational, Scientif c and Cultural Organization shall be invited to attend meetings of the General Assembly of the United Nati ons for the purpose of consultation on educational, scientific and cultural matters."

participation, including the right to vote, in the plenary and, if necessary, in the Main Committees d.rive from Articles 4 and 69 of the Statute of the Court.

34. Until the thirtieth session, the only instance where a representative of a non-member State had appeared before the plenary occurred when His Holiness Pope Paul VI addressed the 1347th meeting of the General Assembly on 4 October 1965. This was a meeting of a purely ceremonial nature and not one involving participation of a representative of a non-member State in the proceedings on a particular item.

35. At its thirtieth session, however, the General Assembly, on the recommendation of the General Committee,[8] decided (see A/PV.2353) to invite the Permanent Observers of the Democratic Republic of Viet-Nam and the Republic of South Viet-Nam to participate in the debate on the special report of the Security Council relating to the consideration of their countries' application for membership in the United Nations. The representatives of the two non-member States made statements at the 2354th plenary meeting of the General Assembly on 19 September 1975.

36. At its thirty-first session, the General Assembly decided (A/31/PV.79, para. 6) to invite the Permanent Observer of the Socialist Republic of Viet-Nam to participate in the debate on the special report of the Security Council on the consideration of his country's application for membership in the United Nations. The representative of that non-member State made a statement at the 79th plenary meeting on 26 November 1976.

2. Participation of specialized agencies and of the International Atomic Energy Agency

(a) *Main Committees*

37. Representatives of specialized agencies and of the International Atomic Energy Agency have on numerous occasions participated in the deliberations of Main Committees.

(b) *Plenary meetings*

38. Except for the presentation of the annual report of the International Atomic Energy Agency by the Director-General of that organization at the outset of the consideration of the item in plenary meetings, the specialized agencies and the International Atomic Energy Agency have not participated in the deliberations of the General Assembly in plenary meetings.

---

3. Modalities of holding a joint meeting of two Main Committees of the General Assembly

Memorandum to the Under-Secretary-General, Political and General Assembly Affairs

1. We have been asked about the modalities of holding a joint meeting of the Second and Third Committees for the purpose of having the President of the Economic and Social Council introduce the report of the Council to both Committees.

2. Joint meetings of these two Committees, and also of other Main Committees, were indeed held during early sessions of the General Assembly (first through sixth). However, these joint meetings were not held pursuant to any particular rule of procedure, but, in each case we were able to find, on the basis of an explicit decision of the General Assembly, in general recommended to it by the General Committee. As a matter of fact, in most of these instances, certain agenda items were referred to the "Joint Second and Third Committee", i.e., to a special organ that in fact constituted an amalgamation of two main Committees; however, in at least one instance, this Joint Committee was instructed by the Assembly to conduct a joint meeting with the Fifth Committee (see A/C.2&3/L.5, A/C.5/L.24, reproduced in *Official Records of the General Assembly, Fourth Session, Joint Second and Third Committee,* Annex to the Summary records of meetings, p. 1).

3. In spite of the fact that all of the precedents we were able to discover were ones in which joint organs or meetings were specifically mandated by the General Assembly, it would appear that the mere conducting of a joint meeting, for the restricted purpose of hearing an address of interest to

[8] *Official Records of the General Assembly, Thirtieth Session, Annexes,* agenda item 8, document A/10250, para. 23 (*a*) (i).

two or more committees and not for the purpose of jointly acting on an agenda item, could be decided on by the two bodies concerned without reference to the Assembly or its General Committee. It is, therefore, suggested that the joint meeting be announced in an Assembly document reproducing the text of a letter that the Chairmen of the Second and Third Committees would address to the President. This procedure would still enable the President to refer the matter to the Assembly or to the General Committee if he considers that necessary or appropriate.

4. As to the chairmanship of the Joint Committee, of the early sessions this was arranged either by consultation or by rotation, whether the meeting was a joint one or that of a special joint organ. This would still seem to be the best method to use, and specifically it is suggested that the two Chairmen consult and agree that they will alternately preside over joint meetings, and either draw lots for the first to preside or decide that it be the Chairman of the Second Committee (merely by numerical priority).

5. With respect to the records, those of a joint organ were indicated as such, i.e. A/C.2&3/. . .). Since this will not be a joint organ, it is suggested that each summary record merely be issued with two separate symbols, i.e. A/C.2/33/SR. . . and A/C.3/33/SR . . .

30 October 1978

---

4. QUESTION WHETHER THE FOURTH COMMITTEE IS COMPETENT TO GRANT A HEARING TO A REPRESENTATIVE OF THE PUERTO RICAN SOCIALIST PARTY NOTWITHSTANDING THE FACT THAT PUERTO RICO IS NOT INCLUDED IN THE LIST OF TERRITORIES APPROVED BY THE GENERAL ASSEMBLY TO WHICH THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES CURRENTLY APPLIES

Statement made by the Legal Counsel at the 24th meeting of the Fourth Committee on 24 November 1978[9]

1. The advice of the Office of Legal Affairs has been requested on the question of whether the Fourth Committee is competent to grant a hearing to a representative of the Puerto Rican Socialist Party. A letter containing a request to that effect was circulated as a document of the Fourth Committee at the request of the representative of Cuba (A/C.4/33/14).

2. Puerto Rico is not included in the list of Territories approved by the General Assembly to which the Declaration on the Granting of Independence to Colonial Countries and Peoples currently applies.

3. At its 1978 session, the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples considered an item entitled "Special Committee decision of 2 September 1977 concerning Puerto Rico" and adopted a resolution on the subject[10] which does not contain any recommendation to the effect that the General Assembly is to include Puerto Rico in the list of Territories to which the Declaration is applicable.

4. In the report of the Special Committee covering its work during 1978 submitted to the General Assembly at its thirty-third session,[11] Puerto Rico is not listed in the section of the report dealing with Territories considered by the Special Committee during the period covered by the report. The question of Puerto Rico is covered under a separate subheading of chapter I entitled "F. Question of the list of Territories to which the Declaration is applicable".

5. The Secretary-General's memorandum entitled "Organization of the thirty-third regular session of the General Assembly, adoption of the agenda and allocation of items" (A/BUR/33/1) contains the following paragraph relating to item 24 of the draft agenda (Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples):

---

[9] The above statement was distributed in accordance with a decision taken by the Fourth Committee at its 25th meeting on 24 November 1978 as document A/C.4/33/15.

[10] A/33/23 (Part I), chap. 1, sect. F.

[11] A/33/23 and Add.1-9.

"22. With regard to item 24 of the draft agenda (Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples), the General Committee may wish to consider referring to the Fourth Committee, as was done at previous sessions, all the chapters of the report of the Special Committee (A/33/23 and Add.1-9) relating to specific Territories. This would again enable the General Assembly to deal in plenary meetings with the question of the implementation of the Declaration as a whole."

6. In paragraph 29 of his memorandum, the Secretary-General stated the following:

"Subject to changes made by the General Committee in the light of the comments contained in paragraphs 19 to 28 above, the allocation of the items of the draft agenda, as based on previous practice, would be the following:

"Plenary meetings

". . .

"24. Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples . . . :

"(*a*) Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples;

"(*b*) Report of the Secretary-General.

"Fourth Committee

". . .

"9. Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples [chapters relating to specific Territories] . . ."

7. At its 4th and 5th plenary meetings, on 22 September 1978, the General Assembly adopted the agenda (A/33/251/Rev. 1) and the allocation of agenda items (A/33/252) for its thirty-third regular session. In so far as item 24 is concerned, the Assembly decided that this item was to be considered in plenary meetings and to allocate to the Fourth Committee all chapters of the report of the Special Committee relating to specific Territories so that it might deal in plenary meetings with the question of the implementation of the Declaration as a whole. (See letter dated 22 September 1978 from the President of the General Assembly to the Chairman of the Fourth Committee informing him of the items allocated to that Committee (A/C.4/33/1).)

8. In these circumstances, it is the view of the Office of Legal Affairs that the question of Puerto Rico is not a question before the Fourth Committee since it is not on the list of Territories to which the Declaration applies and consequently not in any of the chapters of the report of the Special Committee dealing with specific Territories allocated to the Committee by the General Assembly. Since the General Assembly has reserved to itself the consideration of the question of the implementation of the Declaration as a whole, which in the view of the Office of Legal Affairs, is the context in which the question of Puerto Rico has hitherto been considered, it would not be within the competence of the Fourth Committee to consider or grant the request contained in document A/C.4/33/14 without express authorization from the General Assembly.[12]

---

[12] At its 26th meeting on 27 November 1978, the Fourth Committee agreed that its Chairman be authorized to bring to the attention of the President of the General Assembly document A/C.4/33/14 for such treatment as he might deem appropriate (Report of the Fourth Committee to the General Assembly at its thirty-third session on agenda item 24 (A/33/460), para. 16.)

5. CONTRIBUTION OF NON-MEMBER STATES, UNDER REGULATION 5.9 OF THE FINANCIAL RULES AND REGULATIONS OF THE UNITED NATIONS, TO THE EXPENSES OF "TREATY BODIES" OF WHICH THEY ARE MEMBERS AND OF ORGANS OF CONFERENCES IN WHICH THEY PARTICIPATE—MEANING OF THE TERM "PARTICIPATE" IN THE CONTEXT OF REGULATION 5.9—QUESTION WHETHER THE EXPENSES REFERRED TO IN THAT REGULATION ARE LIMITED TO THOSE INCURRED IN THE HOLDING OF THE MEETINGS OF THE ORGANS OR CONFERENCES CONCERNED

Memorandum to the Officer-in-Charge, Budget Division, Office of Financial Services

1. I refer to your memorandum of 16 January 1978 concerning contributions from non-member States under regulation 5.9 of the Financial Rules and Regulations of the United Nations[13] in which you sought our views on two specific matters: (*a*) the precise meaning of the term "treaty bodies" and a definitive list of such bodies currently involved; (*b*) the meaning of the term "participate" in the context of the second sentence of regulation 5.9.

2. For the purpose of regulation 5.9, "treaty bodies" are bodies established in accordance with the provisions of the treaties concerned and which are financed from United Nations appropriations. Although the Charter of the United Nations is also a treaty, the principal and subsidiary organs of the United Nations established in accordance with the provisions of the Charter are not "treaty bodies" envisaged in regulation 5.9. The treaty bodies currently involved are the following:

(a) *International Narcotics Control Board*

The Board was established in accordance with the provisions of the 1961 Single Convention on Narcotic Drugs (which entered into force on 13 December 1964).[14] Paragraph 1 of article 9 of the Convention, as amended by article 2 of the 1972 Protocol,[15] provides that the Board shall consist of thirteen members to be elected by the Economic and Social Council of the United Nations as follows:

"(*a*) Three members with medical, pharmacological or pharmaceutical experience from a list of at least five persons nominated by the World Health Organization; and

"(*b*) Ten members from a list of persons nominated by the Members of the United Nations *and by Parties which are not Members of the United Nations.*" (Italics added.)

Paragraph 6 of the same article states that "The members of the Board shall receive an adequate remuneration as determined by the General Assembly".

The general provision on expenses is contained in article 6 which reads:

"The expenses of the Commission and the Board will be borne by the United Nations in such manner as shall be decided by the General Assembly. The Parties which are not members of the United Nations shall contribute to these expenses such amounts as the General Assembly shall find equitable and assess from time to time after consultation with the Governments of these Parties."

The Commission referred to in article 6 is the Commission on Narcotic Drugs which is a subsidiary organ of the Economic and Social Council and not a treaty body although the Convention entrusts the Commission with specific functions.

---

[13] Reading as follows:

"States which are not Members of the United Nations but which become parties to the Statute of the International Court of Justice or treaty bodies financed from United Nations appropriations shall contribute to the expenses of such bodies at rates to be determined by the General Assembly. States which are not Members of the United Nations but which participate in organs or conferences financed from United Nations appropriations shall contribute to the expenses of such organs or conferences at rates to be determined by the General Assembly, unless the Assembly decides with respect to any such State to exempt it from the requirement of so contributing. Such contributions shall be taken into account as miscellaneous income."

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

[15] E/CONF.63/9.

Both the Commission on Narcotic Drugs and the International Narcotics Control Board are entrusted with further functions under the 1971 Convention on Psychotropic Substances (which entered into force on 16 August 1976).[16] Article 24 of this Convention, entitled "Expenses of international organs incurred in administering the provisions of the Convention", reads as follows:

> "The expenses of the Commission and the Board in carrying out their respective functions under this Convention shall be borne by the United Nations in such manner as shall be decided by the General Assembly. The Parties which are not Members of the United Nations shall contribute to these expenses such amounts as the General Assembly finds equitable and assesses from time to time after consultation with the Governments of these Parties."

Each of the two above-mentioned Conventions thus contains provisions concerning contributions by States Parties which are not Members of the United Nations to the expenses borne by the United Nations.[17]

(b) *Human Rights Committee*

This Committee was established by the International Covenant on Civil and Political Rights (which entered into force on 23 March 1976).[18] It consists of eighteen members nominated and elected by the States Parties to the Covenant. Article 28 of the Covenant specified that the members of the Committee shall serve in their personal capacity. Articles 35 and 36 of the Covenant which involve financing from United Nations appropriations for the Committee read as follows:

"Article 35

> "The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

"Article 36

> "The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant."

In addition the Covenant provides for the possibility of the appointment of *ad hoc* conciliation commissions and stipulates that the States Parties concerned shall share equally all the expenses of the members of the commissions in accordance with estimates to be provided by the Secretary-General of the United Nations; the Secretary-General is empowered to pay the expenses of the members of the commissions, if necessary, before reimbursement by the States Parties concerned (see article 42).

(c) *Committee on the Elimination of Racial Discrimination*

This Committee was established by the International Convention on the Elimination of All Forms of Racial Discrimination (which entered into force on 4 January 1969).[19] It consists of eighteen experts serving in their personal capacity. Like the Human Rights Committee, the members of this Committee are nominated and elected by the States Parties to the Convention. Article 8 (6) of the Convention provides that "States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties". The Convention further contains provisions similar to those of the International Covenant on Civil and Political Rights with respect to the possibility of the appointment of *ad hoc* conciliation commissions whose expenses are shared by States Parties (see article 12).

(d) *Group to Consider Periodic Reports on* Apartheid

According to paragraph 1 of article IX of the International Convention on the Suppression and Punishment of the Crime of *Apartheid* (which entered into force on 18 July 1976),[20] the Chairman

[16] E/CONF.58/6.
[17] See para. 8 below.
[18] United Nations, *Treaty Series*, vol. 999. Also reproduced in the *Juridical Yearbook*, 1966, p. 178.
[19] *Ibid.*, vol. 660, p. 195. Also reproduced in the *Juridical Yearbook*, 1965, p. 63.
[20] General Assembly resolution 3068 (XXVIII). Also reproduced in the *Juridical Yearbook*, 1973, p. 70.

of the Commission on Human Rights shall appoint a group consisting of three members of the Commission who are also representatives of States Parties to the Convention, to consider periodic reports submitted by States Parties on measures they have adopted to give effect to the provisions of the Convention. Paragraphs 2 and 3 of the same article read as follows:

> "If, among the members of the Commission on Human Rights, there are no representatives of States Parties to the present Convention or if there are fewer than three such representatives, the Secretary-General of the United Nations shall, after consulting all States Parties to the Convention, designate a representative of the State Party or representatives of the States Parties which are not members of the Commission on Human Rights to take part in the work of the group established in accordance with paragraph 1 of this article until such time as representatives of the States Parties to the Convention are elected to the Commission on Human Rights.
>
> "The group may meet for a period of not more than five days, either before the opening or after the closing of the session of the Commission on Human Rights, to consider the reports submitted in accordance with article VII."

Although the group is appointed by the Chairman of a functional commission of the Economic and Social Council, it should be considered a treaty body within the meaning of regulation 5.9 since its appointment is pursuant to the provisions of the Convention. There is no provision in the Convention relating to expenses.

3. The above list does not include (i) bodies envisaged in the treaties but whose establishment depends on special circumstances (e.g. the *ad hoc* conciliation commissions referred to in paragraph 2 (*b*) above) and (ii) bodies which may be convened to implement the provisions of treaties and which may require servicing of their meetings by the United Nations (e.g., cases similar to the Preparatory Committee for the Review Conference on the Non-proliferation Treaty and the Review Conference itself held in 1974 and 1975).

4. An Appeals Committee consisting of three members and two alternates was appointed pursuant to article 12 (3) (*b*) (ii) of the 1953 Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium (which entered into force on 8 March 1963).[21] The members of the Appeals Committee shall, in accordance with arrangements made by the Secretary-General, receive remuneration only for the duration of the sittings of the Committee. Since there have been no sittings of the Committee no expenses have been incurred.

5. We are unaware of any bodies established by the commodities agreements that would involve expenses of the United Nations.

6. We note that where the General Assembly itself (instead of a conference) undertakes to examine and draft a treaty, the Secretary-General submits to the Assembly, before the adoption of the treaty, a Note on administrative and financial implications of those provisions of the treaty involving United Nations expenses. This is true in the cases referred to in paragraphs 2 (*b*),[22] (*c*)[23] and (*d*)[24] above.

7. As to your second question, your assumption concerning the meaning of the term "participate" in the context of regulation 5.9 is correct, i.e., it implies full membership with the right to vote.

8. I understand that you wish to have our views on a further question, namely whether the expenses to which non-member States are required to contribute under regulation 5.9 are limited to those incurred in the holding of the meetings of the bodies concerned or cover "all" expenses involved in the functioning of such bodies. From the legal point of view, we believe that in general the latter interpretation should prevail. Thus, in the Commentary on the Convention on Psychotropic Substances[25] (referred to as the Vienna Convention below), it is stated that the obligation imposed

---

[21] United Nations, *Treaty Series*, vol. 456, p. 3.

[22] See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 62, document A/C.5/1102.

[23] *Ibid., Twentieth Session, Annexes*, agenda item 58, document A/C.5/1051.

[24] Document A/C.3/L.2023.

[25] United Nations publication, Sales No. E.76.XI.5 (E/CN.7/589).

upon Parties by article 24 (see paragraph 2 (*a*), third subparagraph above) is more limited than that for which article 6 of the Single Convention on Narcotic Drugs (see paragraph 2 (2), second subparagraph above) provides. It goes on to say:

> "The latter provision requires that Parties which are not Members of the United Nations bear an equitable share of all expenses of the Commission and the Board, and this comprises the expenses incurred in carrying out their functions not only under the Single Convention, but also under other treaties (including of course the Vienna Convention) and, in the case of the Commission, under the Charter. Parties to the Vienna Convention which are neither Members of the United Nations nor parties to the Single Convention would however under article 24 of the Vienna Convention be obligated to pay only their equitable share of those expenses of the Commission and the Board which are due to the work of those organs under the Vienna Convention. But the far greater part of the work of the two organs under the Single Convention or under the Charter would also be work under the terms of the Vienna Convention, since the aims of the Conventions, although not fully identical, are in any event largely overlapping, and are also a part of the task of the United Nations to promote solutions of social, health and related problems pursuant to Article 55 of the Charter. Moreover, the Commission is under both Conventions explicitly authorized to consider all matters pertaining to their aims. The portion of the expenses of the Commission and the Board which is exclusively due to their work under the Single Convention or under the Charter and not also to their functions under the Vienna Convention will therefore be only a minor part of their total costs."[26]

9. Another example is the case of UNCTAD. Paragraph 29 of General Assembly resolution 1995 (XIX) establishing UNCTAD provides:

> "The expenses of the Conference, its subsidiary bodies and secretariat shall be borne by the regular budget of the United Nations, which shall include a separate budgetary provision for such expenses. In accordance with the practice followed by the United Nations in similar cases, arrangements shall be made for assessments on States not members of the United Nations which participate in the Conference."

It is clear that the expenses involved are all expenses of UNCTAD including those of the Secretariat.

10. We would, however, accept a restrictive interpretation in certain cases where the organ or the conference concerned is serviced entirely by existing substantive staff and not by a unit created specially for that purpose. Thus, while the expenses involved, for example, in the Third United Nations Conference on the Law of the Sea include those of the Secretariat of that Conference, the expenses of such conferences as the Conference on the Law of Treaties which are serviced by existing Office of Legal Affairs staff are limited to those incurred in the holding of the Conference. It should be noted that non-members are assessed only for the duration in which they participate in the organ or conference concerned and in accordance with the scale of assessment. Consequently, it is not likely that their financial obligation would be excessive.

1 February 1978

---

6. Eventuality of proposals involving expenditures being voted on at the tenth special session of the General Assembly—Question whether, should that eventuality materialize, the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee should be convened in the light of rule 153 of the rules of procedure of the General Assembly

Memorandum to the Secretary of the Fifth Committee

1. In your memorandum of 6 April 1978, you requested the advice of the Office of Legal Affairs with regard to the question of convening ACABQ and the Fifth Committee, in the event that

[26] *Ibid.*, p. 372.

the tenth special session is to adopt decisions having financial implications, in the light of rule 153 of the General Assembly's rules of procedure.

2. The relevant provision in connexion with the question under review is contained in the second sentence of rule 153 of the General Assembly's rules of procedure. It reads as follows:

> ". . . No resolution in respect of which expenditures are anticipated by the Secretary-General shall be voted by the General Assembly until the Administrative and Budgetary Committee (Fifth Committee) has had an opportunity of stating the effect of the proposal upon the budget estimates of the United Nations."

3. Clearly, this provision makes it mandatory for the Fifth Committee to consider any proposal involving expenditures before such proposal is voted on by the Assembly. The rule as it is now formulated allows for no exceptions. Nevertheless, as you correctly indicated, the General Assembly is master of its own procedure, to the extent that such procedure is not based on provisions contained in the United Nations Charter (such as for example, rules 82, 83 and 85). Consequently, the Assembly could, preferably on the basis of consensus, decide to suspend the application of this rule if there are valid and practical reasons for avoiding the convening of the Fifth Committee during the tenth special session. In this connexion, your attention is drawn to what we believe is the most pertinent precedent for not convening the Fifth Committee during a special session. At the 2349th plenary meeting of the General Assembly (held during the seventh special session), the Assembly adopted a draft resolution on development and international economic co-operation after hearing the following statement by the Under-Secretary-General for Political and General Assembly Affairs:

> "The draft resolution recommended by the *Ad Hoc* Committee incorporates a number of proposals regarding development and international economic co-operation
>
> "23. Should the draft resolution be adopted, financial implications will arise in respect of some of the provisions requiring action by the Secretary-General or units of the Secretariat. In accordance with past practice at previous special sessions and in view of the convening later today of the thirtieth regular session of the General Assembly, the Secretary-General intends to deal with the financial implications which may arise from any resolution adopted at the seventh special session as may be required either in the context of the final performance report of the 1974-1975 biennium or in revised estimates for the 1976-1977 biennium. '[27]

Several decisions giving rise to expenditures were adopted by the seventh special session[28] but the convening of the Fifth Committee was avoided for practical considerations, in particular, the convening of the thirtieth regular session immediately after the special session.

4. In conclusion, it is our view that if resolutions involving expenditures are to be voted on by the General Assembly during the special session devoted to disarmament, the requirements of rule 153 should, if possible, be satisfied. If this procedure presents difficulties, consultations regarding the procedure to be followed should be held in advance of the session among representatives of the various regional groups and, if there is general agreement, the General Assembly could decide to follow the precedent established at the seventh special session, i.e., to act on the substance of proposals and to refer their administrative and financial aspects to the following regular session. The financial implications of any resolutions adopted by the tenth special session could then be included in the Secretary-General's revised estimates for the 1978-1979 biennium and submitted to the General Assembly for its consideration and approval during the course of the thirty-third regular session.

11 April 1978

---

7. COMMITTEE ESTABLISHED UNDER GENERAL ASSEMBLY RESOLUTION 32/174—QUESTION WHETHER THE COMMITTEE ON CONFERENCES HAS THE COMPETENCE, UNDER ITS TERMS OF

[27] *Official Records of the General Assembly, Tenth Special Session, Plenary Meetings,* 2349th meeting, paras. 22 and 23.

[28] *Ibid.,* paras. 28 and 29.

REFERENCE AND IN THE LIGHT OF THE CRITERIA ADOPTED BY THE GENERAL ASSEMBLY IN RESOLUTION 3415 (XXX), TO AUTHORIZE THE PROVISION OF MEETING RECORDS FOR THE SAID COMMITTEE

Memorandum to the Chief, Planning and Meeting Services Section, Department of Conference Services

1. It is to be noted that General Assembly resolution 32/174 of 19 December 1977 establishing a committee of the whole to oversee and monitor the progress in the establishment of the new international economic order, requests the Secretary-General, in paragraph 9, "to ensure that the Committee receives the necessary documentation to enable it to accomplish its tasks . . . and authorizes the Committee to request the Secretary-General to provide specific reports in this regard in co-operation with the appropriate organs, organizations, other bodies and conferences of the United Nations system", but does not expressly authorize the Secretary-General to provide summary records for its meetings. By its resolution 3415 (XXX) of 8 December 1975, the General Assembly endorsed, on an experimental basis, certain criteria for the provision of meeting records, one of which being that newly established bodies are only furnished with meeting records "by an express decision" of the General Assembly (see A/C.5/1670, para. 14 (2)). The Committee on Conferences, in its report to the thirty-second session of the General Assembly, recommended to the Assembly that the criteria which were adopted on an experimental basis for the 1976-1977 biennium should be continued and used more widely.[29] The General Assembly endorsed this recommendation (see paragraph 4 of section II of resolution 32/71 of 9 December 1977).

2. The practice of the General Assembly shows clearly that a request to the Secretary-General "to ensure that the Committee receives the necessary documentation to enable it to accomplish its tasks" or to provide "all the necessary facilities" or "all possible assistance" does not extend to provision of summary records, unless this is expressly spelt out. Several examples of such express provision for meeting records appear in recent Assembly resolutions (see for instance resolution 32/167 of 19 December 1977 convening the United Nations Conference on the Establishment of the United Nations Industrial Development Organization as a Specialized Agency, paragraph 4 of which requests the Secretary-General "to make the necessary arrangements for holding the Conference . . ., to submit to the Conference all relevant documentation and to arrange for the necessary staff, facilities and services that it will require, including the provision of summary records").

3. It remains to be determined whether the General Assembly has in any way delegated to the Committee on Conferences the authority to make the "express decision" that a newly established subsidiary organ shall have meeting records. In this context it is necessary to examine the terms of reference of the Committee on Conferences as well as General Assembly resolution 3415 (XXX) referred to above, by which the Committee on Conferences was entrusted with certain tasks relating to the application of the criteria for the provision of meeting records.

I. *Terms of reference of the Committee on Conferences*

4. The terms of reference of the Committee on Conferences, as laid down in paragraph 3 of General Assembly resolution 32/72 of 9 December 1977, are as follows:

(*a*) To advise the General Assembly on the calendar of conferences;

(*b*) To act on behalf of the General Assembly in dealing with departures from the approved calendar of conferences that have administrative and financial implications;

(*c*) To recommend to the General Assembly means to provide the optimum apportionment of conference resources, facilities and services, including documentation, in order to ensure their most efficient and effective use;

(*d*) To advise the General Assembly on the current and future requirements of the Organization for conference services, facilities and documentation;

[29] *Official Records of the General Assembly, Thirty-second Session, Supplement No. 32* (A/32/32), para. 145 (4).

(*e*) To advise the General Assembly on means to ensure improved co-ordination of conferences within the United Nations system, including conference services and facilities, and to conduct the appropriate consultation in that regard.

5. It is clear from the above text that the Committee on Conferences does not have any explicit authority to decide whether a subsidiary body not specifically authorized to have meeting records by the General Assembly may, nevertheless, have such records. Paragraphs (*a*), (*c*), (*d*) and (*e*) deal exclusively with advisory and consultative functions which the Committee is to exercise in relation to the General Assembly itself and not to subsidiary organs. Paragraph (*b*) authorizes the Committee "to act on behalf of the General Assembly in dealing with departures from the approved calendar of conferences that have administrative and financial implications". The "departures" in question involve matters such as proposed changes in date or venue of a session of a particular body, and authority to permit the provision of meeting records cannot be inferred from such wording. It must be concluded, therefore, that the terms of reference of the Committee on Conferences, taken by themselves, neither expressly or impliedly allow the Committee to authorize the provision of meeting records to any newly established subsidiary organ in respect of which the Assembly has not made an "express decision" calling for the provision of meeting records. The Assembly has reserved for itself the authority to settle such questions.

II. *General Assembly resolution 3415 (XXX)*

6. As noted above, the General Assembly, by its resolution 3415 (XXX), endorsed certain criteria for meeting records of United Nations bodies and, in paragraph 5 thereof, requested:

> "the Committee on Conferences to monitor the application of the criteria, to review, on the basis of appropriate consultations, the optimum requirements for records of bodies and organs of the United Nations, to report on progress made in applying the criteria and to make recommendations as required for consideration by the General Assembly"

7. The above text does not expressly authorize the Committee on Conferences to provide meeting records to a committee not otherwise entitled to such records, and a review of the debates leading to the adoption of the resolution confirms that such authority cannot be inferred from the text. In fact, those records lend support to the contrary view.

8. Paragraph 5 of the original version (A/C.5/L.1249) of the draft resolution which, in a revised form (A/C.5/L.1249/Rev.2 as orally amended) became resolution 3415 (XXX), provided that the Committee on Conferences was to be entrusted "with the task of carrying out proposals for reducing meeting records" (without, however, "impairing the effectiveness of the bodies concerned"). Referring to a revised version of the original draft in which paragraph 5 had been rendered identical with paragraph 5 of the resolution as subsequently adopted, the representative of Sri Lanka, speaking at the Fifth Committee's 1742nd meeting on 18 November 1975, stated the following:

> "The original draft resolution (A/C.5/L.1249) had suggested that the Committee on Conferences should be entrusted with the task of carrying out proposals for reducing meeting records without impairing the effectiveness of the bodies concerned. Although Sri Lanka held the Committee on Conferences in high regard, it felt that it was not the appropriate Committee to evaluate the comparative usefulness of United Nations bodies. That was the task of the General Assembly. His delegation therefore welcomed the amendments to paragraph 5 in the revised draft (A/C.5/L.1249/Rev.1). Nevertheless, it would welcome an assurance that the conclusions of the Committee on Conferences would be merely recommendations to the General Assembly, which would make the final decision."[30]

9. It is, therefore, to be concluded that the General Assembly, in its resolution 3415 (XXX), has not delegated to the Committee on Conferences the power to decide that subsidiary organs of the Assembly shall have summary records. At the very most, that resolution authorizes the Committee to recommend to the Assembly whether or not a subsidiary organ should have records, the power of decision being reserved to the Assembly itself.

[30] *Ibid., Thirtieth Session, Fifth Committee*, 1742nd meeting, para. 27.

III. *Conclusion*

10. There is no existing delegation of authority which would permit the Committee on Conferences to authorize meeting records for a subsidiary organ of the General Assembly, in respect of which the Assembly has made no express decision to this effect. The Committee, however, could recommend to the Assembly which subsidiary organs should, or should not, be provided with meeting records. The financial implications of such recommendations would require appropriate action by organs such as the ACABQ and the Fifth Committee of the Assembly.[31]

16 March 1978

---

8. MEETINGS OF THE BUREAUX OF THE COMMISSION ON HUMAN SETTLEMENTS AND OF THE GOVERNING COUNCIL OF THE UNITED NATIONS ENVIRONMENT PROGRAMME—QUESTION WHETHER THE TRAVEL EXPENSES OF THE MEMBERS OF THE BUREAUX SHOULD BE MET BY THE GOVERNMENTS CONCERNED OR BY THE UNITED NATIONS—CRITERIA SET FORTH IN GENERAL ASSEMBLY RESOLUTION 1798 (XVII)

Memorandum to the Acting Executive Officer, Department of Administration and Management

1. You have raised with us the question of the payment of travel expenses for the members of the bureaux of the Commission on Human Settlements and of the Governing Council of the United Nations Environment Programme, when attending the bi-annual meetings called for by the General Assembly in section VI, paragraph 1, of its resolution 32/162 of 19 December 1977. That paragraph reads as follows:

> "1. *Urges* in particular, that the Executive Director of the Centre and the bureau of the Commission on Human Settlements should meet biannually with the Executive Director of the United Nations Environment Programme and the bureau of its Governing Council to review together their respective priorities and programmes for improving human settlements and to strengthen and extend co-operation between the two organizations;"

2. Unfortunately, the statement of financial implications (A/C.2/32/L.89) submitted in connexion with the consideration of the relevant draft resolution at the thirty-second session of the General Assembly provides no guidance on the question here concerned. It is entirely silent on the matter whether the travel expenses involved should be met by Governments or by the United Nations. In such circumstances it is necessary to have recourse to the basic principles established by the General Assembly for the payment of travel and subsistence allowances to members of organs and subsidiary organs of the United Nations, to ascertain whether they contain clear guidance. These basic principles are to be found in General Assembly resolution 1798 (XVII) of 11 December 1962.

3. Before turning to the provisions of that resolution, it should be pointed out that both the Commission on Human Settlements (established pursuant to General Assembly resolution 32/162 as a Standing Commission of the Economic and Social Council and governed by the rules of procedure of the Council) and the Governing Council of the United Nations Environment Programme (created by the General Assembly in its resolution 2997 (XXVII) of 15 December 1972, and having its own rules of procedure (UNEP/GC/3/Rev.D) come within the definition of "organs and subsidiary organs of the United Nations" to which resolution 1798 (XVII) applies. The Bureau of the Commis-

[31] After an extensive and in-depth discussion, the Committee on Conferences agreed to the following: while noting the importance of the work of the Committee established under General Assembly resolution 32/174 and the context in which the request was made, the Committee, guided by General Assembly resolutions 2538 (XXIV) and 3415 (XXX) on the subject of provision of summary records and noting the explicit exclusion of the provision of summary records in the relevant statement of financial implications, "decided that a decision of that nature would rest with the General Assembly" (*Official Records of the General Assembly, Thirty-third Session, Supplement No. 32* (A/33/32), vol. I, para. 37).

The Committee however commended to the consideration of the Committee established under General Assembly resolution 34/174 the working solution proposed by the Secretariat (i.e., statements of positions could be recorded by the Secretary of the Committee, cleared by the Rapporteur with the delegations concerned and reflected in the Committee's report (*ibid.*, para. 36).

sion consists of a Chairman, three Vice-Chairmen and a Rapporteur, and that of the Governing Council of a President, three Vice-Presidents and a Rapporteur. The number of persons here involved on both bureaux thus amounts to 10, and it is envisaged that they will be required to attend bi-annual meetings. The resolution in question does not lay down the venue of these meetings, this presumably being established by consultation between the Executive Directors of the organs involved.

4. General Assembly resolution 1798 (XVII) provides in its paragraph 2 (*a*) that:

> "Travel and subsistence expenses shall be paid in respect of members of organs and subsidiary organs who serve in an individual personal capacity and not as representatives of Governments."

Members of the bureaux of both the Commission and of the Governing Council are elected from among the representatives of States serving on those bodies, and they cease to serve on those bureaux if they lose their representative capacity. It has, furthermore, not been the practice to consider the entire bureaux of United Nations organs, composed of States, as coming within the terms of paragraph 2 (*a*) of resolution 1798 (XVII). Had this been the case, the United Nations would, for example, have been responsible for the annual travel of the officers of the Economic and Social Council to its sessions in New York or Geneva. Many other examples could be found. To regard the members of the bureaux of the two bodies here concerned as coming within the terms of paragraph 2 (*a*) could thus, by analogy, lead to a very large extension of the liability of the United Nations to meet travel expenses. Such an extension would only appear warranted by decision of a competent deliberative organ.

5. The second basic principle established by resolution 1798 (XVII), in paragraph 2 (*b*), is that ". . . neither travel nor subsistence allowances shall be paid in respect of members of organs or subsidiary organs who serve as representatives of Governments . . .". This principle is subject to certain special exceptions, laid down in paragraph 3. Most of those exceptions would clearly not be applicable to the situation now under consideration. However, paragraph 3 (*b*) (ii) provides that travel and subsistence expenses shall be paid in respect of: "One member of an organ or subsidiary organ serving as its designated representative at meetings of a second organ or subsidiary organ", while similar provisions are extended, in paragraph 3 (*b*) (iii) to: "One representative of a Member State or one alternate participating in a subsidiary organ instituted by the General Assembly or the Security Council and which is required, by decision of the parent organ, to work away from United Nations Headquarters in the performance of a special task . . .". It should be considered whether or not the present case comes at least within the spirit of these two exceptions.

6. Taken together, these exceptions envisage situations where a representative of one organ travels to attend meetings of another organ and where a particular organ as a whole is charged with a special task and is required for that purpose to travel to a designated meeting place. In the present situation part of one organ is instructed to meet with part of another to carry out a new responsibility. It can be cogently argued that by urging the bureaux of the Commission and of the Governing Council to meet for the stated purpose of review of programmes and priorities for strengthening and extending co-operation, the General Assembly has charged representatives of the organs concerned with "the performance of a special task". It could thus be maintained that, on an *ad hoc* basis and having in mind the very particular circumstances created by General Assembly resolution 32/162, the Assembly, by urging the entire bureaux to meet, has created by implication for present purposes only an exception in conformity with the spirit of the exceptions appearing in paragraphs 3 (*b*) (ii) and (iii) of resolution 1798 (XVII). However, as there is nothing in the record to indicate that this was the clear intention of the Assembly—the relevant financial estimates being mute on this point, one way or the other—the Secretary-General, before reaching a conclusion of the nature just set out, might wish to refer the matter to the Advisory Committee on Administrative and Budgetary Questions for its views.[32]

19 June 1978

---

[32] At the thirty-third session of the General Assembly, the Secretary-General informed the Fifth Committee that after carefully reviewing operative paragraph 1 (vi) of resolution 32/162, he had come to the conclusion that

9. VISIT OF A WORKING GROUP OF THE COMMISSION ON HUMAN RIGHTS TO THE COUNTRY DESIGNATED IN ITS TERMS OF REFERENCE—QUESTION WHETHER SUCH A VISIT REQUIRES THE PARTICIPATION OF ALL THE MEMBERS OF THE GROUP—APPLICABILITY OF THE RULE ON QUORUM OF THE RULES OF PROCEDURE OF THE FUNCTIONAL COMMISSIONS OF THE ECONOMIC AND SOCIAL COUNCIL

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. By your memorandum of 26 June you inquired as to the legal propriety of an expected decision of a Working Group of the Commission on Human Rights to proceed with a visit to the country designated in its terms of reference, even though its Chairman would not accompany the Group.

. . .

3. In light of the resolutions which established the Working Group, it appears clear that the Commission expects the Working Group, as such, to visit the country concerned, rather than for its members to do so individually. The question therefore arises whether a visit by the Group requires the participation of all its members.

4. There are no specific rules governing "visits", either in the rules of procedure of the functional commissions of the Economic and Social Council (which are those applicable to the Working Group), or in the Model rules of procedure for United Nations bodies dealing with violations of human rights (E/CN.4/1134, annex, which Economic and Social Council resolution 1870 (LVI) brought to the attention of all organs and bodies of the United Nations dealing with questions of human rights and fundamental freedoms, but which were not specifically made applicable to the Working Group), or for that matter in any other rules of procedure. Consequently, the only applicable rules appear to be those governing quorums, in respect of which rule 40 of the rules of procedure of the functional commissions provides that: "A majority of the representatives of members of the commission shall constitute a quorum". This is in substance identical to rule 8 of the above-mentioned Model rules and indeed to the corresponding rules of almost all other United Nations bodies.

5. In other words, it is sufficient for any act of the Working Group if a majority of its members participates therein. Any requirement that all members of an organ participate in a particular meeting or other activity would of course enable any member to exercise a "veto" over such activity, merely by declining to participate. For this reason, no requirement of full participation can be construed, unless it is explicitly provided for.

6. Finally, it should be noted that it does not make any difference that the absent member would be the Chairman-Rapporteur. Rule 17(*l*) of the rules of procedure of the functional commissions provides that: "If the Chairman finds it necessary to be absent during a meeting or any part thereof, he shall designate one of the Vice-Chairmen to take his place". (Rule 12(*d*) of the Model rules is similar.) If the Working Group has no designated Vice-Chairman, then, under rule 23 of the rules of procedure of the functional commissions, it can elect one, who will then perform the functions of the Chairman in his absence.[33]

27 June 1978

---

the members of the two bureaux would participate in the biennial meetings as the designated representatives of the organ of which they were a member rather than on behalf of their Governments and that, their case being therefore analogous to those dealt with in paragraph 3 (*b*) of General Assembly resolution 1798 (XVII), they would be entitled to reimbursement of travel and subsistence expenses in accordance with the terms of paragraph 4 of that resolution (see document A/C.5/33/42). At its 44th meeting, the Fifth Committee approved the corresponding additional appropriations requested by the Secretary-General (A/C.5/33/SR.44).

[33] For details on the background to the above opinion and on subsequent relevant developments, see document A/33/331, paras. 23-25.

10. Sessional Working Group of the Economic and Social Council on reports from parties to the International Covenant on Economic, Social and Cultural Rights[34]—Question whether the sessional Working Group should be composed exclusively of members of the Council that are parties to the Covenant

Memorandum to the Director and Secretary of the Economic and Social Council

1. By paragraph 9 (*a*) of its resolution 1988 (LX) of 11 May 1976, the Economic and Social Council decided that

> "A sessional working group of the Economic and Social Council, with appropriate representation of States parties to the Covenant, and with due regard to equitable geographical distribution, shall be established by the Council whenever reports are due for consideration by the Council, for the purpose of assisting it in the consideration of such reports."

2. In paragraph 3 (*d*) of its decision 1978/1 of 13 January 1978, the Council decided

> "To request Mr. Vladimir Nikiphorovich Martynenko, Vice-President of the Council, to undertake consultations on the composition of the sessional working group which will be established under item 4 (Implementation of the International Covenant on Economic, Social and Cultural Rights) of the list of items for the first regular session of 1978; to invite members of the Council to notify the Secretary-General as early as possible of their interest in participating in that working group, without prejudice to the final decision of the Council on the composition thereof to be adopted at the outset of the first regular session of 1978; and to request the Secretariat to make an interim report on the notifications received by 15 March 1978."

Pursuant to this decision, the Secretariat received notifications of interest from fifteen members of the Council (see E/1978/L.19 and Add.1), including five States that are not parties to the Covenant.

3. When the resolution and decision referred to in paragraphs 1 and 2 above were approved by the Council, there was no discussion on record of the purport of the above quoted texts. Consequently, interpretation of paragraph 9 (*a*) of Economic and Social Council resolution 1988 (LX) must be based on its wording in the context of the entire resolution, taking into consideration any relevant provisions of the Covenant.

4. The sessional working group is established by the Council for the purpose of assisting it in the consideration of reports submitted by parties to the Covenant. In establishing the working group, the Council attached two conditions, namely, that it should have "appropriate representation of States parties to the Covenant" and that due regard should be given to "equitable geographic representation". In this context, unless records clearly indicate otherwise, "appropriate" representation cannot be taken to mean "exclusive" representation. Moreover, in paragraph 10 of the same resolution (i.e. resolution 1988 (LX)) the Council appealed to States "to include, if possible, in their delegations to the relevant sessions of the Economic and Social Council, members competent in the subject matters under consideration". This is to ensure that all members of the Council including those that are not parties to the Covenant should have representatives competent to discuss the subject matters of the reports submitted by parties to the Covenant.

5. In its decision 1978/1, the Council invited *members* of the Council to notify the Secretary-General of their interest in participating in the working group (see paragraph 2 above). Although this is done without prejudice to the final decision of the Council on the composition of the working group, the fact remains that the invitation is addressed to all members of the Council including States that are not parties to the Covenant.

6. Article 16 of the Covenant provides that reports from States parties to the Covenant shall be submitted to the Secretary-General who shall transmit copies "to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant". While it is clear that reports are submitted only by Parties to the Covenant, nowhere in the Covenant is it indicated or implied that consideration by the Economic and Social Council should in the first instance be made only by those members of the Council that are Parties to the Covenant.

[34] United Nations, *Treaty Series*, vol. 993. Also reproduced in the *Juridical Yearbook*, 1966, p. 170.

7. From the foregoing analysis, it is our conclusion that the phrase "with appropriate representation of States Parties to the Covenant" means that States parties to the Covenant should be represented by an appropriate number on the sessional working group. It does not require from a legal point of view that the sessional working group should be composed exclusively of those members of the Council that are Parties to the Covenant.[35]

10 April 1978

---

11. QUESTION OF THE INCLUSION IN THE AGENDA OF THE ECONOMIC COMMISSION FOR EUROPE OF AN ITEM PROPOSED BY A STATE MEMBER OF THE COMMISSION—DUTY OF THE EXECUTIVE SECRETARY OF THE COMMISSION, UNDER RULE 5 OF THE COMMISSION'S RULES OF PROCEDURE,[36] TO INCLUDE AN ITEM SO PROPOSED IN THE PROVISIONAL AGENDA AFTER CONSULTATION WITH THE CHAIRMAN—MEANING OF THE WORD "CONSULTATION" IN THIS CONTEXT

Telegram to the Legal Liaison Offices, United Nations Office in Geneva

Our opinion is that the Executive Secretary of the Economic Commission for Europe has no alternative but to include in the provisional agenda all items proposed, under the mandatory provisions of rule 6 [of the rules of procedure of the Economic Commission for Europe].[37] Under this rule members have an absolute right to propose items for inclusion in the provisional agenda. The Executive Secretary must include items so proposed after consultation with the Chairman as required by rule 5.[38] In this context "consultation" means informing the Chairman about items to be included under rule 6 and taking into account, to the extent possible, his views concerning the form of presentation, the order of items, the item titles, etc. Under rule 5, the ultimate responsibility for the preparation of the provisional agenda remains with the Executive Secretary. Consultation certainly does not give the Chairman authority to veto the inclusion of items proposed by members under rule 6. Finally we note that the inclusion [of the proposed item] would not present difficulties for the Secretariat under rule 3 which requires communication of the provisional agenda at least 42 days before the commencement of the session.

2 February 1978

---

[35] In decision 1978/10 of 3 May 1978, the Economic and Social Council decided, *inter alia* (*a*) to establish, for the purpose of assisting the Council in the consideration of reports submitted by States parties to the International Covenant on Economic, Social and Cultural Rights in accordance with Council resolution 1988 (LX), a sessional working group composed of 15 members of the Council which are also States parties to the Covenant, 3 members from African States, 3 members from Asian States, 3 members from Eastern European States, 3 members from Latin American States and 3 members from Western European and other States; and (*b*) to invite the President of the Council, after due consultations with the regional groups, to appoint the members of the working group in accordance with paragraph (*a*) above. For the composition of the group see document E/1979/52.

[36] Document E/ECE/778/Rev.2.

[37] Rule 6 reads as follows:

"The provisional agenda for any session shall include:

"(*a*) Items arising from previous sessions of the Commission;

"(*b*) Items proposed by the Economic and Social Council;

"(*c*) Items proposed by any member of the Commission;

"(*d*) Items proposed by a specialized agency in accordance with the agreements of relationship concluded between the United Nations and such agencies; and

"(*e*) Any other item which the Chairman or the Executive Secretary sees fit to include."

[38] Rule 5 reads as follows: "The provisional agenda for each session shall be drawn up by the Executive Secretary in consultation with the Chairman".

12. ECONOMIC COMMISSION FOR WESTERN ASIA—QUESTION OF THE POSTPONEMENT OF THE COMMISSION'S FIFTH SESSION SCHEDULED TO BE HELD IN 1978—UNDER ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1768 (LIV), A DECISION OF THE COMMISSION TO POSTPONE THAT SESSION TO 1979 SHOULD BE SUBMITTED TO THE COUNCIL FOR ITS CONCURRENCE—REQUIREMENT, UNDER COUNCIL DECISION 279 (LXIII), THAT PROPOSALS FOR CHANGES IN THE ESTABLISHED PATTERN OF SESSIONS OF SUBSIDIARY BODIES BE SUBMITTED TO THE COUNCIL FOR ITS CONSIDERATION

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

1. I refer to your memorandum of 21 March 1978 in which you requested our views on the question whether ECWA may postpone its fifth session from 1978 to 1979.

2. The terms of reference of ECWA, as set out in Economic and Social Council resolution 1818 (LV) of 9 August 1973, do not contain a provision on the sessions of ECWA. Rule 1 (*a*) of the provisional rules of procedure of ECWA[39] states that the sessions of the Commission shall be held "*normally* annually, beginning on the third Monday of April" (italics added). Thus neither the terms of reference nor the rules of procedure oblige the Commission to meet annually.

3. It should be noted, however, that in its resolution 1768 (LIV) of 18 May 1973, the Economic and Social Council decided that the calendar of conferences should be so arranged that certain subsidiary organs of the Council including the regional economic commissions "meet every year unless any of these organs decide or have decided otherwise with the concurrence of the Council" (para. 16 (*a*) of the resolution). It is clear that while a regional economic commission may decide not to hold annual sessions or to postpone one of its annual sessions to the following year, such a decision should be submitted to the Economic and Social Council for its concurrence.

4. Your attention is further drawn to decision 279 (LXIII) of 4 August 1977 by which the Economic and Social Council decided "to request its subsidiary bodies, before they submit proposals for changes in the established pattern of their sessions to the Council for its consideration, to seek the advice of the Committee on Conferences, through the Bureau of the Council, which shall make recommendations concerning the timing and co-ordination of the proposals." Whether this decision is applicable to the present case of ECWA depends on the timing and duration of the postponed session. If it is intended to let one year lapse and to have the annual sessions begin again with the fifth session in 1979 without additional meetings and services, this would not involve the application of the procedure laid down in Council decision 279 (LXIII). Should it be more than a pure and simple postponement, consideration may have to be given to the said procedure.[40]

22 March 1978

---

13. QUESTION OF THE PARTICIPATION OF INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS IN THE ECONOMIC COMMISSION FOR WESTERN ASIA (ECWA)

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

1. I refer to your memoranda of 9 January and 8 February transmitting respectively a letter and a cable from the Executive Secretary of ECWA on the above-mentioned subject.

2. From the outset I would like to draw attention to the fact that the participation of intergovernmental organizations and non-governmental organizations in the Commission rests on different bases. There is also a difference between participation in the Commission and contacts at the Secretariat level. A detailed analysis of these and other relevant aspects is given below.

[39] See *Official Records of the Economic and Social Council, Fifty-seventh Session, Supplement No. 10* (E/5539), annex IV.

[40] On 4 May 1978, the Economic and Social Council noted that the fifth session of the Economic Commission for Western Asia had been postponed until a later date in 1978 (decision 1978/38). The session was held from 2 to 6 October 1978.

A. *Intergovernmental organizations*

3. The legal basis for the participation of intergovernmental organizations in ECWA is laid down in paragraph 7 of the Commission's terms of reference which reads:

> "The Commission . . . may invite representatives of any intergovernmental organizations to participate in a consultative capacity in its consideration of any matter of particular concern to those . . . organizations, following the practice of the Council."[41]

This provision is given expression in rule 66 of the Commission's provisional rules of procedure, which reads as follows:

> "Representatives of intergovernmental organizations accorded permanent observer status by the General Assembly and of other intergovernmental organizations designated on an *ad hoc* or continuing basis by the Council or the Commission may participate, without the right to vote, in the deliberations of the Commission on questions within the scope of the activities of the organizations."[42]

4. It is clear from the provisions quoted above that (1) all intergovernmental organizations accorded permanent observer status by the General Assembly and others designated on an *ad hoc* or continuing basis by the Economic and Social Council may participate in the deliberations of the Commission on questions within the scope of activities of those organizations; (2) the Commission itself may grant observer status to intergovernmental organizations on an *ad hoc* or continuing basis and (3) the right of the Commission to grant observer status to intergovernmental organizations other than those referred to in (1) above is discretionary and not obligatory.

5. In accordance with rule 4 of the Commission's provisional rules of procedure, notification of sessions should be sent only to those intergovernmental organizations accorded permanent observer status by the General Assembly, to other organizations designated on an *ad hoc* or continuing basis by the Economic and Social Council and to the organizations which have been designated by the Commission itself to participate in its deliberations.

6. As to the question whether an organization which is "affiliated to" or "associated with" another intergovernmental organization may be granted observer status separately from the latter, the criterion to be applied is whether the former is an organ created by and subject to the direction of the latter. In other words, a subsidiary body of an intergovernmental organization should not have separate representation from that organization. (For non-governmental organizations, see paragraph 8 below.)

B. *Non-governmental organizations*

7. Paragraph 5 of the terms of reference of ECWA provides:

> "The Commission may make arrangements for consultation with non-governmental organizations which have been granted consultative status by the Council, in accordance with the principles approved by the Council for this purpose and contained in its resolution 1296 (XLIV) of 23 May 1968."

The procedure for implementation of this provision is set out in chapter XIII of the Commission's provisional rules of procedure.

8. These provisions make it clear that consultations by the Commission with non-governmental organizations is limited to those organizations which have been granted consultative status by the Economic and Social Council in accordance with Council resolution 1296 (XLIV).

9. Non-governmental organizations under resolution 1296 (XLIV) are mainly international non-governmental organizations. Paragraph 9 of that resolution provides that national organizations shall normally present their views through international non-governmental organizations to which they belong. The paragraph goes on to say:

> "It would not, save in exceptional cases, be appropriate to admit national organizations which are affiliated to an international non-governmental organization covering the same subjects on an international basis. National organizations, however, may be admitted after consul-

[41] See Economic and Social Council resolution 1818 (LV) of 9 August 1973.
[42] See foot-note 39 above.

tation with the Member State concerned in order to help achieve a balanced and effective representation of non-governmental organizations reflecting major interests of all regions and areas of the world, or where they have special experience upon which the Council may wish to draw."

10. Non-governmental organizations in consultative status with the Economic and Social Council may attend any session of the Commission in accordance with the procedure set forth in Chapter XIII of the Commission's provisional rules of procedure. Since not all such organizations are required to or will actually attend the meetings of the Commission, it would be appropriate for practical purposes, for the Executive Secretary to prepare a list of those non-governmental organizations which the Commission has consulted or wishes to consult. In respect of such non-governmental organizations, no grant of observer status is required.

11. In so far as ECWA is concerned there are two possibilities for co-operation with international and national non-governmental organizations which have not been granted consultative status by the Economic and Social Council. The first is that the Commission may invite a person from a particular non-governmental organization to provide it with information which, in the opinion of the Commission, will be useful to its work. This is different from granting *ad hoc* observer status to the non-governmental organization. The second possibility is that such consultation be made at the Secretariat level (see paragraph 13 below). A combination of both approaches is also possible.

C. *National governmental organizations*

12. Since it is assumed that national governmental organizations are a part of the government, it is for the government concerned to include in its delegation to the Commission a representative of such an organization. If the State concerned is not a member of the Commission it may be invited by the Commission to participate in a consultative capacity in accordance with paragraph 4 of the terms of reference of the Commission.

D. *Contacts and co-ordination at the Secretariat level*

13. It has been indicated above that for those organizations to which the Commission is not in a position to grant either *ad hoc* or continuing observer status, the Secretariat of the Commission may play an important role. ECWA resolutions 9 (II) and 31 (II) should be viewed in this light. Those two resolutions give an overall authorization to the Executive Secretary in the matter of co-ordination and co-operation with regional institutions. In his report to the Commission on the implementation of those resolutions, the Executive Secretary should distinguish between those organizations which have been or may be granted observer status by the Commission and those in relation to which responsibility for consultation and co-ordination lies mainly with the Executive Secretary himself.

14. In the light of the foregoing analysis, the Executive Secretary may propose to the Commission a list of intergovernmental organizations (whether regional or not) to which the Commission is competent to grant observer status on a continuing basis. With respect to non-governmental organizations, there is no need for the Commission to grant observer status.

10 February 1978

---

14. Preparatory Committee of the United Nations Conference on Science and Technology for Development—Possible implications with respect to the composition of the Committee's bureau of the decision of the General Assembly to open full membership in the Committee to all States

Memorandum to the Secretary-General of the United Nations Conference on Science and Technology for Development

1. By memorandum of 11 January 1978, you have raised with me the question whether new elections are required for the Preparatory Committee of the United Nations Conference on Science

and Technology for Development, in view of the decision of the General Assembly, in its resolution 32/115 of 15 December 1977, to open full membership in the Committee to all States. We have examined this question very carefully, both in the light of applicable principles and of decisions taken by the Preparatory Committee itself, and have arrived at the conclusions set out below.

2. In its resolution 2028 (LXI) of 4 August 1976, the Economic and Social Council directed the Preparatory Committee "to organize its work in such a way as to ensure the continuity of its preparatory role between its sessions." This principle was confirmed by the General Assembly in its resolution 31/184 of 21 December 1976. With this directive in mind, the Preparatory Committee, at its first session, elected officers to serve for the entire preparatory period for the Conference. While the summary record of the meeting at which this decision was taken does not expressly mention that understanding, it is, however, reflected in the relevant press release of the meeting (TEC/305), repeated in other press releases and it has been confirmed in discussions we have had with representatives present at the meeting.

3. While the General Assembly, by its resolution 32/115, increased the membership of the Preparatory Committee, it did not create a new or different Preparatory Committee, nor did it indicate that any departure should be made from the principle of continuity laid down in resolution 2028 (LXI) of the Economic and Social Council. Consequently, there is no compelling legal reason for requiring new elections for officers of the Committee, although, in view of its enlarged membership, the Committee may wish—as it is entitled to do—to review the composition of its bureau, in order to enlarge it to ensure equitable geographical distribution.

4. As there is no legal reason for requiring new elections, and having in mind the decision of the Committee at its first session to elect officers for the entire preparatory period—a decision which stands until such time as it may be reversed by the Committee—it would not be appropriate for the Secretariat to raise the question of the election of officers, beyond the indication already given in the provisional agenda that the Committee may wish to examine the composition of its bureau, taking into account the enlargement of the Committee.

13 January 1978

---

15. Preparatory Committee for the United Nations Conference on Science and Technology for Development—Question whether the Committee on Conferences is competent under its terms of reference to take affirmative action on a request that Arabic be included as a language of the Preparatory Committee at its future sessions—Arrangements approved by the General Assembly in relation to the provision of Arabic interpretation services

Memorandum to the Director, Interpretation and Meetings Division, Department of Conference Services

1. At its second session held recently in Geneva, the Preparatory Committee for the United Nations Conference on Science and Technology for Development requested that Arabic be included as a language of the Preparatory Committee at its future sessions. You have requested legal advice on whether the Committee on Conferences is competent under its terms of reference, contained in paragraph 3 of General Assembly resolution 32/72 of 9 December 1977, to take affirmative action on that request. The opinion which follows is submitted in response to your request.

2. The practice of the General Assembly shows clearly that the Assembly has reserved for itself the power to determine the languages of the documentation of its subsidiary bodies and the language services to be provided for meetings of those bodies. As a matter of general policy, the language services to be made available for meetings are those for which provision has been made in the financial estimates relating to the holding of those meetings and approved by the appropriate

authority. If subsequently there was a request for an additional language, such a request has always been decided on by the General Assembly after appropriate action had been taken by organs such as ACABQ and the Fifth Committee with regard to the corresponding financial implications. Whenever Arabic language services were to be provided for a particular organ or conference this has always been expressly stated in the relevant General Assembly resolution or decision.

3. The terms of reference of the Committee on Conferences contained in operative paragraph 3 of General Assembly resolution 32/72 of 9 December 1977 are as follows:

(*a*) To advise the General Assembly on the calendar of conferences;

(*b*) To act on behalf of the General Assembly in dealing with departures from the approved calendar of conferences that have administrative and financial implications;

(*c*) To recommend to the General Assembly means to provide the optimum apportionment of conference resources, facilities and services, including documentation, in order to ensure their most efficient and effective use;

(*d*) To advise the General Assembly on the current and future requirements of the Organization for conference services, facilities and documentation;

(*e*) To advise the General Assembly on means to ensure improved co-ordination of conferences within the United States system, including conference services and facilities, and to conduct the appropriate consultations in that regard.

4. It is clear from the above text that the Committee on Conferences does not have the explicit authority to decide whether United Nations bodies may have language services additional to those specifically approved by the General Assembly. It must be concluded, therefore, that the terms of reference of the Committee on Conferences, taken by themselves, neither expressly nor impliedly allow the Committee to authorize the Preparatory Committee for the United Nations Conference on Science and Technology for Development to have Arabic language services on a permanent basis.

5. In so far as documentation is concerned, the Preparatory Committee, being a committee of the General Assembly, is already authorized to have its documents published in Arabic pursuant to General Assembly resolution 878 (IX) of 4 December 1954. With regard to Arabic interpretation services, it is to be noted that the General Assembly dealt with the question at its thirty-first and thirty-second sessions. For its consideration of this question the Assembly had before it reports prepared by the Secretary-General (A/C.5/31/60 and Corr. 1 and A/C.5/32/9). In his report to the thirty-first session, the Secretary-General recommended *inter alia* the establishment of priorities in the provision of Arabic interpretation services as follows:

> "The General Assembly would have first call on permanent staff for the provision of Arabic interpretation services. During the rest of the year, priority for available permanent staff would be given, in the first instance, to the UNCTAD Conference, the Trade and Development Board and its main committees, meetings of the *ad hoc* intergovernmental committee or the Integrated Programme for Commodities and preparatory meetings and the negotiating conference on a common fund; second, to special meetings and conferences for which the General Assembly approves Arabic language services; third, to all other United Nations meetings, including other UNCTAD bodies, on an 'as available' basis; and finally, to other organizations of the United Nations system, when and if available, on reimbursable loan."

This arrangement was approved by the General Assembly at its thirty-first session and confirmed at its thirty-second session (see resolution 31/208 of 22 December 1976 and resolution 32/205 of 21 December 1977).

6. In the light of these resolutions, it is clear that until the General Assembly specifically authorizes the Preparatory Committee for the United Nations Conference on Science and Technology for Development to have full Arabic language services at its future sessions Arabic interpretation can only be provided on an "as available" basis. If Arabic interpreters are available, the Secretary-General could himself assign them to meetings of the Preparatory Committee without referring the question to the Committee on Conferences since the decisions of the General Assembly are clear in this regard.

Conclusion

7. (*a*) The Secretary-General may provide Arabic interpretation services for meetings of the Preparatory Committee for the United Nations Conference on Science and Technology for Development only on an "as available" basis.

(*b*) The Committee on Conferences may recommend to the General Assembly that full Arabic language services be provided for future sessions of the Preparatory Committee but it is not competent under its terms of reference to take a final decision on the inclusion of Arabic as a language of the Preparatory Committee at its future sessions.[43]

17 March 1978

---

16. IMMUNITY FROM LEGAL PROCESS OF THE UNITED NATIONS JOINT STAFF PENSION FUND, A SUBSIDIARY ORGAN OF THE UNITED NATIONS, UNDER ARTICLE II, SECTION 2 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS—IMMUNITY OF UNITED NATIONS OFFICIALS FROM LEGAL PROCESS IN RESPECT OF ACTS PERFORMED IN THEIR OFFICIAL CAPACITY, UNDER ARTICLE V, SECTION 18 OF THE SAID CONVENTION

Letter to the Permanent Mission of the United States to the United Nations

I wish to refer to the letter dated 20 September 1978, from a Deputy Sheriff of the City of New York, addressed to the Secretary of the United Nations Joint Staff Pension Fund.

The addressee of the letter is requested to appear at the office of the Sheriff of the City of New York in the morning of Thursday, 19 October 1978. The request is made under the threat of arrest for non-compliance, and in this connexion reference is made to the order dated 24 May 1978 (index number 5800/75) by a Judge of the Queens County Court in the matter of *Raymonde Shamsee vs. Muddassir Ali Shamsee*. This order purports to hold the United Nations Joint Staff Pension Fund and its Secretary in contempt of court for failure to comply with the court order of 30 December 1976, which would sequester assets of the United Nations Joint Staff Pension Fund.

In connexion with the above, I wish to advise that both the United Nations Joint Staff Pension Fund and its Secretary enjoy immunity from legal process in accordance with the provisions of the Convention on the Privileges and Immunities of the United Nations,[44] to which the United States is a party.

The Pension Fund is a subsidiary organ of the United Nations established by action of the United Nations General Assembly. As such, it falls under article II, section 2, of the Convention which reads:

> "The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution."

The person concerned, being the Secretary of the Pension Fund and its Chief Administrative Officer, is an official of the United Nations in the sense of article V, section 17, of the Convention. He therefore possesses the immunity from national jurisdiction granted under article V, section 18 (*a*), of the Convention which reads:

---

[43] The Committee on Conferences took note of the part of the legal opinion stating that pursuant to reports of the Secretary-General on the question of Arabic language services (A/C.5/31/60 and Corr.1 and A/C.5/32/9) the Assembly confirmed, in its resolutions 31/208 of 22 December 1976 and 32/205 of 21 December 1977, that the Secretary-General could assign Arabic interpretation services on an as available basis, without referring the question to the Committee on Conferences, since the decisions of the Assembly were clear in this regard. (*Official Records of the General Assembly, Thirty-third Session, Supplement No. 32* (A/33/32, vol. I, para. 35).)

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

"Officials of the United Nations shall:

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

In the present case, there can be no doubt that the subject matter involves a claim to assets of the Pension Fund of which the person in question is the Chief Administrative Officer, and that his only connexion with the case is through his official functions as an official of the United Nations.

For the above reasons—with which you are already familiar—I request that the United States Department of State issue a suggestion of immunity from legal process for the United Nations Joint Staff Pension Fund and its Secretary, to the appropriate officials of the Queens County Court and New York City's Sheriff's Office.[45]

3 October 1978

---

17. QUESTION OF THE EXEMPTION FROM REAL ESTATE TAX OF A RESIDENTIAL PROPERTY IN THE HOST STATE OCCUPIED BY A MEMBER OF A PERMANENT MISSION TO THE UNITED NATIONS—RELEVANT PROVISIONS OF THE HEADQUARTERS AGREEMENT AND OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS

Letter to a private lawyer

I refer to your request for the views of the Office of Legal Affairs of the United Nations Secretariat on the claim to real estate tax exemption for a residential property situated in Westbury Village, in New York State. You have indicated that the property in question is occupied by a member of a Permanent Mission to the United Nations with the rank of Counsellor, and that title to the property stands in the name of the Mission. I understand that you have been retained by the Mission as their attorney for the purpose of claiming exemption before the municipal tax authorities of the Village of Westbury.

By virtue of article V, section 15, of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed on 26 June 1947,[46] the resident members of permanent missions to the United Nations are:

---

[45] The following letter was addressed on 23 March 1979 by the Deputy Legal Adviser, Department of State to the United States Attorney, Eastern District of New York:

"In regard to the referenced case, we understand that there are two matters on which the court has requested the opinion of the Department of State:

"(1) The immunity of the Secretary of the United Nations Joint Staff Pension Fund; and

"(2) The immunity of the United Nations Joint Staff Pension Fund.

"As stated in a certificate by the Chief of Protocol of the United States Department of State, the official referred to in (1) above is entitled to the privileges, exemptions and immunities granted employees of the United Nations Secretariat under the International Organizations Immunities Act, 22 U.S.C., §288-288f-2, and section 18 (2) of the Convention on the Privileges and Immunities of the United Nations. He is, therefore, entitled to immunity from suit and legal process relating to acts performed by him in his official capacity and falling within his official functions. His determination that assets of the Pension Fund could not be sequestered or paid over to Mrs. Shamsee consistent with the regulations of the Fund and his consequent refusal to obey the sequestration order were, in the view of the Department of State, acts performed by the official concerned in his official capacity.

"The immunity of the United Nations Joint Staff Pension Fund is governed by Section 2 of the Convention on the Privileges and Immunities of the United Nations which provides:

" 'The United Nations, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to measures of execution.'

The affidavit of the Under-Secretary General and Legal Counsel of the United Nations testifies to the legal status of the Fund and its relationship to the United Nations. On the basis of that affidavit, the Department of State is of the view that the Fund is covered by Section 2 of the Convention on Privileges and Immunities of the United Nations.

"I would appreciate it if you would convey these views to the court."

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

"entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it."

The generally accepted rules of international law on the privileges and immunities of diplomatic personnel are contained in the Vienna Convention on Diplomatic Relations of 18 April 1961,[47] to which the United States acceded on 13 November 1972. Article 23, paragraph 1, of the Convention provides:

"The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered."

The exemption naturally is granted to the legal person who otherwise would be liable for the tax, namely the owner, and it therefore would be a requirement for exemption that the property is owned by either the sending State (which includes title standing in the name of the Mission) or by the head of the Mission.

The limitation of the exemption in respect of "payment for specific services rendered", refers to utility charges and similar fees.

To enjoy exemption, the property must also be included among "the premises of the mission". In this connexion it is relevant to note that article 1 of the Vienna Convention contains a set of definitions of the meanings of certain expressions used in the Convention. Paragraph (i) of article 1 defines the "premises of the mission" as follows:

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

The travaux préparatoires to the Vienna Convention on Diplomatic Relations indicate that the above definition was introduced at the Conference itself. It was considered at the sixth and seventh meetings of the Committee of the Whole held on 8 and 9 March 1961, and provisionally adopted at the latter of these two meetings.[48] At the twenty-third meeting of the Committee of the Whole during its consideration of draft article 21 (which became article 23 of the Convention), the United States representative stated:

". . . the expression 'premises of the mission' used in article 21 and other articles had not been defined; that was a gap which should be filled. In his delegation's opinion, the expression should comprise the land and all the buildings of the mission, even if scattered."[49]

It does not appear that any further statement was made by United States representatives on this matter during the Conference. At its thirty-eighth meeting, the Committee of the Whole adopted Article 1 (i) in its present formulation by 52 votes to 9 with 11 abstentions.[50] Article 21 was adopted at the twenty-third meeting by 72 votes to none with one abstention.[51]

During the subsequent consideration of the matter by the Conference meeting in plenary, article 1 was adopted unanimously (subject to drafting changes not relevant to paragraph (i)) at the fourth plenary meeting, held on 10 April 1961,[52] and article 21 (now article 23) was adopted unanimously without debate at the sixth plenary meeting on 11 April 1961.[53]

In the opinion of the Office of Legal Affairs the interpretation and application of article 23 of the Vienna Convention to the present case should be based on the legal facts stated in the preceding.

20 April 1978

---

[47] *Ibid.*, vol. 500, p. 95.

[48] United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. I: Summary Records, seventh meeting of the Committee of the Whole, para. 39.

[49] *Ibid.*, twenty-third meeting of the Committee of the Whole, para. 49.

[50] *Ibid.*, thirty-eighth meeting of the Committee of the Whole, para. 42.

[51] *Ibid.*, twenty-third meeting of the Committee of the Whole, para. 69.

[52] *Ibid.*, fourth plenary meeting, para. 11.

[53] *Ibid.*, sixth plenary meeting, para. 22.

18. SECTION 13 (*b*) OF THE AGREEMENT CONCERNING THE HEADQUARTERS OF THE UNITED NATIONS OF 26 JUNE 1947—INTERPRETATION OF THE CONCEPT OF PRIOR CONSULTATION IN RELATION TO A REQUEST MADE BY THE HOST STATE FOR THE DEPARTURE FROM ITS TERRITORY OF A PERMANENT REPRESENTATIVE TO THE UNITED NATIONS—DISTINCTION BETWEEN CONSULTATION AND AGREEMENT OR CONCURRENCE

Statement made by the Legal Counsel at the 71st meeting of the Committee on Relations with the Host Country, on 13 February 1978[54]

During the meeting last Thursday, the representative of Senegal asked me to give certain clarifications and I am now ready to reply to what I think was the main question raised here, namely, what is the legal meaning of "prior consultation". The Headquarters Agreement of 1947 provides, in subparagraph (1) of section 13 (*b*), that:

"(1) No proceedings shall be instituted . . . to require any such person to leave the United States except with the prior approval of the Secretary of State of the United States. Such approval shall be given only after consultation with the appropriate Member in the case of a representative of a Member". . . .

Thus the essential question is to determine what the term "prior consultation" means. I shall confine myself to seeking a legal definition of this expression. In this connexion, I first of all consulted the only existing dictionary of the terminology of international law, that published in Paris in 1960.[55] The following definition of the word "consultation" is found there:

"Term which, in diplomatic language, is used to signify the joint consideration of an affair, a situation, an incident, the attitude to be adopted, the measures to be taken, the seeking, on that occasion, of the opinion of another Government."[56]

The same dictionary gives several examples, of which I should like to cite the following in particular:

"At the meeting of the United Nations Trusteeship Council held on 24 January 1950 to deal with the preparation of the Trusteeship Agreement for Italian Somaliland, Mr. Ryckmans (Belgium) said, with reference to the expression 'after consultation with the Advisory Council', appearing in article 6 of that Agreement: ' "after consultation" is certainly more precise than "request the opinion". But neither of these expressions goes as far as "with the agreement of" '.[57]

"The United States representative, Mr. Sayre, said 'The first term [consultation] implies a continuous action, whereas the second [opinion] refers to a specific action. A request for an opinion . . . could prompt a positive or a negative reply, whereas consultation entails collaboration and discussion.' "[58]

Furthermore, when in 1975 the United Nations drew up the Vienna Convention—often cited here—on the Representation of States in their Relations with International Organizations, which has

---

[54] The facts behind the above statement are the following:

In December 1977, the host State requested the departure of the Permanent Representative of a Member State on grounds of abuse of the privilege of residence within the meaning of section 13 (*b*) of the Headquarters Agreement of 26 June 1947. The Member State concerned contended that, in taking such action, the host State had exploited the uncertainty surrounding the rules about *persona non grata* declarations in both the Headquarters Agreement and the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, and had breached Section 13 (*b*) of the Headquarters Agreement by not consulting the Government concerned beforehand.

The representative of the host State claimed that the conditions set forth in subparagraph (1) of section 13 (*b*) had been scrupulously observed in this case, stating in particular that his Government had attempted to discuss the situation with the Permanent Mission concerned but that after an initial contact, the Mission had refused to engage in further discussions. For more details on this case see the report of the Committee on Relations with the Host Country to the thirty-third session of the General Assembly (*Official Records of the General Assembly, Thirty-third Session, Supplement No. 26* (A/33/26), paras. 7-46.

[55] Union académique internationale, *Dictionnaire de la terminologie du droit international*, Sirey, Paris, 1960.

[56] *Ibid.*, p. 159.

[57] *Ibid.*

[58] *Ibid.*

not yet entered into force, the delegations had occasion to discuss an article and amendments on respect for the laws and regulations of the host State.

During the discussions, the representative of France proposed to add to the relevant article a paragraph reading as follows:

> "Nothing in this article shall be construed as prohibiting the host State from taking such measures as are necessary for its own protection. In that event the host State shall, without prejudice to articles 81 and 82, consult the sending State in an appropriate manner in order to ensure that such measures do not interfere with the normal functioning of the mission or delegation."[59]

In submitting this text, the representative of France stated the following:

> "All authorities on international law had traditionally conceded to host States the powers which it proposed; in order to allay any apprehension, his oral revision made specific reference to articles 81 and 82. Article 81 made provision for consultation when a dispute had already arisen, but the proposed new sentence envisaged consultation with the sending State at an earlier stage in order to further the aim, common to all delegations, of ensuring the effective functioning of the international organization and of the missions accredited to it."[60]

We have here the element of prior consultation. Moreover, the text of the amendment specifies that the consultation shall be held "in an appropriate manner". This French amendment was finally incorporated in the text of article 77 of the Vienna Convention, paragraph 4 of which reads as follows:

> "Nothing in this article shall be construed as prohibiting the host State from taking such measures as are necessary for its own protection. In that event the host State shall, without prejudice to articles 84 and 85, consult the sending State in an appropriate manner in order to ensure that such measures do not interfere with the normal functioning of the mission, the delegation or the observer delegation."[61]

I think that, although this Convention has not yet entered into force, the article in question, and more specifically this text, reflects existing international law with respect to the matter and that the host State should take appropriate measures of prior consultation before taking any action against an ambassador or a member of a mission.

Thirdly, in the Secretariat we had occasion more than 15 years ago to prepare a study on the subject of the expressions "in consultation with" and "after consultation". I shall read out to you several very brief extracts from this study.[62]

> "In interpreting United Nations texts, therefore, 'consultation' must be distinguished from 'agreement', 'concurrence' or 'consent' unless it is clearly indicated in the text that the purpose of consultation is to obtain agreement. On the other hand, it may be said that while certain differences of emphasis may exist, the expressions 'in consultation with' or 'after consultation with' have a similar connotation as 'taking into account the views of'[63] or 'bearing in mind the recommendations of'[64] in the sense that these latter expressions do not require agreement with the views expressed or the recommendations made."

> "United Nations practice does not indicate any significant difference between the expressions 'in consultation with' and 'after consultation with'. The former expression may refer to a more continuous process leading to the reaching of a decision by the consulting party; the latter may more clearly distinguish between the two stages, that of consultations and that of decision-making."

In conclusion, this study states:

---

[59] United Nations Conference on the Representation of States in their Relations with International Organizations, *Official Records*, vol. II, document A/CONF.67/17, para. 776, subparagraph (*d*).

[60] *Ibid.*, vol. I, 40th meeting of the Committee of the Whole, para. 26.

[61] *Ibid.*, vol. II, document A/CONF.67/16.

[62] *Juridical Yearbook*, 1962, provisional edition (mimeographed), Fascicle 2, p. 269.

[63] E.g., General Assembly resolutions 1512 (XV) and 1572 (XV).

[64] E.g., General Assembly resolution 1517 (XV).

"It may therefore be said that either the language or the implementation in practice of such resolutions of the General Assembly as those illustrated above indicates that consultation is a process by which the views of the parties consulted are merely sought or ascertained and that the distinction is carefully made between the use of the expressions 'in consultation with' or 'after consultation with' and such expressions as 'with the concurrence of'."[65]

---

19. QUESTION WHETHER UNITED NATIONS OFFICIALS CAN TESTIFY UNDER OATH IN DOMESTIC COURTS CONSISTENTLY WITH THEIR OBLIGATIONS UNDER THE STAFF REGULATIONS—UNITED NATIONS PRACTICE WITH REGARD TO PROVISION TO COURTS OF UNPRIVILEGED INFORMATION IN ITS POSSESSION WHICH MAY BE NEEDED IN JUDICIAL PROCEEDINGS

Letter to the Legal Liaison Officer, United Nations Office in Geneva

I refer to your letter of 7 February asking advice on how to handle a summons addressed to a United Nations official for the purpose of eliciting testimony about salaries, pension, career prospects, etc. of a staff member victim of an automobile accident which is the subject of a suit for damages. You particularly ask whether United Nations officials can take an oath in court consistently with their obligations under the Staff Regulations.

We have a long-standing United Nations policy with respect to requests for staff members to appear as witnesses in court proceedings, in cases in which the United Nations as such has no interest, to testify on matters within their knowledge as United Nations officials or to provide information contained in United Nations files. Our policy is based on the Secretary-General's duty under Section 20 of the Convention on the Privileges and Immunities of the United Nations "to waive the immunity of any officer in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations".

The United Nations authorizes officials to appear and to testify on specific matters within their official knowledge provided (1) that there is no reasonable effective alternative to such testimony for the orderly adjudication or prosecution of the case; and (2) that no significant United Nations interest would be adversely affected by the waiver. The authority to waive the immunity and to authorize the testimony has been delegated to the Legal Counsel.

Occasions for the authorization and waiver are limited to cases in which the subject matter within the official's knowledge may be made public without giving rise to any problem as regards, for example, privileged papers or controversial political issues. Most frequently, where testimony by officials is required for criminal cases where cross examination is anticipated, we have had prior consultation with the attorneys requesting the appearance concerning the area of questioning.

We have on frequent occasions received summonses or subpoenae in connexion with matrimonial and personal injury cases where United Nations salary entitlements and allowances are relevant. Our usual practice is to reply stating that the United Nations is immune but that information may be provided in relation to specific questions on a voluntary basis. Frequently, letters or documentary material is sufficient. In some instances, Personnel officers have appeared in judicial or quasi-judicial proceedings to provide information on United Nations salaries and emoluments. In cases where the staff member is a party to the dispute and the opposing party needs information about his United Nations emoluments, we sometimes provide the information to the staff member and require him to transmit the material required in the court proceedings so as to relieve the United Nations of the need to waive. In other words, our effort is to provide the information other than by court appearance if possible.

When staff members are authorized to appear and to testify on a particular subject matter, they are implicitly authorized to take whatever oath or to make whatever affirmation is necessary for the testimony to be admissible. Given the conditions for the waiver and authorization, the oath to testify

[65] *Ibid.*, p. 279.

truthfully would not, in our view, give rise to a conflict with the staff member's obligations under the Staff Regulations.

17 February 1978

---

20. MEMBERSHIP DRIVE CONDUCTED BY A NATIONAL TRADE UNION FOR ENROLLING LOCAL EMPLOYEES OF INTERNATIONAL ORGANIZATIONS—RIGHT TO FREEDOM OF ASSOCIATION OF ALL UNITED NATIONS STAFF MEMBERS—THE EMPLOYMENT RELATIONSHIP BETWEEN THE UNITED NATIONS AND ITS STAFF IS GOVERNED EXCLUSIVELY BY THE APPLICABLE UNITED NATIONS STAFF RÉGIME—EXCLUSIVE STATUS OF STAFF REPRESENTATIVES UNDER CHAPTER 8 OF THE UNITED NATIONS STAFF REGULATIONS

Letter to the Legal Liaison Officer, United Nations Environment Programme

1. You have requested our advice on the question whether units of the United Nations in [name of a Member State] are compelled to deal with a national trade union which claims the right to represent all local employees of international organizations in that State in matters relating to their conditions of employment.

The Facts

2. On 11 September 1978 the trade union in question (hereafter referred to as the "Union") wrote to various United Nations offices in the country concerned announcing a membership drive for local employees of "international establishments and allied institutions".

3. The Union advised that it had been registered by the Registrar of Trade Unions as the "sole union that caters for all employees" engaged in international institutions in the country concerned. However, the Union's membership drive is limited to organizing and enrolling "local employees into the Union membership and to explain to them about union representations and what is expected of them as workers under the Industrial Relations contents".

4. In support of its membership drive the Union notes that it is the policy of the Government to see to it that every worker is represented and protected by trade unions. The Union also refers to a number of local statutes governing labour relations and to Conventions Nos. 84, 87 and 98 of the International Labour Organisation in order to buttress its claim to organize local employees of international institutions in the Member State concerned.

Law applicable to employment relationship with the United Nations

5. It is a well recognized principle of public international law that the employment relationship between the United Nations and its staff is not subject to national law but is governed by the internal rules of the United Nations. This principle derives from Article 101, paragraph 1 of the Charter of the United Nations which provides as follows:

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

Furthermore, pursuant to Article 100, paragraph 2, "each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff".

6. The inapplicability of national law to the employment relationship between the United Nations and its staff has been recognized not only by international tribunals and doctrinal writings but also by national courts. The relevant authorities are conveniently set out and discussed in an opinion of the Legal Counsel of the Food and Agricultural Organization dated 4 September 1970.[66] However, national law may, on occasion, be relevant since General Service staff and manual workers are appointed "on the basis of the best prevailing conditions of employment in the locality of the United Nations office concerned" (Staff Regulations, annex I, para. 7). But in these cases, national

[66] Reproduced in *Juridical Yearbook*, 1970, p. 189.

laws are relevant only because they may be taken into consideration when estı blishing the conditions of employment of locally recruited staff. National laws themselves are no directly applicable to the relationship between the Secretary-General and United Nations staff.

Right of national trade unions to represent United Nations staff in employmen matters

7. Given the fact that the laws governing the employment relationship ɔetween the United Nations (including UNICEF, UNDP, UNEP and other subsidiary organs of the C rganization) and its staff are the "regulations established by the General Assembly" pursuant to Aı icle 101, paragraph 1 of the Charter, the question arises as to whether these regulations oblige, or even authorize, the United Nations to deal with national trade unions which seek to represent certain sectors of the staff.

8. The Staff Regulations adopted by the General Assembly as implemente d by the Staff Rules promulgated by the Secretary-General provide machinery for the representatio n of United Nations employees. In particular, Staff Regulation 8.1 provides for an elected Staff C(uncil "for the purpose of ensuring continuous contact between the staff and the Secretary-Gener al". The Council is "entitled to make proposals to the Secretary-General for improvements in th e situation of staff members, both as regards their conditions of work and their general condition s of life".

The Council must be "composed in such a way as to afford equitable r epresentation to all levels of the staff". Staff Regulation 8.2 provides for the establishment of joint administrative machinery with staff participation regarding personnel policy and general questi ons of staff welfare. Staff Rules 108.1 and 108.2 implement these Regulations.

9. In addition, by General Assembly resolution 3357 (XXIX) of 18 D ecember 1974, the International Civil Service Commission was established "for the regulation and co-ordination of the conditions of service of the United Nations common system" (article 1 of the S atute of the ICSC). The United Nations Administrative Tribunal has recently pointed out that the Statute of the ICSC and its rules of procedure "afford fair and reasonable opportunity for the s aff to make representations to the Commission and discuss issues with it . . . (Judgement No. 2 ·6 (Belchamber), at para. XVI).[67]

10. It is thus clear that the machinery established by the General Assembly to enable the staff to participate in the determination of conditions of employment through recog nized staff associations and joint administrative machinery does not require the United Nations ad ministration to deal with associations other than those established in accordance with the Staff Regulations and Rules. It follows that national trade unions have no status to represent the staff of the Unit ed Nations in questions relating to the staff's employment relationship with the United Nations. Accordingly, the United Nations administration has no obligation to accord any recognition to nati onal trade unions or to grant such unions facilities on United Nations premises.

11. Consequently, staff members cannot be compelled, by national laws or by union regulation enforced by law, to become members of any trade union.

Freedom of association

12. This is not, however, to say that staff members are prohibited from be coming members of trade unions. Staff members are free to join with other staff members, and eve n with persons not affiliated with the United Nations in any association that is compatible with t heir status as international civil servants, that is which does not entail public espousal of political p ositions or inappropriate activities within or outside the United Nations. Staff members' freedom of association has been considered to encompass the right to organize a union of staff members o her than the recognized staff association;[68] but this freedom of association enjoyed by staff mem bers is separate and distinct from rights accorded to a particular association that staff members may join. While there is no absolute impediment to the administration's voluntarily having contact with representatives of any groups or associations to which staff members belong, the United Nations administration must

[67] For a summary of this judgement see p. 140 of this *Yearbook*.

[68] See the legal opinion reproduced on p. 171 of the *Juridical Yearbook*, 1973.

respect the exclusive status and functions of the representatives recognized pursuant to Chapter 8 of the Staff Regulations and Rules.

Relevance to ILO Conventions

13. In addition to relying upon domestic legislation to grant it authority to represent United Nations staff, the Union also relies on several conventions adopted by the International Labour Organisation.

14. These Conventions are, of course, applicable only to those States who ratify them and not to any intergovernmental organizations that those States might belong to. As was pointed out in a previous opinion from this Office:

> "If States feel obliged to bring the provisions or the principles of such treaties to bear on an international organization, they can do so by means of appropriate resolutions in the organization."[69]

15. However, leaving aside this question of the applicability of ILO Conventions, it is clear that the three Conventions relied upon by the Union do not assist it in its claim. These three Conventions, as well as another more recently adopted, are discussed in turn.

ILO Convention No. 84

16. The Right of Association (Non-Metropolitan Territories) Convention, 1947[70] concerns the right of association and the settlement of labour disputes in non-metropolitan territories of Members of the ILO. It is clear that this Convention is not applicable, even by way of analogy, to the present circumstances.

ILO Convention No. 87

17. The Freedom of Association and Protection of the Right to Organise Convention, 1948[71] concerns the freedom of association of employees and protection of their right to organize. These rights are also specified in the Universal Declaration of Human Rights and are also clearly established pursuant to general principles of international law. The United Nations has fully recognized and implemented these rights.[72] Indeed, staff regulation 8.1 and staff rule 108.1, which make provision for the election of a Staff Council, have been seen by the United Nations Administrative Tribunal as constituting a specific recognition and acceptance of these rights (Judgement No. 15 (Robinson)).[73]

18. Moreover, as pointed out above, individual staff members have the right to organize or to join any associations, including trade unions, but this does not oblige the United Nations to deal with such associations if these are outside the specific machinery established by the General Assembly pursuant to Article 101, paragraph 1 of the Charter.

ILO Convention No. 98

19. The Right to Organise and Collective Bargaining Convention, 1949[74] concerns the application of the principles of the right to organize and to bargain collectively. This Convention recognizes that the right of employees to join unions or associations is not synonymous with the right to insist that employers bargain with those unions. Although the Convention promotes collective agreements between employers' and employees' organizations, article 6 specifically states that the Convention "does not deal with the position of public servants engaged in the administration of the State".

---

[69] *Ibid.*, para. 2.
[70] United Nations, *Treaty Series*, vol. 171, p. 330.
[71] *Ibid.*, vol. 68, p. 17.
[72] See para. 2 of the legal opinion referred to in foot-note 68 above.
[73] See *Judgements of the United Nations Administrative Tribunal*, Numbers 1 to 70, 1950-1957, pp. 43-53.
[74] United Nations, *Treaty Series*, vol. 96, p. 258.

ILO Convention No. 151 and ILO Recommendation No. 159

20. The special status of employees in the public service has been recognized by the adoption by the ILO in 1978 of the Labour Relations (Public Service) Convention and of the Labour Relations (Public Service) Recommendation. Although the Union did not refer to these instruments, it may be useful to discuss them since they deal with employment that is analogous to that of the international civil service.

21. The above-mentioned Convention and Recommendation concern the protection of the right to organize of public employees and the establishment of procedures for determining conditions of employment in the public service. The Convention sets out the facilities to be afforded to "recognized public employees' organizations" (article 6) and calls for the promotion and utilization of machinery for the negotiation of terms and conditions of employment or of such other methods as will allow representatives of public employees to participate in the determination of these matters (article 7; see also paragraph 2 of the Recommendation). However, such facilities are already accorded to the recognized staff associations in the United Nations, whereby the representatives of the staff can participate in the determination of terms and conditions of employment.

22. It is thus evident that, insofar as the provisions of the new Convention and Recommendation are applicable by way of analogy to the international civil service, the machinery established under the United Nations Staff Regulations and Rules meets the standards set out in the Conventions.

Conclusion

23. Locally recruited staff in the Member State concerned, like all United Nations staff members, have the right to freedom of association, but their employment relations with the United Nations are governed exclusively by the applicable United Nations staff régime. Consequently, the Secretary-General and the executive heads of subsidiary organs with offices in that Member State are not obliged to deal with the Union and should avoid action inconsistent with the exclusive status of staff representatives under chapter 8 of the United Nations Staff Regulations and Rules.

30 November 1978

---

21. INELIGIBILITY OF UNITED NATIONS EMPLOYEES FOR UNEMPLOYMENT INSURANCE COMPENSATION

Internal note

We recently had an enquiry regarding the availability to former United Nations employees of unemployment insurance compensation.

The United Nations is a public international organization not liable for contributions as an employer under the New York State Unemployment Insurance Law;[75] and accordingly United Nations employees are not eligible for unemployment insurance compensation.[76]

11 January 1978

---

[75] In a letter to the Secretariat of the United Nations dated 4 October 1946, an official in the New York State Department of Labour wrote:

"You inquire as to whether or not the United Nations is an employer liable for contributions under the New York State Unemployment Insurance Law.

"We have carefully examined the documents submitted . . . and have also secured the advice of the Secretary of State of the United States. It is our determination that the United Nations is not an employer liable for contributions under the New York State Unemployment Insurance Law. Our determination is based upon the fact that the United Nations is entitled to all of the rights and privileges of a sovereign State."

[76] The question of availability of unemployment insurance benefits came up in New York State in 1975 in

22. CONVENTION ON THE AGENCY FOR CULTURAL AND TECHNICAL CO-OPERATION—THE DESIGNATION IN THE CONVENTION OF AN AUTHORITY RESPONSIBLE FOR REGISTRATION WITH THE SECRETARIAT OF THE UNITED NATIONS DOES NOT RELIEVE STATES PARTIES WHICH ARE MEMBERS OF THE UNITED NATIONS OF THE OBLIGATION INCUMBENT ON THEM UNDER ARTICLE 102 OF THE CHARTER—PROBLEM RESULTING FROM THE TAKING INTO ACCOUNT, FOR THE PURPOSE OF THE ENTRY INTO FORCE OF THE CONVENTION, OF SIGNATURES WHICH THE STATES CONCERNED INTENDED TO BE CONSIDERED SUBJECT TO RATIFICATION

Letter to the Minister for Foreign Affairs and Co-operation of a Member State

I have the honour to acknowledge receipt of your letter No. 03160 of 24 April 1978 concerning the registration, under Article 102 of the Charter, of the Convention on the Agency for Cultural and Technical Co-operation, concluded at The Hague on 20 March 1970.

Your communication raises two questions, concerning (1) the registration procedure itself, and (2) the determination of the date of entry into force of the Convention in view of the uncertainties which at present exist with regard to the effect of a number of signatures.

Registration procedure under Article 102 of the Charter

We have taken note of article 11 of the Convention, which provides that "the Government of the host country for the constituent Conference or the Government of the country in which the Agency will have its seat" shall cause the Convention to be registered with the Secretariat.

In this connexion, it should be noted that, in the case of States Members of the United Nations, the obligation to register stems primarily from Article 102 of the Charter and from the General Assembly regulations to give effect to that Article.[77] Where an agreement—such as the Convention on the Agency—specifically designates an authority responsible for registration, it thereby creates an obligation for that authority, which, assuming that it is a Member of the United Nations, is additional to the obligation already incumbent on it under Article 102 of the Charter; such a designation is not, however, considered to relieve other States Parties which are Members of the United Nations of the obligation laid down in Article 102.

It may also be noted that it has become customary, in the case of multilateral international agreements, to allow registration to be effected by the depositary, the latter being obviously in a better position than the other parties, since the depositary keeps custody of the original text and usually of the instruments. This practice, which had been recommended by the Sixth Committee of the General Assembly at the time of the adoption of the regulations to give effect to Article 102 of the Charter, was sanctioned by the 1969 Vienna Convention on the Law of Treaties,[78] which includes registration among the functions of depositaries (see art. 77 (1) (*g*)).[79]

Determination of the date of entry into force of the Convention

You have also requested an opinion from the Office of Legal Affairs on the question of the date of entry into force of the Convention. The Convention provides, *inter alia*, for definitive signature—in other words, signature without reservation as to ratification—and three States (Chad, Senegal and Upper Volta) did sign it without reservation as to ratification. The depositaries took those three signatures into account for the purpose of the definitive entry into force of the Convention, which was accordingly announced as at 31 August 1970; however, it is apparent from the full powers subsequently communicated to the depositaries or from the subsequent deposit of instru-

---

the case of an individual who had been employed by the United Nations in New York for a limited period in 1975. Under the relevant legislation, a claimant must have a minimum of 20 weeks of employment as defined by Federal law in order to establish a valid claim for unemployment insurance benefits. A New York State Department of Labour referee confirmed, by a decision of 15 June 1977, that the claimant's period of employment in the United Nations should be discounted in the computation of the 20-week period of employment required.

[77] General Assembly resolutions 97 (I), 364 B (IV), 482 (V) and 33/141 A.

[78] United Nations Conference on the Law of Treaties, *Official Records*, Documents of the Conference (A/CONF.39/11/Add.2—United Nations publication, Sales No. E.70.V.5), p. 287.

[79] As at 23 August 1979, two additional ratifications were required for the entry into force of the Vienna Convention on the Law of Treaties.

ments of ratification that the Governments concerned intended to sign the Convention subject to ratification. That being the case, there arose the question whether the depositaries should, for the sake of good order, notify interested States that an error had been made in declaring the Convention officially in force as from 30 August 1970, and that it had in fact entered into force on 7 June 1971 (the date on which 10 instruments of ratification or definitive signatures had actually been received).

Difficulties of this kind tend to occur when an agreement provides for the unfortunately uncommon procedure of participation by definitive signature, and the Secretary-General, as depositary of nearly 300 multilateral agreements, has himself encountered such difficulties (see, for example, the annual publication *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions* (ST/LEG/SER.D/11), p. 336, foot-notes 2 and 3).

The main fact which emerges from the information you were good enough to provide to us is that the Convention was signed without reservation as to ratification on behalf of Chad, Senegal and the Upper Volta, as provided for in article 5 (1) (*a*). The production of full powers at the time of signature would no doubt have prevented the subsequent confusion about the real intentions of the Governments concerned; however, it should be noted, firstly, that the production of full powers, while always recommended, does not follow from a peremptory norm of general international law (see in this connexion art. 7, para. 1 of the Vienna Convention on the Law of Treaties), and, secondly, that the depositary Government is always entitled to assume that a formal act by the official representative of a State was done advisedly.

It is also clear that the communication by which the depositaries announced the entry into force of the Convention as at 31 August 1970 did not lead to any objection from the Governments of Chad, Senegal and the Upper Volta. That being so, the three Governments concerned may be considered to have accepted the signatures affixed on their behalf as definitively binding them, even if their original intention was to subject the Convention to domestic ratification procedures.

In conclusion, our opinion is that it is not necessary now to correct the notification by which the depositaries announced the entry into force of the Convention as at 31 August 1970. In the absence of any objection to that notification, the Governments of Chad, Senegal and the Upper Volta may be considered to have retroactively confirmed the definitive signatures effected on their behalf.

11 May 1978

---

23. REGISTRATION OF TREATIES WITH THE SECRETARIAT IN ACCORDANCE WITH THE GENERAL ASSEMBLY REGULATIONS TO GIVE EFFECT TO ARTICLE 102 OF THE CHARTER[80]—PRACTICE DEVELOPED BY THE SECRETARIAT WITH A VIEW TO REFLECTING IN THE REGISTER ANY SUBSEQUENT ACTION AFFECTING A REGISTERED TREATY EVEN IN THE ABSENCE OF A CERTIFIED STATEMENT UNDER ARTICLE 2 OF THE REGULATIONS

Extract from a letter to the Permanent Representative of a Member State to the United Nations

. . . reference is made to the Agreement between Brazil and Guyana for air services between and beyond their respective territories, signed at Georgetown on 10 May 1974. The said Agreement provides in its article 15 for the termination of the air transport agreement between Brazil and the United Kingdom, signed at Rio de Janeiro on 31 October 1946, in so far as it applies to Brazil and Guyana (Guyana was included in the terms of the Agreement by an exchange of notes dated 27 June 1952 which was registered under No. 152 on 18 February 1953). In the past, the Secretariat's practice, in the absence of any mention of the termination in the accompanying certification, has been to suggest that the registering party register the termination by means of a certified statement under article 2 of the General Assembly regulations to give effect to Article 102 of the Charter.[80]

A number of Governments have, however, not considered it necessary as a matter of law to do so. In suggesting registration in similar instances the Secretariat has been guided by the usefulness of hav-

[80] General Assembly resolutions 97 (I), 364 B (IV), 452 (V) and 33/141 A.

ing all developments affecting a registered treaty or international agreement reflected in the registration records, which is particularly important in light of the computerization of treaty data now in progress at the Secretariat.

After reviewing its procedures, the Secretariat has concluded that this purpose could be achieved by means of a note originating in the Secretariat which would provide, under the number of the Agreement that has been terminated, the relevant information contained in the new Agreement submitted for registration, in the same way as a certified statement. Thus as regards the agreement in question, the text which will be inserted in the register will read as follows:

"No. 152. Air transport agreement between the Government of the United Kingdom and the Government of Brazil. Signed at Rio de Janeiro on 31 October 1946;

"TERMINATION of the exchange of notes of 27 June 1952 amending the above-mentioned Agreement (*Note by the Secretariat*)

"The Government of Brazil registered on 27 February 1976, an agreement between Brazil and Guyana for air services between and beyond their respective territories, signed at Georgetown on 10 May 1974.

"The said Agreement, which came into force on 4 March 1975, provides in its article 15 for the termination of the Agreement of 31 October 1946 in so far as it applies to Brazil and Guyana.

"*27 February 1976.*"

13 February 1978

---

24. QUESTION WHETHER UNILATERAL DECLARATIONS DEPOSITED BY MEMBER STATES IN RESPONSE TO GENERAL ASSEMBLY RESOLUTION 32/64 RELATING TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT CONSTITUTE BINDING UNDERTAKINGS IN INTERNATIONAL LAW

Internal memorandum

1. I understand that the Government of Luxembourg has deposited a declaration in response to General Assembly resolution 32/64 [paragraph 1 of which calls upon all Member States to make unilateral declarations against torture and other cruel, inhuman or degrading treatment or punishment along the lines of the text annexed to the resolution, and to deposit such declarations with the Secretary-General].

2. A number of essentially administrative decisions should now be taken in relation to these instruments, depending in large part on what legal status and effect these are considered to have.

3. An examination of resolution 32/64 shows that the declarations called for by the resolution are to be "deposited . . . with the Secretary-General", a formal term used in treaty practice. However, the model declaration annexed to the resolution[81] would merely have Governments declare their "intention" to comply and to implement, rather than indicate that they "will" or "undertake to" comply and implement. On balance, therefore, the resolution suggests that no binding obligation is intended.

4. An examination of the debates leading to the adoption of the resolution shows that the principal sponsor, India, in introducing the draft resolution (A/C.3/32/L.15) stated that:

---

[81] The text of the annex reads as follows:

"Model unilateral declaration against torture and other cruel, inhuman or degrading treatment or punishment

"The Government of . . . hereby declares its intention:

"(*a*) To comply with the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX), annex;

"(*b*) To implement, through legislation and other effective measures, the provisions of the said Declaration."

"the fourth preambular paragraph [of the draft resolution] recognized the need for further international action in the form of a legally binding international convention. The unilateral declarations called for in paragraph 1 would be an expression of the good faith of Governments and their moral commitment to the provisions of the Declaration on Torture" (A/C.3/32/SR.37, para. 27).

In other words, the ultimate goal of a binding convention is contrasted with the immediate object of securing moral commitments. However, in explaining their votes, a number of representatives seemed to suggest that they attributed some legal force to the resolution and/or to declarations made pursuant to it: e.g., France (A/C.3/32/SR.42, para. 21), Togo (*id*, para. 23), the German Democratic Republic (*id*, para. 24), Madagascar, Mali, the United Republic of Cameroon, Benin, Venezuela (*id*, para. 27) and the United Kingdom (*id*, para. 32). Naturally these statements may have been *ex abundanti cautela*. Here again, on balance, the *travaux préparatoires* suggest that no binding obligation was intended.

5. If it is agreed that the declarations have no legal force, then it would seem that they should be dealt with by the Division of Human Rights, perhaps through its Liaison Office here. That Division would then receive the declarations, acknowledge them, keep a running list and prepare the annual report required by paragraph 3 of the resolution.

6. However, should it be concluded that the declarations do have legal force, then they should be dealt with by the Office of Legal Affairs. Indeed, if they are to be considered treaty obligations, they should presumably be dealt with by the Treaty Section in the same way as other instruments deposited with the Secretary-General, in particular those that are unilateral in form (e.g. declarations under Article 36 (2) of the Statute of the International Court of Justice).

13 January 1978

---

25. CONVENTION PROVIDING A UNIFORM LAW FOR CHEQUES OF 19 MARCH 1931—QUESTION WHETHER A STATE PARTY TO THE CONVENTION MAY, SUBSEQUENT TO THE DEPOSIT OF ITS INSTRUMENT OF ACCESSION, MAKE RESERVATIONS WHICH UNDER THE TERMS OF THE CONVENTION MAY BE MADE ONLY AT THE TIME OF ACCESSION OR RATIFICATION—PROCEDURE WHEREBY THE PROPOSED RESERVATIONS WOULD BE COMMUNICATED TO THE STATES PARTIES AND CONSIDERED TO HAVE TAKEN EFFECT, IN THE ABSENCE OF ANY OBJECTION, UPON THE EXPIRY OF 90 DAYS FROM THE DATE OF COMMUNICATION

Letter to the Permanent Mission of a Member State to the United Nations

1. I have the honour to refer to our recent conversations concerning the Convention providing a Uniform Law for Cheques of 19 March 1931,[82] for which the United Nations performs the Secretariat functions previously entrusted to the Secretary-General of the League of Nations as depositary.

2. You stated that your Government was considering including in its next finance bill, with a view to minimizing tax evasion, provisions curtailing the freedom to endorse cheques which would be consistent with article 7 of annex II of the Convention (reservations permitted to articles 5 and 14 of the Uniform Law). The situation is that your country acceded to the Convention on 27 April 1936 without making the reservation in question, whereas the second paragraph of article I of the Convention provides that such a reservation may be made only at the time of ratification or accession (in contrast with what the third paragraph of article I prescribes in the case of the reservations referred to in articles 9, 22, 27 and 30 of annex II, which may be notified after ratification or accession). Your Government, having considered denouncing the Convention and then reacceding to it with the requisite reservations, wonders whether it would not be possible to employ a simpler procedure, which would involve submitting its proposed reservation for the unanimous approval of the parties—i.e., the States for which the Convention is in force.

[82] League of Nations, *Treaty Series*, vol. CXLIII, p. 355.

3. Although our review of the practice of the Secretary-General has not thus far brought to light any exactly identical case, such a situation is not without precedent. For instance, article 20 of the Customs Convention on the temporary importation of packings of 6 October 1960,[83] which was deposited with the Secretary-General of the Customs Co-operation Council, provides that any Contracting Party may, at the time of signing and ratifying the Convention, declare that it does not consider itself bound by article 2 of the Convention. Switzerland, which had ratified the Convention on 30 April 1963, made a reservation on 21 December 1965, which was submitted by the depositary to the States concerned and, in the absence of any objection, was considered accepted with retroactive effect to 31 July 1963.

4. The procedure described above appears to be fully in accord with the general principle that the parties to an international agreement may, by unanimous decision, amend the provisions of an agreement or take such measures as they deem appropriate with respect to the application or interpretation of that agreement. In fact, this procedure has already been followed with respect to the 1931 Convention itself in connexion with the acceptance for deposit of the instruments of ratification of Germany, Greece, the Netherlands and Portugal, which had been received after 1 September 1933, the date stipulated in article IV (see *Multilateral Treaties in respect of which the Secretary-General performs Depositary Functions* (ST/LEG/SER.D/11), p. 584, foot-note with asterisk).

5. Consequently, it would appear that your Government could address to the Secretary-General, over the signature of the Minister for Foreign Affairs, a letter communicating the proposed reservation together with an indication of the date, if any, on which it is decided that it should take effect. The proposed reservation would be communicated to the States concerned (States parties, Contracting States and signatory States) by the Secretary-General and, in the absence of any objection by States parties within 90 days from the date of that communication (the period traditionally set, according to the practice of the Secretary-General, for the purpose of tacit acceptance and corresponding, in the present case, to the period specified in the third paragraph of article I of the Convention for acceptance of the reservations referred to in articles 9, 22, 27 and 30 of annex II), the reservation would be considered to take effect on the date indicated. It may be deemed advisable, when communicating the reservation, to include a brief statement of the reasons for which it is being made.

14 September 1978

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

1. INTERNATIONAL LABOUR ORGANISATION

MEMORANDUM ON THE MIGRANT WORKERS (SUPPLEMENTARY PROVISIONS) CONVENTION, 1975 (NO. 143)

The following memorandum, dealing with the interpretation of an international labour Convention, was drawn up by the International Labour Office at the request of a Government:

Memorandum on the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), drawn up at the request of the Government of the Federal Republic of Germany, 30 January 1979. Document GB. 210/16/1; 210th session of the Governing Body, May-June 1979.

---

[83] United Nations, *Treaty Series*, vol. 473, p. 131.

2. WORLD BANK

MEANING OF ARTICLE 2, SECTIONS 2 (*a*) AND 9 (*a*) AND (*b*) OF THE BANK'S ARTICLES OF AGREEMENT[84] UPON THE ENTRY INTO FORCE OF THE SECOND AMENDMENT TO THE ARTICLES OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND

Opinion of the General Counsel[85]

I

1. Article II, Section 2 (*a*) provides as follows:

"The authorized capital stock of the Bank shall be $10,000,000,000, in terms of United States dollars of the weight and fineness in effect on July 1, 1944. The capital stock shall be divided into 100,000 shares having a par value of $100,000 each, which shall be available for subscription only by members."

The Bank's authorized capital is expressed in terms of "United States dollars of the weight and fineness in effect on July 1, 1944" (hereafter "1944 dollars"), and so is the "par value"[86] of the shares into which the capital is divided. Article II, Sections 3 and 4, govern the terms and conditions under which members are obliged and entitled, respectively, to subscribe to shares of the Bank's capital stock and such subscriptions have at all times been, and still are, expressed in 1944 dollars. Article II, Section 7(*i*) provides that two per cent of "the price of each share" (which is expressed in 1944 dollars) is payable in gold or United States dollars and eighteen per cent in the currency of the subscribing member. Equally, Section 7(*iii*) provides with respect to calls on the eighty per cent portion of subscriptions that payments on such calls "shall be made in amounts equal in value to the member's liability under the call". And the text continues: "This liability shall be a proportionate part of the subscribed capital stock of the Bank as authorized and defined in Section 2 of this Article", i.e. in terms of the 1944 dollar.

2. Thus, under the provisions of the Bank's Articles with respect to capital subscriptions and payment for shares, the 1944 dollar is the measure of value for all currencies, including the current United States dollar. Accordingly, after the devaluation of the United States dollar in 1972, and again in 1973, payments of subscriptions on account of the two per cent portion payable in United States dollars were made in amounts calculated to be the equivalent of the 1944 dollar in which such subscriptions were expressed. The calculation was based on the IMF par value of the United States dollar on the relevant date compared to the 1944 dollar.

3. Article II, Section 9 (*a*) and (*b*), provides as follows:

"(*a*) Whenever (i) the par value of a member's currency is reduced or (ii) the foreign exchange value of a member's currency has, in the opinion of the Bank, depreciated to a significant extent within that member's territories, the member shall pay to the Bank within a reasonable time an additional amount of its own currency sufficient to maintain the value, as of the time of initial subscription, of the amount of the currency of such member which is held by the Bank and derived from currency originally paid into the Bank by the member under Article II, Section 7(*i*), from currency referred to in Article IV, Section 2 (*b*), or from any additional currency furnished under the provisions of the present paragraph, and which has not been repurchased by the member for gold or for the currency of any member which is acceptable to the Bank."

"(*b*) Whenever the par value of a member's currency is increased, the Bank shall return to such member within a reasonable time an amount of that member's currency equal to the increase in the value of the amount of such currency described in (*a*) above."

---

[84] This opinion has been submitted to the President and the Executive Director of the World Bank. The Executive Director has not yet acted on the matter.

[85] United Nations, *Treaty Series*, vol. 2, p. 134.

[86] "Par value" is used here in the meaning of face value, as in Article II, Section 4 ("Shares . . . shall be issued at par"), and Article V, Section 12, dealing with notes issued in substitution of the paid-in local currency portion of subscriptions (". . . notes . . . which shall be non-negotiable, non-interest bearing and payable at their par value . . .").

4. The Bank's maintenance of value provisions becomes operative upon certain changes in "par value" and "foreign exchange value within [its] territories", terms derived from and to be understood in the context of the Fund Articles. Article IV, Section 1 of the Fund Articles provides that the "par value" of the currency of each member shall be expressed "in terms of gold as a common denominator" (direct gold link) or "in terms of the United States dollar of the weight and fineness in effect on July 1, 1944" (indirect gold link).[87] Transactions in gold by members must take place within prescribed margins above or below par value (Article IV, Section 2) and members are required to observe prescribed margins around "parity" (the relationship between par values) for exchange transactions within their territories (Article IV, Sections 3 and 4). As distinguished from "par value" which is fixed, directly or indirectly, in terms of gold, and "parity" which is the fixed relationship between the par values of any two or more currencies, the "foreign exchange value" of a currency in terms of any other currency is a *de facto* relationship which may deviate from "parity", and if a significant deviation (depreciation) has occurred in the opinion of the Fund, maintenance of value payments will be called for. The Bank's Article II, Section 9 is to the same effect.[88]

II

5. On April 30, 1976, the Board of Governors of the Fund approved proposed modifications of the Fund Articles (hereafter "Second Amendment") which will become effective when they shall have been accepted by three-fifths of the members, having four-fifths of the total voting power.[89]

6. On the effective date of the Second Amendment, par values will cease to exist and there will no longer be an official price for gold. Fund quotas and the value of the Fund's assets in the accounts of the General Department will be expressed in terms of the SDR (new Articles III, Section 1 and V, Section 10). A par value system may be reintroduced by an 85 per cent majority of total voting power (new Article IV, Section 4), but the common denominator of par values shall not be gold or a currency and no member is required to establish a par value (new Schedule C, paras. 1 and 3).

7. The maintenance of value provisions under the Second Amendment (new Article V, Section 11) no longer mention "gold value", "par value" or "foreign exchange value". The value of currencies is to be maintained in terms of the special drawing right.[90]

8. Under Article XXI, Section 2 of the existing Fund Articles, as amended in 1969 on the occasion of the introduction of the special drawing rights, the unit of value of the special drawing right is equivalent to 0.888671 gram of fine gold, i.e. the gold content of the 1944 dollar. New Fund Article XV, Section 2, provides that the method of valuation of the special drawing right shall be determined by the Fund.

9. The present method of valuation of the SDR is set out in Fund Rule 0-3 as follows:

> "(*a*) For the purpose of determining the exchange rate in terms of special drawing rights for a currency provided in a transaction between participants or involved in a conversion associated with such a transaction one special drawing right shall be deemed to be equal to the sum of:
>
> US dollar 0.40
> Deutsche mark 0.38

[87] The language in the initial Bretton Woods Fund draft was "gold or gold-convertible currency". This was changed to the present text, since in 1944 no (prospective) member, including the United States, converted its currency into gold without restriction.

[88] While the Fund and Bank Articles expressly prescribe only maintenance of value payments by members in case of *de facto* depreciation, both institutions have decided that they are permitted to make such payments to members in case of *de facto* appreciation (Fund, Executive Directors' Decision No. 321-(54/32), as amended; Bank, R59-45 of May 27, 1959, approved June 16, 1959 (SM 59-15) and R73-42 of March 9, 1973, approved March 16, 1973 (M73-13)).

[89] The "Second Amendment" came into force on 1 April 1978 (see *supra*, p. 100 of this *Yearbook*).

[90] The full text is "in terms of the special drawing right in accordance with exchange rates under Article XIX, Section 7 (*a*)". The reference to the latter provision means that computations must be made on the basis of the rates (in terms of the SDR) for each currency determined for the purposes of transactions in special drawing rights (at present according to Rule 0-3).

Pound sterling	0.045
French franc	0.44
Japanese yen	26
Canadian dollar	0.071
Italian lira	47
Netherlands guilder	0.14
Belgian franc	1.6
Swedish krona	0.13
Australian dollar	0.012
Danish krone	0.11
Norwegian krone	0.099
Spanish peseta	1.1
Austrian schilling	0.22
South African rand	0.0082

"(*b*) One special drawing right in terms of the United States dollar shall be equal to the sum of the equivalents in United States dollars of the amounts of the currencies specified in (*a*) above calculated on the basis of exchange rates established in accordance with procedures decided from time to time by the Fund.

"(*c*) One special drawing right in terms of a currency other than the United States dollar shall be determined on the basis of the rate of the special drawing right in terms of the United States dollar as established in accordance with (*b*) above and an exchange rate for that currency determined as follows:

"(i) for the currency of a member having an exchange market in which the Fund finds that a representative rate for spot delivery for the United States dollar can be readily ascertained, that representative rate;

"(ii) for the currency of a member having an exchange market in which the Fund finds that a representative rate for spot delivery for the United States dollar cannot be readily ascertained but in which a representative rate can be readily ascertained for spot delivery for a currency as described in (i), the rate calculated by reference to the representative rate for spot delivery for that currency and the rate ascertained pursuant to (i) above for the United States dollar in terms of that currency;

"(iii) for any other currency, a rate determined by the Fund."

10. Pursuant to paragraph 6 of new Schedule B the method of valuation in effect at the date of the amendment, i.e. the "basket" adopted in June 1974, described in the previous paragraph, will continue in effect until changed in accordance with Article XV, Section 2.[91] Thus, no action by the Fund is required with respect to the valuation of the SDR upon the Second Amendment becoming effective. The then existing "basket" remains in effect.

11. Determination of a new valuation of the SDR requires a 70% majority of the total voting power, except that a change in the principle of valuation or a fundamental change in the application of the principle in effect requires an 85 per cent majority of the total voting power.[92] The Fund Report does not explain, by example or otherwise, what is meant by "change in the principle of valuation" and "fundamental change in the application of the principle". A special majority is not prescribed for deciding whether a proposed change requires the lower or the higher majority, and therefore that decision can be taken by a majority of the votes cast.[93]

[91] See Report by the Executive Directors of the Fund on the Proposed Second Amendment of the Fund Articles (hereafter "Fund Report"), chap. II, Q, para. 1.

[92] If the valuation of the SDR is to be regarded as a matter pertaining to both the (newly named) General Department and Special Drawing Rights Department, the required majorities would have to be obtained both among members (for the former) and "participants" (for the latter). However, since the total voting power of participants cannot be higher than that of members, in practice the majority of total voting power of members is what matters (new Article XXI (*a*) (iii) and Fund Report, Chapter II, Q, para 1).

[93] See Fund Report, chap. II, Q, para. 1.

III

12. As noted in Part I of this Opinion, the gold content of the United States dollar on July 1, 1944 was established by the Articles of Agreement as the unit of value in which the size of the authorized capital stock of the Bank and the share of each member in the capital stock is expressed and, as a consequence, is the common denominator and standard of value for determining in terms of the relevant currency the obligation of each member to make payments on account of the paid-in and callable portions of its subscription, as well as the mutual obligations of each member and the Bank to maintain the value of the 18 per cent portion of that member's subscription paid in its own currency.

13. Section 2 (*a*) of Article II of the Bank's Articles was drafted in the context of the monetary system established at Bretton Woods which gave a central place to gold. Under the Fund's Articles par values for members' currencies are to be expressed in terms of gold or of the 1944 dollar. As noted in Part II of this Opinion, upon the coming into effect of the Second Amendment (i) the function of gold as the common denominator of the par value system will be eliminated, (ii) the official price of gold will be abolished and (iii) currencies of members will no longer have par values and, if at some future time the Fund permits the re-establishment of par values, gold will not be the common denominator. Consequently, there will no longer be any official basis for relating the value of any member's currency to the gold content of the United States dollar in effect on July 1, 1944.

14. Thus, one would be led to conclude that on the effective date of the Second Amendment all direct and indirect references in the Bank's Articles of Agreement to share capital denominated in terms of 1944 dollars will cease to have any operative meaning. But such a conclusion is unacceptable since it would leave the Bank without an effective basis for valuing its capital stock which is crucial for its continued operation.

15. It is my opinion that it is indispensable to give the term "1944 dollar" in Article II, Section 2 (*a*) some meaning which will permit it, upon the effectiveness of the Second Amendment, to be applied for the purposes which it is to serve in the Bank's Articles. It is further my opinion that as a matter of law the proper meaning to be assigned to the term "United States dollar of the weight and fineness in effect on July 1, 1944" is "the unit of value of the special drawing right as determined by the International Monetary Fund".

16. When special drawing rights were first introduced in the Fund Articles in 1969, their unit of value was a quantity of gold equal to the gold content of the 1944 dollar. In 1974 the Fund proceeded to define the special drawing right in terms of a basket of currencies.[94] This basket was composed in such a manner as to produce an initial value for the special drawing right translated into United States dollars equal to the gold value of the 1944 dollar and the gold value of the special drawing right, namely $1.20635. This leads me to the conclusion that the special drawing right as so defined, or as it may be subsequently defined under the Fund Agreement, must be regarded as the equivalent in the reformed monetary system of the 1944 dollar.

17. This conclusion is reinforced by considering the only other practical meaning to be given to the term "United States dollar of the weight and fineness in effect on July 1, 1944", namely that of 1.20635 current United States dollars, the equivalent of the 1944 dollar calculated by reference to the last IMF par value for the United States dollar. The argument in support of such an interpretation would have to be that the Bank's Articles were based on a system of par values, that par values will be abolished by the Second Amendment of the Fund Articles and that the unit of the Bank's capital should therefore be fixed at the last amount which can be derived from the application of the par value system. Such an interpretation would seem to me to be inconsistent with the consensus regarding the reform of the monetary system which is reflected in the Second Amendment, which does away with both gold and any single national currency as a standard of value. To substitute a quantity of current dollars for the 1944 dollar would, on the contrary, substitute for a reference unit of value for all member currencies (namely the 1944 dollar), the currency unit of one member, namely the

[94] "This way of determining gold value for the purpose of applying the provisions of the Articles was adopted by the Fund when members ceased to maintain effective par values for their currencies and there was no longer any member that bought and sold gold freely for the settlement of international transactions" (Fund Report, p. 37).

current United States dollar. This would mean a radical change in the existing mutuality of rights and obligations of members with respect to maintenance of value. Every movement in the rate of exchange between the United States dollar and another member's currency would give rise to an obligation either of the other member to make additional payments to the Bank, or of the Bank to make refunds to the member, but there would be no maintenance of value obligations running from the United States to the Bank or vice versa. For these reasons I consider that such an interpretation could not be justified as a matter of law.

18. Having concluded that references to the 1944 dollar must be taken to mean references to the unit of value of the special drawing right upon the effectiveness of the Second Amendment, the meaning of Article II, Section 9 (*a*) and (*b*) can be determined without difficulty. That provision calls for maintenance of value payments by the member upon a decrease in the par value of its currency or a finding by the Bank that the foreign exchange value of its currency has depreciated to a significant extent within its territories and, as interpreted by the Bank, obliges the Bank to make maintenance of value payments to the member in case of an increase in par value and permits such payments to be made in case of *de facto* appreciation. As has been noted, upon the effectiveness of the Second Amendment there will be no par value and in the absence of par values the expression "foreign exchange value" of which Article II, Section 9 speaks in terms of a departure from par value has lost its original meaning. Under the new Fund maintenance of value provision (new Article V, Section 11) the event that gives rise to an adjustment of currency holdings is a change in the value of a currency in terms of the special drawing rights. It seems clear that Article II, Section 9 of the Bank's Articles must be read as providing for maintenance of value in terms of that same SDR value which has taken the place of "par value". It seems equally clear that Article II, Section 9 should, therefore, be read as making maintenance of value payments mandatory in case of both decreases and increases in SDR value.

Conclusions

19. Upon the coming into effect of the Second Amendment to the Articles of Agreement of the International Monetary Fund:

(*a*) Article II, Section 2 (*a*) of the Bank's Articles of Agreement must be read to mean that the capital stock of the Bank and its shares are defined in terms of the special drawing right of the International Monetary Fund, as determined from time to time by the Fund, on the basis of one such special drawing right for one United States dollar of the weight and fineness in effect on July 1, 1944.

(*b*) The mutual obligations of each member and the Bank to maintain the value of holdings of the member's currency under, and within the limits of, Article II, Section 9 (*a*) and (*b*) of the Bank's Articles of Agreement will be measured by the value of that currency in terms of the special drawing right at any given time.

17 February 1978