



UNITED NATIONS
JURIDICAL YEARBOOK

1972

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JURIDICAL YEARBOOK
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FOREWORD

By its resolution 1814 (XVII) of 18 December 1962, the General Assembly requested the Secretary-General to publish a *Juridical Yearbook* which would include certain documentary materials of a legal character concerning the United Nations and related intergovernmental organizations, and by its resolution 3006 (XXVII) of 18 December 1972 the General Assembly made certain changes in the outline of the *Yearbook*.

Chapters I and II of the present volume—the tenth of the series—contain legislative texts and treaty provisions relating to the legal status of the United Nations and related intergovernmental organizations. With a few exceptions, the legislative texts and treaty provisions which are included in these two chapters entered into force in 1972. Decisions given in 1972 by international and national tribunals relating to the legal status of the various organizations are found in chapters VII and VIII.

Chapter III contains a general review of the legal activities of the United Nations and related intergovernmental organizations; each organization has prepared the section which relates to it.

Chapter IV is devoted to treaties concerning international law concluded under the auspices of the organizations concerned during the year in question, whether or not they entered into force that year. This criterion has been used in order to reduce in some measure the difficulty created by the sometimes considerable time-lag between the conclusion of treaties and their publication in the United Nations *Treaty Series* following upon entry into force.

Finally, the bibliography lists works and articles of a legal character published in 1972 regardless of the period to which they refer. Some works and articles which were not included in the bibliographies of the *Juridical Yearbook* for previous years have also been listed.

All documents published in the *Juridical Yearbook* were supplied by the organizations concerned, with the exception of the legislative texts and judicial decisions in chapters I and VIII which, unless otherwise indicated, were communicated by Governments at the request of the Secretary-General.

ABBREVIATIONS

Bank	}	
IBRD		International Bank for Reconstruction and Development
CERD		Committee on the Elimination of Racial Discrimination
ECA		Economic Commission for Africa
ECAFE		Economic Commission for Asia and the Far East
ECLA		Economic Commission for Latin America
EURATOM		European Atomic Energy Community
FAO		Food and Agriculture Organization of the United Nations
Fund	}	
IMF		International Monetary Fund
IAEA		International Atomic Energy Agency
ICAO		International Civil Aviation Organization
ICSID		International Centre for Settlement of Investment Disputes
IDA		International Development Association
IFC		International Finance Corporation
ILO		International Labour Organisation
IMCO		Inter-Governmental Maritime Consultative Organization
ITU		International Telecommunication Union
NEA		Nuclear Energy Agency
OAU		Organization of African Unity
OECD		Organisation for Economic Co-operation and Development
UNCTAD		United Nations Conference on Trade and Development
UNDP		United Nations Development Programme
UNESCO		United Nations Educational, Scientific and Cultural Organization
UNHCR		United Nations High Commissioner for Refugees
UNICEF		United Nations Children's Fund
UNIDO		United Nations Industrial Development Organization
UNTSO		United Nations Truce Supervision Organization in Palestine
UPU		Universal Postal Union
WFP		World Food Programme
WHO		World Health Organization
WIPO		World Intellectual Property Organization
WMO		World Meteorological Organization

Part One

**LEGAL STATUS OF THE UNITED NATIONS
AND RELATED INTERGOVERNMENTAL
ORGANIZATIONS**

Chapter I

LEGISLATIVE TEXTS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS [AND RELATED INTERGOVERNMENTAL ORGANIZATIONS]

1. Barbados

NOTICE ¹

THE PENSIONS ACT, 1947 (ACT 1947-20): SERVICE DETERMINED BY HIS EXCELLENCY THE GOVERNOR-GENERAL TO BE PUBLIC SERVICE FOR THE PURPOSES OF THE ABOVE ACT

Notice is hereby given that His Excellency the Governor-General, under and by virtue of the provisions of paragraph (d) of the definition of the expression "public service" in section 2(1) of the Pensions Act, 1947, has determined service with the United Nations its agencies or sub-agencies to be public service for the purposes of the Pensions Act, 1947.

Dated this 16th day of December, 1971.

By Command
B. R. COLLYMORE
Chief Establishments Officer (Ag.)

2. Fiji

(a) AN ACT ² TO AMEND THE DIPLOMATIC PRIVILEGES AND IMMUNITIES ACT, 1971 ³

[22nd December, 1972]

Enacted by the Parliament of Fiji:

1. This Act may be cited as the Diplomatic Privileges and Immunities (Amendment) Act, 1972.

2. Section 7 of the Diplomatic Privileges and Immunities Act, 1971, hereinafter referred to as the principal Act, is amended by deleting the full stop at the end of subsection (1) and inserting in its place the following words and full stop: "or to which such person

¹ S.I. 1972 No. 21.

² No. 32 of 1972. Assented to on 21 December 1972.

³ See *Juridical Yearbook*, 1971, p. 7.

may be entitled by virtue of the appropriate treaty, convention or other arrangement to which Fiji is a party.”

3. Section 11 of the principal Act is amended as follows:

(a) by inserting the words and comma “international organisation,” immediately before the word “or” in the third line of paragraph (b) of subsection (1) thereof;

(b) by substituting the words and comma “Subject to the provisions of any international convention, treaty or arrangement to which Fiji is a party, where” for the word “Where” at the commencement of subsection (2) thereof.

Passed by the House of Representatives this twenty-second day of November, in the year of our Lord one thousand, nine hundred and seventy-two.

Passed by the Senate, this eighteenth day of December, in the year of our Lord one thousand, nine hundred and seventy-two.

(b) DIPLOMATIC PRIVILEGES AND IMMUNITIES ACT, 1971
(No. 26 of 1971) ⁴

(i) *Diplomatic Privileges (International Organisations) Order, 1972*

In exercise of the powers conferred upon me by section 6 of the Diplomatic Privileges and Immunities Act, 1971, I hereby declare the organisations specified in the Schedule to this Order to be organisations of which two or more states or the Governments thereof are members and that such organisations shall have the privileges and immunities specified in the Second Schedule to that Act and shall also have the legal capacity of bodies corporate.

2. Gazette Notices Nos. 787 of 1971, 1195 of 1971 and 1624 of 1971 are hereby revoked.

Schedule

INTERNATIONAL ORGANISATIONS

United Nations Organisation
International Labour Organisation
Food and Agriculture Organization of the United Nations
United Nations Educational, Scientific and Cultural Organization
International Civil Aviation Organization
World Health Organization
International Telecommunication Union
World Meteorological Organization
International Atomic Energy Agency
Universal Postal Union
United Nations Industrial Development Organization
United Nations Conference on Trade and Development
Inter-Governmental Maritime Consultative Organization
International Monetary Fund
International Bank for Reconstruction and Development
International Refugee Organization
International Finance Corporation

⁴ *Ibid.*

Asian Development Bank
Commonwealth Secretariat
International Court of Justice
South Pacific Commission
United Nations Office of Technical Co-operation
United Nations Development Programme.

Made at Suva this 10th day of July, 1972.

K. K. T. MARA,
Minister for Foreign Affairs

(ii) *Amendment of Sixth Schedule*

In exercise of the powers conferred upon me by subsection (4) of section 7 of the Diplomatic Privileges and Immunities Act, 1971, I have amended the Sixth Schedule to that Act by adding the following international organisations thereto:—

International Monetary Fund
International Bank for Reconstruction and Development
International Refugee Organization
International Finance Corporation
Asian Development Bank
Commonwealth Secretariat
International Court of Justice
South Pacific Commission
United Nations Office of Technical Co-operation
United Nations Development Programme.

Dated at Suva this 10th day of July, 1972.

K. K. T. MARA,
Minister for Foreign Affairs

3. Hungary

LEGISLATIVE DECREE ⁵ OF THE PRESIDENTIAL COUNCIL ON THE PROCEDURE TO BE FOLLOWED IN THE CASE OF DIPLOMATIC OR OTHER IMMUNITIES

In accordance with international law, the Hungarian People's Republic accords facilities to foreign States and grants privileges and immunities to their diplomatic agents and other representatives. International organizations and some of their official likewise enjoy privileges and immunities. The purpose of privileges and immunities is not to benefit individuals but to ensure the effective discharge of their functions as representatives or other delegates of States and the normal functioning of international organizations. The granting of privileges and immunities to qualified persons does not affect their obligation to respect the laws and other legal rules of the Hungarian People's Republic; in the event of violation of the latter, the persons concerned will be subject to the jurisdiction of their own States.

⁵ No. 7 of 1973. Translation by the Secretariat of the United Nations on the basis of a French text kindly furnished by the Hungarian Government.

The Presidential Council of the Hungarian People's Republic, with a view to regulating in a uniform manner the procedure of the courts and other public authorities in matters affecting foreign States, their diplomatic agents and other representatives, and international organizations and their officials, hereby promulgates the following legislative decree:

Article 1

1. All courts and other public authorities shall proceed in accordance with the present legislative decree where

- (a) The party concerned in civil or administrative proceedings is a foreign State;
- (b) It appears that the person who is a party in civil or administrative proceedings or is the accused or a private prosecutor in criminal proceedings is entitled to diplomatic immunities or other immunities based on international law.

2. The provisions of the present legislative decree shall apply also to proceedings initiated on the basis of labour disputes.

Article 2

1. In the cases mentioned in article 1, the court or other public authority shall automatically suspend the proceedings at any stage.

2. Similarly, the court or other public authority shall suspend proceedings if so decided, in the case of the court, by the Minister of Justice, or, in the case of another public authority, by its supervisory organ. Hereinafter, the expression "supervisory organ" shall mean either the Minister of Justice or the supervisory organ of a public authority.

3. The court or other public authority shall be obliged to report to the supervisory organ on the suspension of proceedings.

Article 3

1. The court or other public authority shall be obliged, without, however, suspending the proceedings, to report to the supervisory organ when, in the course of the proceedings, it wishes to take a measure or a decision in which a person within the category mentioned in article 1 is involved in a capacity other than that defined in the said article, for example, as a witness.

2. The court or other public authority shall wait before taking a measure or a decision of the type defined in paragraph 1 until the supervisory organ has advised it of its position on the matter.

Article 4

If a person within the category mentioned in article 1 is a civil claimant in criminal proceedings, the provisions of article 2 shall apply to claims under civil law.

Article 5

1. On the basis of the report of the court or other public authority, the supervisory organ shall rule on the question of immunity in agreement with the Minister for Foreign Affairs. This decision shall be binding on the court or other public authority.

2. If the supervisory organ concludes that immunity exists, the court or other public authority shall, in the cases provided for in articles 1 and 4, apply the provisions relating

to lack of competent jurisdiction and, in the cases provided for in article 3, refrain from taking any measure or decision regarding the person concerned.

Article 6

1. The present legislative decree shall enter into force on the date of its publication; its provisions shall apply even to proceedings which have begun.

2. The present legislative decree abrogates Act XVIII of 1937 on the rules of procedure relating to extraterritoriality and personal immunity.

4. Somalia

DECREE ⁶ OF THE SECRETARY OF STATE FOR FOREIGN AFFAIRS PRIVILEGES OF UNITED NATIONS AND SPECIALIZED AGENCIES

The Secretary of State

Having seen First Charter of the Revolution of 21 October 1969 and Law No. 1 of the same date;

Having seen Convention on Privileges and Immunities of the United Nations of 1946;

Realising the necessity of regulating the privileges of the United Nations in Somali Democratic Republic;

Decrees:

Article 1

1. The Resident Representative of the U.N. Development Programme and the Heads of the U.N. Specialized Agencies shall be entitled to exemption from customs duties except charges for services, on the following articles:

- (a) Fuel—3,000 litres per six months;
- (b) Lubricants—30 kilos per six months;
- (c) Cigarettes and tobacco—10 kilos per six months;
- (d) Alcoholic beverages above 21°—65 standard bottles per six months;
- (e) Alcoholic beverages under 21°—65 standard bottles per six months;
- (f) Ordinary wines—120 standard bottles per six months;
- (g) Beer—800 standard bottles per six months.

2. The officers of the U.N. Development Programme and the Specialized Agencies shall each be entitled to 2 U.N. Plate vehicles for all uses, official or personal.

Article 2

The Resident Representative of the U.N. Development Programme and the Heads of the U.N. Specialized Agencies shall be entitled to exemption from customs duties, except charges for services, on articles for their personal use provided that they submit list of articles required to the Foreign Office, Protocol Department, for approval before the said articles are ordered.

⁶ No. 49 of 23 February 1971.

Article 3

The Offices of the U.N. Development Programme and the U.N. Specialized Agencies shall be entitled to exemption from customs duties, except charges for services, on articles for official use provided the articles are not excessive for that use.

Article 4

The United Nations officials shall be entitled to the following:

- (a) exemption from taxation in respect of salaries and emoluments paid to them by the United Nation and the U.N. Specialized Agencies;
- (b) exemption from customs duties, except charges for services, on their furniture and personal effects at the time of first taking up their post including:
 - household furniture;
 - professional instruments and equipment;
 - one refrigerator;
 - one air-conditioner;
 - one camera;
 - one radio-or radio-grammophone;
 - small electrical appliances for personal or household use;
 - one motor-car or motor-cycle.

Article 5

The United Nations and Specialized Agencies shall at all times cooperate with the appropriate authorities of the Somali Democratic Republic to facilitate the proper administration of justice, the observance of all local laws including Labour Code and prevent occurrence of any abuse in connexion with the above privileges and facilities mentioned in above articles. Officials of the United Nations and Specialized Agencies shall not be allowed to leave the country before finalization of any judicial processes filed against them.

Article 6

1. This decree shall enter into force on the date of its publication in the Official Bulletin.
 2. Decree No. 243 of 27 September 1970 is abrogated.
- Mogadiscio, 23 February 1971.

Omar ARTEH
Secretary of State for Foreign Affairs

5. United Kingdom of Great Britain and Northern Ireland

- (a) THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION
(IMMUNITIES AND PRIVILEGES) (AMENDMENT) ORDER 1972 ⁷

Laid before Parliament in draft

Made 4th February 1972

Coming into Operation 5th February 1972

⁷ 1972 No. 118.

At the Court at Buckingham Palace, the 4th day of February 1972

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before Parliament in accordance with section 10 of the International Organisations Act 1968⁸ (hereinafter referred to as the Act) and has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred on Her by section 2 of the Act, as amended by section 3 of the Diplomatic and other Privileges Act 1971,⁹ or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. This Order may be cited as the Inter-Governmental Maritime Consultative Organization (Immunities and Privileges) (Amendment) Order 1972. It shall come into operation on 5th February 1972.

2. The Interpretation Act 1889¹⁰ shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. The following sub-paragraph shall be added to paragraph (1) of Article 12 of the Inter-Governmental Maritime Consultative Organisation (Immunities and Privileges) Order 1968:¹¹

“(d) exemption from vehicle excise duty (that is to say, duty under section I of the Vehicles (Excise) Act 1971,¹² whether chargeable by virtue of that section or otherwise, or any corresponding duty under an enactment of the Parliament of Northern Ireland);”.

W. G. AGNEW

(b) THE SECOND UNITED NATIONS CONFERENCE ON THE STANDARDIZATION OF GEOGRAPHICAL NAMES (IMMUNITIES AND PRIVILEGES) ORDER 1972¹³

Made 22nd March 1972

Laid before Parliament 28th March 1972

Coming into Operation 18th April 1972

At the Court of Saint James, the 22nd day of March 1972

Present,

Her Majesty Queen Elizabeth The Queen Mother;

Her Royal Highness The Princess Anne;

Lord President, Earl St. Aldwyn;

Mr. Amery, Chancellor of the Duchy of Lancaster.

...

... whereas the Second United Nations Conference on the Standardization of Geographical Names is to be held in the United Kingdom from 10th to 31st May 1972

⁸ 1968 c. 48. Reproduced in the *Juridical Yearbook*, 1968, p. 20.

⁹ 1971 c. 64.

¹⁰ 1889 c. 63.

¹¹ S.I. 1968/1862 (1968 III, p. 4897). Reproduced in the *Juridical Yearbook*, 1968, p. 28.

¹² 1971 c. 10.

¹³ 1972 No. 448.

and is to be attended by representatives of Her Majesty's Government in the United Kingdom and of the Governments of foreign sovereign Powers:

Now, therefore, Her Majesty Queen Elizabeth The Queen Mother and Her Royal Highness The Princess Anne, being authorised thereto by the said Letters Patent, and in pursuance of the powers conferred by section 6 of the International Organisations Act 1968¹⁴ (hereinafter referred to as the Act) and all other powers enabling Her Majesty, do hereby, by and with the advice of Her Majesty's Privy Council, on Her Majesty's behalf order, and it is hereby ordered, as follows:

1. This Order may be cited as the Second United Nations Conference on the Standardization of Geographical Names (Immunities and Privileges) Order 1972 and shall come into operation on 18th April 1972.

2. The Interpretation Act 1889¹⁵ shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3.—(1) Except in so far as in any particular case any privilege or immunity is waived by the Governments whom they represent, representatives of the Governments of foreign sovereign Powers at the Second United Nations Conference on the Standardization of Geographical Names shall enjoy:

- (a) immunity from suit and legal process in respect of things done or omitted to be done by them in their capacity as representatives;
- (b) while exercising their functions and during their journeys to and from the place of meeting, the like inviolability of residence, the like immunity from personal arrest or detention and from seizure of their personal baggage, the like inviolability of all papers and documents, and the like exemption or relief from taxes (other than customs and excise duties or purchase tax) as is accorded to the head of a diplomatic mission; and
- (c) while exercising their functions and during their journeys to and from the place of meeting, the like exemptions and privileges in respect of their personal baggage as in accordance with Article 36 of the Vienna Convention on Diplomatic Relations, which is set out in Schedule 1 to the Diplomatic Privileges Act 1964¹⁶ are accorded to a diplomatic agent.

(2) Where the incidence of any form of taxation depends upon residence, a representative shall not be deemed to be resident in the United Kingdom during any period when he is present in the United Kingdom for the discharge of his duties.

(3) Part IV of Schedule 1 to the Act shall not operate so as to confer any privilege or immunity on the official staff of a representative other than delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

(4) Neither this Article nor Part IV of Schedule 1 to the Act shall operate so as to confer any privilege or immunity on any person as the representative of the Government of the United Kingdom or as a member of the official staff of such a representative or on any person who is a citizen of the United Kingdom and Colonies.

W. G. AGNEW

¹⁴ See footnote 7 above.

¹⁵ 1889 c. 63.

¹⁶ 1964 c. 81.

6. United States of America

(a) AN ACT ¹⁷ TO AMEND TITLE 18, UNITED STATES CODE, TO PROVIDE FOR EXPANDED PROTECTION OF FOREIGN OFFICIALS AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Act for the Protection of Foreign Officials and Official Guests of the United States".

STATEMENT OF FINDINGS AND DECLARATION OF POLICY

Sec. 2. The Congress recognizes that from the beginning of our history as a nation, the police power to investigate, prosecute, and punish common crimes such as murder, kidnapping, and assault has resided in the several States, and that such power should remain with the States.

The Congress finds, however, that harassment, intimidation, obstruction, coercion, and acts of violence committed against foreign officials or their family members in the United States or against official guests of the United States adversely affect the foreign relations of the United States.

Accordingly, this legislation is intended to afford the United States jurisdiction concurrent with that of the several States to proceed against those who by such acts interfere with its conduct of foreign affairs.

TITLE I – MURDER OR MANSLAUGHTER OF FOREIGN OFFICIALS AND OFFICIAL GUESTS

Sec. 101. Chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

“ § 1116. Murder or manslaughter of foreign officials or official guests

“(a) Whoever kills a foreign official or official guest shall be punished as provided under sections 1111 and 1112 of this title, except that any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life.

“(b) For the purpose of this section ‘foreign official’ means—

“(1) a Chief of State or the political equivalent. President, Vice-President, Prime Minister, Ambassador, Foreign Minister, or other officer of cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any person who has previously served in such capacity, and any member of his family, while in the United States; and

“(2) any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization, and who is in the United States on official business, and any member of his family whose presence in the United States is in connection with the presence of such officer or employee.

¹⁷ Public Law 92-539, 92nd Congress, H.R. 15883, 24 October 1972. Subsequent to the signing of the Law, the White House released the following statement by the President:

“The menace of international terrorism has become particularly vivid in recent months—and our Government has been playing a leading role in the international effort to combat it. It is with particular satisfaction, therefore, that I sign H.R. 15883, a Bill which makes it a Federal offense for anyone to harass, assault, kidnap, or murder a foreign official, a member of his family or an official guest of the United States while that person is in our country. This law will strengthen significantly the protection we can provide for such persons. And it will also strengthen our position as we work within the United Nations and the International Civil Aviation Organization for further actions to fight the scourge of terrorism.”

“(c) For the purpose of this section:

“(1) ‘Foreign government’ means the government of a foreign country, irrespective of recognition by the United States.

“(2) ‘International organization’ means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C.288).¹⁸

“(3) ‘Family’ includes (a) a spouse, parent, brother or sister, child, or person to whom the foreign official stands *in loco parentis*, or (b) any other person living in his household and related to the foreign official by blood or marriage.

“(4) ‘Official guest’ means a citizen or national of a foreign country present in the United States as an official guest of the Government of the United States pursuant to designation as such by the Secretary of State.

“§ 1117. Conspiracy to murder

“If two or more persons conspire to violate section 1111, 1114, or 1116 of this title, and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.”

Sec. 102. The analysis of chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following new items:

“1116. Murder or manslaughter of foreign officials or official guests.

“1117. Conspiracy to murder.”

TITLE II – KIDNAPPING

Sec. 201. Section 1201 of title 18, United States Code, is amended to read as follows:

“§ 1201. Kidnapping

“(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when:

“(1) the person is willfully transported in interstate or foreign commerce;

“(2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;

“(3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 101 (32) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 (32)); or

“(4) the person is a foreign official as defined in section 1116 (b) or an official guest as defined in section 1116 (c) (4) of this title,

shall be punished by imprisonment for any term of years or for life.

“(b) With respect to subsection (a) (1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce.

“(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.”

Sec. 202. The analysis of chapter 55 of title 18, United States Code, is amended by deleting

“1201. Transportation.”,

¹⁸ United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST/LEG/SER.B/10; United Nations publication, Sales No. 60.V.2), p. 128.

and substituting the following:

“1201. Kidnapping.”

TITLE III. PROTECTION OF FOREIGN OFFICIALS AND OFFICIAL GUESTS

Sec. 301. Section 112 of title 18, United States Code, is amended to read as follows:

“§ 112. Protection of foreign officials and official guests

“(a) Whoever assaults, strikes, wounds, imprisons, or offers violence to a foreign official or official guest shall be fined not more than \$5,000, or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than \$10,000, or imprisoned not more than ten years, or both.

“(b) Whoever willfully intimidates, coerces, threatens, or harasses a foreign official or an official guest, or willfully obstructs a foreign official in the performance of his duties, shall be fined not more than \$500, or imprisoned not more than six months, or both.

“(c) Whoever within the United States but outside the District of Columbia and within one hundred feet of any building or premises belonging to or used or occupied by a foreign government or by a foreign official for diplomatic or consular purposes, or as a mission to an international organization, or as a residence of a foreign official, or belonging to or used or occupied by an international organization for official business or residential purposes, publicly—

“(1) parades, pickets, displays any flag, banner, sign, placard, or device, or utters any word, phrase, sound, or noise, for the purpose of intimidating, coercing, threatening, or harassing any foreign official or obstructing him in the performance of his duties, or

“(2) congregates with two or more other persons with the intent to perform any of the aforesaid acts or to violate subsection (a) or (b) of this section,

shall be fined not more than \$500, or imprisoned not more than six months, or both.

“(d) For the purpose of this section ‘foreign official’, ‘foreign government’, ‘international organization’, and ‘official guest’ shall have the same meanings as those provided in sections 1116 (b) and (c) of this title.

“(e) Nothing contained in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the first amendment to the Constitution of the United States.”

Sec. 302. The analysis of chapter 7 of title 18, United States Code, is amended by deleting

“112. Assaulting certain foreign diplomats and other official personnel.”

and adding at the beginning thereof the following new item:

“112. Protection of foreign officials and official guests.”

TITLE IV. PROTECTION OF PROPERTY OF FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

Sec. 401. Chapter 45 of title 18, United States Code, is amended by adding at the end thereof the following new section:

“§ 970. Protection of property occupied by foreign governments

“(a) Whoever willfully injures, damages, or destroys, or attempts to injure, damage, or destroy, any property, real or personal, located within the United States and belonging to or utilized or occupied by any foreign government or international organization, by a foreign official or official guest, shall be fined not more than \$10,000, or imprisoned not more than five years or both.

“(b) For the purpose of this section ‘foreign official’, ‘foreign government’, ‘international organization’, and ‘official guest’ shall have the same meanings as those provided in sections 1116 (b) and (c) of this title.”

Sec. 402. The analysis of chapter 45 of title 18, United States Code, is amended by adding at the end thereof the following new item:

“970. Protection of property occupied by foreign governments.”

Sec. 3. Nothing contained in this Act shall be construed to indicate an intent on the part of Congress to occupy the field in which its provisions operate to the exclusion of the laws of any State, Commonwealth, territory, possession, or the District of Columbia on the same subject matter, nor to relieve any person of any obligation imposed by any law of any State, Commonwealth, territory, possession, or the District of Columbia.

(b) AMENDMENT TO UNITED STATES CODE OF FEDERAL REGULATIONS

TITLE 22. FOREIGN RELATIONS

CHAPTER 1. DEPARTMENT OF STATE

Part 2. Protection of Foreign Dignitaries and Other Official Personnel
Designation of Foreign Officials and Official Guests

Part 2 of Title 22 of the Code of Federal Regulations is amended as set forth below:
New § § 2.2 through 2.5 are added to read as follows:

§ 2.2 Purpose.

Section 1116 (b) (2) of title 18 of the United States Code, as added by Public Law 92-539. An Act for the Protection of Foreign Officials and Official Guests of the United States (86 Stat. 1071),¹⁹ defines the term “foreign official” for purposes of that Act as “any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization, and who is in the United States on official business, and any member of his family whose presence in the United States is in connection with the presence of such officer or employee.” Section 1116 (c) (4) of the same Act defines the term “official guest” for the purposes of that Act as “a citizen or national of a foreign country present in the United States as an official guest of the Government of the United States pursuant to designation as such by the Secretary of State.” It is the purpose of this regulation to specify the officer of the Department of State who shall be responsible for receiving notifications of foreign officials under the Act and determining whether persons are “duly notified” to the United States and who shall be responsible for processing official guest designations by the Secretary of State.

§ 2.3 Notification of foreign officials.

Any notification of a foreign official for purposes of section 1116 (b) (2) of title 18 of the United States Code shall be directed by the foreign government or international organization concerned to the Chief of Protocol, Department of State, Washington, D.C. 20520. For persons normally accredited to the United States in diplomatic or consular capacities and also for persons normally accredited to the United Nations and other international organizations and in turn notified to the Department of State, the procedure for placing a person in the statutory category of being “duly notified to the United States” shall be the current procedure for accreditation, with notification in turn when applicable. The Chief of the Office of Protocol will place on the roster of persons “duly notified to the United States” the names of all persons currently accredited and, when applicable, notified in turn, and will maintain the roster as part of the official files of the Department of State adding to and deleting therefrom as changes in accreditations occur.

¹⁹ Reproduced above under (a).

For those persons not normally accredited, the Chief of Protocol shall determine upon receipt of notification, by letter from the foreign government or international organization concerned, whether any person who is the subject of such a notification has been duly notified under the Act. Any inquiries by law enforcement officers or other persons as to whether a person has been duly notified shall be directed to the Chief of Protocol. The determination of the Chief of Protocol that a person has been duly notified is final.

§ 2.4 Designation of official guests.

The Chief of Protocol shall also maintain a roster of persons designated by the Secretary of State as official guests. Any inquiries by law enforcement officers or others persons as to whether a person has been so designated shall be directed to the Chief of Protocol. The designation of a person as an official guest is final. Pursuant to section 2658 of title 22 of the United States Code, the authority of the Secretary of State to perform the function of designation of official guests is hereby delegated through the Deputy Secretary of State to the Deputy Under Secretary of State for Management.

§ 2.5 Records.

The Chief of Protocol shall maintain as a part of the official files of the Department of State a cumulative roster of all persons who have been duly notified as foreign officials or designated as official guests under this Part. The roster will reflect the name, position, nationality, and foreign government or international organization concerned or purpose of visit as an official guest and reflect the date the person was accorded recognition as being "duly notified to the United States" or designated as an official guest and the date, if any, of termination of such status.

(18, U.S.C. 1116 (b) (2), 1116 (c) (4); sec. 4 of the Act of 26 May 1949, as amended (22 U.S.C. 2658))

Effective date. These amendments shall be effective upon publication in the Federal Register (22-11-72).

Seal

18 November 1972

William P. ROGERS
Secretary of State

(c) COMMUNICATION DATED 6 DECEMBER 1972, FROM THE ACTING DIRECTOR OF THE UNITED STATES FEDERAL BUREAU OF INVESTIGATION TO THE HEADS OF ALL LAW ENFORCEMENT AGENCIES IN THE UNITED STATES

Re: Act for the Protection of Foreign Officials and Official Guests
of the United States.

On 24 October 1972, President Nixon signed the above Act into law.

The Act provides for concurrent jurisdiction of the Federal Government in the investigation of certain acts committed against foreign officials and official guests, and for the protection of such individuals.

At the beginning of the Act, Congress recognizes, and reaffirms, that "... the police power to investigate, prosecute, and punish common crimes such as murder, kidnapping and assault... (of all individuals whether domestic or foreign) should

remain with the States"; but also notes that, at times, commission of these common crimes against foreign officials or official guests may adversely affect or interfere with the foreign affairs of the United States.

Consequently, when common crimes, including those specifically enumerated in the Act, are committed against foreign officials or official guests, or property occupied by a foreign Government or international organization, it is the intent of Congress that these matters continue to be investigated and prosecuted by local authorities, as in the past.

On the other hand, particularly in light of the current trend towards violence which is directed against diplomats and officials of a Government by that Government's opponents for political reasons, and especially since these violent acts often occur in countries not directly involved in the dispute, Congress feels that the Federal Government must have concurrent jurisdiction in situations where international repercussions may be felt, or where the incident may have some effect on United States foreign relations.

Such an incident and subsequent investigation will require close co-ordination at the highest levels of the Federal Government. The FBI has been assigned jurisdiction for the enforcement of this Act in cases in which the Federal Government has an interest.

The Act provides for concurrent Federal jurisdiction when the following prohibited acts are committed: (1) murder; (2) conspiracy to murder; (3) manslaughter; or (4) kidnapping of a foreign official or official guest. (Federal jurisdiction attaches immediately in the kidnapping of a foreign official or official guest. The victim need not be transported in interstate or foreign commerce.)

The Act also prohibits anyone from (1) assaulting; (2) striking; (3) wounding; (4) imprisoning; or (5) offering violence to a foreign official or official guest and from (1) intimidating; (2) coercing; (3) threatening; or (4) harassing a foreign official or official guest; and from obstructing a foreign official in the performance of his duties.

Outside the District of Columbia, the Act also prohibits anyone from, within 100 feet of a foreign or international establishment or the residence of a foreign official, (1) parading; (2) picketing; (3) displaying any flag, banner, sign, placard, or device; (4) uttering any word, phrase, sound, or noise; or (5) congregating with or more other persons with the intent to perform such acts, for the purpose of (1) intimidating; (2) coercing; (3) threatening; or (4) harassing any foreign official or obstructing a foreign official in the performance of his duties. (These prohibitions shall not be construed or applied to abridge the exercise of First Amendment rights.)

The Act further prohibits anyone from (1) injuring; (2) damaging; (3) destroying; or (4) attempting to injure, damage, or destroy any real or personal property belonging to, utilized by, or occupied by a foreign Government, international organization, foreign official, or official guest.

Definitions, for the purposes of the Act:

Foreign official:

“(1) a Chief of State or the political equivalent, President, Vice-President, Prime Minister, Ambassador, Foreign Minister, or other officer of cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any person who has previously served in such capacity, and any member of his family, while in the United States; and

“(2) any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization, (i.e., the United States has been officially informed of his position) and who is in the United States on official business, and any member of his family whose presence in the United States is in connection with the presence of such officer or employee.”

Foreign Government: “the government of a foreign country, irrespective of recognition by the United States.”

International organization: “a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288).”

Family: “(a) a spouse, parent, brother or sister, child or person to whom the foreign official stands *in loco parentis*, or (b) any other person living in his household and related to the foreign official by blood or marriage.”

Official guest: “a citizen or national of a foreign country present in the United States as an official guest of the government of the United States pursuant to designation as such by the Secretary of State.”

The definitions are quite broad, and are not limited to individuals with diplomatic status.

The United States Department of State is informing Governments and organizations affected by this Act of the contents of the Act, and the manner of its enforcement, specifically the intention of the Federal Government not to supplant local authority in routine criminal cases having no international political ramifications. A copy of the State Department’s diplomatic note is attached for your information.

You are requested to bring to the attention of your nearest FBI office any information concerning possible violations of the Act and intelligence information relating to threatened violations, since such incidents may have implications affecting United States foreign policy considerations. If it is determined the violation does not affect the foreign affairs of the United States, no Federal prosecution will result.

Your continued support in affording protection to foreign officials and official guests in co-operation with the United States Secret Service is vital since the Act does not enlarge Federal resources for that purpose.

Hopefully, there will be few, if any, such incidents, and these, most likely, will occur in our larger cities where foreign Governments and organizations have representatives assigned. However, such an incident may occur while an official is in travel status or on vacation; consequently, I am attempting to bring this matter to the attention of all local United States law enforcement officials.

Sincerely yours,
(Signed)
L. Patrick GRAY, III
Acting Director

Chapter II

TREATY PROVISIONS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Treaty provisions concerning the legal status of the United Nations

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS.¹ APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 13 FEBRUARY 1946

The following States acceded to the Convention on the Privileges and Immunities of the United Nations in 1972:²

<i>State</i>	<i>Date of receipt of instrument of accession</i> ³
Barbados	10 January 1972d
Guyana	28 December 1972
Indonesia ⁴	8 March 1972

This brought up to 107 the number of States parties to this Convention.

2. AGREEMENTS RELATING TO MEETINGS AND INSTALLATIONS

(a) Agreement between the United Nations and the Republic of Austria regarding the Headquarters of the United Nations Industrial Development Organization. Signed at New York on 13 April 1967

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

² The Convention is in force with regard to each State which deposited an instrument of accession with the Secretary-General of the United Nations as from the date of its deposit.

³ The symbol "d" immediately following the date appearing opposite the name of a State denotes a declaration by that State recognizing itself bound, as from the date of its independence, by the Convention, the application of which had been extended to its territory by a State then responsible for the conduct of its foreign relations. The date shown is the date of receipt by the Secretary-General of the notification to that effect.

⁴ With the following reservations:

"Article 1 (b) section 1: The capacity of the United Nations to acquire and dispose of immovable property shall be exercised with due regard to national laws and regulations.

"Article VIII section 30: With regard to competence of the International Court of Justice in disputes concerning the interpretation or application of the Convention, the Government of Indonesia reserves the right to maintain that in every individual case the agreement of the parties to the dispute is required before the Court for a ruling."

The Government of the United Kingdom of Great Britain and Northern Ireland has notified the Secretary General "that they are unable to accept these reservations because, in their view, it is not of the kind which intending parties to the Convention have the right to make."

Supplemental Agreement to the above-mentioned Agreement, relating to the United Nations Industrial Development Commissary (with exchange of notes dated 2 March 1971 and 9 March 1972. ⁵ Vienna, 1 March 1972

The purpose of this Agreement is to implement the relevant provisions of Article XII, Section 27 (j) (iii) of the Agreement regarding the Headquarters of the United Nations Industrial Development Organization. ⁶

(b) Agreement between the United Nations and Ethiopia regarding the arrangements for the meetings of the Security Council to be held at Addis Ababa from 28 January 1972 to 4 February 1972. ⁷ Signed at New York on 22 January 1972

Article I

Privileges and Immunities

1. The Convention on the Privileges and Immunities of the United Nations shall be applicable with respect to the meetings of the Security Council. Accordingly, the United Nations, Representatives of the Members of the United Nations present in connexion with the meetings of the Security Council, officials of the United Nations performing functions in connexion with those meetings, and experts on mission for the United Nations in connexion with those meetings shall enjoy the privileges and immunities provided in said Convention, respectively, for the United Nations, Representatives of Members, officials, and experts on mission for the United Nations.

2. Personnel provided by the Government under Section 4 of the Annex to this Agreement shall enjoy immunity from legal process in respect of any words spoken or written, or any act performed by them in their official capacity in connexion with the meetings.

3. Without prejudice to the preceding Sections of this Article, all other persons, including representatives of the information media, who are performing official functions in connexion with the meetings, or are invited by the United Nations to attend it, likewise shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the meetings.

Article II

Access and Exit

1. The unqualified right of unhindered entry into and exit from Ethiopia shall be observed by all the authorities concerned in respect of the following categories of persons: representatives of Members of the United Nations and their immediate families, officials

⁵ Came into force on 1 April 1972.

⁶ Reproduced in the *Juridical Yearbook*, 1967, p. 44. Article XII, Section 27 (j) provides that officials of the United Nations Industrial Development Organization as defined in Article I, Section 1 (h) of the Agreement shall have.

"The right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports:

(iii) Limited quantities of certain articles for personal use or consumption and not for gift or sale; the UNIDO may establish a commissary for the sale of such articles to its officials and members of delegations; a Supplemental Agreement shall be concluded between the UNIDO and the Government to regulate the exercise of these rights."

⁷ Came into force on the date of signature.

and experts of the United Nations having official functions in connexion with the meetings and their immediate families, representatives of the press, or of radio, television, film or other information agencies accredited to the United Nations, and other persons officially invited to the meetings by the United Nations.

2. During the period of the meetings including any preparatory or final stage, the buildings, areas and premises referred to in Section 2 of the Annex to this Agreement shall be deemed to constitute United Nations premises under Section 3 of the Convention on the Privileges and Immunities to the United Nations, and entry thereto shall be subject to the authority and control of the United Nations.

3. The Government shall ensure that no impediment is imposed on transit by the persons mentioned in Section 1 of this Article to or from the United Nations premises, referred to in Section 2 of this Article and the residences referred to in Article V. They shall also be granted facilities for speedy travel.

4. Visas, entry and exit permits, where required, shall be granted free of charge, as speedily as possible and, not later than two days from the receipt of the application.

...

Article VII

Liability

The Government shall be responsible for dealing with any actions, claims or other demands arising out of (a) injury or damage to person or property in the premises referred to in Article V above; (b) injury or damage to person or property caused by, or incurred in using, the meeting facilities referred to in Article IV above; (c) the employment for the meetings of the personnel referred to in Article I, Section 2 above, and the Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands.

(c) Agreement between the United Nations and Austria relating to the seminar on human rights and scientific and technological developments to be held in Vienna, Austria, from 19 June to 1 July 1972 (with exchange of letters dated 16 and 22 March 1972).⁸ Signed at New York on 23 March 1972

This agreement contains articles similar to articles V and VI of an agreement between the United Nations and Yugoslavia, reproduced on p. 28 of the *Juridical Yearbook*, 1970.

This agreement is accompanied with an exchange of letters containing the following passage:

“... ”

“(3) The terms ‘facilities for speedy travel’ in Article V (4) shall be interpreted as encompassing exclusively the public means of transportation available in Austria. Entry permits will be granted free of charge only by the Austrian diplomatic and consular representatives abroad. The Austrian border authorities—and this includes the Vienna airport—are not in position to grant visas free of charge.”

(d) Agreement between the United Nations and Turkey relating to the seminar on the status of women and family planning to be held in Istanbul, Turkey from 11 to 24 July 1972.⁹ Signed at Ankara on 21 March 1972 and at New York on 6 April 1972

⁸ Came into force on the date of signature.

⁹ Came into force on 6 April 1972.

This agreement contains articles similar to articles V and VI of the agreement between the United Nations and Yugoslavia referred to above under (c).

- (e) Exchange of letters constituting an Agreement between the United Nations and Romania regarding the Interregional Seminar on Mortality Analysis to be held in Mamaia, Romania, from 29 September to 3 October 1972.¹⁰ New York, 16 August 1972

This agreement contains articles similar to articles V and VI of the agreement between the United Nations and Yugoslavia referred to above under (c) except that the last part of paragraph 4 of Article V, from the words "as speedily as possible" does not appear.

- (f) Agreement between the United Nations and India concerning the organization of technical panels in the practical applications of space technology.¹¹ Signed at New York on 8 December 1972

This agreement contains articles similar to articles V and VI of the agreement between the United Nations and Yugoslavia referred to above under (c) except that a paragraph 3 reading as follows has been inserted in article V:

"3. Participants attending the Panel in pursuance of paragraph (a) of Article II of the Agreement shall enjoy the privileges and immunities of experts on mission under Article VI of the Convention on the Privileges and Immunities of the United Nations."

- (g) Agreement between the United Nations and Mexico concerning a joint United Nations/World Meteorological Organisation panel and training seminar on the use of meteorological satellite data to be held at Mexico City from 29 November to 8 December 1972.¹² Signed at New York of 24 November 1972

This agreement contains articles similar to articles V and VI of the agreement between the United Nations and Yugoslavia referred to above under (c) except that:

- (i) the first sentence of paragraph 1 of article V reads as follows:

"1. The Convention on the Privileges and Immunities of the United Nations which has been acceded to by Mexico shall be applicable in accordance with such accession to the panel/training seminar";

- (ii) the words "in accordance with the accession of Mexico" have been added at the end of paragraphs 1 and 2 of article V;

- (iii) a paragraph 3 reading as follows has been inserted in article V:

"3. Participants attending the panel/training seminar in pursuance of item (a) of Article II of the Agreement shall enjoy the privileges of experts on mission under Article VI of the Convention on the Privileges and Immunities of the United Nations in accordance with the accession of Mexico".

- (iv) in the last paragraph of article V, the words "without prejudice to the pertinent requisites of the Mexican migration laws", have been inserted before the words "Visas and entry permits" and the words "and, when application are made... from the receipt of the application" do not appear.

¹⁰ Came into force on 16 August 1972.

¹¹ Came into force on the date of signature.

¹² Came into force on the date of signature.

- (h) Agreement between the United Nations and Sweden concerning the Arrangements for the United Nations Conference on the Human Environment to be held at Stockholm from 5 to 16 June 1972.¹³ Signed at Geneva on 9 May 1972

This agreement contains articles similar to articles VI, VII and VIII of the agreement between the United Nations and Kenya reproduced on p. 19 of the *Juridical Yearbook*, 1971 except that:

(i) the last part of article VI from the words "except where it is agreed" has been omitted;

(ii) the second sentence of paragraph 1 of article VII appears at the end of the article, as paragraph 6;

(iii) the second sentence of paragraph 3 of article VII has been replaced by the following:

"It is understood, however, that local personnel provided by the Government under Article IV of this Agreement shall enjoy only an immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity in connexion with the Conference";

(iv) paragraph 5 of article VII reads as follows:

"The Swedish authorities shall impose no impediment to transit to and from the Conference of the following categories of persons invited by the United Nations to attend the Conference: representatives of Governments and their immediate families; observers of specialized agencies and intergovernmental organizations and their immediate families; officials and experts of the United Nations and their immediate families; observers of non-governmental organizations; representatives of the press or of other information media accredited by the United Nations at its discretion after consultation with the Government; and other persons whose presence at the Conference is authorized by the United Nations. Any visa required for such persons shall be granted promptly and without charge.";

(v) article VIII contains an additional paragraph reading as follows:

"2. The Government shall issue to the United Nations an import permit for the supplies needed by the United Nations for official requirements and entertainment schedule of the Conference, to be designated in a separate letter Agreement between the United Nations and the Government".

- (i) Memorandum of Understanding between the United Nations and the Government of the United Kingdom of Great Britain and Northern Ireland concerning arrangements for the Second United Nations Conference on the Standardization of Geographical Names.¹⁴ Signed at Geneva on 2 May 1972

This agreement contains articles similar to articles VII and VIII of the agreement between the United Nations and Kenya referred to under (h) above except that:

(i) the second sentence of paragraph 1 of the article on privileges and immunities reads as follows:

"Subject to the requirements of the police for the efficient discharge of their duties as specified in Article III above, the Conference premises and access thereto will be under the control and authority of the United Nations";

(ii) paragraphs 4 and 5 of that same article read as follows:

¹³ Came into force on the date of signature.

¹⁴ Came into force on the date of signature.

"4. Representatives of specialized agencies in respect of which the United Kingdom has undertaken to apply the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies will enjoy the privileges and immunities specified in that Convention. Representatives of other intergovernmental organizations invited to attend the Conference will enjoy such privileges and immunities as are specified in any agreement between the United Kingdom and the organization concerned, or in the absence of such agreement, such facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the Conference.

"5. All persons enumerated in paragraphs 2, 3 and 4 of Article VII and all persons performing functions in connexion with the Conference who are not nationals of the United Kingdom shall be immune from immigration restrictions and alien registration. They shall be granted facilities for speedy travel. No charge shall be made for the issue, when required, of visas, entry or exit permits".

- (j) Agreement between the United Nations and Egypt relating to the continuation and further extension of the Interregional Centre for Demographic Research and Training established at Cairo by the Agreement between the above parties signed in New York on 8 February 1963 and in Cairo on 14 November 1968.¹⁵ Signed in New York on 22 June 1972

This agreement contains articles similar to articles VI and VII of the agreement between the same parties reproduced in the *Juridical Yearbook*, 1968, pp. 41-42.

- (k) Letter of Agreement between the United Nations Development Programme and Bahrain concerning the establishment of a UNDP sub-office in Manama. New York, 22 August 1972 and Manama, 7 September 1972

This Letter contains the following paragraph:

"(6) The Deputy Regional Representative and the UNDP office staff, being officials of the United Nations within the meaning of the Convention on the Privileges and Immunities of the United Nations shall be entitled to the appropriate privileges, immunities and facilities under Article V of the Agreement signed on 27 May 1972 by the Minister for Foreign Affairs of the State of Bahrain on behalf of the Government, and on 6 July 1972 by the Administrator of the United Nations Development Programme on behalf of the Participating Organizations".¹⁶

3. AGREEMENTS RELATING TO THE UNITED NATIONS CHILDREN'S FUND: REVISED MODEL AGREEMENT CONCERNING THE ACTIVITIES OF UNICEF¹⁷

Article VI

Claims against UNICEF

[See *Juridical Yearbook*, 1965, pp. 31 and 32]

¹⁵ Came into force on the date of signature.

¹⁶ See Section 5 below.

¹⁷ Revised January 1968.

Article VII

Privileges and immunities

[See *Juridical Yearbook*, 1965, p. 32]

Basic agreements between UNICEF and the Governments of the United Arab Emirates, Lesotho, Tonga, Fiji and Swaziland concerning the activities of UNICEF.¹⁸ Signed respectively at Beirut on 22 March 1972 and Abu Dhabi on 25 March 1972, at Lusaka on 29 October 1971 and Maseru on 7 April 1972, at Nuku'alofa on 30 May 1972 and New York on 27 June 1972, at Suva on 2 October 1972, and at Mbabane on 21 November 1972 and Lusaka on 8 December 1972.

These agreements contain articles similar to articles VI and VII of the revised model agreement.

4. AGREEMENTS RELATING TO THE TECHNICAL ASSISTANCE SECTOR OF THE UNITED NATIONS DEVELOPMENT PROGRAMME: REVISED STANDARD AGREEMENT CONCERNING TECHNICAL ASSISTANCE¹⁹

Article I

Furnishing of technical assistance

...

6... [See *Juridical Yearbook*, 1967, p. 73]

Article V

Facilities, privileges and immunities

[See *Juridical Yearbook*, 1963, pp. 27 and 28]

Revised standard agreements on technical assistance between the United Nations (including UNIDO and UNCTAD), ILO, FAO, UNESCO, ICAO, WHO, ITU, WMO, IAEA, UPU and IMCO, and the Governments of Tonga,²⁰ Bahrain,²¹ the People's Republic of Bangladesh,²² Oman²³ and the United Arab Emirates.²⁴ Signed, respectively, at Nuku'alofa on 22 April 1971, at Manama on 27 May 1972 and New York on 6 July 1972, at Dacca on 12 July 1972 and New York on 31 July 1972, at New York on 11 September 1972 and at New York on 12 September 1972.

These agreements contain articles similar to articles I, paragraph 6, and V of the revised standard agreement.

¹⁸ Came into force respectively on 25 March 1972, 7 April 1972, 27 June 1972, 2 October 1972 and 8 December 1972.

¹⁹ United Nations Development Programme, *Field Manual*, Edition II (document DP/4), Section IX-C (July 1969).

²⁰ Came into force on 22 April 1971 with effect from 7 January 1972, the date when Tonga became a member of one of the specialized agencies of the United Nations.

²¹ Came into force on 6 July 1972.

²² Came into force on 31 July 1972.

²³ Came into force on 11 September 1972.

²⁴ Came into force on 12 September 1972.

5. AGREEMENTS RELATING TO THE SPECIAL FUND SECTOR OF THE UNITED NATIONS DEVELOPMENT PROGRAMME: STANDARD AGREEMENT CONCERNING ASSISTANCE FROM THE UNITED NATIONS DEVELOPMENT PROGRAMME (SPECIAL FUND)²⁵

Article VIII

Facilities, privileges and immunities

[See *Juridical Yearbook*, 1963, p. 31]

Article X

General provisions

...

4... [See *Juridical Yearbook*, 1963, p. 32].

Agreements concerning assistance from the United Nations Development Programme (Special Fund) between the United Nations Development Programme (Special Fund) and the Governments of Tonga,²⁶ Bahrain,²⁷ the People's Republic of Bangladesh,²⁸ Oman²⁹ and the United Arab Emirates.³⁰ Signed, respectively, at Nuku'alofa on 22 April 1971, at Manama on 27 May 1972 and New York on 6 July 1972, at Dacca on 12 July 1972 and New York on 31 July 1972, at New York on 11 September 1972 and at New York on 12 September 1972

These agreements contain articles similar to articles VIII and X (4) of the standard agreement.

6. AGREEMENTS RELATING TO OPERATIONAL ASSISTANCE:
STANDARD AGREEMENT ON OPERATIONAL ASSISTANCE³¹

Article II

Functions of the officers

...

3. [See *Juridical Yearbook*, 1965, p. 37]

Article IV

Obligations of the Government

...

5. [See *Juridical Yearbook*, 1965, pp. 37 and 38]

²⁵ United Nations Development Programme, *Field Manual*, Edition II, document DP/4, Section IX-C (July 1969).

²⁶ Came into force on 22 April 1971, with effect from 7 January 1972, the date when Tonga became a member of one of the specialized agencies of the United Nations.

²⁷ Came into force on 6 July 1972.

²⁸ Came into force on 31 July 1972.

²⁹ Came into force on 11 September 1972.

³⁰ Came into force on 12 September 1972.

³¹ United Nations Development Programme, *Field Manual*, Edition II, document DP/4, Section IX-C (July 1969).

6. [See *Juridical Yearbook*, 1968, pp. 46 and 47]

- (a) Standard agreements on operational assistance between the United Nations (including UNIDO and UNCTAD), ILO, FAO, UNESCO, ICAO, WHO, ITU, WMO, IAEA, UPU, IMCO and IBRD, and the Governments of the Central African Republic, Bahrain, the People's Republic of Bangladesh, Mauritania, Oman and the United Arab Emirates.³² Signed, respectively, at Bangui on 13 January 1972, at Manama on 27 May 1972 and New York on 6 July 1972, at Dacca on 12 July 1972 and New York on 31 July 1972, at Nouakchott on 11 August 1972, at New York on 11 September 1972 and at New York on 12 September 1972

These agreements contain articles similar to articles II (3) and IV (5) and (6) of the model standard agreement.

- (b) Agreements in the form of exchange of letters³³ relating respectively to the Standard Agreements on operational assistance between the United Nations, ILO, FAO, UNESCO, ICAO, WHO, ITU, WMO, IAEA, UPU and IMCO, and the Governments of Ecuador,³⁴ Sierra Leone³⁵ and Uganda.³⁶ Quito, 12 November 1971 and New York, 10 February 1972, Freetown, 8 March 1972 and New York, 5 April 1972, Kampala 17 April 1972 and New York, 9 May 1972

By these agreements, the Bank has been added among the organizations participating in the respective Standard Agreements.

7. AGREEMENTS CONCERNING ASSISTANCE FROM THE WORLD FOOD PROGRAMME

- (a) Basic agreements concerning assistance from the World Food Programme between the United Nations and the Food and Agriculture Organization of the United Nations, on behalf of the World Food Programme (WFP), and the Governments of Sierra Leone, Sudan, Cameroon, Malawi, Mali, Paraguay, the Republic of Korea, Malaysia, Togo, Indonesia, Peru, Niger, Madagascar, Trinidad and Tobago, Botswana, India, Pakistan, Barbados, Jamaica, Morocco, Congo, Malta, Burundi, Chad, Haiti, Central African Republic, Lebanon, People's Democratic Republic of Yemen, Senegal, Syrian Arab Republic, Equatorial Guinea, Ecuador, Mauritius, Afghanistan, Nigeria, Gambia, Swaziland, Venezuela, Guyana, El Salvador, Netherlands (on behalf of the Netherlands Antilles) and Nicaragua.³⁷ Signed, respectively, at Freetown

³² Came into force respectively on 13 January 1972, 6 July 1972, 31 July 1972, 11 August 1972, 11 September 1972 and 12 September 1972.

³³ Came into force, respectively, on 10 February 1972, 5 April 1972, and 9 May 1972.

³⁴ See *Juridical Yearbook*, 1971, p. 22.

³⁵ *Ibid.*, 1964, p. 34.

³⁶ *Ibid.*, 1967, p. 77.

³⁷ Came into force on the respective dates of signature, except for the agreements with Paraguay, the Republic of Korea, Trinidad and Tobago, El Salvador and the Netherlands, which came into force respectively, on 10 March 1969, 15 July 1969, 20 January 1969, 2 February 1972 and 1 February 1972.

on 13 February 1968, at Khartoum on 26 February 1968, at Yaoundé on 3 April 1968, at Zomba on 8 April 1968, at Bamako on 13 April 1968, at Asunción on 15 April 1968, at Seoul on 3 May 1968, at Kuala Lumpur on 10 May 1968, at Lomé on 25 May 1968, at Djakarta on 28 May 1968, at Lima on 13 June 1968, at Niamey on 21 June 1968, at Tananarive on 3 July 1968, at Port of Spain on 12 July 1968, at Gaberones on 15 July 1968, at New Delhi on 16 July 1968, at Karachi on 19 July 1968 and Islamabad on 25 July 1968, at Bridgetown on 3 September 1968, at Kingston on 10 and 13 September 1968, at Rabat on 16 September 1968, at Brazzaville on 26 September 1968, at Colombo on 10 November 1968, at La Valette on 25 November 1968, at Bujumbura on 27 November 1968, at Fort-Lamy on 13 December 1968, at Port au Prince on 10 January 1969, at Bangui on 13 January 1969, at Beirut on 12 February 1969, at Aden on 4 March 1969, at Dakar on 21 April 1969, at Damas on 5 May 1969, at Santa Isabel on 18 June 1969, at Quito on 21 August 1969, at Tananarive on 15 and 25 August 1969, at Apia on 1 September 1969, at Kaboul on 2 October 1969, at Bathurst on 13 June 1969, at Mbabane on 1 July 1970, at Caracas on 23 July 1970, at Georgetown on 13 August 1970, at San Salvador on 12 July 1971, at Rome on 13 August 1971 and at Managua on 24 August 1971

These agreements contain provisions similar to those reproduced on p. 23 of the *Juridical Yearbook*, 1971.

- (b) Basic agreement concerning assistance from the World Food Programme between the United Nations and the Food and Agriculture Organization of the United Nations, on behalf of the World Food Programme (WFP), and the Government of Bolivia.³⁸ Signed at La Paz on 14 March 1968

This agreement contains provisions similar to those reproduced on p. 23 of the *Juridical Yearbook*, 1971. It is accompanied with the following annex:

“In order to clarify the contents of article V, paragraph 1, of the Basic Agreement of which this annex is an integral part, it is hereby stated that that paragraph shall not mean that the Government of Bolivia shall afford personnel of the World Food Programme and persons rendering services on its behalf privileges or immunities, but merely that it shall grant certain facilities which are required for the speedy and efficient execution of projects.

“To facilitate the interpretation of the relevant paragraph, certain examples are given below:

- (i) Prompt and free issuance of the requisite visas, permits and authorizations;
- (ii) Access to sites where projects are being executed and all the necessary rights;
- (iii) Right to move freely within the national territory and to enter or leave it to the extent necessary for the proper execution of projects;
- (iv) Favourable rate of exchange in the absence of a free market.”

- (c) Basic agreement concerning assistance from the World Food Programme between the United Nations and the Food and Agriculture Organization of the United Nations, on behalf of the World Food Programme (WFP), and the Government of Mexico.³⁹ Signed at Mexico City, D.F. on 8 July 1971

³⁸ Came into force on the date of signature.

³⁹ Came into force on the date of signature.

This agreement contains provisions similar to those reproduced on p. 23 of the *Juridical Yearbook, 1971* except that

(i) paragraph 1 reads as follows:

“The Government shall apply the provisions of the Convention on the Privileges and Immunities of the United Nations, as approved by the Chamber of Deputies of the United Mexican States, pursuant to the Presidential Decree of 13 February 1962 and published in the *Diario Oficial* of 16 February of the same year, to the officials and consultants of the World Food Programme and to their properties, funds and assets.”

(ii) paragraph 2 reads as follows:

“The Government shall afford to officials and consultants of the World Food Programme whatever technical and administrative facilities are required in the prompt and efficient execution of the projects.”

(d) Basic agreement concerning assistance from the World Food Programme between the United Nations and the Food and Agriculture Organization of the United Nations, on behalf of the World Food Programme (WFP), and the Government of Colombia. ⁴⁰ Signed at Bogotá on 29 April 1969

This agreement contains an article reading as follows:

Article V

“Facilities, privileges and immunities”

“1. The Government shall afford to officials and consultants of the World Food Programme and to other persons performing services on behalf of the Programme such facilities as are afforded to those of the United Nations and specialized agencies.

“2. The Government shall grant all the privileges and immunities set forth in the Convention on Privileges and Immunities adopted by the United Nations General Assembly on 13 February 1946. The Resident Representative of the United Nations Development Programme, in his capacity as Official Representative of the World Food Programme in Colombia, and all the officials of the World Food Programme Project who are duly accredited to the Government of Colombia, except those who are of Colombian nationality, shall enjoy the same privileges as the accredited diplomatic corps in respect of the importation, free of duty and of any other charges, of articles required for their personal use.

“3. In cases of *force majeure*, the World Food Programme may purchase materials, equipment and any other articles on the Colombian market exempt from direct taxes as provided in the Convention on the Privileges and Immunities of the United Nations mentioned in paragraph 2.

“4. The Government shall ensure implementation of the provisions of the agreements between the Government and the World Food Programme relating to each project under which the Government shall provide the staff, premises, equipment, services and transport and defray the expenses of the food aid projects.

“5. The officials of the World Food Programme, other than those of Colombian nationality, shall be exempt from all taxes payable in Colombia, whether the tax or charge is levied by the Government or by other Colombian public bodies or departments.

“6. The staff employed in the Office of the World Food Programme in Colombia may be recruited by the World Food Programme in accordance with the relevant United Nations staff rules and regulations, in which case they shall enjoy the same rights and privileges as

⁴⁰ Came into force on the date of signature.

United Nations staff connected with such employment, including social security, but on the understanding that the relevant provisions are at least equal to those governing such matters in Colombia.

"7. The Government shall be responsible for dealing with any claims which may be brought by third parties against the World Food Programme or against its officials or consultants or other persons performing services on behalf of the World Food Programme under this Agreement and shall hold the World Food Programme and the above-mentioned persons harmless in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Government and the World Food Programme that such claims or liabilities arise from the gross negligence or wilful misconduct of such persons.

"8. The Office of the World Food Programme shall enjoy in respect of its communications sent through the national postal and telegraph systems the same treatment as that accorded to other United Nations bodies."

8. EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT BETWEEN THE UNITED NATIONS AND THE GOVERNMENT OF THE REPUBLIC OF CYPRUS CONCERNING THE STATUS OF THE UNITED NATIONS PEACE-KEEPING FORCE IN CYPRUS. NEW YORK, 31 MARCH 1964

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT AMENDING PARAGRAPH 38 OF THE ABOVE-MENTIONED AGREEMENT. ⁴¹ NICOSIA, 17 APRIL 1972

I

H.Q. UNFICYP
Nicosia
17 April 1972

Sir,

I have the honour to refer to the exchange of letters between the Secretary-General of the United Nations and the Minister of Foreign Affairs of the Republic of Cyprus, dated 31 March 1964, constituting an agreement between the United Nations and the Government of the Republic of Cyprus concerning the status of the United Nations Peace-keeping Force in Cyprus ⁴² and in particular to the provisions of paragraph 38 of the agreement concerning the settlement of disputes or claims.

For the purpose of facilitating the settlement of disputes arising out of traffic accidents in which vehicles belonging to or being used on behalf of either the Republic of Cyprus or the United Nations are involved, I propose that paragraph 38 of the agreement be amended as follows:

1. In subparagraph (a) amend the words "... in subparagraphs (b) and (c) following." to read "... in subparagraph (b), (c), and (d) following."
2. In subparagraph (b) insert the words "Except as otherwise provided in paragraph (c) below," before the words "any claim made by".
3. After subparagraph (b) insert a new subparagraph (c) to read as follows:

⁴¹ Came into force on 17 April 1972 with retroactive effect from 31 March 1964.

⁴² Reproduced in the *Juridical Yearbook*, 1964, p. 40.

“Any claim made by the Force or the Government against each other arising out of any traffic accident occurring between vehicles belonging to or hired by the Republic of Cyprus used officially at the time of accident and vehicles belonging to or hired by the Force or any of its national contingents used officially at the time of accident, shall be considered as non-existent.”

4. Renumber subparagraph (c) as subparagraph (d).

I further propose that paragraph 38, as amended and incorporated into the agreement, have effect retroactively from 31 March 1964 as if it had been communicated to Your Excellency in my letter of 31 March 1964.

Upon acceptance by your Government of this proposal, this letter and your reply shall be considered as constituting an agreement between the United Nations and the Republic of Cyprus amending the agreement of 31 March 1964.

Please accept, Sir, the assurances of my highest consideration.

B. F. OSORIO-TAFALL
Special Representative for the Secretary-General

His Excellency
Mr. Spyros Kyprianou
Minister of Foreign Affairs
Republic of Cyprus

II

Nicosia
17 April 1972

Sir,

I have the honour to refer to your letter dated 17th April 1972, in which you propose to amend paragraph 38 of the agreement dated 31 March, 1964, between the United Nations and the Government of Cyprus concerning the status of the United Nations Peace-Keeping Force in Cyprus to include provisions for the settlement of disputes arising out of traffic accidents between vehicles belonging to or hired by either the United Nations or the Government of Cyprus officially used at the time of the accident.

In reply I wish to inform you that the Government of the Republic of Cyprus agrees that your letter and this reply be considered as constituting an agreement between the United Nations and Cyprus provided that the relevant legislation will be enacted. Pending such enactment the Government of the Republic of Cyprus undertakes to apply provisionally the provisions of paragraph 38 of the agreement as amended and to exert every effort in order to ensure that the said enactment is effected as early as possible.

Please accept, Sir, the assurances of my highest consideration.

SPYROS KYPRIANOU
Minister of Foreign Affairs

His Excellency
Mr. B. F. Osorio-Tafall,
Special Representative for the
Secretary-General
UNFICYP Headquarters
Nicosia

B. Treaty provisions concerning the legal status of intergovernmental organizations related to the United Nations

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES.⁴³ APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

In 1972, the following States acceded to the Convention, or if already parties undertook by a subsequent notification to apply the provisions of the Convention, in respect of the specialized agencies indicated below:⁴⁴

<i>State</i>		<i>Date of receipt of instrument of accession or ratification</i>	<i>Specialized agencies</i>
Cuba ⁴⁵	Accession	13 Septembre 1972	FAO, ILO, UNESCO, WMO, IMCO, UPU, ICAO, ITU, WHO
Fiji ⁴⁶	Notification of succession	21 June 1971	WHO—second revised text of Annex VII, ICAO, ILO, IMCO—Revised text of Annex XII, FAO, UNESCO, UPU, ITU, WMO
Indonesia ⁴⁷	Accession	8 March 1972	WHO, ICAO, ILO, FAO, UNESCO, Bank, Fund, UPU, ITU, WMO, IMCO, IFC, IDA

⁴³ United Nations, *Treaty Series*, vol. 33, p. 261.

⁴⁴ The Convention is in force with regard to each State which deposited an instrument of accession and in respect of specialized agencies indicated therein or in a subsequent notification as from the date of deposit of such instrument or receipt of such notification.

⁴⁵ With the following reservation:

“The Revolutionary Government of Cuba does not consider itself bound by the provisions of sections 24 and 32 of the Convention, under which the International Court of Justice has compulsory jurisdiction in disputes arising out of the interpretation or application of the Convention. Concerning the competence of the International Court of Justice in such disputes, Cuba takes the position that for any dispute to be referred to the International Court of Justice for settlement, the agreement of all parties involved in the dispute must be obtained in each individual case. This reservation also applies to the provision of section 32 requiring the parties concerned to accept the advisory opinion of the International Court of Justice as decisive.”

The Government of the United Kingdom of Great Britain and Northern Ireland has notified the Secretary-General that it is unable to accept this reservation because in its view it is not of the kind which intending parties to the Convention have the right to make.

⁴⁶ A notification of succession by the Government of Fiji to the Convention was received on 21 June 1971. Subsequently, the Government of Fiji indicated that the said succession entailed the continued application of the Convention in respect of the specialized agencies referred to above which had been previously designated by the Government of the United Kingdom, then responsible for the international relations of Fiji.

⁴⁷ With the following reservations:

“(1) Article II(b) section 3: The capacity of the specialized agencies to acquire and dispose of immovable property shall be exercised with due regard to national laws and regulations.

“(2) Article IX section 32: With regard to the competence of the International Court of Justice in disputes concerning the interpretation or application of the Convention, the Government of Indonesia reserves the right to maintain that in every individual case the agreement of the parties to the dispute is required before the Court for a ruling.”

The Government of the United Kingdom of Great Britain and Northern Ireland has notified the Secretary-General that it is unable to accept the second of these reservations because in its view it is not of the kind which intending parties to the Convention have the right to make.

As of 31 December 1972, 77 States were parties to the Convention.

2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(a) Agreements based on the standard "Memorandum of Responsibilities" in respect of FAO sessions

Agreements were concluded in 1972 by FAO and the Governments of Antigua, ⁴⁹ Argentina, Brazil, Chad, Ecuador, ⁴⁹ Finland, Gabon, Hungary, India, Iran, Israel, Italy, Jordan, Kenya, Korea (Republic of), Kuwait, Netherlands, ⁴⁹ Norway, Thailand, ⁴⁹ Trinidad and Tobago, United Kingdom. ⁴⁹

These agreements contained provisions for specific sessions in these countries similar to the following standard text:

MEMORANDUM OF RESPONSIBILITIES TO BE ASSUMED BY FAO AND THE HOST GOVERNMENT

Part. II. Responsibilities of the Host Government in regard to privileges and immunities for FAO and participants

The Host Government undertakes to:

. . .

9. Accord for the purposes of the Session, to delegates and observers, and to FAO, its property, funds and assets, as well as to FAO staff, all the privileges and immunities provided for in Article VIII, paragraph 4, and Article XVI, paragraph 2 of the Constitution and Rule XXXI-4 of the General Rules of the Organization, and specified in the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies.

10. Grant visas and all necessary facilities to delegates, observers and consultants attending the Session.

⁴⁸ With the following reservation:

"The Union of Soviet Socialist Republics does not consider itself bound by the provisions of sections 24 and 32 of the Convention, concerning the compulsory jurisdiction of the International Court of Justice. Concerning the jurisdiction of the International Court of Justice in disputes arising out of the interpretation or application of the Convention, the USSR will maintain the same position as hitherto, namely, that for any dispute to be referred to the International Court of Justice for settlement, the agreement of all Parties involved in the dispute must be obtained in each individual case. This reservation similarly applies to the provision contained in section 32, stipulating that the advisory opinion of the International Court of Justice shall be accepted as decisive."

The Government of the United Kingdom of Great Britain and Northern Ireland has notified the Secretary-General that it is unable to accept this reservation because in its view it is not of the kind which intending parties to the Convention have the right to make.

⁴⁹ Certain exceptions from or modifications of the standard text were made at the request of the Host Government.

11. Hold FAO and its staff harmless in respect of any delegates and observers or by other third parties arising out of the Session, except where it is agreed by the Host Government and FAO that the claim arises from gross negligence or wilful misconduct of such staff.

(b) Agreements based on the standard "Memorandum of Responsibilities" in respect of group seminars, training courses or workshops

Agreements were concluded in 1972 by FAO and the Governments of Argentina, Chile, Costa Rica, Egypt, India, Jamaica, Kenya, Malaysia, Nigeria, Norway, Peru, Thailand,⁵⁰ Uganda and Uruguay.

These agreements contained provisions for specific training courses etc. in these countries similar to the following standard text:

MEMORANDUM OF RESPONSIBILITIES TO BE ASSUMED
BY FAO AND THE HOST GOVERNMENT

*Part II. Responsibilities of the Host Government in regard to privileges
and immunities for FAO and participants*

The Host Government undertakes to:

14. Accord for the purpose of the training course, to FAO, its property, funds and assets as well as to FAO staff and experts, all the privileges and immunities specified in the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies.

15. Grant visas and all necessary facilities to participants lecturers, experts and consultants attending the training course.

16. Hold FAO and its staff harmless in respect of any claims by participants or by other third parties arising out of the training course, except where it is agreed by the Host Government and FAO that the claim arises from gross negligence or wilful misconduct of such staff.

(c) Exchange of letters between the Government of Sweden and the Food and Agriculture Organization of the United Nations regarding training centres and seminars to be held in 1972 in Sweden

I

Royal Ministry for
Foreign Affairs
4 February 1972

Sir,

With reference to your letter of December 30, 1971, regarding the training centres and seminars to be held in 1972 in Sweden, jointly by the Food and Agriculture Organization of the United Nations and the Swedish International Development Authority (SIDA), I have the honour to confirm that the Government of Sweden will apply, in respect of these training centres and seminars, the provisions of the Convention on the Privileges and

⁵⁰ Host Government did not assume the responsibility set out in paragraph 16 of the standard text.

Immunities of the Specialized Agencies and of Annex II thereto relating to FAO, to which it has been a party since 12th September 1951, and that it will impose no impediment to transit to and from these training centres and seminars of any persons entitled to attend them, and will grant any visa required for such persons promptly.

I hope that the above will meet your main requirements, and I would suggest that any further questions concerning the arrangements for these meetings be dealt with through the representatives of SIDA or Sweden in Rome.

Accept, Sir, etc.

For the Minister
L. KELLBERG
Head of the Legal Department

Mr. A.H. Boerma
Director-General
Food and Agriculture Organization
of the United Nations
Rome
Italy

II

Food and Agriculture Organization
of the United Nations
3 March 1972

Sir,

I have the honour to refer to a letter sent to me in your name on 4 February 1972, by Mr. L. Kellberg, Head of the Legal Department of your Ministry, regarding the training centres and seminars to be held in 1972 in Sweden jointly by the Swedish International Development Authority (SIDA) and this Organization.

I wish to thank you for this prompt reply, and have the pleasure to confirm that the application by the Government of Sweden in respect of these activities of the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies and of Annex II thereto relating to FAO, and its undertaking not to impose any impediment to transit to and from these training centres and seminars of any persons entitled to attend them, and to promptly grant all visas required for such persons, meets the requirements of this Organization.

I trust that this understanding can be extended in future years by a mere exchange of cables between us.

I have noted that any further questions concerning arrangements for the meetings mentioned above should be raised directly with the representatives of SIDA or of your Government in Rome.

Accept, Sir, etc.

A. H. BOERMA
Director-General

H.E. The Minister of Foreign Affairs
Ministry of Foreign Affairs
Stockholm.
Sweden.

3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

- (a) Agreement between the Government of the Socialist Republic of Romania and the United Nations Educational, Scientific and Cultural Organization regarding the European Centre for Higher Education.⁵¹ Signed at Bucharest on 12 June 1972 and at Paris on 4 July 1972.

Considering that the United Nations Educational, Scientific and Cultural Organization has decided to establish a European Centre for Higher Education (hereinafter called "the Centre"), whose Headquarters has been fixed at Bucharest in the Socialist Republic of Romania,

Taking into account the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies adopted by the General Assembly of the United Nations on 21 November 1947,

Desiring to regulate, by this Agreement, all questions relating to the establishment of the Headquarters of the Centre at Bucharest and consequently to define the privileges and immunities of this Centre in Romania,

The Government of the Socialist Republic of Romania, represented by Mr. Corneliu Mănescu, Minister for Foreign Affairs and

The United Nations Educational, Scientific and Cultural Organization (hereinafter called "the Organization"). Represented by Mr. René Maheu, Director-General,

Have agreed as follows:

Article 1

Legal personality of the Organization

The Government of the Socialist Republic of Romania recognizes the legal personality of the Organization and its capacity:

- (a) to contract;
- (b) to acquire and dispose of movable and immovable property;
- (c) to be party to judicial proceedings.

Article 2

Headquarters of the Centre

1. The Headquarters of the Centre shall be under the authority and control of the Organization.

2. The Organization shall have the right to make internal regulations applicable throughout the Headquarters of the Centre in order to enable it to carry out its work.

3. Subject to the provisions of the preceding paragraph, the laws and regulations of the Government of the Socialist Republic of Romania shall apply at the Headquarters of the Centre.

4. The Headquarters of the Centre shall be inviolable. Agents and officials of the Government of the Socialist Republic of Romania shall not enter the Headquarters to

⁵¹ Came into force on 4 July 1972.

discharge any official duty save with consent or at the request of the Director-General and in accordance with conditions approved by him.

5. The execution of legal process, including the seizure of private property, may take place in the Headquarters of the Centre only with the consent of and under conditions approved by the Director-General.

6. Without prejudice to the terms of this Agreement, the Organization shall not permit the Headquarters of the Centre to become a refuge from justice for persons against whom a penal judgement has been made or who are pursued *flagrante delicto* or against whom a warrant of arrest or a deportation order has been issued by the competent authorities of the Government of the Socialist Republic of Romania.

7. The Government of the Socialist Republic of Romania undertakes to protect the Headquarters of the Centre and to maintain order in its immediate vicinity.

8. The competent Romanian authorities shall endeavour, within the limits of their powers, on equitable terms, and in accordance with requests made by the Director-General of the Organization, to provide the public services needed by the Centre, such as postal, telephone and telegraph service, electricity, water and gas supplies, public transport, drainage, collection of refuse, fire protection and snow removal.

9. Subject to the provisions of article 4, paragraph 1, the Centre shall be granted, in respect of tariffs charged for public services supplied by the Government of the Socialist Republic of Romania or public bodies under its control, such reductions as are granted to the national administrative services. In case of *force majeure* involving a partial or total suspension of public services, the Centre shall receive, for its requirements, priority equal to that received by the national administrative services.

Article 3

Access to the Headquarters of the Centre

1. The competent Romania authorities shall not impede the transit to or from the Headquarters of the Centre of any persons having official duty at the Headquarters or invited there by the Organization.

2. For this purpose the Government of the Socialist Republic of Romania undertakes to authorize, without charge for visas and without delay, the entry into and residence in its territory of the following persons for the term of their duty or mission with the Centre:

(a) Representatives of Member States, including alternates, advisers, experts and secretaries, at conferences and meetings convened at the Headquarters of the Centre;

(b) Members of any advisory committee established by the Director-General at the Centre;

(c) Officials and experts of the Organization and their families;

(d) Officials and experts of the Centre and their families and other dependants;

(e) Persons who without being officials of the Organization, are undertaking missions with the Centre and their spouses and dependent children;

(f) Any other persons invited to the Headquarters of the Centre on official business.

3. Without prejudice to any special immunities which they may enjoy, the persons mentioned in paragraph 2 may not, during the whole period in which they are performing their duties or missions, be compelled by the Romanian authorities to leave the territory of the Socialist Republic of Romania, save where they have abused the privileges accorded to them in respect of their visits by carrying out activities unconnected with their duties or missions with the Organization and subject to the following provisions.

4. No measures for the expulsion from the territory of the Socialist Republic of Romania of the persons mentioned in paragraph 2 may be taken without the approval of the Minister for Foreign Affairs. Before giving his approval, the Minister for Foreign Affairs shall consult the Director-General of the Organization.

5. Persons who enjoy diplomatic privileges and immunities by virtue of this Agreement may not be required to leave the territory of the Socialist Republic of Romania save in accordance with the procedure customarily applicable to diplomats accredited to the Government of the Socialist Republic of Romania.

6. It is understood that the persons referred to in paragraph 2 are not exempt from any reasonable application of the rules governing quarantine and public health.

Article 4

Arrangements for communication

1. In so far as is compatible with any international conventions, regulations and arrangements to which it is party, the Government of the Socialist Republic of Romania shall grant to the Centre for communication by post, telephone, telegraph, radio-telephone, radio-telegraph and radio-photo-telegraph, terms at least as favourable as those granted by it to other governments, including diplomatic missions, as regards priorities, tariffs and taxes on mail, cablegrams, telegrams, radio-telegrams, photo-telegrams, telephone calls and other communications and also as regards charges payable for press and radio communications.

2. The official correspondence of the Organization shall be inviolable.

3. The official statements of the Organization shall not be subject to censorship. This immunity extends to publications, films, negatives, photographs, and visual and sound recordings addressed to or dispatched by the Centre, and also material displayed at exhibitions which it may organize.

4. The Centre may make use of codes and may dispatch and receive correspondence by courier or pouch. Courier and pouch services shall be accorded the same privileges and immunities as diplomatic couriers and pouches.

Article 5

Property, funds and assets

1. The Organization, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except in so far as in any particular case the Organization has expressly waived immunity. It is, however, understood that no waiver shall extend to any measure of execution.

2. The property and assets of the Centre, wherever located and by whomsoever held, shall be immune from search, confiscation, requisition, expropriation or any other form of constraint, whether executive, administrative or legislative.

3. The archives of the Organization and, in general, all documents belonging to or held by it shall be inviolable wherever they are located.

4. The Organization, its assets, income and other property shall be exempt from all direct taxation. The Organization shall, however, pay taxes charged for services rendered.

5. The Organization shall be exempt:

(a) From all duty and taxes, other than taxes for services rendered, collected by the Government of the Socialist Republic of Romania, and from all prohibitions and restrictions

on imports and exports in respect of articles imported or exported by it for official use. It is understood, however, that articles imported free of duty may not be sold in Romanian territory, except on terms approved by the Government of the Socialist Republic of Romania;

(b) From all duty and taxes, except taxes payable for services rendered, collected by the Government of the Socialist Republic of Romania and from all prohibitions and restrictions on imports and exports in respect of publications, cinematograph films, photographic slides and documents which the Organization may import or publish in the course of its official activities.

6. The Organization shall pay under general laws and regulations, indirect taxes which form part of the cost of goods sold or services rendered. Nevertheless, indirect taxes paid in connexion with purchases or operations effected by the Organization for official use may be reimbursed under a lump-sum arrangement to be mutually agreed upon between the Organization and the Government of the Socialist Republic of Romania.

7. The Organization may, without being subject to any financial controls, regulations or moratoria:

(a) Receive and hold funds and foreign exchange of all kinds and operate accounts in all currencies;

(b) Freely transfer its funds and foreign exchange within Romanian territory and from the Socialist Republic of Romania to another country and vice versa.

8. The competent Romanian authorities shall grant all facilities and assistance to the Organization with a view to obtaining the most favourable conditions for all transfers and exchanges. Special arrangements to be made between the Government of the Socialist Republic of Romania and the Organization shall regulate, if necessary, the application of this article.

9. In exercising its rights under this article, the Organization shall take account of all representation made by the Government of the Socialist Republic of Romania in so far as it considers that these can be complied with without prejudice to its own interests.

Article 6

Diplomatic facilities, privileges and immunities

1. Representatives of Member States of the Organization at conferences and meetings called by it at the Headquarters of the Centre and members of any advisory committee established by the Director-General at the Centre shall enjoy, during their stay in Romania on official duty, such facilities, privileges and immunities as are accorded to diplomats of equal rank belonging to foreign diplomatic missions accredited to the Government of the Socialist Republic of Romania.

2. Without prejudice to the provisions of article 7, paragraphs 1 and 3, the Director-General and Deputy Director-General of the Organization shall, during their stay at the Headquarters of the Centre, have the status accorded to the heads of foreign diplomatic missions accredited to the Government of the Socialist Republic of Romania.

3. Without prejudice to the provisions of article 7, paragraphs 1 and 3, the Director of the Centre and the officials of the Centre of grade P-5 and over their spouses and dependent children, shall be accorded during their residence in Romania the privileges, immunities and facilities and other courtesies accorded to members of foreign diplomatic missions accredited to the Government of the Socialist Republic of Romania.

4. The Organization shall, in due course, communicate to the Government of the Socialist Republic of Romania the names of the persons mentioned in paragraph 3 of this article.

5. The immunities provided for in paragraphs 1, 2 and 3 of this article are accorded in the interests of the Organization and not for the personal benefit of the individuals themselves. The immunities may be waived by the Government of the State concerned in respect of its representatives and their families in respect of the members of any advisory committee established by him and by the Executive Board in respect of the Director-General and by the Director-General in respect of the other officials of the Organization mentioned in paragraph 3 and their families.

Article 7

Officials and experts

1. Officials of UNESCO assigned to the Centre and other officials of UNESCO on official mission with the Centre:

(a) Shall be immune from legal process in respect of all activities performed by them in their official capacity (including words spoken or written);

(b) Shall be exempt from all direct taxation on salaries and emoluments paid to them by the Organization;

(c) Subject to the provisions of paragraph 2 of this article, shall be exempt from all military service and from all other compulsory service in Romania;

(d) Shall, together with their spouses and dependent members of their families, be exempt from immigration restrictions and registration provisions relating to foreigners;

(e) Shall, with regard to foreign exchange, be granted the same facilities as are granted to members of diplomatic missions accredited to the Government of the Socialist Republic of Romania;

(f) Shall, together with their spouses and dependent members of their families, be accorded the same facilities for repatriation as are granted to members of diplomatic missions accredited to the Government of the Socialist Republic of Romania, in time of international crisis;

(g) Shall, provided they formerly resided abroad, be granted the right to import free of duty their furniture and personal effects at the time of their establishment in Romania;

(h) May import motor-cars free of duty;

(i) May import, on conditions to be determined between the Organization and the Government of the Socialist Republic of Romania, certain property, effects and household equipment, intended for their personal use. The definition of the property, effects and equipment, and the conditions of their re-sale in the territory of the Socialist Republic of Romania shall be subject to the provisions of Romanian regulations concerning the matter.

2. Romanian officials of the Centre are not exempt from military service or any other compulsory service in Romania. Nevertheless, those whose names have, by reason of their duties, been placed upon a list compiled by the Director-General of the Organization and approved by the competent Romanian authorities, may, in case of mobilization, be assigned to special duties in accordance with Romanian law. These authorities shall, on the request of the Organization and in case of a call up for national service applicable to other officials of Romanian nationality, grant such temporary deferments as may be necessary to avoid the interruption of essential work.

3. Privileges and immunities are granted to officials in the interests of the Organization and not for the personal benefit of the individuals themselves. The Director-General shall agree to waive the immunity granted to an official in any case in which he considers that

such immunity would impede the course of justice and could be waived without prejudice to the interests of the Organization.

4. While performing their functions or engaged on mission on behalf of the Centre, experts other than the officials mentioned in paragraph 1 above shall, in so far as is necessary for the effective discharge of their functions, and also during journeys made in the course of duty or for the period of their missions, be granted the under-mentioned privileges and immunities:

(a) Immunity from personal arrest and seizure of personal luggage;

(b) Immunity from judicial process in respect of all acts done by them in the performance of their official functions (including words spoken or written). Such immunity shall continue notwithstanding that the persons concerned are no longer performing official functions for the Organization or on mission on its behalf;

(c) The same facilities concerning the regulation of foreign exchange as those accorded to officials of foreign Governments on temporary official mission.

5. The Director-General of the Organization shall agree to waive the immunity of an expert in any case in which he considers that this can be done without damage to the interests of the Organization.

6. The Organization shall constantly co-operate with the competent Romanian authorities in order to facilitate the proper administration of justice, ensure the due carrying out of police regulations and avoid any possible abuse arising out of the exercise of the immunities and facilities provided for in this Agreement.

7. The Organization shall communicate to the Romanian authorities the names of the persons to whom this article applies.

Article 8

Laissez-passer

United Nations *laissez-passer* held by officials of the Organization shall be recognized and accepted by the Government of the Socialist Republic of Romania as travel documents.

Article 9

Settlement of disputes

1. The Organization shall make provision for appropriate modes of settlement of:

(a) Disputes arising out of contracts or other disputes in private law to which the Organization is party;

(b) Disputes involving any official of the Organization who, by reason of his official position, enjoys immunity, if this immunity has not been waived by the Director-General.

2. Any dispute between the Organization and the Government of the Socialist Republic of Romania concerning the interpretation or application of this Agreement, or any supplementary agreement, if it is not settled by negotiation or any other appropriate method agreed to by the parties, shall be submitted for final decision to an arbitration tribunal composed of three members; one shall be appointed by the Director-General of the Organization, another by the Minister for Foreign Affairs of the Socialist Republic of Romania and the third chosen by these two. If the two arbitrators cannot agree on the choice of the third, the appointment shall be made by the President of the International Court of Justice. The decision of the tribunal shall be final.

Article 10

General provisions

1. This Agreement is made in accordance with the provisions of section 39 of the Convention on the Privileges and Immunities of the Specialized Agencies, which provides for special agreements between a State and a specialized agency for the carrying out of the provisions of the above-mentioned Convention, taking into account the particular needs of an agency resulting from the establishment of regional bureaux or centres.

2. It is understood that, should that Convention be revised, the Government of the Socialist Republic of Romania and the Organization shall confer with a view to deciding what necessary amendments should be made to this Agreement.

3. At the request of either party, the parties to this Agreement shall confer with a view to its modification and may agree upon any amendment.

4. This Agreement shall enter into force on the date of signature.

DONE in duplicate, in the French language.

For the Government of the Socialist Republic of Romania

(Signed)

C. Mănescu

Minister for Foreign Affairs

Bucharest, 12 June 1972

For the United Nations Educational Scientific and Cultural Organization

(Signed)

René Maheu

Director-General

Paris, 4 July 1972

(b) Agreement between the Government of Lebanon and the United Nations Educational, Scientific and Cultural Organization regarding the UNESCO Regional Education Bureau in the Arab Countries.⁶² Signed at Beirut on 22 December 1972.

The substantive provisions of this Agreement are similar to those of the Agreement reproduced in (a) above. However, in article 7:

(i) The words “ on the understanding that the Lebanese Government will reimburse to the Organization any taxes which it may have collected on the said salaries and emoluments ” are added at the end of paragraph 1 (b).

(ii) Paragraph 1 (g) reads as follows:

“(g) Shall, provided they formerly resided abroad, be granted the right to import free of duty their furniture, their personal effects and any household equipment intended for their personal use at the time of their establishment in Lebanon. This privilege shall extend over a maximum period of six months from the date of their arrival in Lebanon”;

⁶² Came into force provisionally on the date of signature.

- (iii) The words “ for the duration of their mission, on the conditions laid down under the régime for temporary admission ” are added at the end of paragraph 1 (h);
- (iv) Paragraph 1 (i) is omitted;
- (v) The words “ except if caught in the act of committing an offence. The competent Lebanese authorities shall, in such cases, immediately inform the Director-General of the Organization of the arrest or of the seizure of luggage ” are added at the end of paragraph 4 (a).

(c) Agreements were also concluded between UNESCO and the Governments of Argentina, Belgium, Byelorussian SSR, Denmark, Federal Republic of Germany, Hungary, India, Kenya, Malaysia, Mexico, Niger, Nigeria, Philippines, Poland, Romania and Togo relating to meetings scheduled to be held in their respective territories. These agreements contain a provision similar to that reproduced on page 25 of the *Juridical Yearbook*, 1971, in paragraph (2).

4. INTERNATIONAL ATOMIC ENERGY AGENCY

1. Agreement on the Privileges and Immunities of the International Atomic Energy Agency.⁵³ Approved by the Board of Governors on 1 July 1959

(a) *Deposit of Instruments of Acceptance*

The following Member States accepted the Agreement on the Privileges and Immunities of the International Atomic Energy Agency in 1972:⁵⁴

<i>State</i>	<i>Date of deposit of instrument of acceptance</i>
Ireland	29 February 1972
Luxembourg ⁵⁵	24 March 1972

This brought up to 41 the number of States parties to this Agreement.

(b) *Incorporation of provisions of the Agreement by reference in other agreements*

(i) Article 10 of the Agreement between the Republic of Finland and the International Atomic Energy Agency on Safeguards (INFCIRC/155); entered into force on 9 February 1972.

(ii) Article 10 of the Agreement between the Government of Canada and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/164); entered into force on 21 February 1972.

⁵³ United Nations, *Treaty Series*, vol. 374, p. 147.

⁵⁴ The Agreement enters into force as between the Agency and the accepting State on the date of deposit of the instrument of acceptance.

⁵⁵ With the following reservation:

“In accordance with the provisions of Article XII, Section 38 of the Agreement, Luxembourg excludes from application the last sentence of Article VI, Section 20 thereof.”

(iii) Part V, Section 25 of the Agreement between the International Atomic Energy Agency, the Government of Switzerland and the Government of the United States of America for the Application of Safeguards (INFCIRC/161); entered into force on 28 February 1972.

(iv) Article 10 of the Agreement between New Zealand and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/185); entered into force on 29 February 1972.

(v) Article 10 of the Agreement between the Government of Malaysia and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/182); entered into force on 29 February 1972.

(vi) Article 10 of the Agreement between the Government of Ireland and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/184); entered into force on 29 February 1972.

(vii) Article 10 of the Agreement between the People's Republic of Bulgaria and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/178); entered into force on 29 February 1972.

(viii) Article 10 of the Agreement between the Republic of Iraq and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/172); entered into force on 29 February 1972.

(ix) Article 10 of the Agreement between the Kingdom of Norway and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/177); entered into force on 1 March 1972.

(x) Part V, Section 25 the Agreement between the International Atomic Energy Agency, the Government of Sweden and the Government of the United States of America for the Application of Safeguards (INFCIRC/165); entered into force on 1 March 1972.

(xi) Article 10 of the Agreement between the Government of the Kingdom of Denmark and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/176); entered into force on 1 March 1972.

(xii) Article 10 of the Agreement between the Government of the Czechoslovak Socialist Republic and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/173); entered into force on 3 March 1972.

(xiii) Article 10 of the Agreement between the Government of the German Democratic Republic and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/181); entered into force on 7 March 1972.

(xiv) Article 10 of the Agreement between the Hungarian People's Republic and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/174); entered into force on 30 March 1972.

(xv) Article 10 of the Agreement between the Kingdom of Nepal and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/186); entered into force on 22 June 1972.

(xvi) Section 27 of the Agreement between the International Atomic Energy Agency, the Government of Japan and the Government of the Commonwealth of Australia for the Application of Agency Safeguards in Respect of the Agreement between those Governments for Co-operation in the Peaceful Uses of Atomic Energy (INFCIRC/170); entered into force on 28 July 1972.

(xvii) Article 10 of the Agreement between the Holy See and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/187); entered into force on 1 August 1972.

(xviii) Article 10 of the Agreement between the Mongolian People's Republic and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/188); entered into force on 5 September 1972.

(xix) Section 27 of the Agreement between the International Atomic Energy Agency, the Government of Japan and the Government of the French Republic for the Application of Agency Safeguards in respect of the Agreement for Co-operation between those Governments in the Peaceful Uses of Nuclear Energy (INFCIRC/171); entered into force on 22 September 1972.

(xx) Part VII, Section 20 of the Agreement between the International Atomic Energy Agency and the Government of the Republic of Argentina for the Application of Safeguards to the Atucha Power Reactor Facility (INFCIRC/168); entered into force on 3 October 1972.

(xxi) Article 10 of the Agreement between the Government of the Polish People's Republic and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/179); entered into force on 11 October 1972.

(xxii) Article 10 of the Agreement between the Government of the Socialist Republic of Romania and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/180); entered into force on 27 October 1972.

(xxiii) Article 10 of the Agreement between the Republic of Zaire and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/183); entered into force on 9 November 1972.

(xxiv) Part V, Section 17 of the Agreement between the International Atomic Energy Agency and the Government of the United Kingdom of Great Britain and Northern Ireland for the Application of Safeguards (INFCIRC/175); entered into force on 14 December 1972.

2. *Provisions affecting the privileges and immunities of the International Atomic Energy Agency in Austria*

1. Article 10 of the Agreement between the Republic of Austria and the International Atomic Energy Agency for the Application of Safeguards Pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/156); entered into force on 23 July 1972.

[Application of the relevant provisions of the Headquarters Agreement; additional immunities of inspectors and other officials performing functions under the Safeguards Agreement.]

2. Supplemental Agreement on the Establishment of an Agency Commissary for the Purpose of Implementing Article XV, Section 38 (j) (iii) of the Agreement between the IAEA and the Republic of Austria regarding the Headquarters on the IAEA of 11 December 1957 ⁵⁶ as amended on 4 June 1970 ⁵⁷ (INFCIRC/15/Mod.3); entered into force on 1 April 1972.

⁵⁶ United Nations, *Treaty Series*, vol. 339, p. 111.

⁵⁷ See *Juridical Yearbook*, 1971, p. 36.

Part Two

**LEGAL ACTIVITIES OF THE UNITED NATIONS
AND RELATED INTERGOVERNMENTAL
ORGANIZATIONS**

Chapter III

GENERAL REVIEW OF THE LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. General review of the legal activities of the United Nations

1. DISARMAMENT AND RELATED MATTERS ¹

During its two series of meetings in 1972, the Conference of the Committee on Disarmament gave priority to the question of the prohibition of the development, production and stockpiling of chemical weapons and to the question of cessation of nuclear weapon tests. General and complete disarmament, as well as specific measures to halt the nuclear arms race were also considered.

At its twenty-seventh session, the General Assembly considered the following items relating to disarmament:

(1) WORLD DISARMAMENT CONFERENCE

The Assembly [resolution 2930 (XXVII)] *inter alia* invited the Governments of all States to exert further efforts with a view to creating adequate conditions for the convening of a world disarmament conference at an appropriate time and decided to establish a Special Committee of 35 Member States which it requested to examine all the views and suggestions expressed by Governments on the convening of a world disarmament conference and related problems.

(2) GENERAL AND COMPLETE DISARMAMENT

The Assembly [resolution 2932A (XXVII)] welcomed the report of the Secretary-General on napalm and other incendiary weapons; ² it deplored the use of napalm and other incendiary weapons in all armed conflicts.

Furthermore, the Assembly [resolution 2932B (XXVII)] noted with satisfaction the Strategic Arms Limitation Agreements signed by the Soviet Union and the United States on 26 May 1972 and appealed to the Governments of both countries to make every effort to expedite the conclusion of further agreements including important qualitative limitations and substantial reductions of offensive and defensive strategic nuclear weapon systems.

(3) CHEMICAL AND BACTERIOLOGICAL (BIOLOGICAL) WEAPONS

The Assembly [resolution 2933 (XXVII)] again requested the Conference of the Committee on Disarmament to continue negotiations, as a matter of high priority, with a view

¹ For detailed information see *Official Records of the Disarmament Commission, Supplement for 1972* and *Official Records of the General Assembly, Twenty-seventh Session, Annexes*, agenda items 26, 27, 30, 32, 32 and 34.

² A/8803/Rev. 1 (United Nations publication, Sales No. E.73.1.3).

to reaching early agreement on effective measures for the prohibition of the development, production and stockpiling of chemical weapons and for their destruction. The Assembly also reaffirmed its hope for the widest possible adherence to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.³ It further invited all States that had not yet done to accede to the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous and Other Gases, and of Bacteriological Methods of Warfare of 17 June 1925⁴ or to ratify it, and called anew for the strict observance by all States of the principles and objectives contained therein.

(4) URGENT NEED FOR SUSPENSION OF NUCLEAR AND THERMONUCLEAR TESTS

The Assembly [resolution 2934A (XXVII)] stressed anew the urgency of bringing to a halt all atmospheric testing of nuclear weapons in the Pacific or anywhere else in the world; called upon all nuclear-weapon States to suspend nuclear weapon tests in all environments; and called upon the Conference of the Committee on Disarmament to give urgent consideration to the question of a treaty banning all nuclear weapon tests.

Furthermore the Assembly [resolution 2934B (XXVII)] urged all States to adhere to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water;⁵ called upon all Governments concerned to undertake immediately unilateral or negotiated measures to suspend or reduce underground testing; requested the Conference of the Committee on Disarmament to give first priority to a comprehensive treaty banning such tests; urged further development of capabilities for verification of underground tests; and called upon Governments urgently to seek a halt to all testing.

Finally, the Assembly [resolution 2934C (XXVII)] reaffirmed its conviction that there was no valid reason for delaying the conclusion of a comprehensive nuclear test ban and urged nuclear-weapon States to halt all tests at the earliest possible date, and in any case not later than 5 August 1973 either through a permanent agreement or through unilateral or agreed moratoria.

(5) IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 2830 (XXVI)⁶ CONCERNING THE SIGNATURE AND RATIFICATION OF ADDITIONAL PROTOCOL II OF THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA (TREATY OF TLATELOLCO)⁷

The Assembly [resolution 2935 (XXVII)] reaffirmed its conviction that the cooperation of the nuclear-weapon States was necessary for the effectiveness of any treaty establishing a nuclear-weapon-free zone; welcomed the declaration made by the Government of the People's Republic of China on 14 November 1972⁸ and invited China to accede to the Protocol as soon as possible; and urged two nuclear-weapon States which had not yet acceded to the Protocol to sign and ratify it without further delay.

³ Reproduced in the *Juridical Yearbook*, 1971, p. 118.

⁴ League of Nations, *Treaty Series*, vol. XCIV, p. 65.

⁵ Reproduced in the *Juridical Yearbook*, 1963, p. 107.

⁶ Reproduced in the *Juridical Yearbook*, 1971, p. 47.

⁷ Reproduced in the *Juridical Yearbook*, 1967, p. 272.

⁸ See document A/C.1/1028.

2. OTHER POLITICAL AND SECURITY QUESTIONS

(1) STRENGTHENING OF INTERNATIONAL SECURITY ⁹

The Secretary-General submitted a report ¹⁰ on the implementation of the Declaration on the Strengthening of International Security: ¹¹ he stated in particular that if the United Nations was expected to play a crucial and meaningful role in the complex relationship among States, greater efforts must be exerted to make it more relevant to the manifold social, economic, political and security problems of our times. In order to make the Organization more effective, the obligation assumed by Member States, under Article 25 of the Charter, to comply with the decisions of the Security Council should be scrupulously respected by all. Furthermore it was essential that Member States try to resolve all outstanding conflicts by peaceful means in accordance with the procedures for peaceful settlement provided for in the Charter.

The Assembly [resolution 2993 (XXVII)] *inter alia* urged all States to take measures to eliminate armed conflicts, colonialism, racism and other situations which prevented peoples from exercising their right to self-determination and independence, in accordance with the Charter and reaffirmed that pressure against any State while exercising its sovereign right freely to dispose of its natural resources was a flagrant violation of the principles of self-determination and non-intervention, as set forth in the Charter.

(2) NON-USE OF FORCE IN INTERNATIONAL RELATIONS AND PERMANENT PROHIBITION OF THE USE OF NUCLEAR WEAPONS ¹²

This item was included in the agenda of the twenty-seventh session of the General Assembly at the request of the Union of Soviet Socialist Republics ¹³ which stressed *inter alia* that the adoption by the Assembly of a resolution on the question would constitute a significant contribution to the strengthening of international security and to the prevention of armed conflicts. The USSR added that the obligation to refrain from the use of force was fully in keeping with the Charter and it did not imply the renunciation by States of their inherent right of individual and collective self-defence under Article 51, nor did it infringe the right of people to carry on the struggle for their freedom and independence.

The Assembly [resolution 2936 (XXVII)] solemnly declared on behalf of the States Members of the Organization, their renunciation of the use or threat of force in all its forms and manifestations in international relations, in accordance with the Charter, and the permanent prohibition of the use of nuclear weapons.

(3) QUESTION OF THE HIJACKING OF AIRCRAFT

In a document issued on 20 June 1972, ¹⁴ the President of the Security Council announced the decision which the Council had adopted on hijacking by consensus on that date, further to a telegram which the Secretary-General had received from the International

⁹ For detailed information, see *Official Records of the General Assembly, Twenty-seventh Session, Annexes*, agenda item 35.

¹⁰ A/8775 and Add.1-4.

¹¹ General Assembly resolution 2734 (XXV), reproduced in the *Juridical Yearbook*, 1970, p. 62.

¹² For detailed information, see *Official Records of the General Assembly, Twenty-seventh Session, Annexes*, agenda item 25.

¹³ See document A/8793.

¹⁴ Document S/10705.

Federation of Airline Pilots Association and which he had transmitted to the members of the Council for their information. In that decision, members of the Council expressed concern at the threat to the lives of passengers and crews arising from the hijacking of aircraft and other unlawful interference with international civil aviation. The Council also called upon States to take all appropriate measures to prevent such acts and to take effective measures to deal with those who committed such acts.

3. ECONOMIC, SOCIAL AND HUMANITARIAN ACTIVITIES

(1) HUMAN RIGHTS ¹⁵

(a) *International instruments*

(i) *International Convention on the Elimination of All Forms of Racial Discrimination* ¹⁶

The General Assembly had before it at its twenty-seventh session the third report of the Committee on the Elimination of Racial Discrimination established under article 8 of the Convention to receive and consider communications from individuals or groups of individuals within the jurisdiction of States parties claiming to be victims of a violation by the States concerned of any of the rights set forth in the Convention. Under article 14 of the Convention, the Committee is competent to exercise this function only when at least ten States parties are bound by declarations made to that effect. By the end of 1972, three States parties had made such declarations. The Assembly [resolution 2921 (XXVII)] urgently requested all States which were not yet parties to the International Convention to ratify or accede to it, if possibly by 10 December 1973, the twenty-fifth anniversary of the Universal Declaration of Human Rights.

(ii) *International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol thereto* ¹⁷

The General Assembly [resolution 3025 (XXVII)] expressed the hope that Member States would find it possible to take appropriate action with a view to accelerating the steps that would enable them to deposit their instruments of ratification or accession if possibly by 10 December 1973.

(b) *Slavery*

At its fifty-second session, the Economic and Social Council adopted, on the basis of a draft resolution submitted by the Sub-Committee on Prevention of Discrimination and Protection of Minorities, a resolution [1965 (LII)] in which it called upon all eligible States which were not yet parties to become parties as soon as possible to the international Slavery Convention of 1926 ¹⁸ and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 ¹⁹ as

¹⁵ For detailed information, see *Official Records of the Economic and Social Council, Fifty-second Session, Supplement No. 7* (E/5113).

¹⁶ Reproduced in the *Juridical Yearbook*, 1965, p. 63. The Convention came into force on 4 January 1969.

¹⁷ Reproduced in the *Juridical Yearbook*, 1966, p. 170. Those instruments have not yet come into force.

¹⁸ League of Nations, *Treaty Series*, vol. LX, p. 253.

¹⁹ United Nations, *Treaty Series*, vol. 266, p. 3.

well as a number of ILO Conventions dealing with matters closely related to the abolition of slavery, the slave trade and institutions and practices similar to slavery. It drew attention to the close relationship between the effects of slavery, *apartheid* and colonialism and to the need to take concrete measures to ensure the effective implementation of the relevant international conventions and decisions of the United Nations with a view to bringing about the complete elimination of these shameful phenomena. It called upon all States to enact any necessary legislation and to provide effective penal sanctions for persons committing, or ordering to be committed, any of the following acts: (a) abduction, or planning the abduction, or filing instructions for the abduction of any person by force, treachery, gifts, abuse of authority or power, or intimidation, which results in that person being placed in a status of slavery or servitude as defined in the international Slavery Convention of 1926 and the Supplementary Convention of 1956; (b) holding any person in a status of slavery or servitude as defined in those Conventions. The Council also called upon all States to search for persons alleged to have committed, or to have ordered to be committed, any such acts, and to bring such persons, regardless of their nationality, before its own courts or to hand such persons over for trial to another State concerned.

(c) *Exploitation of labour through illicit and clandestine trafficking*

Recalling the provisions of Economic and Social Council resolution 1706 (LII) in which the Council had noted with alarm and indignation reports of incidents involving the illegal transportation, organized or undertaken by criminal elements, to some European countries and the exploitation of workers from some African countries in conditions akin to slavery and forced labour, and had appealed to the Governments concerned to take or enforce the application of measures to put an end to the discriminatory treatment of which migrant workers in their territory were the victims. It invited all Governments to ensure respect for the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and urged the Governments which had not yet done so to give high priority to the ratification of the ILO Convention concerning Migration for Employment (Revised 1949).

(d) *Question of the violation of human rights*

At its twenty-eighth session, the Commission on Human Rights examined a study, prepared by an *Ad Hoc* Working Group of Experts, of the question of *apartheid* from the point of view of international penal law;²⁰ the study dealt with the relevant doctrine, with international instruments relating to international penal law and with practices and manifestations of *apartheid* which could be considered as crimes under international law. On the recommendation of the Commission, the Council decided to transmit the study to Member States, the Special Committee on *Apartheid* and the International Law Commission for comment.

(2) PROMOTION OF EQUALITY OF MEN AND WOMEN²¹

(a) *International instruments and national standards relating to the status of women*

The Secretary-General prepared for the twenty-fourth session of the Commission on the Status of Women a report²² on the implementation of the Declaration on the Elimi-

²⁰ E/CN.4/1075.

²¹ For detailed information, see *Official Records of the Economic and Social Council, Fifty-second Session, Supplement No. 6* (E/5109).

²² E/CN.6/548.

nation of Discrimination against Women,²³ on the basis of which the Commission [resolution 2 (XXIV)] expressed the hope that Member States give full effect to the Declaration. As a result of the work of the Commission in this field, the General Assembly adopted two resolutions, one of which [resolution 3209 (XXVII)] related to the employment of women in senior and other professional positions in the secretariats of organizations in the United Nations system and the other one [resolution 3007 (XXVII)] requested the Secretary-General to submit to it at its twenty-eighth session a study relating to the Staff Rules and Regulations of the United Nations whose application might give rise to discrimination on grounds of sex. The Commission also examined, at its twenty-fourth session, a report prepared by the ILO on the application of the principles of equal remuneration for men and women workers.²⁴ Finally, on the basis of a report of the Secretary-General, the Commission decided to establish a working group which would begin work on the preparation of a new draft instrument of international law to eliminate discrimination against women. At its fifty-fourth session, the Economic and Social Council established the working group whose report²⁵ will be considered by the Commission at its twenty-fifth session.

(b) *The role of women in the family*

(i) *The status of the unmarried mother*

On the recommendation of the Commission on the Status of Women, the Economic and Social Council [resolution 1679 (LII)] adopted a set of general principles aimed at the elimination of any legal or social discrimination against the unmarried mother.

(ii) *The status of women in private law*

The Secretary-General has undertaken the preparation of a report on the legal capacity of married women which will be arranged according to the following outline: nature of the legal relationship existing between the spouses, capacity of the wife in the context of the personal as well as the basic patrimonial relations of the spouses and questions of domicile and residence of the wife, including freedom of movement.

(3) OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES²⁶

With respect to the international instruments relating to the status of refugees, it is to be noted that additional States have acceded to the 1967 Protocol relating to the Status of Refugees.²⁷ Reports received from States parties to the 1951 Convention²⁸ and the 1967 Protocol indicate that these instruments are, on the whole, being implemented in a satisfactory manner.

Among other international legal instruments of direct interest to refugees, the OAU Convention of 1969 governing the Specific Aspects of Refugee Problems in Africa is of special importance since the great majority of refugees assisted by UNHCR are in Africa. One third of the 41 States members of OAU must ratify the Convention before it comes into force; as of 15 June 1972, five countries had ratified it. Four States have adhered to

²³ Reproduced in the *Juridical Yearbook*, 1967, p. 140.

²⁴ E/CN.6/550.

²⁵ E/CN.6/574.

²⁶ For detailed information see *Official Records of the General Assembly, Supplement No. 12 and 12A* (A/8712 and Add.1).

²⁷ Reproduced in the *Juridical Yearbook*, 1967, p. 285.

²⁸ United Nations, *Treaty Series*, vol. 189, p. 137.

the 1961 Convention on the Reduction of Statelessness;²⁹ two additional accessions are required for the entry into force of the Convention.

On the national plane, further measures have been taken for the benefit of refugees, particularly in respect of access to employment and social security.

With regard to the vital questions of asylum and *non-refoulement* increasing attention is being given to the possibility of strengthening the application of the principle of asylum by the adoption of a binding legal instrument on the subject.

(4) DRUG ABUSE CONTROL

Pursuant to Economic and Social Council resolution 1577 (L), the United Nations Conference to consider Amendments to the Single Convention on Narcotic Drugs, 1961, met at Geneva with the participation of the representatives of 97 States, observers from five States and representatives of WHO, the International Narcotics Control Board and the International Criminal Police Organization. As a result of its deliberations, the Conference adopted and opened for signature a Protocol amending 13 articles of the Single Convention and introducing 3 new articles thereto.

4. INTERNATIONAL COURT OF JUSTICE³⁰

(1) CASES SUBMITTED TO THE COURT

(a) *Appeal relating to the jurisdiction of the ICAO Council (India v. Pakistan)*.

[For a summary of the judgment delivered by the Court, see p. 203 of this *Yearbook*].

(b) *Fisheries jurisdiction (United Kingdom v. Iceland; Federal Republic of Germany v. Iceland)*.

These two cases which concern Iceland's decision to extend its exclusive jurisdiction from a limit of 12 to one of 50 miles as from 1 September 1972 are pending before the Court.

(c) *Application for review of Judgment No. 158 of the United Nations Administrative Tribunal (Advisory opinion)*

These proceedings arose from an application for the review of Judgement No. 158 given by the United Nations Administrative Tribunal in the case of *Fasla v. the Secretary-General*.³¹

On 20 June 1972, the Committee on Applications for Review of Administrative Tribunal Judgement decided to request of the Court an advisory opinion on the questions whether the Tribunal had failed to exercise its jurisdiction in the case or had committed a fundamental error in procedure occasioning a failure of justice.³²

²⁹ A/CONF.9/15.

³⁰ For detailed information see I.C.J. *Yearbook* 1971-1972 No. 26, and 1972-1973 No. 27.

³¹ For a summary of this judgement, see p. 127 of this *Yearbook*.

³² The Court delivered its advisory opinion on 12 July 1973.

(2) FIFTIETH ANNIVERSARY OF THE INAUGURATION OF THE INTERNATIONAL JUDICIAL SYSTEM

On 27 April 1972, the Court held a Special Sitting in order to commemorate the fiftieth anniversary of the inauguration of the international judicial system. The President of the Court recalled that the Permanent Court of International Justice had held its inaugural meeting in the same hall on 15 February 1922, and went on to trace the evolution and the future prospects of international judicial settlement.

(3) REVISION OF THE RULES OF COURT

While the Court has not yet completed the entire revision of its rule of procedure, on 10 May 1972 it adopted amendments to the articles of the Rules which appeared to call for amendments as a matter of priority with the aim of making its procedure as simple and expeditious as possible, to provide for greater flexibility, to avoid delays and to simplify both contentious and advisory proceedings. The Rules of Court as amended have come into force on 1 September 1972 but for cases submitted before that date, the previous Rules will continue to apply.

5. INTERNATIONAL LAW COMMISSION

Most of the twenty-fourth session of the Commission was devoted to the consideration of the topics "Succession of States in respect of treaties" and "Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law". On both of these topics the Commission adopted a complete set of draft articles.³³

At its twenty-seventh session, the General Assembly [resolution 2926 (XXVII)] recommended that the Commission should continue its work on the following questions: State responsibility succession of States in respect of matters other than treaties, most-favoured-nation clause, treaties concluded between States and international organizations or between two or more international organizations. It also invited States and the specialized agencies and interested intergovernmental organizations to submit as soon as possible their comments on the draft articles concerning the prevention and punishment of crimes against diplomatic agents and decided to include the question in the provisional agenda of its twenty-eighth session with a view to the final elaboration of a convention by the General Assembly.

6. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ³⁴

At its fifth session, the Commission continued its work concerning the international sale of goods: it considered: (1) with respect to the question of the "Uniform rules gover-

³³ For the text of these two drafts see *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10 (A/8710/Rev.1)*. See also *ibid.*, *Twenty-seventh Session, Annexes*, agenda item 85 and *Yearbook of the International Law Commission 1972*, vols. I and II (United Nations publication, Sales Nos. E.73.V.4 and E.73.V.5).

³⁴ For detailed information, see *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17 (A/8717)* and *ibid.*, *Twenty-seventh Session, Annexes*, agenda item 86. See also *Yearbook of the United Nations Commission on International Trade Law*, volume III: 1972 (United Nations publication, Sales No. E.73.V.6).

ning the international sale of goods” a programme report on the third session of the Working Group on Sales, held in January 1972; and (2) with respect to the “General conditions of sale and standard contracts” a progress report on a study by the Secretary-General concerning the feasibility of developing general conditions embracing a wider scope of commodity than were included in existing general conditions forms; with respect to time limits and limitations (prescription), the Commission approved a draft convention, the purpose of which is to provide uniform rules relating to the period within which claims arising out of international sales transactions may be brought before a tribunal.

With respect to international payments, the Commission established a working group entrusted with the task of preparing a final draft uniform law on international bills of exchange and promissory notes.

Finally, the Commission proceeded with work on international commercial arbitration and international legislation on shipping.

The General Assembly [resolution 2928 (XXVII)] commended the Commission for the progress it had made and recommended that it should combine its work. Furthermore the Assembly [resolution 2929 (XXVII)] decided that an international conference of plenipotentiaries should be convened in 1974 to conclude, on the basis of the draft articles prepared by the Commission, a convention on prescription (limitation) in the international sale of goods.

7. OTHER LEGAL QUESTIONS

(1) QUESTION OF DEFINING AGGRESSION ³⁵

At its 1972 session, the Special Committee on the Question of Defining Aggression re-established its Working Group, which was instructed to help the Special Committee in the same manner as at the 1971 session. In the interval between formal meetings of the Working Group, informal negotiations were held with a view to overcoming the difficulties which had arisen and to reaching generally acceptable compromise solutions on the various elements of the definition.

On the recommendation of the Special Committee, the Assembly decided at its twenty-seventh session [resolution 2967 (XXVII)] that the Committee should resume its work in 1973.

(2) INTERNATIONAL TERRORISM ³⁶

Further to an initiative taken by the Secretary-General, the General Assembly decided [resolution 3034 (XXVII)] entitled “Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes”) to establish an *Ad Hoc* Committee on International Terrorism consisting of 35 members and requested it *inter alia* to formulate recommendations for possible co-operation for the speedy elimination of the problem.

³⁵ For detailed information, see *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 19 (A/8719)* and *ibid.*, *Twenty-seventh Session, Annexes*, agenda item 88.

³⁶ For detailed information, see *Official Records of the General Assembly, Twenty-seventh Session, Annexes*, agenda item 92. For the report of the Committee to the twenty-eighth session of the General Assembly, see *ibid.*, *Twenty-eighth Session, Supplement No. 28 (A/9028)*.

(3) RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICT ³⁷

At its twenty-seventh session, the Assembly had before it a report of the Secretary-General (A/8781 and Corr.1) containing a summary of the results of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, convened by the International Committee of the Red Cross at Geneva in the spring of 1972. The Assembly welcomed [resolution 3032 (XXVII)] the readiness of the Swiss Federal Council to convoke a diplomatic conference on the question. It also called upon all parties to armed conflicts to observe the international humanitarian rules which are applicable and requested the Secretary-General to prepare, as soon as possible, a survey of existing rules of international law concerning the prohibition or restriction of use of specific weapons. ³⁸

(4) LEGAL ASPECTS OF THE PEACEFUL USES OF OUTER SPACE ³⁹

The most significant development was the coming into effect, on 1 September 1972, of the *Convention on International Liability for Damage caused by Space Objects*. ⁴⁰

At its fifteenth session, the Committee on the Peaceful Uses of Outer Space commended the Legal Sub-Committee for approving, at the Sub-Committee's eleventh session, the text of the preamble and 21 articles of a draft treaty relating to the Moon and for elaborating the text of the preamble and nine articles of the draft convention on the registration of space objects. At its twenty-seventh session, the General Assembly [resolution 2915 (XXVII)] agreed that the Legal Sub-Committee should pursue, as a matter of priority, its work on both drafts. It also expressed the hope for an early consideration by the Legal Sub-Committee of matters relating to the definition of outer space, to the use of satellites for direct television broadcasting and to remote sensing of earth resources through satellite.

(5) THE SEA-BED OUTSIDE NATIONAL JURISDICTION AND CONVENING OF A CONFERENCE ON THE LAW OF THE SEA ⁴¹

The Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction submitted to the General Assembly at its twenty-seventh session a report including an account of the questions dealt with in the general debate at both sessions in 1972 and of the work of the three Sub-Committees. Part I recounted comments relating to the rate of progress achieved; Part II dealt with subjects and functions allocated to Sub-Committee I (status, scope and basic provisions of the régime based on the Declaration of Principles set forth in General Assembly resolution 2749 (XXV); ⁴² Part III dealt with the work carried out by Sub-Committee II (preparation of a comprehensive list of subjects and issues relating to the law of the sea); Part IV dealt with the discussions in Sub-Committee III which covered the preservation of the marine environment, including the prevention of pollution, scientific research and the transfer of technology. At its

³⁷ For detailed information, see *ibid.*, *Twenty-seventh Session, Annexes*, agenda item 49.

³⁸ The study has been submitted to the twenty-eighth session of the General Assembly as document A/9215.

³⁹ For detailed information, see *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 20 (A/8720)* and *ibid.*, *Twenty-seventh Session, Annexes*, agenda item 28.

⁴⁰ Reproduced in the *Juridical Yearbook*, 1971, p. 111.

⁴¹ For detailed information, see *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21 (A/8721 and Corr.1)* and *ibid.*, *Twenty-seventh Session, Annexes*, agenda item 36.

⁴² Reproduced in the *Juridical Yearbook*, 1970, p. 55.

twenty-seventh session, the General Assembly [resolution 3029A (XXVII)] *inter alia* requested the Secretary-General to convene the first session of the Third United Nations Conference on the Law of the Sea in New York in November and December 1973 and decided to convene the second session of the Conference at Santiago, Chile in April and May 1974.

(6) RELATIONS WITH THE HOST COUNTRY ⁴³

The Committee on Relations with the Host Country held six meetings in 1972. In its report to the General Assembly at the twenty-seventh session, the Committee included a set of recommendations on measures by the host country to ensure the security of permanent missions and the safety of their personnel. The General Assembly [resolution 3033 (XXVII)] condemned all acts of violence, terrorist attacks and harassment against missions or their personnel, considered it necessary that active measures be taken to enhance relations between the diplomatic community and the local community and decided that the Committee should continue its work in 1973.

8. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH

In the course of 1972, UNITAR published two additional studies on the peaceful settlement of disputes, entitled, respectively, *Peaceful Settlement in Africa: Role of the Organization for African Unity and the United Nations*; (document PS No. 5) and *The Quiet Approach: A Study of the Good Offices Exercised by the United Nations Secretary-General in the Cause of Peace* (document PS No. 6).

UNITAR also prepared a research report on international co-operation for pollution control (Research report No. 9).

B. General review of the activities of intergovernmental organizations related to the United Nations

1. INTERNATIONAL LABOUR ORGANISATION

1. The International Labour Conference, which held its fifty-seventh session in Geneva in June 1972, adopted the Instrument for the Amendment of the Constitution of the International Labour Organisation, 1972. ⁴⁴ This instrument aims at increasing in a certain proportion the number of members who compose the Governing Body of the International Labour Organisation.

2. No convention or recommendation was adopted by the Conference at its fifty-seventh session.

⁴³ For detailed information, see *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 26 (A/8726)* and *ibid.*, *Twenty-seventh Session, Annexes*, agenda item 91.

⁴⁴ Reproduced in this *Yearbook*, p. 86. Regarding the preparatory work, see: Substitution, in the provisions of the Constitution of the International Labour Organisation relating to membership of the Governing Body, of the figures "fifty-six", "twenty-eight", "eighteen" and "fourteen" for the figures "forty-eight", "twenty-four", "fourteen" and "twelve", International Labour Conference, fifty-seventh session, 1972, Report VII, 11 pp., English, French, German, Russian, Spanish; International Labour Conference, fifty-seventh session, 1972, Record of Proceedings, pp. 125-126.

3. The Committee of Experts on the Application of Conventions and Recommendations met in Geneva from 16-29 March 1972 and presented its report. ⁴⁵

4. The Governing Body Committee on Freedom of Association met in Geneva and adopted Reports 126, ⁴⁶ 127 ⁴⁶ and 128 ⁴⁶ on 11 November 1971, 129 ⁴⁶ and 130 ⁴⁶ on 25 February 1972, and 131 ⁴⁶ and 132 ⁴⁶ on 1 June 1972.

2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

The principal intergovernmental bodies of the Organization responsible for FAO activities of a legal nature are the Conference which, due to its biennial rhythm of sessions did not meet in 1972; the Council which held its fifty-ninth session from 20 November to 1 December 1972; and the Committee on Constitutional and Legal Matters (CCLM) which held its twenty-sixth session from 26 to 29 September 1972.

At the Secretariat level, the legal activities of FAO are coordinated, since 1971, in a single Legal Office directed by the Legal Counsel and consisting of the Office of the Legal Counsel and the Legislation Branch.

I. OFFICE OF THE LEGAL COUNSEL ⁴⁷

1. *General legal advice and services*

In addition to current legal advice and services provided to the Director-General and various units of the Secretariat, the activities of the Office of the Legal Counsel included in 1972 follow-up action to the sixteenth session of the Conference held in November 1971 and the preparation of and services to the sessions of the CCLM ⁴⁸ and the Council ⁴⁹ held in 1972 dealing *inter alia* with the following subjects:

⁴⁵ This report has been published as Report III (Part IV) to the International Labour Conference and consists of three volumes: Vol. A, "General Report and Observations concerning Particular Countries" (Report III (Part 4A), 269 pp., English, French, Spanish; Vol. B, "General Survey on the Reports relating to the Employment Policy Convention and Recommendation, 1964" (Report III (Part 4B)), 127 pp., English, French, Spanish; Vol. C, "General Survey on the Reports relating to two Recommendations concerning Social Conditions of Seafarers (Nos. 107 and 108)" (Report III (Part 4C)), 12 pp., English, French, Spanish.

⁴⁶ These reports will be published in the form of supplements to various issues of Vol. LV (1972) of the *Official Bulletin*, the publication of which has been postponed.

⁴⁷ In addition to the Legal Counsel, the Office consists of six legal officers, of whom one deals with environment law and one covers the legal aspects of international fisheries.

The functions of the Office of the Legal Counsel are:

to provide to the Conference, the Council and other organs of the Organization and of the World Food Programme, as well as the Director-General and the various units of the Secretariat, advice on legal and constitutional questions arising from the activities of the Organization; to represent the Director-General in judicial proceedings before international and national tribunals and in negotiations concerning the settlement of disputes and other legal matters; to prepare drafts of international conventions and agreements and other instruments; to discharge the Director-General's responsibilities as depositary of conventions and agreements; to provide the secretariat and substantive services to the CCLM and, where required, to other committees and conferences dealing with legal matters; to deal with the legal aspects of international fisheries; to deal with the international law aspects of environment protection and coordinate sectoral legislative work in this field.

⁴⁸ CL 59/26.

⁴⁹ CL 59/REP, paras. 220 to 271.

- review of FAO Basic Texts
- official and working languages of FAO ⁵⁰
- methods of work of the Council
- increase in the number of Council seats
- establishment of Statutes for the Joint FAO/WHO/OAU Regional Food and Nutrition Commission for Africa.

Work connected with sessions of other inter-governmental bodies included:

- a study on “appellations d’origine” and international food standards for the Executive Committee of the FAO/WHO *Codex Alimentarius* Commission ⁵¹
- advice on the question of assistance by the UN/FAO World Food Programme to Bangladesh ⁵²

The following reference documents of legal interest were issued in 1972:

- (i) FAO Basic Texts ... 1972 ed., 2 v. in 1. ⁵³
- (ii) Reference Table of Amendments to the FAO Constitution from 1945 to 1971 inclusive (LEG: MISC/72).
- (iii) Register of international organizations that have formal relations with FAO.
- (iv) Directory of FAO statutory bodies and panels of experts 1972.
- (v) Selected Bibliography on Legal, Historical and Political Aspects of the Food and Agriculture Organization of the United Nations (FAO) and Related Institutions. (LEG: MISC/72/1).

2. *Environment Law*

In addition to the contributions prepared for the United Nations Conference on the Human Environment held in Stockholm, a comparative study on environment legislation was published. ⁵⁴

Legal Office staff participated in, and contributed papers to, the “Table-Ronde sur les aspects juridiques de la lutte contre la pollution de l’air” at Strasbourg, France in March 1972; the FAO/SIDA Training Seminar on Marine Pollution Control at Göteborg, Sweden, in May 1972; and the Colloquium on “Man and his environment” convened by the International Association of Legal Science at Brussels in September 1972. Translations and summaries of environmental legislation of various countries and references to other current national legislation in this field were published in the FAO periodical *Food and Agricultural Legislation* (Volume XXI, Nos. 1 and 2). Legislative information on environment protection laws was provided to a number of governments and private researchers.

3. *Law of the sea and international fisheries*

The sixteenth session of the Conference of FAO (November 1971) recommended that the Committee on Fisheries review its ability to perform all the tasks it was likely to be called upon to carry out in the interest of rational management and utilization of the world fishery resources including those that might arise from the United Nations Conferences

⁵⁰ See also CCLM 26/2.

⁵¹ CX/EXEC 72/18/11.

⁵² WFP/IGC: 22/20 and WFP/IGC: 22/22, para. 104.

⁵³ Issued in English, French, Spanish and Arabic.

⁵⁴ Sand, P. H. *Legal Systems for Environment Protection: Japan, Sweden, United States*. FAO Legislative Studies No. 4, iii + 60 pp.

on the Human Environment and on the Law of the Sea. At its seventh session in April 1972, the Committee on Fisheries considered a secretariat document outlining the constitutional and legal problems involved.⁵⁵ After a thorough debate on the question of its status, functions and composition the Committee decided to refer the matter to one of its sub-committees for further study.

At its annual sessions the Committee on Fisheries is kept informed of the progress achieved by the United Nations Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction (hereinafter referred to as the enlarged Sea-Bed Committee) acting as preparatory committee for the Third United Nations Conference on the Law of the Sea. In particular, the FAO Secretariat prepares synopses of the discussions and proposals relating to fisheries. At its seventh session in April 1972, the Committee on Fisheries considered a document on the session held by the enlarged Sea-Bed Committee in July-August 1971.⁵⁶

Matters of legal interest also arise out of the work of the regional fishery bodies of FAO.⁵⁷ At its Third Session in December 1972, the FAO Fishery Committee for the Eastern Central Atlantic gave preliminary consideration to a secretariat document⁵⁸ on the question of enforcement of the conservation and management measures adopted by that Committee, with particular reference to possible arrangements for international inspection.

II. LEGISLATION BRANCH⁵⁹

1. *Legislative assistance in the field*

Assistance in the field is carried out either by specifically recruited legal experts supervised by the Legislation Branch and provided by it with the necessary backstopping or by officers of the Branch acting temporarily in an advisory capacity to Member Nations or UNDP field projects. Such assistance is provided upon specific requests from Governments, FAO technical departments or field projects.

⁵⁵ COFI/72/6.

⁵⁶ COFI/72/7-Sup. 1.

⁵⁷ See generally *Directory of subsidiary bodies of the FAO regional fishery councils, commissions and committees*. Compiled by Fishery Liaison Unit, Dept. of Fisheries (FAO Fisheries Circular No. 136).

⁵⁸ CECAF/72/6.

⁵⁹ The Legislation Branch advises and assists the FAO Secretariat and Member Nations, both at Headquarters and in the field, on relevant legislative measures and on legal or institutional aspects in the spheres of FAO's competence designed to help the development process.

Its staff of 10 permanent legal officers is subdivided into three sections and a documentation unit and responsibilities are distributed as follows:

(a) *Agrarian and Water Legislation Section*: Legislative aspects of agricultural planning, land use, agrarian structures and reform, soil and water resources, agricultural taxation, cooperatives, credit, insurance and marketing.

(b) *Forestry, Wildlife and Fisheries Legislation Section*: Legislative aspects of forest management, production and industries; wildlife, national parks and hunting; fisheries and related aspects including water pollution.

(c) *Animal, Plants and Food Legislation Section*: Legislative aspects of animal production, veterinary and animal quarantine, animal protection; plant production and protection, quarantine, seeds, fertilizers, insecticides, pesticides, breeder's rights; food standards, inspection, control, labelling, production and marketing.

(d) *Legislative Reference Unit*: Collection, translation, indexing and dissemination of legislative information from FAO member countries.

Projects provided with legislative assistance in the recent past included: water legislation and administration in Ethiopia, Fiji, Cyprus, Libya, Jamaica, Costa Rica, Chad and Mekong Basin Commission; rural code for Togo, land reform legislation in Latin America, soil consolidation legislation in Cyprus inland fisheries legislation in British Solomon Islands, People's Democratic Republic of Yemen, Sudan, Chad Basin; wildlife legislation for the Chad Basin, Sudan, Nepal; forestry legislation in Venezuela, Mexico, El Salvador; food and dairy legislation in Malawi, Ecuador, Sudan.

2. *Legal drafting*

Member Nations especially the developing countries, are tending increasingly to resort to legislation as a means of building the institutional framework needed for promoting economic and social development. This policy has made itself felt in various fields of land reform as well as in forestry, fisheries and food legislation and the Legislation Branch furnishes assistance in drafting or reviews drafts at the request of Member Nations or of FAO technical experts.

Legislative drafts on which advice was given in recent years included: draft land reform laws for Latin American countries, draft soil conservation law for Iran, fisheries legislation for Chile, Dahomey and Libya, draft law on the prevention of water pollution in Bangladesh, draft seed and feedstuffs law for Pakistan, draft wheat law for Syria, milk legislation for Madagascar, Nigeria, Ethiopia, amendment to rural succession law for Tunisia, draft rural code for Rwanda, draft legislation on settlement in Lybia, draft legislation on land use planning in Ethiopia, Mekong Basin Water Charter.

3. *Special or comparative legal studies and reports*

The Legislation Branch has undertaken or contributed to the preparation of a number of studies, documents and working papers of a specialized character on the legislative aspects of subjects of current interest to the FAO.

III. COLLECTION, TRANSLATION AND DISSEMINATION OF LEGISLATIVE INFORMATION

FAO's documentation contains an extensive collection of laws and regulations promulgated by Member Nations during the last fifty years on food, agriculture, forestry and fisheries.

A card index of this material is currently abstracted from about 16,000 official gazettes and other official publications of Member Nations and is classified by subject matter and by country according to a standard classification system. FAO possesses more than 125,000 laws and regulations on food and agriculture, filed since 1946 in addition to the texts collected by the former International Institute of Agriculture from 1911 to 1945.

FAO publishes semi-annually the *Food and Agriculture Legislation*. Annotated lists of laws and regulations on land reform, land settlement and agricultural cooperatives appear regularly in *Land Reform*, a semi-annual FAO publication. Analogous lists are also published in the quarterly *Nutrition Newsletter*.

3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

I. CONSTITUTIONAL AND PROCEDURAL QUESTIONS

(a) *Executive Board*

At its seventeenth session, the General Conference, after having considered several alternative proposals on the matter,⁶⁰ decided to increase the membership of the Executive Board from thirty-four to forty.⁶¹

With the view to speeding up considerably the rotation cycle of membership of the Board and offering the opportunity to a greater number of Member States to participate in the activities of the Board, the General Conference, at the same session, reduced the duration of the term of office of members of the Board from six years to four years without immediate eligibility for a second term.⁶²

Notwithstanding the aforesaid, members of the Board elected prior to the seventeenth session of the General Conference shall serve until the end of the term for which they were elected and those appointed prior to the seventeenth session of the General Conference by the Board in accordance with the provisions of paragraph 4 of Article V of the Constitution to replace members with a four-year term will be eligible for a second term of four years.⁶³

(b) *The Legal Committee*

The Legal Committee, in its eight report (part II) to the sixteenth session of the General Conference, stated *inter alia* that it considered it desirable that a review of its functions as defined in the Rules of Procedure of the General Conference be undertaken, such a review having as its aim "... a more precise definition of those functions in the light of recent developments and current practice".⁶⁴

The General Conference concurred in this opinion of the Committee, placed the "Functions of the Legal Committee" as one of the items on the agenda for its seventeenth session and invited the Director-General to prepare a study of the matter for its consideration.⁶⁵

At the seventeenth session of the General Conference, the Legal Committee, after having considered the Director-General's study,⁶⁶ reported to the plenary meeting of the General Conference on the matter and upon the recommendations contained in that report,⁶⁷ the General Conference adopted a resolution⁶⁸ by which it re-defined some of the functions of the Committee as laid down in the aforementioned Rules of Procedure and also provided that the Committee shall submit its reports directly to the General Conference or to the referring organ or the organ which has been designated by the General Conference.

⁶⁰ See Annexes III-VIII of Document 17C/93, 23 October 1972, 9 p. and Annexes.

⁶¹ 17C/Res. 13.1, 24 October 1972. See p. 88 of this *Yearbook*.

⁶² 17C/Res. 13.2, 24 October 1972. See p. 88 of this *Yearbook*.

⁶³ *Ibid.*

⁶⁴ See Part II of Document 16C/104, 9 November 1970.

⁶⁵ 16C/Res. 46, 13 November 1970.

⁶⁶ Document 17C/27, 14 September 1972, 10 p. and Annex.

⁶⁷ Document 17C/93, Part V, 14 November 1972, 5 p. and Annex.

⁶⁸ 17C/Res. 13.5, 16 November 1972.

(c) *Discussion and separate vote in plenary meetings of the General Conference*

Until the seventeenth session of the General Conference, any Member State which proposed, at a session of the Conference, the discussion and separate vote in plenary meeting of a subject previously considered in the Programme or Administrative Commission and not included as a specific recommendation in the report of the Commission concerned, was required to give notice to the President of the General Conference in order that such a subject should be specifically listed in the agenda of the plenary meeting to which the report of the Commission was submitted.

Following the recommendation of the Executive Board⁶⁹ and the report of the Legal Committee,⁷⁰ the General Conference amended its Rules of Procedure with the result that the requirement referred to in the preceding paragraph has been broadened to apply in cases where subjects have been previously considered in a "... Committee or Commission in which all the Member States are represented."⁷¹

(d) *Methods of application of paragraphs 8 (b) and (c) of Article IV.C. of the Constitution*

Upon the recommendation of the Executive Board⁷² and the report of the Legal Committee,⁷³ the General Conference, at its seventeenth session, adopted an amendment, to its Rules of Procedure, which makes it the responsibility of the Executive Board to consider communications received from Member States invoking the terms of Article IV, paragraph 8 (c), of the Constitution and to make recommendations thereon in a report to the General Conference.⁷⁴

The General Conference may, however, before taking a decision on such a communication or on any other communication of the same nature received after the adoption by the Executive Board of its aforesaid report, decide to refer the question for examination to one of its Committees or Commissions.⁷⁵

(e) *Financing of unforeseen and unavoidable expenses*

At its seventeenth session, the General Conference considered the question of the financing of unforeseen and unavoidable expenses. After examining the recommendation of the Executive Board⁷⁶ and the reports of the Director-General⁷⁷ and the Administrative Commission⁷⁸ on the subject, the General Conference decided to modify the financial practice of the Organization with regard to the approval of supplementary estimates. To this end, the General Conference adopted amendments to the Financial Regulations as a result of which, subject to final approval by the General Conference, supplementary estimates to a total of 2.5 per cent of the appropriation for the financial period may now be approved provisionally by the Executive Board, if the Board is satisfied that all possibilities of savings and transfers within Parts I to VI of the Budget have been exhausted.⁷⁹

⁶⁹ 90 EX/Decision 6.2, September-November 1972.

⁷⁰ Document 17C/93, Part II, 27 October 1972, 1 p. and Annex.

⁷¹ 17C/Res. 13.6, 30 October 1972.

⁷² 90 EX/Decision 8.1, September-November 1972.

⁷³ Document 17C/93, Part VI, 15 November 1972, 1 p. and Annex.

⁷⁴ 17C/Res. 13.7, 16 November 1972.

⁷⁵ *Ibid.*

⁷⁶ 89 EX/Decision 8.5, May-July 1972.

⁷⁷ Document 17C/42, 7 August 1972, 3 p.

⁷⁸ 17C/92, Part V, paragraphs 64 to 68 and Annex—Recommendations, paragraph 14, 15 November 1972.

⁷⁹ 17C/Res. 19.1, 16 November 1972.

Supplementary estimates in excess of 2.5 per cent of the appropriations for the financial period will continue to be treated as before, that is, they will be reviewed by the Executive Board and submitted to the General Conference with such recommendations as the Board may consider desirable. ⁸⁰

2. MEMBER STATES

(a) *New Member States*

From December 1971 to December 1972, the Constitution of UNESCO was signed, and instruments of its acceptance were deposited, on behalf of the following States:

<i>State</i>	<i>Date of signature</i>	<i>Date of deposit of instrument of acceptance</i>
Bahrain	18 January 1972	18 January 1972
Qatar	27 January 1972	27 January 1972
Oman	10 February 1972	16 December 1971
United Arab Emirates	20 April 1972	20 April 1972
Bangladesh	27 October 1972	27 October 1972
German Democratic Republic	24 November 1972	24 November 1972

Under the terms of the relevant provisions of the Constitution, ⁸¹ each of the aforementioned States became a member of the Organization on the respective date its acceptance took effect.

In the case of Bangladesh and the German Democratic Republic, as they were then not Member States of the United Nations, Article II (2) of the UNESCO Constitution applied to them. Thus, before they deposited their instruments of acceptance, the General Conference had, following applications received from the Governments of the two States and upon recommendations of the Executive Board, adopted by the required two-thirds majority resolutions admitting them to membership of UNESCO. ⁸²

(b) *Withdrawal by a Member State*

On 25 June 1971, the Director-General received a communication by which the Minister of Foreign Affairs of Portugal informed him of Portugal's withdrawal from the Organization. ⁸³ Article II (6) which governs withdrawal of Member States from the Organization provides, *inter alia*, that such a withdrawal notice "... shall take effect on 31 December of the year following that during which the notice was given".

Pursuant to this provision, the aforesaid notice of withdrawal by Portugal from the Organization took effect on 31 December 1972.

3. INTERNATIONAL REGULATIONS

(a) *Entry into force of instruments previously adopted*

In conformity with the terms of its Article 21, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural

⁸⁰ *Ibid.*

⁸¹ See Articles II and XV of the Constitution.

⁸² See 17C/Res. O.71, 19 October 1972, and 17C/Res. 0.72, 21 November 1972.

⁸³ See circular letter CL/2159 and Annexes, 6 July 1971.

Property, adopted on 14 November 1970 by the General Conference,⁸⁴ entered into force on 24 April 1972, that is, three months after the deposit with the Director-General of the third instrument of ratification, acceptance or accession.

(b) *Adoption of new instruments*

In the course of the year under review, the three international standard-setting instruments listed below were adopted or proclaimed by the General Conference:

- Convention concerning the protection of the world cultural and natural heritage (Adopted on 16 November 1972)⁸⁵
- Recommendation concerning the protection, at national level, of the cultural and natural heritage (Adopted on 16 November 1972)⁸⁶
- Declaration of guiding principles on the use of satellite broadcasting for the free flow of information, the spread of education and greater cultural exchange (Proclaimed on 15 November 1972)⁸⁷

4. INITIAL SPECIAL REPORTS BY MEMBER STATES

(a) *Reports submitted to the seventeenth session of the General Conference*

At its seventeenth session, the General Conference, after considering the initial special reports submitted by Member States on the action taken by them upon the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and on the Recommendation concerning the International Standardization of Library Statistics, adopted by the General Conference at its sixteenth session, adopted a general report embodying its comments on the aforesaid action taken by Member States and decided that the general report be transmitted to Member States and their National Commissions, and to the United Nations, in accordance with Article 19 of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution.⁸⁸

(b) *Reports to be submitted to the eighteenth session of the General Conference*

The General Conference, at its seventeenth session, invited Member States to forward to it, not less than two months prior to the opening of its eighteenth session, an initial special report on the action taken by them on the Convention concerning the protection of the world cultural and natural heritage and on the Recommendation concerning the protection, at national level, of the cultural and natural heritage, adopted by the General Conference at its seventeenth session, and to include in such reports information on the points specified in paragraph 4 of resolution 10C/50.⁸⁹

⁸⁴ United Nations, *Juridical Yearbook* 1970, p. 124.

⁸⁵ Reproduced in this *Yearbook*, p. 89. See also Document SHC/MD/18, 21 February 1972, 1 p. and Annexes; 17C/18, 15 June 1972, 1 p. and Annex; 17C/Res. 29, 16 November 1972.

⁸⁶ See Document SHC/MD/18, 21 February 1972, 1 p. and Annexes; 17C/18, 15 June 1972, 1 p. and Annex; 17C/Res. 30, 16 November 1972.

⁸⁷ See Document 17C/76, 21 July 1972, 5 p. and 17C/Res. 4.111, 15 November 1972.

⁸⁸ 17C/Res. 32.1, 16 November 1972.

⁸⁹ 17C/Res. 33.1, 16 November 1972.

5. COPYRIGHT AND NEIGHBOURING RIGHTS

(a) *Desirability of modifying existing conventions or preparing a new international instrument on the protection of television signals transmitted by space satellites*

Pursuant to decisions of the Executive Board of UNESCO at its 88th session (decision 4.5.1) and of the Executive Committee of the Berne Union at its second ordinary session, a second Committee of Governmental Experts on problems in the field of copyright and of the protection of performers, producers of phonograms and broadcasting organizations raised by transmission via space satellites was convened at UNESCO Headquarters in Paris from 9 to 17 May 1972.

Following a general discussion to see whether the problems involved should be solved by revising existing conventions, by the conclusion of an independent new treaty or by some other means, the Committee examined the draft convention prepared by the first Committee of Governmental Experts which met at Lausanne from 21 to 20 April 1971. At the close of its work, the Committee adopted a resolution recommending that once a commentary on the draft convention had been prepared by the Secretariats of UNESCO and the World Intellectual Property Organization (WIPO), and governments and governmental experts had submitted their observations, a third Committee of Experts be convened in 1973 to decide, in the light of its deliberations, whether it was desirable for a diplomatic conference on the matter to be held in 1974.⁹⁰

The seventeenth session of the General Conference of UNESCO⁹¹ authorized the Director-General to convene, in 1973, jointly with the Director-General of WIPO, a third Committee of Governmental Experts, and decided—should the third Committee so recommend—that an intergovernmental conference shall be convened in 1974, jointly with WIPO, so as to draw up and adopt an appropriate international convention on the protection of television signals transmitted by satellite.

(b) *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations—Intergovernmental Committee*

The Intergovernmental Committee established by Article 32 of this Convention,⁹² for which the International Labour Office (ILO), UNESCO and WIPO jointly provide the secretariat, held an extraordinary session on 21 and 22 September 1972 at ILO Headquarters in Geneva to consider the conclusions of the second Committee of Governmental Experts on problems in the field of copyright and of the protection of performers, producers of phonograms and broadcasting organizations raised by transmission via space satellites. At this same session, the Committee was informed of progress made in preparing a draft model law to facilitate the ratification and implementation of the Convention.⁹³

⁹⁰ Report of the second Committee of Governmental Experts on problems in the field of copyright and of the protection of performers, producers of phonograms and broadcasting organizations raised by transmission via space satellites, *Unesco/WIPO/SAT.2/14*, 15 June 1972.

⁹¹ 17C/Res. 5.161, 24 October 1972.

⁹² United Nations, *Treaty Series*, vol. 496, p. 43.

⁹³ Report of the Extraordinary Session of the Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, *ILO/Unesco/WIPO/ICR/1972 EX/6*, 21-22 September 1972.

(c) *Advisability of adopting an international instrument concerning the photographic reproduction of copyrighted works*

After examining the report of the Director-General (17C/23) at its seventeenth session, the General Conference of UNESCO adopted resolution 5.15,⁹⁴ in which it expressed the opinion that it is desirable to prepare an international instrument concerning the photographic reproduction of copyrighted works, and that the instrument should take the form of a recommendation to Member States. The General Conference invited the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union to examine at their meetings in 1973, the feasibility of preparing such a recommendation, and authorized the Director-General to take account of the results of these meetings and, if feasible, to prepare a draft recommendation for submission to the eighteenth session of the General Conference.

(d) *Advisability of adopting an international instrument for the protection of translators*

The seventeenth session of the General Conference⁹⁵ decided to defer consideration of the advisability of adopting an international instrument on the protection of translators to its eighteenth session, and in the meantime invited the Director-General to prepare and submit a report on the desirability of such an instrument and its possible scope and manner of approach.

(e) *International Copyright Information Centre*

Set up in 1971, in accordance with resolution 4.122 adopted by the General Conference at its sixteenth session, as part of the Office of Free Flow of Information, this Centre whose purpose is to "afford developing countries greater access to protected works" was transferred on 1 May 1972 to the Office of International Standards and Legal Affairs.

The Centre began its work by requesting the developing countries to indicate their needs in the field of protected works, and by inviting the developed countries to establish suitable machinery in order to make the works required by the developing countries available to them on the most favourable possible terms. It also encouraged the establishment of national or regional copyright information centres which would co-operate with it by serving as a link between the authors and publishers concerned.

Five national centres had been set up by the end of 1972 in the following countries: United States of America, France, United Kingdom, Federal Republic of Germany and Canada. On their side, the Regional Book Development Centres for Latin America (Bogota) and Asia (Karachi and Tokyo) assumed equivalent functions at the regional level.

Several developing countries approached the International Copyright Information Centre in 1972, either to ask it to get in touch with the copyright holders of certain works published in industrialized countries and obtain authorization to translate or reproduce these works, or to request its assistance in identifying the holders of the copyrights in question.

For the purpose of establishing an inventory of the problems which access to works protected by copyright raises for developing countries, the Centre prepared a questionnaire which the Director-General sent out on 7 July 1972 to all States members of UNESCO. The results of the questionnaire were then analysed and classified in order to identify the

⁹⁴ 17C/Res. 5.151, 24 October 1972.

⁹⁵ 17C/Res. 5.141, 24 October 1972.

problems and determine their extent in each region of the world, as well as within each country. The replies received from 48 States reveal difficulties of four kinds connected with (i) gathering information (bibliographical information, selecting titles, identifying copyright holders); (ii) international relations concerning copyright; (iii) the possibilities of translation and adaptation (lack of translators and adaptors qualified both linguistically and from the point of view of their specialization in the subjects dealt with in the books to be translated); (iv) the economic situation (copyright financing, obstacles of an economic nature relating in particular to customs duties, import taxes, transport charges and currency regulations).

The study of the date produced by the inquiry shows that, despite differences of detail, there is great similarity in the problems faced by developing countries in gaining access to works protected by copyright. These problems have been classified systematically with a view to submitting them for consideration at a meeting of those in charge of regional and national copyright information centres, publishers' associations and bodies and organizations representing authors, whose recommendations will provide the Centre with very useful guidelines for pursuing the goals which have been assigned to it. The preparations for this meeting, planned for 1973, took up a considerable part of the Centre's activities during the final months of 1972.

6. HUMAN RIGHTS

(a) *Implementation of the Convention and Recommendation against Discrimination in Education*

The second report ⁹⁶ of the Committee on Conventions and Recommendations in Education which has responsibility for examining periodic reports by Member States on the implementation of the Convention and Recommendation against Discrimination in Education, together with the comments of the Executive Board on that report, ⁹⁷ was submitted to the seventeenth session of the General Conference.

After adopting the aforesaid report, the General Conference *inter alia* recommended that the Director-General study whether it would not be advisable, as provided for by Article 6 of the Convention against Discrimination in Education and by Section VI of the Recommendation against Discrimination in Education, for the General Conference at subsequent sessions to adopt new recommendations for the international regulation of carefully selected questions so as to clarify the measures to be taken against discrimination and to ensure equality of opportunity and treatment, and submit relevant proposals to this effect to the Executive Board. ⁹⁸

(b) *Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education*

On the report of the Nominations Committee, the seventeenth session of the General Conference, on 20 November 1972, re-elected for a six-year term the following persons as members of the above-mentioned Commission: Dr. Narciso B. Albarracin (Philippines), Professor Dr. Wilhelm Friedrich de Gaay Fortman (Netherlands), Mr. Kéba M'Baye (Senegal) and Judge Helga Pedersen (Denmark). ⁹⁹

⁹⁶ See Document 17C/15, 15 September 1972, 49 p. and Annexes.

⁹⁷ 89 EX/Decision 4.2.4., May-July 1972.

⁹⁸ 17C/Res. 31.1., 17 November 1972.

⁹⁹ See Document 17C/NOM/8, 18 August 1972, 2 p. and Annexes, and 17C/Res. 5.122, 20 November 1972.

In the year under review, no dispute was referred to the Commission for settlement.

(c) *Formulation of international standards*

The Secretariat prepared a preliminary study on the desirability of adopting an international instrument on education for international understanding, co-operation and peace. This study was submitted to the Executive Board which decided, at its 89th session, to include the question in the provisional agenda of the seventeenth session of the General Conference. This preliminary study, with a summary of relevant discussions in the Programme and External Relations Commission of the Executive Board, was subsequently submitted to the seventeenth session of the General Conference.¹⁰⁰ The Conference decided that a draft recommendation, which would also cover education in the field of human rights and fundamental freedoms, should be submitted to it at its eighteenth session.¹⁰¹

(d) *Others*

During the period being reviewed, the Secretariat continued to examine complaints lodged with the Organization regarding human rights but it was found in each of the cases examined that there were no grounds for originating the procedure laid down by the 77th session of the Executive Board for handling communications addressed to UNESCO in connexion with individual cases alleging a violation of human rights in education, science and culture.¹⁰²

7. LEGAL STATUS OF OCEAN DATA ACQUISITION SYSTEMS (ODAS)

A Preparatory Conference of Governmental Experts to Formulate a Draft Convention on the Legal Status of Ocean Data Acquisition Systems (ODAS), convened jointly by UNESCO and the Inter-Governmental Maritime Consultative Organization (IMCO), met at UNESCO Headquarters from 31 January to 11 February 1972.

In a resolution, the Conference referred to its inability to discuss in their entirety the many problems connected with the deployment of ODAS, including the Technical Annexes of the Preliminary Draft Convention, jurisdictional questions and questions relating to private law matters including civil liability of owners and operators of registered ODAS and related issues of public law and recommended to UNESCO and IMCO to convene a second session of the Conference.¹⁰³ The second session will be convened most probably after the United Nations Law of the Sea Conference has completed its deliberations.

4. INTERNATIONAL CIVIL AVIATION ORGANIZATION

1. SETTLEMENT OF DISPUTES BETWEEN CONTRACTING STATES PAKISTAN VERSUS INDIA¹⁰⁴

On 5 June, the President informed the Council that he had received requests from India that consideration of the complaint and disagreement filed by Pakistan under the

¹⁰⁰ Doc. 17C/19, 7 August 1972, 2 p. and Annexes.

¹⁰¹ 17C/Res. 1.222, 17 November 1972.

¹⁰² 77EX/Decision 8.3, October-November 1967.

¹⁰³ See Document SC-72/CONF.85/8, 30 March 1972, 19 p. and Annexes.

¹⁰⁴ See Annual Report of the Council to the Assembly for 1972—Doc 9046, p. 86.

Rules for the Settlement of Differences (Doc 7782) should be postponed until the International Court of Justice had completed consideration of India's appeal against the Council's decision of 29 July 1971 that it had jurisdiction to consider the complaint and disagreement. The Council acceded to the requests and it was understood that the subject would not return to the work programme until the International Court had given its decision. The Court rendered its judgement on 18 August 1972 (*Appeal Relating to the Jurisdiction of the ICAO Council, Judgment*, I.C.J. Reports 1972, p. 46).¹⁰⁵ The Court held, *inter alia*, that the ICAO Council was competent to entertain the application and complaint laid before the Council by the Government of Pakistan on 3 March 1971; and, in consequence, rejected the appeal made to the Court by the Government of India against the decision of the Council assuming jurisdiction in those cases. On 28 August 1972, the Government of India filed its counter-memorial with the Organization. On 15 November, the President informed the Council that the application and complaint of Pakistan against India would not be considered at the then current session of the Council, both parties having agreed to deferment until the next session.

2. REQUEST PRESENTED BY ISRAEL UNDER ARTICLES 54 (n) AND 55 (e)
OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION¹⁰⁶

Following an armed attack incident at Lod Airport on 30 May, the Government of Israel, on 1 June, requested the Council to take certain action in pursuance of Articles 54 (n) and 55 (e) of the Convention on International Civil Aviation.¹⁰⁷ On 19 June, after the Council had adopted a resolution relating to unlawful interference with international civil aviation, the Government of Israel withdrew its request.

3. PROPOSED CONVENTION ON THE INTERNATIONAL COMBINED TRANSPORT
OF GOODS: IMPLICATIONS FOR INTERNATIONAL CIVIL AVIATION¹⁰⁸

The question of the implications for international civil aviation of the Proposed Convention on the International Combined Transport of Goods was considered by a Subcommittee of the Legal Committee in February and by the Legal Committee at its nineteenth session in May. On 28 June, the Council decided that the Legal Committee's report on the subject should be transmitted to the Economic Commission for Europe, the Inter-Governmental Maritime Consultative Organization and the Economic and Social Council as constituting a record of the discussions in the Committee on the subject, but not the "official position" of ICAO, and that a letter should be sent to Contracting States drawing their attention to the Legal Committee's report in connexion with the UN/IMCO Conference on International Container Traffic to be held in November 1972.

4. QUESTION OF THE REVISION OF THE WARSAW CONVENTION OF 1929 AS
AMENDED BY THE HAGUE PROTOCOL OF 1955: (a) CARGO; (b) MAIL;
(c) AUTOMATIC INSURANCE¹⁰⁹

A subcommittee on the above-mentioned subject was established by the nineteenth session of the Legal Committee in May. It met in Montreal from 20 September to 4 October.

¹⁰⁵ For a summary of the judgement, see p. 203 of this *Yearbook*.

¹⁰⁶ See Annual Report of the Council to the Assembly for 1972, Doc 9046, p. 86.

¹⁰⁷ United Nations, *Treaty Series*, vol. 15, p. 295.

¹⁰⁸ See Annual Report of the Council to the Assembly for 1972, Doc 9046, p. 87.

¹⁰⁹ *Ibid.*

The Subcommittee reached a substantial measure of agreement on some questions and an appreciable measure of agreement on others. However, it did not take decisions on certain questions, due to the absence of information from States and the lack of economic data. It considered that its report should be placed before the Legal Committee for further action.

5. SONIC BOOM ¹¹⁰

On 28 June, when considering the report of the first meeting of the Sonic Boom Committee, the Council requested the Legal Committee to consider as soon as possible the question of the applicability of Article 1 (1) of the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (1952). ¹¹¹

6. THE COUNCIL RESOLUTION OF 19 JUNE 1972—JOINT ACTION ¹¹²

On 19 June, the Council adopted a resolution in which, *inter alia*, it directed the Legal Committee to convene immediately a special subcommittee to work on the preparation of an international convention to establish appropriate multilateral procedures within the ICAO framework for determining whether there was a need for joint action in cases envisaged in the first resolution adopted by the Council on 1 October 1970 and for deciding on the nature of joint action if it was to be taken. At the same time, it urged States to become parties as soon as possible to the Tokyo, ¹¹³ Hague ¹¹⁴ and Montreal ¹¹⁵ Conventions, and, in the interim, prior to their becoming parties to these Conventions, to observe to the maximum extent possible under their national laws the provisions of the Conventions.

The special subcommittee of the Legal Committee met at Washington from 4 to 15 September to consider the question of the Council Resolution, and drew up a report. On 1 November, the Council decided to convene a special session of the Legal Committee in January 1973 in Montreal to work on the report of the subcommittee and it also provided for the convening of a diplomatic conference on air security in August-September 1973.

7. COMMITTEE ON UNLAWFUL INTERFERENCE ¹¹⁶

The Committee on Unlawful Interference with International Civil Aviation and its Facilities, established by the Council on 10 April 1969, held one meeting during the year, and its continuance for another year with a membership of eleven was agreed by the Council on 28 September.

On 10 February, the Council adopted a draft resolution developed by the Committee in 1971, urging States to refrain from any act likely to interfere with the passage of aircraft engaged in international civil air transport or the liberty of their passengers and crew when such aircraft, passengers and crew comply with the provisions of the Chicago Convention and its Annexes and national laws and published regulations.

¹¹⁰ See Annual Report of the Council to the Assembly for 1972—Doc 9046, p. 87.

¹¹¹ United Nations, *Treaty Series*, vol. 310, p. 181.

¹¹² See Annual Report of the Council to the Assembly for 1972—Doc 9046, p. 87.

¹¹³ Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963). Reproduced in the *Juridical Yearbook*, 1963, p. 136.

¹¹⁴ Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 1970). *Ibid.*, 1970, p. 131.

¹¹⁵ Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal, 1971). *Ibid.*, 1971, p. 143.

¹¹⁶ See Annual Report of the Council to the Assembly for 1972—Doc 9046, p. 87.

8. ANNEXES TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION,
PROCEDURES FOR AIR NAVIGATION SERVICES (PANS), REGIONAL
SUPPLEMENTARY PROCEDURES (SUPPS)

See "ICAO Technical Publications, Current Edition" which is published in the *ICAO Bulletin*.

5. INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

CREATION OF THE INTERNATIONAL CROPS RESEARCH INSTITUTE FOR THE
SEMI-ARID TROPICS (ICRISAT)

1. A group of governments and organizations,¹¹⁷ called the Consultative Group on International Agricultural Research hereafter referred to as the Consultative Group, was formed in January 1971 for the purpose of sponsoring research programmes designed to raise the quantity and quality of agricultural products in developing countries.

In December 1971, the Consultative Group requested the Ford Foundation to act as its agent and assist in establishing an International Crops Research Institute for the Semi-Arid Tropics (ICRISAT). Certain members of the Consultative Group agreed to make contributions to finance part of the expenditures to be incurred by the Ford Foundation in carrying out this task. At the same time the International Bank for Reconstruction and Development (the Bank) was requested by the Consultative Group to administer a special account consisting of the contributions of donors.

On 22 February 1972, these arrangements were formalized in a Memorandum of Understanding whereby four initial donors, namely the United Kingdom of Great Britain and Northern Ireland, the United States, the Bank and the United Nations Development Programme agreed each to contribute \$100,000 to the venture.¹¹⁸ Appended to this Memorandum of Understanding is an ICRISAT Special Account Agreement between the Bank and the Ford Foundation which provides for the setting up of a special account and sets forth the conditions upon which the proceeds of the donors' contributions are to be made available to the Ford Foundation.

2. Discussions between the Ford Foundation and the Government of India in whose territories it was proposed to locate ICRISAT's headquarters led to the conclusion on 28 March 1972 of a Memorandum of Agreement. This Agreement provides that the parties thereto will work together toward the establishment of ICRISAT "with suitable governance, legal charter, with appropriate status, authorities, privileges and other conditions necessary to enable it to operate effectively and efficiently toward the attainment of its objectives when provided the requisite financial support". Article 6 of the Agreement refers to the international status of the Institute and the privileges and immunities that it and its staff are to enjoy in India.

On 5 July 1972, this Agreement was made part of the Constitution of the International Crops Research Institute for the Semi-Arid Tropics (ICRISAT) whereby the Food and

¹¹⁷ The list of the members of the Consultative Group appears as Appendix 1 to the Constitution of ICRISAT.

¹¹⁸ Subsequent donors include the Federal Republic of Germany, the International Development Research Centre of Canada, Norway, Sweden and Switzerland. As of 28 February 1973, their respective contributions aggregated 1,450,000 dollars.

Agriculture Organization of the United Nations (FAO) and the Bank established ICRISAT "as an autonomous, international, philanthropic, non-profit, research, educational, development training institute".¹¹⁹ On the same day, the Government of India informed both FAO and the Bank that it agreed "to the establishment of ICRISAT as created under the Constitution".

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES (ICSID)

Signatures and Ratifications of the Convention for the Settlement of Investment Disputes between States and Nationals of other States

In the course of 1972, the Convention for the Settlement of Investment Disputes between States and Nationals of other States¹²⁰ (hereinafter referred to as the Convention) was signed and ratified by the Arab Republic of Egypt and by Jordan. As of 31 December 1972, 68 States had signed the Convention and 64 States had deposited their instruments of ratification.

Liaison with Contracting States

The Secretary-General was in contact with the authorities of a number of Contracting States, both capital exporting and capital importing, with regard to potential use of the procedures of the Convention. As a result of these contacts the investment guarantee institutions of several Contracting States began to draw the attention of investors to the existence of the Centre. The Secretary-General also participated in meetings organized by the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD) dealing with questions of private foreign investment.

Submissions to the jurisdiction of the Centre

The Centre continued to receive information from States and investors with respect to the conclusion of agreements in which ICSID clauses are incorporated. Since the Convention does not require the parties to such agreements to inform the Centre thereof before an actual request for conciliation or arbitration is submitted, the Centre has no statistical information as to the extent to which ICSID clauses have been used. Nevertheless, the Secretariat believes that such clauses are being used increasingly, especially in connexion with major investments. Specific enquiries have also been addressed to the Centre relating to the formulation of agreements to submit actual or potential disputes to the jurisdiction of the Centre. In most of these cases, the set of Model Clauses¹²¹ which was prepared by the Secretariat some years ago continued to be of assistance to the parties. However, further consultations with the Secretariat have taken place in connexion with more complicated agreements. The Centre was able to satisfy the needs of both Govern-

¹¹⁹ The full text of the relevant article (Article I) reads as follows:

"Legal Status

"1. The Institute is hereby established as an autonomous, international, philanthropic, non-profit, research, educational, development and training institute.

"2. The Institute shall possess full juridical personality. The signatories to this Constitution [The Food and Agriculture Organization of the United Nations and the International Bank for Reconstruction and Development] and the members of the Consultative Group on International Agricultural Research shall not be responsible or liable, individually or collectively, for any debts, liabilities or other obligations of the Institute."

¹²⁰ Reproduced in the *Juridical Yearbook*, 1966, p. 196.

¹²¹ Document ICSID/5.

ments and investors in this respect thanks to the flexibility of the Convention with respect to its jurisdictional requirements. While some bilateral treaties for the protection and promotion of foreign investments already refer to the Centre's jurisdiction, further consultations have taken place between interested Governments and the Centre. The set of Model Clauses¹²² prepared by the Centre for use in such treaties has been distributed to the States concerned.

Arbitration Proceedings

On 13 January 1972 the Secretary-General registered the first request for arbitration pursuant to Article 36 of the Convention. The request concerned a dispute arising out of an agreement between the Government of Morocco and two private companies, Holiday Inns S.A. (a Swiss company) and Occidental Petroleum Inc. (a U.S. corporation). The Arbitral Tribunal was constituted on 29 March 1972, and held its opening session on 20 April 1972. As agreed by the parties pursuant to Article 63 of the Convention, the session was held at the seat of the Permanent Court of Arbitration at The Hague, with which the Centre had made general arrangements for mutual co-operation.¹²³ The President of the Tribunal is Judge Sture Petré (Swedish) and the other two members are Sir John Foster (British) and Professor Paul Reuter (French). In accordance with the agreement between the parties, each side designated one arbitrator and the two arbitrators so designated selected the President of the Tribunal. The arbitrators designated by the parties were selected from the Panel of Arbitrators maintained by the Centre. The proceedings are still pending.

Project on Investment Laws and Treaties

During 1972, the Centre made substantial progress with the project for the collection, classification and dissemination of the contents of national legislation and international agreements relating to foreign investments. The Centre made arrangements for the publication of this material in a loose-leaf service to be supplemented and brought up-to-date periodically. The first volume which has been published contains materials relating to ten countries. This service entitled "Investment Laws of the World" deals on a country-by-country basis with the laws affecting investment, and consists of a compilation of constitutional, legislative, regulatory and treaty materials. These materials have been prepared and coded in such a way as to provide for uniformity of treatment of the countries covered in the publication, and are presented in both French and English, the official languages of the Centre. The publication has been initially limited to fifty developing countries that are parties to the Convention.

Designations of Panel Members and Other Actions by Contracting States Pursuant to the Convention

Pursuant to Article 13 (1) of the Convention, each Contracting State has the right to designate up to four persons to serve on each of the two Panels maintained by the Centre. As of 31 December 1972, thirty-three States had exercised this right and the names of 118 persons appeared on the Panel of Conciliators and 125 on the Panel of Arbitrators.

No Contracting State has made a notification to the Centre under Article 25 (4) of the Convention (concerning the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre). There have been a few designations under Articles 25 (1) and (3) (constituent subdivisions or governmental agencies empowered

¹²² Document ICSID/6.

¹²³ The text of which is set forth in Annex 7 to the Second Annual Report.

to consent to the jurisdiction of the Centre). In 1972 there have been no further designations under Article 54 (2) (competent court or other authority to which requests for the recognition or enforcement of arbitral awards rendered pursuant to the Convention are to be furnished). Twenty-three States have already notified the Centre of such designations.

6. INTERNATIONAL MONETARY FUND

The legal activities of the International Monetary Fund cover the diverse activities of the Fund as an international regulatory agency which administers a code of obligations binding on its members in monetary matters, and as an international financial agency which administers resources, and supervises the operation of special drawing rights, the new supplement to reserve assets that the Fund allocates to participants in the scheme. During 1972, the legal work of the Fund reflected, in particular, the disturbances in the exchange markets and the reform of the international monetary system.

REFORM OF THE INTERNATIONAL MONETARY SYSTEM AND ORGANIZATION

During the past year the legal staff collaborated in the report of the Executive Directors on the improvement or reform of the international monetary system,¹²⁴ and the Board of Governors resolution establishing a Committee of twenty members to examine reform of the international monetary system¹²⁵ and related issues. The Committee of 20 is a Committee of the Board of Governors appointed by the members of the Fund that appoint executive directors and the groups of members that elect executive directors. There was also established at the same time the Deputies composed of deputies appointed by the members of the Committee to prepare the work of the Committee.

The Executive Directors have been concerned with questions relating to the size and structure of the Executive Board, such as the consequences of the potential membership of small states, geographical and other patterns of distribution, and basic votes under Article XII, Section 5 (a).

EXCHANGE RATES

Following the suspension on August 15, 1971 of the convertibility of the U.S. dollar into gold and other reserve assets, an agreement was reached on 18 December 1971 among members on the realignment of currencies, and the Fund adopted a decision¹²⁶ providing for a temporary régime under which members could permit their exchange rates against their intervention currencies to move within margins of 2½ per cent on either side of the parity relationship, calculated on the basis of par values or central rates communicated to the Fund. The decision indicated the practices that members could follow consistently with their obligations to collaborate with the Fund under Article IV, Section 4 (a) of the Articles of Agreement¹²⁷ to promote exchange stability and to maintain orderly exchange arrangements.

¹²⁴ *Reform of the International Monetary System: A Report by the Executive Directors to the Board of Governors*, Washington, D.C., International Monetary Fund, 1972.

¹²⁵ *Selected Decisions of the International Monetary Fund*, Sixth Issue, 30 September 1972, pp. 151-154.

¹²⁶ Central Rates and Wider Margins: A Temporary Regime, *Selected Decisions . . . op. cit.*, pp. 12-15.

¹²⁷ United Nations, *Treaty Series*, vol. 2, p. 39.

GENERAL ACCOUNT

The resources for the financial activities of the Fund, held in the General Account, are made available to members for temporary assistance in coping with balance of payments difficulties. These resources were normally made available on the basis of par values. The disruption of the international monetary system posed problems for the functioning of the General Account and necessitated the determination of appropriate exchange rates for the Fund's transactions in currencies, as reflected in the realigned exchange rates.¹²⁸

SPECIAL DRAWING ACCOUNT

In 1969, the Fund's Articles of Agreement were amended¹²⁹ to provide for special drawing rights as a supplement to existing reserve assets. All operations and transactions in special drawing rights are conducted through the Special Drawing Account. The original operations and transactions of the Fund, together with certain new ones are conducted through what is called the General Account as a result of the amendment. Decisions to allocate special drawing rights are made for "basic periods", normally five years, but the first decision to allocate was for a basic period of 3 years. This period ended 31 December 1972. The Managing Director of the Fund is empowered to make a proposal in specified circumstances for the allocation or cancellation of special drawing rights, after ascertaining, through consultations with members, that there is broad support among participants for a proposal. At the end of the first basic period, the Managing Director ascertained that there was no proposal consistent with the Articles that had broad support among participants for allocation during the second basic period which began 1 January 1973. During 1972, the rules for the reconstitution of special drawing rights were amended in certain minor respects and a review of the rules for designation was undertaken. It was decided not to adopt any new rules for designation.

CONSULTATIONS WITH MEMBER COUNTRIES

Under Article XIV of the Fund's Articles of agreement, members are required to consult with the Fund on the retention of restrictions on payments and transfers for current international transactions. The decisions concluding these consultations include the Fund's comments on a member's economic situation, policies and prospects. The consultations also facilitate action by the Fund on proposed changes in par values or exchange practices. The consultation procedure has been extended by agreement between the Fund and its members to members that have undertaken to maintain the convertibility of their currencies under Article VIII.

INTERPRETATION

Article XVIII provides that the Fund shall have the power to interpret its own Articles authoritatively. The power is exercised through the Executive Directors, a Committee of the Board of Governors, and the Board of Governors itself. The Fund has adopted only a small number of interpretations under Article XVIII. Most decisions of an interpretation on character are taken informally, that is to say, without recourse to Article XVIII. Certain basic decisions which the Executive Directors have taken over the course of time are to be found in selected decisions of the International Monetary Fund and selected documents.¹³⁰

¹²⁸ *Selected Decisions . . . , op. cit.*, pp. 17-19.

¹²⁹ United Nations, *Treaty Series*, vol. 726, p. 266.

¹³⁰ See footnote 125 above.

TRAINING AND TECHNICAL ASSISTANCE

The legal staff of the Fund participates in the training and technical assistance facilities provided to members to help them in their formulation and execution of economic policies. The IMF Institute conducts courses for the training of officials of member countries in financial analysis and policy, including the Fund's policies and procedures, balance of payments methodology, and public finance.

Technical assistance is provided on central banking legislative problems and policies, and on various legislative aspects of public finance in the field of taxation.

7. UNIVERSAL POSTAL UNION ¹³¹

1. DECISIONS TAKEN BY THE EXECUTIVE COUNCIL AT ITS MAY 1972 SESSION

The Executive Council adopted, with effect from 1 January 1973:

The International Bureau Staff Regulations, which replaces the Regulations of the International Bureau of the UPU of 20 December 1963 (Decision CE 27).

The Relief Fund for the Staff of the International Bureau (Decision CE 32).

UPU Financial Regulations (Decision CE 44).

2. PROBLEMS UNDER CONSIDERATION IN THE EXECUTIVE COUNCIL

(a) *General questions*

Possibilities of extension and development of relations between the UPU and the Restricted Unions

Resolution CE 5 was adopted by the Executive Council on this matter; the operative part of the resolution reads as follows:

¹³¹ The activities of the Universal Postal Union are in general regulated by treaties concluded between the Governments of the Member Countries, which are supplemented by Detailed Regulations adopted by their postal Administrations (called Acts of the Union). This function is entrusted to the Congress.

Operational activities (particularly technical co-operation between the postal Administrations) are carried on under the authority of resolutions adopted by the various competent bodies. Regulatory activities are also carried out by subordinate bodies, in particular the Executive Council and the International Bureau, within the purview of the jurisdiction given them by the Congress.

The UPU Congress is the highest legislative authority. Its main function is to adopt (revise) the Acts of the Union which regulate the organization and operations of the UPU and international postal services.

The *Executive Council*, an essentially administrative body, also exercises some juridical functions. It has the authority to make decisions affecting the matters which come within its jurisdiction. It also deals with various legal problems and, as necessary, submits proposals to the Congress, which decides on the action to be taken (amendment of the Acts, adoption of a resolution). It has authority to take part in the procedure of amending the Acts of the Union in the intervals between Congresses.

The *Consultative Council for Postal Studies* also has authority to submit to the Congress proposals affecting the matters entrusted to it. These proposals generally concern the operation of the international postal service and are submitted either by the Consultative Council for Postal Services itself, or after consultation with the Executive Council in the case of matters coming within the jurisdiction of the latter.

The *International Bureau* performs various kinds of juridical functions. It generally plays a leading role in the preparation of legal studies which are submitted to the Congress or to the Executive Council. It gives opinions on matters in dispute and others submitted to it by the Administrations. As the need arises, it functions as sole arbiter in disputes between the postal Administrations. It co-operates with the Swiss Confederation with regard to the admission of new Member Countries, the approval of Acts of the Union and the processing of reservations to Acts of the Union.

“The Executive Council . . .

“Desires that ever fuller and more fruitful co-operation should develop between the UPU and the Restricted Unions,

“Authorizes the International Bureau to take any steps to this end which the Union’s Acts and budgetary decisions allow it, and

“Instructs the International Bureau to consider, for the next session of the Executive Council and in co-operation with the Restricted Unions concerned, the elements which could serve in the eventual preparation of a model framework to govern the relations in question or the preparation of a draft resolution for the 17th Congress.”

Amendment of Articles 1, 3, 13 and 30 of the Constitution

By its decision CE 18, the Executive Council considered that an amendment of the Constitution as intended by the proposals submitted to the Tokyo Congress¹³² did not correspond to a real necessity and decided to leave these proposals in abeyance in the event that a general revision of the Constitution should be contemplated.

(b) Staff questions

Legal position of the Director-General of the International Bureau

By its decision CE 28, the Executive Council instructed the International Bureau to make a study of this question.

Procedure for the appointment of the Deputy Director-General

The Executive Council instructed the International Bureau to submit in 1973 a purely documentary study on the procedure for the appointment and the duration of the mandate of the Secretary-General (Director-General) and the Deputy Secretary-General (Deputy Director-General) in the other specialized agencies.¹³³

Representation of staff

Resolution CE 10 was adopted by the Executive Council on this matter.

(c) Postal questions

Official correspondence of diplomatic missions, consulates and international organizations

The consultation opened by circular letter 240 of 14 January 1972 showed that official correspondence and diplomatic or consular bags circulate in the postal service and that a majority of Administrations would agree to this traffic being subject to regulations. However, it also showed that these “bags” do not always comply with the conditions for admission specified in the Acts, especially as regards weight and payment of postage. It was therefore agreed that the proposed special treatment could clearly only apply to items fulfilling the conditions for admission of one of the existing categories (letters, parcels or insured items). The Committee asked Austria and the International Bureau to submit draft proposals for regulating the conveyance of these items in the Convention, the Insured Articles Agreement and the Parcels Agreement.

¹³² See *Proceedings of the 1969 Tokyo Congress*, Vol. I, Proposals submitted to the Congress.

¹³³ Since this study is closely linked with the study on the legal position of the Director-General of the International Bureau, it will be included in the latter.

3. LEGAL ACTIVITIES OF THE INTERNATIONAL BUREAU

In accordance with the 1969 Tokyo UPU General Regulations, Article 111, paragraph 2, the International Bureau was called upon to give opinions on the following matters in dispute: special transit statistics, non-acceptance of an air-mail account and conversion rate for a debt expressed in gold francs. In addition, the International Bureau gave opinions on other matters as follows: interpretation of the Convention, Article 17, paragraph 9; interpretation of the Convention, Article 17, paragraph 8, first sentence; charge for delivery of small packets to the addressee's address; the charge applicable to photocopies of a typewritten original; and individual entry of insured parcels on simplified parcel bills.¹³⁴

8. INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

1. AMENDMENT PROCEDURES

Pursuant to IMCO Assembly Resolution A.249 (VII) requesting the Legal Committee and the Maritime Safety Committee to prepare proposals for accelerating the bringing into force of amendments to conventions for which IMCO is depositary, the Legal Committee and the Maritime Safety Committee of IMCO have concluded their consideration of the subject. The conclusions of the Committees will be submitted to the Assembly of IMCO at its eighth regular session to be held in November 1973. In particular, the Legal Committee prepared Draft Provisions on Tacit Amendment Procedure, which are contained in Annex I of its report on its sixteenth session (LEG XVI/7).

2. EXTENSION OF THE 1969 CONVENTION RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF OIL POLLUTION CASUALTIES¹³⁵ TO COVER NOXIOUS AND HAZARDOUS SUBSTANCES OTHER THAN OIL

Following the Council's decision to include consideration of an instrument on this subject in the agenda of the 1973 IMCO Conference on Marine Pollution, the Legal Committee devoted a substantial part of the time of its sixteenth and seventeenth sessions to the preparation of a draft. The Committee prepared a draft protocol which, together with explanatory notes and alternative suggestions, has been submitted to governments for their consideration prior to its consideration by the IMCO Diplomatic Conference on Marine Pollution to be held in October-November 1973. The text of the draft protocol is contained in Annex II of the report of the Legal Committee on its sixteenth session (LEG XVI/7).

3. LEGAL QUESTIONS RELATED TO WRECK REMOVAL—REVIEW OF THE CONVENTION RELATING TO THE LIMITATION OF LIABILITY OF OWNERS OF SEA-GOING SHIPS, 1957

The Legal Committee considered these subjects during its twelfth and thirteenth sessions, with a view to preparing a draft convention for submission to a diplomatic conference scheduled for 1974.

¹³⁴ For a summary of these opinions, see the *Report on the Work of the Union, 1972*, page 88 *et seq.*

¹³⁵ Reproduced in the *Juridical Yearbook, 1969*, p. 166.

4. CONVENTIONS ADOPTED UNDER THE AUSPICES OF IMCO

(a) *International Regulations for Preventing Collisions at Sea, 1972*

A Conference convened by IMCO in October 1972 concluded a new Convention revising the International Regulations for Preventing Collisions at Sea, at present in force. The revised Regulations which take account of current technical developments, regulate the navigation of ships in or through separation schemes and are a significant improvement on the existing rules.

An amendment procedure has been included in the Convention whereby the Regulations will be kept up-to-date as necessary. The Conference recommended that all contracting Governments (including those which are not Members of IMCO) should participate in the process of consideration and adoption of amendments. The Convention is deposited with IMCO.

(b) *International Convention on Safe Transport Containers*

The UN/IMCO Conference on International Container Traffic was held at Geneva from 13 November to 2 December 1972; its successful completion and, in particular, its adoption of the International Convention for Safe Containers (CSC) on 2 December 1972 brought to fruition IMCO's preparatory work on the technical and safety aspects of containerization. The Convention seeks to maintain a high level of safety of human life in the transport and handling of containers while facilitating their international movement. The Convention is deposited with the Organization, where it will remain open for signature until 31 December 1973. It will enter into force 12 months after ten Governments have accepted it.

The Convention provides that all Contracting Governments (including those which are not Members of IMCO) should participate in the process of consideration and adoption of amendments and the Conference adopted a resolution inviting the competent organs of IMCO to take all necessary and appropriate steps to implement this provision.

The Conference, in addition, adopted the Customs Convention on Containers, 1972.

9. INTERNATIONAL ATOMIC ENERGY AGENCY

1. STATUTE AND MEMBERSHIP OF THE AGENCY: ACTION TAKEN BY STATES IN CONNEXION WITH THE STATUTE (INFCIRC/48/REV.8)

(a) The Agency's membership at the end of 1972 stood at 103, Bangladesh having become a Member of the International Atomic Energy Agency by depositing an Instrument of Acceptance of the Agency's Statute with the depositary Government (United States of America) on 27 September 1972.

(b) The official designation of "Ceylon" was changed to "Sri Lanka" with effect from 21 September 1972.

(c) By 31 December 1972, 57 of the 103 Member States of the Agency had accepted the amendment to Article VI.A—D of the Statute of the Agency. This amendment was approved by the General Conference of the IAEA on 28 September 1970 by Resolution GC(XIV) RES/272.¹³⁶ It will enter into force when it has been accepted by two-thirds

¹³⁶ Reproduced in the *Juridical Yearbook*, 1970, p. 135.

of the Members in accordance with their respective constitutional requirements, as provided for by Article XVIII.C. (ii) of the Statute. The amendment will increase the size of the Board by about one third and will provide for more ample representation of the developing Member States.

2. LEGAL ACTIVITIES

(a) By 31 December 1972, 98 States had signed, and 77 States had ratified or acceded to the Treaty on the Non-Proliferation of Nuclear Weapons.¹³⁷ The Board of Governors of the Agency had, by that date, approved agreements with thirty of the seventy-four non-nuclear-weapon States that had, by then, become party to the Non-Proliferation Treaty; these agreements cover nearly all the non-nuclear-weapon States party to the Treaty that at present have significant nuclear activities or quantities of nuclear material. The Board of Governors has also approved an agreement with EURATOM and the five members of EURATOM that have signed the Treaty (Belgium, the Federal Republic of Germany, Italy, Luxembourg and the Netherlands), as well as two agreements with the Netherlands with respect to the Netherlands Antilles and Surinam, which also cover the Netherlands' obligation under Additional Protocol I to the Treaty for the Prohibition of Nuclear Weapons in Latin America.¹³⁸

(b) On 21 June 1972, the Board of Governors of the Agency adopted guidelines for the observation by the Agency of nuclear explosions for peaceful purposes under the Non-Proliferation Treaty or under analogous provisions in other international agreements (INFCIRC/169). This procedure is provided to ensure that obligations undertaken by the States concerned are not violated.

(c) On 31 December 1972, the Treaty for the Prohibition of Nuclear Weapons in Latin America (the Tlatelolco Treaty) which, in its Article 13, provides for the application of Agency safeguards, was in force between twenty States, of which three had concluded the required safeguards agreement with the Agency. Two non-Latin-American States had ratified the Additional Protocol I to the Treaty with respect to territories under their responsibility in the region. For States parties both to the Tlatelolco Treaty and to the Non-Proliferation Treaty, safeguards will be applied under a single set of comprehensive arrangements which will satisfy the requirements of both treaties.

(d) Consultations have also taken place with the Governments of the United Kingdom of Great Britain and Northern Ireland and the United States of America in regard to their offers to place certain of their nuclear activities under safeguards.

(e) The Cooperation Agreement between the International Atomic Energy Agency and the Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL) was signed and entered into force on 3 October 1972 (INFCIRC/25/Add.4). The Agency has thus concluded agreements of this kind with the European Nuclear Energy Agency of the Organisation for Economic Co-operation and Development (NEA), the Inter-American Nuclear Energy Commission, the Organization of African Unity, the League of Arab States,¹³⁹ and with the Agency for the Prohibition of Nuclear Weapons in Latin America, as well as with eight organizations within the United Nations family.

(f) The most recent revision of the Agency's Regulations for the Safe Transport of Radioactive Materials¹⁴⁰ was approved in September 1972 by the Board of Governors

¹³⁷ *Ibid.*, 1968, p. 156.

¹³⁸ *Ibid.*, 1967, p. 272.

¹³⁹ The texts of these agreements are reproduced in INFCIRC/25 and Add.2 and 3.

¹⁴⁰ IAEA Safety Series No. 6, 1967 Edition.

as part of the Agency's safety standards and, also, for recommendation to Member States and appropriate international organizations as the basis for national and international regulations.¹⁴¹ The Agency's revised Regulations took account of improved technical knowledge and the extensive experience gained in implementing them. The Regulations were first issued in 1961 and in a revised form in 1964 and 1967; the objective was to provide a practical and concise set of rules which would enable national regulations to be harmonized and thus facilitate the safe and speedy international transport of radioactive materials. The Agency's Regulations have been adopted by almost all international bodies dealing with transport and incorporated in the legislation of many countries.

(g) Guidelines recommended by a panel of experts for the physical protection of nuclear material against theft, loss, etc. during storage, use and transport were published in June 1972¹⁴² for use by the Agency in providing advice to States in conjunction with the establishment of their national systems of nuclear material control.

(h) By 31 December 1972, twelve States had signed the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, the text of which was elaborated by a joint IAEA/IMCO/NEA International Diplomatic Conference held at Brussels in November/December 1971.¹⁴³ Its purpose is to ensure that if an incident occurs when nuclear material is being carried by sea, all liability will be channelled to the operator of the nuclear installation for damage arising therefrom and none to the carrier. Hitherto, the possibility of liability falling on the carrier has proved to be a serious obstacle in arranging for the shipment of nuclear material.

(i) The Conference was followed up by an Agency/NEA symposium on the maritime carriage of nuclear material, at Stockholm in June 1972, which discussed the technical and legal aspects of the problem and, particularly, techniques for packing and transporting nuclear material, the effect of changes in international and national regulations and the consequences of the legal situation created by the 1971 Brussels Convention.

(j) The Agency was represented at the Intergovernmental Conference convened in London in November 1972, which adopted a Convention on the Prevention of Maritime Pollution by Dumping of Wastes and Other Matters. The Convention was opened for signature by any State from 29 December 1972 until 31 December 1973 and thereafter is open for accession by any State. With respect to radioactive wastes, the Convention entrusts the Agency with the responsibilities of defining high-level radioactive waste or other high-level radioactive material as unsuitable for dumping at sea, and of recommending criteria and conditions for the issue of special permits for the dumping of other radioactive wastes or other radioactive material. Such responsibilities fall within the purview of a decision by which the Agency's Board of Governors decided in March 1972 that with respect to the elaboration of safety standards concerning the dispersion into the environment of radioactive waste resulting from the peaceful use of nuclear energy, the organs of the United Nations, specialized agencies and other international organizations concerned and competent should closely collaborate, with the Agency taking the leading role. (GOV/DEC/71 (XV), decision (26).)

(k) An Agency/FAO/WHO group on the legal aspects of food irradiation which met at Vienna from 20 to 24 March 1972 drew up recommendations regarding the principles to be applied in regulating the marketing of irradiated foodstuffs.

(l) Consultations were held between the Legal Divisions of the Agency and NEA with a view to promoting closer co-operation in connexion with the International Nuclear

¹⁴¹ GOV/DEC/73 (XV), decision (52).

¹⁴² Recommendations for the Physical Protection of Nuclear Material, IAEA, 1972.

¹⁴³ Reproduced in this *Yearbook*, p. 100.

Information System (INIS) and, in particular, the inclusion in the System of information in the field of nuclear law.

(*m*) The Agency provided advice to Lebanon, Kuwait, Malaysia, Saudi Arabia and Sri Lanka in the framing of radiation safety regulations, and to Mexico on licensing regulations for nuclear power plants. Two lawyers from Bulgaria and Hungary were trained in the legal aspects of atomic energy at the Agency's Headquarters.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

I. INTERNATIONAL LABOUR ORGANISATION

Instrument for the Amendment of the Constitution of the International Labour Organisation, adopted by the Conference at its fifty-seventh session, Geneva, 22 June 1972

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-seventh Session on 7 June 1972; and

Having decided upon the adoption of proposals for the substitution, in the provisions of the Constitution of the International Labour Organisation relating to membership of the Governing Body, of the figures "fifty-six", "twenty-eight", "eighteen" and "fourteen" for the figures "forty-eight", "twenty-four", "fourteen" and "twelve", a question which is the seventh item on the agenda of the session,

Adopts this twenty-second day of June of the year one thousand nine hundred and seventy-two the following instrument for the amendment of the Constitution of the International Labour Organisation, which may be cited as the Constitution of the International Labour Organisation Instrument of Amendment, 1972:

Article 1

In the text of the Constitution of the International Labour Organisation as at present in force, the figures "fifty-six", "twenty-eight", "eighteen" and "fourteen" shall be substituted for the figures "forty-eight", "twenty-four", "fourteen" and "twelve" in paragraphs 1 and 2 of article 7.

Article 2

As from the date of the coming into force of this Instrument of Amendment the Constitution of the International Labour Organisation shall have effect as amended in accordance with the preceding Article.

Article 3

On the coming into force of this Instrument of Amendment, the Director-General of the International Labour Office shall cause an official text of the Constitution of the Inter-

(ii) *Article VIII.* Replace this Article by the following text:

“Each Member State shall submit to the Organization, at such times and in such manner as shall be determined by the General Conference, reports on the laws, regulations and statistics relating to its educational, scientific and cultural institutions and activities, and on the action taken upon the recommendations and conventions referred to in Article IV, paragraph 4”;

(b) ...

(b) *Convention concerning the protection of the world cultural and national heritage. Adopted by the General Conference at its seventeenth session, Paris, 16 November 1972*

The General Conference of the United Nations Educational, Scientific and Cultural Organization meeting in Paris from 17 October to 21 November 1972, at its seventeenth session,

Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction,

Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world,

Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific and technical resources of the country where the property to be protected is situated,

Recalling that the Constitution of the Organization provides that it will maintain, increase and diffuse knowledge, by assuring the conservation and protection of the world's heritage, and recommending to the nations concerned the necessary international conventions,

Considering that the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong,

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole,

Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto,

Considering that it is essential for this purpose to adopt new provisions in the form of a convention establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods,

Having decided, at its sixteenth session, that this question should be made the subject of an international convention,

Adopts this sixteenth day of November 1972 this Convention.

I. DEFINITIONS OF THE CULTURAL AND THE NATURAL HERITAGE

Article 1

For the purposes of this Convention, the following shall be considered as “cultural heritage”:

monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.

Article 2

For the purposes of this Convention, the following shall be considered as “natural heritage”:

natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;

geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;

natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

Article 3

It is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above.

II. NATIONAL PROTECTION AND INTERNATIONAL PROTECTION OF THE CULTURAL AND NATURAL HERITAGE

Article 4

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

Article 5

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State

national Labour Organisation as modified by the provisions of this Instrument to be prepared in two original copies, duly authenticated by his signature. One of these copies shall be deposited in the archives of the International Labour Office and the other shall be communicated to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations. The Director-General shall communicate a certified copy of the text to each of the Members of the International Labour Organisation.

Article 4

Two copies of this Instrument of Amendment shall be authenticated by the signatures of the President of the Conference and of the Director-General of the International Labour Office. One of these copies shall be deposited in the archives of the International Labour Office and the other shall be communicated to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations. The Director-General shall communicate a certified copy of the Instrument to each of the Members of the International Labour Organisation.

Article 5

1. The formal ratifications or acceptances of this Instrument of Amendment shall be communicated to the Director-General of the International Labour Office, who shall notify the Members of the Organisation of the receipt thereof.

2. This Instrument of Amendment will come into force in accordance with the provisions of article 36 of the Constitution of the Organisation.¹

3. On the coming into force of this Instrument, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation and the Secretary-General of the United Nations.

The foregoing is the authentic text of the Instrument for the amendment of the Constitution of the International Labour Organisation duly adopted by the General Conference of the International Labour Organisation during its Fifty-seventh Session which was held at Geneva and declared closed the twenty-seventh day of June 1972.

The English and French versions of the text of this Instrument of Amendment are equally authoritative.

IN FAITH WHEREOF we have appended our signatures this twenty-seventh day of June 1972.

The President of the Conference

*The Director-General of the International
Labour Office*

¹ Article 36 of the Constitution reads as follows:

“Amendments to this Constitution which are adopted by the Conference by a majority of two-thirds of the votes cast by the delegates present shall take effect when ratified or accepted by two-thirds of the Members of the Organisation including five of the ten Members which are represented on the Governing Body as Members of chief industrial importance in accordance with the provisions of paragraph 3 of article 7 of this Constitution.”

2. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(a) *Amendments to the Constitution of the United Nations Educational, Scientific and Cultural Organization.*² *Adopted by the General Conference at its seventeenth session*

(i) *The General Conference,*³

1. *Decides* to amend Article V, paragraph 1, of the Constitution as follows:

The words "thirty-four" are replaced by the word "forty";

2. ...

(ii) *The General Conference,*⁴

...

1. *Decides* to replace the present Article V. A., paragraph 3, of the Constitution by the following text:

"Members of the Board shall serve from the close of the session of the General Conference which elected them until the close of the second ordinary session of the General Conference following that election. They shall not be immediately eligible for a second term. The General Conference shall, at each of its ordinary sessions, elect the number of members required to fill vacancies occurring at the end of the session."

2. *Decides* to replace the present Article V. C., paragraph 13, of the Constitution by the following text:

"Notwithstanding the provisions of paragraph 3 of this Article,

(a) members of the Executive Board elected prior to the seventeenth session of the General Conference shall serve until the end of the term for which they were elected.

(b) members of the Executive Board appointed, prior to the seventeenth session of the General Conference, by the Board in accordance with the provisions of paragraph 4 of this Article to replace members with a four-year term shall be eligible for a second term of four years."

3. To delete Article V. C., paragraph 14, of the Constitution;

4. ...

(iii) *The General Conference,*⁵

Decides:

(a) to amend the Constitution as follows:

(i) *Article IV. B, paragraph 6.* Replace this paragraph by the following text:

"6. The General Conference shall receive and consider the reports sent to the Organization by Member States on the action taken upon the recommendations and conventions referred to in paragraph 4 above or, if it so decides, analytical summaries of these reports";

² United Nations, *Treaty Series*, vol. 4, p. 275.

³ 17C/Res. 13.1, 24 October 1972.

⁴ 17C/Res. 13.2, 24 October 1972.

⁵ 17C/Res. 13.3, 30 October 1972.

Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country:

(a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes;

(b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions;

(c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage;

(d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and

(e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field.

Article 6

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property rights provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.

2. The States Parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and preservation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request.

3. Each State Party to this Convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory of other States Parties to this Convention.

Article 7

For the purpose of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage.

III. INTERGOVERNMENTAL COMMITTEE FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

Article 8

1. An Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Committee", is hereby established within the United Nations Educational, Scientific and Cultural Organization. It shall be composed of 15 States Parties to the Convention, elected by States Parties to the Convention meeting in general assembly during the ordinary session of the

General Conference of the United Nations Educational, Scientific and Cultural Organization. The Number of States members of the Committee shall be increased to 21 as from the date of the ordinary session of the General Conference following the entry into force of this Convention for at least 40 States.

2. Election of members of the Committee shall ensure an equitable representation of the different regions and cultures of the world.

3. A representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre), a representative of the International Council of Monuments and Sites (ICOMOS) and a representative of the International Union for Conservation of Nature and Natural Resources (IUCN), to whom may be added, at the request of States Parties to the Convention meeting in general assembly during the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization, representatives of other intergovernmental or non-governmental organizations, with similar objectives, may attend the meetings of the Committee in an advisory capacity.

Article 9

1. The term of office of States members of the World Heritage Committee shall extend from the end of the ordinary session of the General Conference during which they are elected until the end of its third subsequent ordinary session.

2. The term of office of one-third of the members designated at the time of the first election shall, however, cease at the end of the first ordinary session of the General Conference following that at which they were elected; and the term of office of a further third of the members designated at the same time shall cease at the end of the second ordinary session of the General Conference following that at which they were elected. The names of these members shall be chosen by lot by the President of the General Conference of the United Nations Educational, Scientific and Cultural Organization after the first election.

3. States members of the Committee shall choose as their representatives persons qualified in the field of the cultural or natural heritage.

Article 10

1. The World Heritage Committee shall adopt its Rules of Procedure.

2. The Committee may at any time invite public or private organizations or individuals to participate in its meetings for consultation on particular problems.

3. The Committee may create such consultative bodies as it deems necessary for the performance of its functions.

Article 11

1. Every State Party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance.

2. On the basis of the inventories submitted by States in accordance with paragraph 1, the Committee shall establish, keep up to date and publish, under the title of "World Heritage List, a list of properties forming part of the cultural heritage and natural heritage, as defined in Articles 1 and 2 of this Convention, which it considers as having outstanding

universal value in terms of such criteria as it shall have established. An updated list shall be distributed at least every two years.

3. The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute.

4. The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of "List of World Heritage in Danger", a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods, and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately.

5. The Committee shall define the criteria on the basis of which a property belonging to the cultural or natural heritage may be included in either of the lists mentioned in paragraphs 2 and 4 of this article.

6. Before refusing a request for inclusion in one of the two lists mentioned in paragraphs 2 and 4 of this article, the Committee shall consult the State Party in whose territory the cultural or natural property in question is situated.

7. The Committee shall, with the agreement of the States concerned, co-ordinate and encourage the studies and research needed for the drawing up of the lists referred to in paragraphs 2 and 4 of this article.

Article 12

The fact that a property belonging to the cultural or natural heritage has not been included in either of the two lists mentioned in paragraphs 2 and 4 of Article 11 shall in no way be construed to mean that it does not have an outstanding universal value for purposes other than those resulting from inclusion in these lists.

Article 13

1. The World Heritage Committee shall receive and study requests for international assistance formulated by States Parties to this Convention with respect to property forming part of the cultural or natural heritage, situated in their territories, and included or potentially suitable for inclusion in the lists referred to in paragraphs 2 and 4 of Article 11. The purpose of such requests may be to secure the protection, conservation, presentation or rehabilitation of such property.

2. Requests for international assistance under paragraph 1 of this article may also be concerned with identification of cultural or natural property defined in Articles 1 and 2, when preliminary investigations have shown that further inquiries would be justified.

3. The Committee shall decide on the action to be taken with regard to these requests, determine where appropriate, the nature and extent of its assistance, and authorize the conclusion, on its behalf, of the necessary arrangements with the government concerned.

4. The Committee shall determine an order of priorities for its operations. It shall in so doing bear in mind the respective importance for the world cultural and natural heritage of the property requiring protection, the need to give international assistance to the property most representative of a natural environment or of the genius and the history of the peoples of the world, the urgency of the work to be done, the resources available to the States on whose territory the threatened property is situated and in particular the extent to which they are able to safeguard such property by their own means.

5. The Committee shall draw up, keep up to date and publicize a list of property for which international assistance has been granted.

6. The Committee shall decide on the use of the resources of the Fund established under Article 15 of this Convention. It shall seek ways of increasing these resources and shall take all useful steps to this end.

7. The Committee shall co-operate with international and national governmental and non-governmental organizations having objectives similar to those of this Convention. For the implementation of its programmes and projects, the Committee may call on such organizations, particularly the International Centre for the Study of the Preservation and Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN), as well as on public and private bodies and individuals.

8. Decisions of the Committee shall be taken by a majority of two-thirds of its members present and voting. A majority of the members of the Committee shall constitute a quorum.

Article 14

1. The World Heritage Committee shall be assisted by a Secretariat appointed by the Director-General of the United Nations Educational, Scientific and Cultural Organization.

2. The Director-General of the United Nations Educational, Scientific and Cultural Organization, utilizing to the fullest extent possible the services of the International Centre for the Study of the Preservation and the Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN) in their respective areas of competence and capability, shall prepare the Committee's documentation and the agenda of its meetings and shall have the responsibility for the implementation of its decisions.

IV. FUND FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

Article 15

1. A Fund for the Protection of the World Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Fund", is hereby established.

2. The Fund shall constitute a trust fund, in conformity with the provisions of the Financial Regulations of the United Nations Educational, Scientific and Cultural Organization.

3. The resources of the Fund shall consist of:

(a) compulsory and voluntary contributions made by the States Parties to this Convention,

(b) contributions, gifts or bequests which may be made by:

- (i) other States;
- (ii) the United Nations Educational, Scientific and Cultural Organization, other organizations of the United Nations system, particularly the United Nations Development Programme or other intergovernmental organizations;
- (iii) public or private bodies or individuals;
- (c) any interest due on the resources of the Fund;
- (d) funds raised by collections and receipts from events organized for the benefit of the Fund; and
- (e) all other resources authorized by the Fund's regulations, as drawn up by the World Heritage Committee.

4. Contributions to the Fund and other forms of assistance made available to the Committee may be used only for such purposes as the Committee shall define. The Committee may accept contributions to be used only for a certain programme or project, provided that the Committee shall have decided on the implementation of such programme or project. No political conditions may be attached to contributions made to the Fund.

Article 16

1. Without prejudice to any supplementary voluntary contribution, the States Parties to this Convention undertake to pay regularly, every two years, to the World Heritage Fund, contributions, the amount of which, in the form of a uniform percentage applicable to all States, shall be determined by the General Assembly of States Parties to the Convention, meeting during the sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization. This decision of the General Assembly requires the majority of the States Parties present and voting, which have not made the declaration referred to in paragraph 2 of this Article. In no case shall the compulsory contribution of States Parties to the Convention exceed 1 % of the contribution to the Regular Budget of the United Nations Educational, Scientific and Cultural Organization.

2. However, each State referred to in Article 31 or in Article 32 of this Convention may declare, at the time of the deposit of its instruments of ratification, acceptance or accession, that it shall not be bound by the provisions of paragraph 1 of this Article.

3. A State Party to the Convention which has made the declaration referred to in paragraph 2 of this Article may at any time withdraw the said declaration by notifying the Director-General of the United Nations Educational, Scientific and Cultural Organization. However, the withdrawal of the declaration shall not take effect in regard to the compulsory contribution due by the State until the date of the subsequent General Assembly of States Parties to the Convention.

4. In order that the Committee may be able to plan its operations effectively, the contributions of States Parties to this Convention which have made the declaration referred to in paragraph 2 of this Article, shall be paid on a regular basis, at least every two years, and should not be less than the contributions which they should have paid if they had been bound by the provisions of paragraph 1 of this Article.

5. Any State Party to the Convention which is in arrears with the payment of its compulsory or voluntary contribution for the current year and the calendar year immediately preceding it shall not be eligible as a Member of the World Heritage Committee, although this provision shall not apply to the first election.

The terms of office of any such State which is already a member of the Committee shall terminate at the time of the elections provided for in Article 8, paragraph 1 of this Convention.

Article 17

The States Parties to this Convention shall consider or encourage the establishment of national, public and private foundations or associations whose purpose is to invite donations for the protection of the cultural and natural heritage as defined in Articles 1 and 2 of this Convention.

Article 18

The States Parties to this Convention shall give their assistance to international fund-raising campaigns organized for the World Heritage Fund under the auspices of the United Nations Educational, Scientific and Cultural Organization. They shall facilitate collections made by the bodies mentioned in paragraph 3 of Article 15 for this purpose.

V. CONDITIONS AND ARRANGEMENTS FOR INTERNATIONAL ASSISTANCE

Article 19

Any State Party to this Convention may request international assistance for property forming part of the cultural or natural heritage of outstanding universal value situated within its territory. It shall submit with its request such information and documentation provided for in Article 21 as it has in its possession and as will enable the Committee to come to a decision.

Article 20

Subject to the provisions of paragraph 2 of Article 13, sub-paragraph (c) of Article 22 and Article 23, international assistance provided for by this Convention may be granted only to property forming part of the cultural and natural heritage which the World Heritage Committee has decided, or may decide, to enter in one of the lists mentioned in paragraphs 2 and 4 of Article 11.

Article 21

1. The World Heritage Committee shall define the procedure by which requests to it for international assistance shall be considered and shall specify the content of the request, which should define the operation contemplated, the work that is necessary, the expected cost thereof, the degree of urgency and the reasons why the resources of the State requesting assistance do not allow it to meet all the expenses. Such requests must be supported by experts' reports whenever possible.

2. Requests based upon disasters or natural calamities should, by reasons of the urgent work which they may involve, be given immediate, priority consideration by the Committee, which should have a reserve fund at its disposal against such contingencies.

3. Before coming to a decision, the Committee shall carry out such studies and consultations as it deems necessary.

Article 22

Assistance granted by the World Heritage Committee may take the following forms:

(a) studies concerning the artistic, scientific and technical problems raised by the protection, conservation, presentation and rehabilitation of the cultural and natural heritage, as defined in paragraphs 2 and 4 of Article 11 of this Convention;

(b) provision of experts, technicians and skilled labour to ensure that the approved work is correctly carried out;

(c) training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage;

(d) supply of equipment which the State concerned does not possess or is not in a position to acquire;

(e) low-interest or interest-free loans which might be repayable on a long-term basis;

(f) the granting, in exceptional cases and for special reasons, of non-repayable subsidies.

Article 23

The World Heritage Committee may also provide international assistance to national or regional centres for the training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage.

Article 24

International assistance on a large scale shall be preceded by detailed scientific, economic and technical studies. These studies shall draw upon the most advanced techniques for the protection, conservation, presentation and rehabilitation of the natural and cultural heritage and shall be consistent with the objectives of this Convention. The studies shall also seek means of making rational use of the resources available in the State concerned.

Article 25

As a general rule, only part of the cost of work necessary shall be borne by the international community. The contribution of the State benefiting from international assistance shall constitute a substantial share of the resources devoted to each programme or project, unless its resources do not permit this.

Article 26

The World Heritage Committee and the recipient State shall define in the agreement they conclude the conditions in which a programme or project for which international assistance under the terms of this Convention is provided, shall be carried out. It shall be the responsibility of the State receiving such international assistance to continue to protect, conserve and present the property so safeguarded, in observance of the conditions laid down by the agreement.

VI. EDUCATIONAL PROGRAMMES

Article 27

1. The States Parties to this Convention shall endeavour by all appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect by their peoples of the cultural and natural heritage defined in Articles 1 and 2 of the Convention.

2. They shall undertake to keep the public broadly informed of the dangers threatening this heritage and of activities carried on in pursuance of this Convention.

Article 28

States Parties to this Convention which receive international assistance under the Convention shall take appropriate measures to make known the importance of the property for which assistance has been received and the role played by such assistance.

VII. REPORTS

Article 29

1. The States Parties to this Convention shall, in the reports which they submit to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field.

2. These reports shall be brought to the attention of the World Heritage Committee.

3. The Committee shall submit a report on its activities at each of the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization.

VIII. FINAL CLAUSES

Article 30

This Convention is drawn up in Arabic, English, French, Russian and Spanish, the five texts being equally authoritative.

Article 31

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.

2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 32

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited by the General Conference of the Organization to accede to it.

2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 33

This Convention shall enter into force three months after the date of the deposit of the twentieth instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments of ratification, acceptance or accession on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

Article 34

The following provisions shall apply to those States Parties to this Convention which have a federal or non-unitary constitutional system:

(a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations

of the federal or central government shall be the same as for those States Parties which are not federal States;

(b) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of individual constituent States, countries, provinces or cantons that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

Article 35

1. Each State Party to this Convention may denounce the Convention.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation. It shall not affect the financial obligations of the denouncing State until the date on which the withdrawal takes effect.

Article 36

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 32, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, or accession provided for in Articles 31 and 32, and of the denunciations provided for in Article 35.

Article 37

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.
2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession, as from the date on which the new revising convention enters into force.

Article 38

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

DONE in Paris, this twenty-third day of November 1972, in two authentic copies bearing the signature of the President of the seventeenth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 31 and 32 as well as to the United Nations.

3. INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

(a) *Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material. Done at Brussels on 17 December 1971*⁶

The High Contracting Parties,

Considering that the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and its Additional Protocol of 28 January 1964 (hereinafter referred to as "the Paris Convention") and the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage⁷ (hereinafter referred to as "the Vienna Convention") provide that, in the case of damage caused by a nuclear incident occurring in the course of maritime carriage of nuclear material covered by such Conventions, the operator of a nuclear installation is the person liable for such damage,

Considering that similar provisions exist in the national law in force in certain States,

Considering that the application of any preceding international Convention in the field of maritime transport is however maintained,

Desirous of ensuring that the operator of a nuclear installation will be exclusively liable for damage caused by a nuclear incident occurring in the course of maritime carriage of nuclear material,

Have agreed as follows:

Article 1

Any person who by virtue of an international convention or national law applicable in the field of maritime transport might be held liable for damage caused by a nuclear incident shall be exonerated from such liability:

(a) if the operator of a nuclear installation is liable for such damage under either the Paris or the Vienna Convention, or

(b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Convention.

Article 2

1. The exoneration provided for in Article 1 shall also apply in respect of damage caused by a nuclear incident:

(a) to the nuclear installation itself or to any property on the site of that installation which is used or to be used in connexion with that installation, or

(b) to the means of transport upon which the nuclear material involved was at the time of the nuclear incident,

for which the operator of the nuclear installation is not liable because his liability for such damage has been excluded pursuant to the provisions of either the Paris or the Vienna

⁶ The Convention was prepared by the International Legal Conference on Maritime Carriage of Nuclear Substances which was held at Brussels from 29 November to 2 December 1971 on the basis of decisions and co-operative measures taken in the Inter-Governmental Maritime Consultative Organization, the International Atomic Energy Agency and the European Nuclear Energy Agency of the Organisation for Economic Co-operation and Development.

⁷ *Juridical Yearbook*, 1963, p. 148.

Convention, or, in cases referred to in Article 1 (b), by equivalent provisions of the national law referred to therein.

2. The provisions of paragraph 1 shall not, however, affect the liability of any individual who has caused the damage by an act or omission done with intent to cause damage.

Article 3

No provision of the present Convention shall affect the liability of the operator of a nuclear ship in respect of damage caused by a nuclear incident involving the nuclear fuel of or radioactive products or waste produced in such ship.

Article 4

The present Convention shall supersede any international Conventions in the field of maritime transport which, at the date on which the present Convention is opened for signature, are in force or open for signature, ratification or accession but only to the extent that such Conventions would be in conflict with it; however, nothing in this Article shall affect the obligations of the Contracting Parties to the present Convention to non-Contracting States arising under such international Conventions.

Article 5

1. The present Convention shall be opened for signature in Brussels and shall remain open for signature in London at the Headquarters of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as "the Organization") until 31 December 1972 and shall thereafter remain open for accession.

2. States Members of the United Nations or any of the Specialized Agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice may become Parties to the present Convention by:

- (a) signature without reservation as to ratification, acceptance or approval;
- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
- (c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

Article 6

1. The present Convention shall enter into force on the ninetieth day following the date on which five States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization.

2. For any State which subsequently signs the present Convention without reservation as to ratification, acceptance or approval, or deposits its instrument of ratification, acceptance, approval or accession, the Convention shall come into force on the ninetieth day after the date of such signature or deposit.

Article 7

1. The present Convention may be denounced by any Contracting Party to it at any time after the date on which the Convention comes into force for that State.

2. Denunciation shall be effected by a notification in writing delivered to the Secretary-General of the Organization.

3. A denunciation shall take effect one year, or such longer period as may be specified in the notification, after its receipt by the Secretary-General of the Organization.

4. Notwithstanding a denunciation by a Contracting Party pursuant to this Article the provisions of the present Convention shall continue to apply to any damage caused by a nuclear incident occurring before the denunciation takes effect.

Article 8

1. The United Nations where it is the administering authority for a territory, or any Contracting Party to the present Convention responsible for the international relations of a territory, may at any time by notification in writing to the Secretary-General of the Organization declare that the present Convention shall extend to such territory.

2. The present Convention shall, from the date of receipt of the notification or from such other date as may be specified in the notification, extend to the territory named therein.

3. The United Nations, or any Contracting Party which had made a declaration under paragraph 1 of this Article may at any time after the date on which the Convention has been so extended to any territory declare by notification in writing to the Secretary-General of the Organization that the present Convention shall cease to extend to any such territory named in the notification.

4. The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, after the date of receipt of the notification by the Secretary-General of the Organization.

Article 9

1. A Conference for the purpose of revising or amending the present Convention may be convened by the Organization.

2. The Organization shall convene a Conference of the Contracting Parties to the present Convention for revising or amending it at the request of not less than one-third of the Contracting Parties.

Article 10

A Contracting Party may make reservations corresponding to those which it has validly made to the Paris or Vienna Convention. A reservation may be made at the time of signature, ratification, acceptance, approval or accession.

Article 11

1. The present Convention shall be deposited with the Secretary-General of the Organization.

2. The Secretary-General of the Organization shall:

- (a) inform all States which have signed or acceded to the present Convention of:
 - (i) each new signature and each deposit of an instrument together with the date thereof;
 - (ii) any reservation made in conformity with the present Convention;
 - (iii) the date of entry into force of the present Convention;
 - (iv) any denunciation of the present Convention and the date on which it takes effect;

(v) the extension of the present Convention to any territory under paragraph 1 of Article 8 and of the termination of any such extension under the provisions of paragraph 4 of that Article stating in each case the date on which the present Convention has been or will cease to be so extended;

(b) transmit certified true copies of the present Convention to all Signatory States and to all States which have acceded to the present Convention.

3. As soon as the present Convention comes into force, a certified true copy thereof shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 12

The present Convention is established in a single original in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared by the Secretariat of the Organization and deposited with the signed original.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed the present Convention.

DONE at Brussels this seventeenth day of December 1971.

(b) *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Supplementary to the International Convention on Civil Liability for Oil Pollution Damage, 1969⁸). Done at Brussels on 18 December 1971*

The States Parties to the present Convention,

Being parties to the International Convention on Civil Liability for Oil Pollution Damage, adopted at Brussels on 29 November 1969,

Conscious of the dangers of pollution posed by the world-wide maritime carriage of oil in bulk,

Convinced of the need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships,

Considering that the International Convention of 29 November 1969, on Civil Liability for Oil Pollution Damage, by providing a régime for compensation for pollution damage in Contracting States and for the costs of measures, wherever taken, to prevent or minimize such damage, represents a considerable progress towards the achievement of this aim,

Considering however that this régime does not afford full compensation for victims of oil pollution damage in all cases while it imposes an additional financial burden on shipowners,

Considering further that the economic consequences of oil pollution damage resulting from the escape or discharge of oil carried in bulk at sea by ships should not exclusively be borne by the shipping industry but should in part be borne by the oil cargo interests,

⁸ *Ibid.*, 1969, p. 174.

Convinced of the need to elaborate a compensation and indemnification system supplementary to the International Convention on Civil Liability for Oil Pollution Damage with a view to ensuring that full compensation will be available to victims of oil pollution incidents and that the shipowners are at the same time given relief in respect of the additional financial burdens imposed on them by the said Convention,

Taking note of the Resolution on the Establishment of an International Compensation Fund for Oil Pollution Damage which was adopted on 29 November 1969 by the International Legal Conference on Marine Pollution Damage,⁹

Have agreed as follows:

GENERAL PROVISIONS

Article 1

For the purposes of this Convention—

1. “Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, adopted at Brussels on 29 November 1969.

2. “Ship”, “Person”, “Owner”, “Oil”, “Pollution Damage”, “Preventive Measures”, “Incident” and “Organization”, have the same meaning as in Article I of the Liability Convention, provided however that, for the purposes of these terms, “oil” shall be confined to persistent hydrocarbon mineral oils.

3. “Contributing Oil” means crude oil and fuel oil as defined in sub-paragraphs (a) and (b) below:

(a) “Crude Oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as “topped crudes”) or to which certain distillate fractions have been added (sometimes referred to as “spiked” or “reconstituted” crudes).

(b) “Fuel Oil” means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the “American Society for Testing and Materials’ Specification for Number Four Fuel Oil (Designation D 396-69)”, or heavier.

4. “Franc” means the unit referred to in Article V, paragraph 9 of the Liability Convention.

5. “Ship’s tonnage” has the same meaning as in Article V, paragraph 10, of the Liability Convention.

6. “Ton”, in relation to oil, means a metric ton.

7. “Guarantor” means any person providing insurance or other financial security to cover an owner’s liability in pursuance of Article VII, paragraph 1, of the Liability Convention.

8. “Terminal installation” means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.

9. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence.

⁹ *Ibid.*, p. 181.

Article 2

1. An International Fund for compensation for pollution damage, to be named "The International Oil Pollution Compensation Fund" and hereinafter referred to as "The Fund", is hereby established with the following aims:

(a) to provide compensation for pollution damage to the extent that the protection afforded by the Liability Convention is inadequate;

(b) to give relief to shipowners in respect of the additional financial burden imposed on them by the Liability Convention, such relief being subject to conditions designed to ensure compliance with safety at sea and other conventions;

(c) to give effect to the related purposes set out in this Convention.

2. The Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognize the Director of the Fund (hereinafter referred to as "The Director") as the legal representative of the Fund.

Article 3

This Convention shall apply:

1. With regard to compensation according to Article 4, exclusively to pollution damage caused on the territory including the territorial sea of a Contracting State, and to preventive measures taken to prevent or minimize such damage;

2. With regard to indemnification of shipowners and their guarantors according to Article 5, exclusively in respect of pollution damage caused on the territory, including the territorial sea, of a State party to the Liability Convention by a ship registered in or flying the flag of a Contracting State and in respect of preventive measures taken to prevent or minimize such damage.

COMPENSATION AND INDEMNIFICATION

Article 4

1. For the purpose of fulfilling its function under Article 2, paragraph 1 (a), the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the Liability Convention,

(a) because no liability for the damage arises under the Liability Convention;

(b) because the owner liable for the damage under the Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under Article VII of that Convention does not cover or is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him;

(c) because the damage exceeds the owner's liability under the Liability Convention as limited pursuant to Article V, paragraph 1, of that Convention or under the terms of any other international Convention in force or open for signature, ratification or accession at the date of this Convention.

Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as pollution damage for the purposes of this Article.

2. The Fund shall incur no obligation under the preceding paragraph if:

(a) it proves that the pollution damage resulted from an act of war, hostilities, civil war or insurrection or was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or

(b) the claimant cannot prove that the damage resulted from an incident involving one or more ships.

3. If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person provided, however, that there shall be no such exoneration with regard to such preventive measures which are compensated under paragraph 1. The Fund shall in any event be exonerated to the extent that the shipowner may have been exonerated under Article III, paragraph 3, of the Liability Convention.

4. (a) Except as otherwise provided in sub-paragraph (b) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention for pollution damage caused in the territory of the Contracting States, including any sums in respect of which the Fund is under an obligation to indemnify the owner pursuant to Article 5, paragraph 1, of this Convention, shall not exceed 450 million francs.

(b) The aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 450 million francs.

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under the Liability Convention and this Convention shall be the same for all claimants.

6. The Assembly of the Fund (hereinafter referred to as "the Assembly") may, having regard to the experience of incidents which have occurred and in particular the amount of damage resulting therefrom and to changes in the monetary values, decide that the amount of 450 million francs referred to in paragraph 4, sub-paragraphs (a) and (b), shall be changed; provided, however, that this amount shall in no case exceed 900 million francs or be lower than 450 million francs. The changed amount shall apply to incidents which occur after the date of the decision effecting the change.

7. The Fund shall, at the request of a Contracting State, use its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate pollution damage arising from an incident in respect of which the Fund may be called upon to pay compensation under this Convention.

8. The Fund may on conditions to be laid down in the Internal Regulations provide credit facilities with a view to the taking of preventive measures against pollution damage

arising from a particular incident in respect of which the Fund may be called upon to pay compensation under this Convention.

Article 5

1. For the purpose of fulfilling its function under Article 2, paragraph 1 (b), the Fund shall indemnify the owner and his guarantor for that portion of the aggregate amount of liability under the Liability Convention which:

(a) is in excess of an amount equivalent to 1,500 francs for each ton of the ship's tonnage or of an amount of 125 million francs, whichever is the less, and

(b) is not in excess of an amount equivalent to 2,000 francs for each ton of the said tonnage or an amount of 210 million francs, whichever is the less,

provided, however, that the Fund shall incur no obligation under this paragraph where the pollution damage resulted from the wilful misconduct of the owner himself.

2. The Assembly may decide that the Fund shall, on conditions to be laid down in the Internal Regulations, assume the obligations of a guarantor in respect of ships referred to in Article 3, paragraph 2, with regard to the portion of liability referred to in paragraph 1 of this Article. However, the Fund shall assume such obligations only if the owner so requests and if he maintains adequate insurance or other financial security covering the owner's liability under the Liability Convention up to an amount equivalent to 1,500 francs for each ton of the ship's tonnage or an amount of 125 million francs, whichever is the less. If the Fund assumes such obligations, the owner shall in each Contracting State be considered to have complied with Article VII of the Liability Convention in respect of the portion of his liability mentioned above.

3. The Fund may be exonerated wholly or partially from its obligations under paragraph 1 towards the owner and his guarantor if the Fund proves that as a result of the actual fault or privity of the owner:

(a) the ship from which the oil causing the pollution damage escaped did not comply with the requirements laid down in:

(i) the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended in 1962; or

(ii) the International Convention for the Safety of Life at Sea, 1960; or

(iii) the International Convention on Load Lines, 1966; or

(iv) the International Regulations for Preventing Collisions at Sea, 1960; or

(v) any amendments to the above-mentioned Conventions which have been determined as being of an important nature in accordance with Article XVI (5) of the Convention mentioned under (i), Article IX (e) of the Convention mentioned under (ii) or Article 29 (3) (d) or (4) (d) of the Convention mentioned under (iii), provided, however, that such amendments had been in force for at least twelve months at the time of the incident; and

(b) the incident or damage was caused wholly or partially by such non-compliance.

The provisions of this paragraph shall apply irrespective of whether the Contracting State in which the ship was registered or whose flag it was flying is a Party to the relevant Instrument.

4. Upon the entry into force of a new Convention designed to replace, in whole or in part, any of the Instruments specified in paragraph 3, the Assembly may decide at least six months in advance a date on which the new Convention will replace such Instrument or part thereof for the purpose of paragraph 3. However, any State Party to this Convention

may declare to the Director before that date that it does not accept such replacement; in which case the decision of the Assembly shall have no effect in respect of a ship registered in, or flying the flag of, that State at the time of the incident. Such a declaration may be withdrawn at any later date and shall in any event cease to have effect when the State in question becomes a party to such new Convention.

5. A ship complying with the requirements in an amendment to an Instrument specified in paragraph 3 or with requirements in a new Convention, where the amendment or Convention is designed to replace in whole or in part such Instrument, shall be considered as complying with the requirements in the said Instrument for the purposes of paragraph 3.

6. Where the Fund, acting as a guarantor by virtue of paragraph 2, has paid compensation for pollution damage in accordance with the Liability Convention, it shall have a right of recovery from the owner if and to the extent that the Fund would have been exonerated pursuant to paragraph 3 from its obligations under paragraph 1 to indemnify the owner.

7. Expenses reasonably incurred and sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as included in the owner's liability for the purposes of this Article.

Article 6

1. Rights to compensation under Article 4 or indemnification under Article 5 shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage.

2. Notwithstanding paragraph 1, the right of the owner or his guarantor to seek indemnification from the Fund pursuant to Article 5, paragraph 1, shall in no case be extinguished before the expiry of a period of six months as from the date on which the owner or his guarantor acquired knowledge of the bringing of an action against him under the Liability Convention.

Article 7

1. Subject to the subsequent provisions of this Article, any action against the Fund for compensation under Article 4 or indemnification under Article 5 of this Convention shall be brought only before a court competent under Article IX of the Liability Convention in respect of actions against the owner who is or who would, but for the provisions of Article III, paragraph 2, of that Convention, have been liable for pollution damage caused by the relevant incident.

2. Each Contracting State shall ensure that its courts possess the necessary jurisdiction to entertain such actions against the Fund as are referred to in paragraph 1.

3. Where an action for compensation for pollution damage has been brought before a court competent under Article IX of the Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Fund for compensation or indemnification under the provisions of Article 4 or 5 of this Convention in respect of the same damage. However, where an action for compensation for pollution damage under the Liability Convention has been brought before a court in a State Party to the Liability Convention but not to this Convention, any action against the Fund under Article 4 or under Article 5, paragraph 1, of this Convention shall at the option of the claimant be brought either before a court of the State where

the Fund has its headquarters or before any court of a State Party to this Convention competent under Article IX of the Liability Convention.

4. Each Contracting State shall ensure that the Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with Article IX of the Liability Convention before a competent court of that State against the owner of a ship or his guarantor.

5. Except as otherwise provided in paragraph 6, the Fund shall not be bound by any judgment or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

6. Without prejudice to the provisions of paragraph 4, where an action under the Liability Convention for compensation for pollution damage has been brought against an owner or his guarantor before a competent court in a Contracting State, each party to the proceedings shall be entitled under the national law of that State to notify the Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgment rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgment was given, become binding upon the Fund in the sense that the facts and findings in that judgment may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings.

Article 8

Subject to any decision concerning the distribution referred to in Article 4, paragraph 5, any judgment given against the Fund by a court having jurisdiction in accordance with Article 7, paragraphs 1 and 3, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the Liability Convention.

Article 9

1. Subject to the provisions of Article 5, the Fund shall, in respect of any amount of compensation for pollution damage paid by the Fund in accordance with Article 4, paragraph 1, of this Convention, acquire by subrogation the rights that the person so compensated may enjoy under the Liability Convention against the owner or his guarantor.

2. Nothing in this Convention shall prejudice any right of recourse or subrogation of the Fund against persons other than those referred to in the preceding paragraph. In any event the right of the Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation or indemnification has been paid.

3. Without prejudice to any other rights of subrogation or recourse against the Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

CONTRIBUTIONS

Article 10

1. Contributions to the Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article 11, paragraph 1, as regards

initial contributions and in Article 12, paragraphs 2 (a) or (b), as regards annual contributions, has received in total quantities exceeding 150,000 tons:

(a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and

(b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.

2. (a) For the purposes of paragraph 1, where the quantity of contributing oil received in the territory of a Contracting State by any person in a calendar year when aggregated with the quantity of contributing oil received in the Contracting State in that year by any associated person or persons exceeds 150,000 tons, such person shall pay contributions in respect of the actual quantity received by him notwithstanding that that quantity did not exceed 150,000 tons.

(b) "Associated person" means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

Article 11

1. In respect of each Contracting State initial contributions shall be made of an amount which shall for each person referred to in Article 10 be calculated on the basis of a fixed sum for each ton of contributing oil received by him during the calendar year preceding that in which this Convention entered into force for that State.

2. The sum referred to in paragraph 1 shall be determined by the Assembly within two months after the entry into force of this Convention. In performing this function the Assembly shall, to the extent possible, fix the sum in such a way that the total amount of initial contributions would, if contributions were to be made in respect of 90 per cent of the quantities of contributing oil carried by sea in the world, equal 75 million francs.

3. The initial contributions shall in respect of each Contracting State be paid within three months following the date at which the Convention entered into force for that State.

Article 12

1. With a view to assessing for each person referred to in Article 10 the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

(i) *Expenditure*

(a) costs and expenses of the administration of the Fund in the relevant year and any deficit from operations in preceding years;

(b) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4 or 5, including repayment on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident does not exceed 15 million francs;

(c) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4 or 5, including repayments on loans previously taken

by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident is in excess of 15 million francs;

(ii) *Income*

- (a) surplus funds from operations in preceding years, including any interest;
- (b) initial contributions to be paid in the course of the year;
- (c) annual contributions, if required to balance the budget;
- (d) any other income.

2. For each person referred to in Article 10 the amount of his annual contribution shall be determined by the Assembly and shall be calculated in respect of each Contracting State:

(a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1 (i) (a) and (b) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such persons during the preceding calendar year; and

(b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1 (i) (c) of this Article on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a party to this Convention at the date of the incident.

3. The sums referred to in paragraph 2 above shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.

4. The Assembly shall decide the portion of the annual contribution which shall be immediately paid in cash and decide on the date of payment. The remaining part of each annual contribution shall be paid upon notification by the Director.

5. The Director may, in cases and in accordance with conditions to be laid down in the Internal Regulations of the Fund, require a contributor to provide financial security for the sums due from him.

6. Any demand for payments made under paragraph 4 shall be called rateably from all individual contributors.

Article 13

1. The amount of any contribution due under Article 12 and which is in arrear shall bear interest at a rate which shall be determined by the Assembly for each calendar year provided that different rates may be fixed for different circumstances.

2. Each Contracting State shall ensure that any obligation to contribute to the Fund arising under this Convention in respect of oil received within the territory of that State is fulfilled and shall take any appropriate measures under its law, including the imposing of such sanctions as it may deem necessary, with a view to the effective execution of any such obligation; provided, however, that such measures shall only be directed against those persons who are under an obligation to contribute to the Fund.

3. Where a person who is liable in accordance with the provisions of Articles 10 and 11 to make contributions to the Fund does not fulfil his obligations in respect of any such contribution or any part thereof and is in arrear for a period exceeding three months, the Director shall take all appropriate action against such person on behalf of the Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon

recommendation of the Director, decide that no action shall be taken or continued against the contributor.

Article 14

1. Each Contracting State may at the time when it deposits its instrument of ratification or accession or at any time thereafter declare that it assumes itself obligations that are incumbent under this Convention on any person who is liable to contribute to the Fund in accordance with Article 10, paragraph 1, in respect of oil received within the territory of that State. Such declaration shall be made in writing and shall specify which obligations are assumed.

2. Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with Article 40, it shall be deposited with the Secretary-General of the Organization who shall after the entry into force of the Convention communicate the declaration to the Director.

3. A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.

4. A declaration made in accordance with this Article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such notification shall take effect three months after the Director's receipt thereof.

5. Any State which is bound by a declaration made under this Article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

Article 15

1. Each Contracting State shall ensure that any person who receives contributing oil within its territory in such quantities that he is liable to contribute to the Fund appears on a list to be established and kept up to date by the Director in accordance with the subsequent provisions of this Article.

2. For the purposes set out in paragraph 1, each Contracting State shall communicate, at a time and in the manner to be prescribed in the Internal Regulations, to the Director the name and address of any person who in respect of that State is liable to contribute to the Fund pursuant to Article 10, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year.

3. For the purposes of ascertaining who are, at any given time, the persons liable to contribute to the Fund in accordance with Article 10, paragraph 1, and of establishing, where applicable, the quantities of oil to be taken into account for any such person when determining the amount of his contribution, the list shall be *prima facie* evidence of the facts stated therein.

ORGANIZATION AND ADMINISTRATION

Article 16

The Fund shall have an Assembly, a Secretariat headed by a Director and, in accordance with the provisions of Article 21, an Executive Committee.

ASSEMBLY

Article 17

The Assembly shall consist of all Contracting States to this Convention.

Article 18

The functions of the Assembly shall, subject to the provisions of Article 26, be:

1. to elect at each regular session its Chairman and two Vice-Chairmen who shall hold office until the next regular session;
2. to determine its own rules of procedure, subject to the provisions of this Convention;
3. to adopt Internal Regulations necessary for the proper functioning of the Fund;
4. to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;
5. to adopt the annual budget and fix the annual contributions;
6. to appoint auditors and approve the accounts of the Fund;
7. to approve settlements of claims against the Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article 4, paragraph 5, and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of pollution damage are compensated as promptly as possible;
8. to elect the members of the Assembly to be represented on the Executive Committee, as provided in Articles 21, 22 and 23;
9. to establish any temporary or permanent subsidiary body it may consider to be necessary;
10. to determine which non-Contracting States and which inter-governmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly, the Executive Committee, and subsidiary bodies;
11. to give instructions concerning the administration of the Fund to the Director, the Executive Committee and subsidiary bodies;
12. to review and approve the reports and activities of the Executive Committee;
13. to supervise the proper execution of the Convention and of its own decisions;
14. to perform such other functions as are allocated to it under the Convention or are otherwise necessary for the proper operation of the Fund.

Article 19

1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director; provided, however, that if the Assembly allocates to the Executive Committee the functions specified in Article 18, paragraph 5, regular sessions of the Assembly shall be held once every two years.

2. Extraordinary sessions of the Assembly shall be convened by the Director at the request of the Executive Committee or of at least one-third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the Chairman of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

Article 20

A majority of the members of the Assembly shall constitute a quorum for its meetings.

EXECUTIVE COMMITTEE

Article 21

The Executive Committee shall be established at the first regular session of the Assembly after the date on which the number of Contracting States reaches fifteen.

Article 22

1. The Executive Committee shall consist of one-third of the members of the Assembly but of not less than seven or more than fifteen members. Where the number of members of the Assembly is not divisible by three, the one-third referred to shall be calculated on the next higher number which is divisible by three.

2. When electing the members of the Executive Committee the Assembly shall:

(a) secure an equitable geographical distribution of the seats on the Committee on the basis of an adequate representation of Contracting States particularly exposed to the risks of oil pollution and of Contracting States having large tanker fleets; and

(b) elect one half of the members of the Committee, or in case the total number of members to be elected is uneven, such number of the members as is equivalent to one half of the total number less one, among those Contracting States in the territory of which the the largest quantities of oil to be taken into account under Article 10 were received during the preceding calendar year, provided that the number of States eligible under this sub-paragraph shall be limited as shown in the table below:

<i>Total number of Members on the Committee</i>	<i>Number of States eligible under sub-paragraph (b)</i>	<i>Number of States to be elected under sub-paragraph (b)</i>
7	5	3
8	6	4
9	6	4
10	8	5
11	8	5
12	9	6
13	9	6
14	11	7
15	11	7

3. A member of the Assembly which was eligible but was not elected under sub-paragraph (b) shall not be eligible to be elected for any remaining seat on the Executive Committee.

Article 23

1. Members of the Executive Committee shall hold office until the end of the next regular session of the Assembly.

2. Except to the extent that may be necessary for complying with the requirements of Article 22, no State Member of the Assembly may serve on the Executive Committee for more than two consecutive terms.

Article 24

The Executive Committee shall meet at least once every calendar year at thirty days' notice upon convocation by the Director, either on his own initiative or at the request of its Chairman or of at least one-third of its members. It shall meet at such places as may be convenient.

Article 25

At least two-thirds of the members of the Executive Committee shall constitute a quorum for its meetings.

Article 26

1. The functions of the Executive Committee shall be:

(a) to elect its Chairman and adopt its own rules of procedure, except as otherwise provided in this Convention;

(b) to assume and exercise in place of the Assembly the following functions:

(i) making provision for the appointment of such personnel, other than the Director, as may be necessary and determining the terms and conditions of service of such personnel;

(ii) approving settlements of claims against the Fund and taking all other steps envisaged in relation to such claims in Article 18, paragraph 7;

(iii) giving instructions to the Director concerning the administration of the Fund and supervising the proper execution, by him of the Convention, of the decisions of the Assembly and of the Committee's own decisions; and

(c) to perform such other functions as are allocated to it by the Assembly.

2. The Executive Committee shall each year prepare and publish a report of the activities of the Fund during the previous calendar year.

Article 27

Members of the Assembly who are not members of the Executive Committee shall have the right to attend its meetings as observers.

SECRETARIAT

Article 28

1. The Secretariat shall comprise the Director and such staff as the administration of the Fund may require.

2. The Director shall be the legal representative of the Fund.

Article 29

1. The Director shall be the chief administrative officer of the Fund and shall, subject to the instructions given to him by the Assembly and by the Executive Committee, perform those functions which are assigned to him by this Convention, the Internal Regulations, the Assembly and the Executive Committee.

2. The Director shall in particular:

(a) appoint the personnel required for the administration of the Fund;

(b) take all appropriate measures with a view to the proper administration of the Fund's assets;

(c) collect the contributions due under this Convention while observing in particular the provisions of Article 13, paragraph 3;

(d) to the extent necessary to deal with claims against the Fund and carry out the other functions of the Fund, employ the services of legal, financial and other experts;

(e) take all appropriate measures for dealing with claims against the Fund within the limits and on conditions to be laid down in the internal Regulations, including the final settlement of claims without the prior approval of the Assembly or the Executive Committee where these Regulations so provide;

(f) prepare and submit to the Assembly or to the Executive Committee, as the case may be, the financial statements and budget estimates for each calendar year;

(g) assist the Executive Committee in the preparation of the report referred to in Article 26, paragraph 2;

(h) prepare, collect and circulate the papers, documents, agenda, minutes and information that may be required for the work of the Assembly, the Executive Committee and subsidiary bodies.

Article 30

In the performance of their duties the Director and the staff and experts appointed by him shall not seek or receive instructions from any Government or from any authority external to the Fund. They shall refrain from any action which might reflect on their position as international officials. Each Contracting State on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by him, and not to seek to influence them in the discharge of their duties.

FINANCES

Article 31

1. Each Contracting State shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on the Executive Committee and on subsidiary bodies.

2. Any other expenses incurred in the operation of the Fund shall be borne by the Fund.

VOTING

Article 32

The following provisions shall apply to voting in the Assembly and the Executive Committee:

(a) each member shall have one vote;

(b) except as otherwise provided in Article 33, decisions of the Assembly and the Executive Committee shall be by a majority vote of the members present and voting;

(c) decisions where a three-fourths or a two-thirds majority is required shall be by a three-fourths or two-thirds majority vote, as the case may be, of those present;

(d) for the purpose of this Article the phrase "members present" means "members present at the meeting at the time of the vote", and the phrase "members present and

voting” means “members present and casting an affirmative or negative vote”. Members who abstain from voting shall be considered as not voting.

Article 33

1. The following decisions of the Assembly shall require a three-fourths majority:
 - (a) an increase in accordance with Article 4, paragraph 6, in the maximum amount of compensation payable by the Fund;
 - (b) a determination, under Article 5, paragraph 4, relating to the replacement of the Instruments referred to in that paragraph;
 - (c) the allocation to the Executive Committee of the functions specified in Article 18, paragraph 5.
2. The following decisions of the Assembly shall require a two-thirds majority:
 - (a) a decision under Article 13, paragraph 3, not to take or continue action against a contributor;
 - (b) the appointment of the Director under Article 18, paragraph 4;
 - (c) the establishment of subsidiary bodies, under Article 18, paragraph 9.

Article 34

1. The Fund, its assets, income, including contributions, and other property shall enjoy in all Contracting States exemption from all direct taxation.
2. When the Fund makes substantial purchases of movable or immovable property, or has important work carried out which is necessary for the exercise of its official activities and the cost of which includes indirect taxes or sales taxes, the Governments of Member States shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes.
3. No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.
4. The Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the government of that country.
5. Persons contributing to the Fund and victims and owners of ships receiving compensation from the Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.
6. Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the Fund except in so far as it may be strictly necessary to enable the Fund to carry out its functions including the bringing and defending of legal proceedings.
7. Independently of existing or future regulations concerning currency or transfers, Contracting States shall authorize the transfer and payment of any contribution to the Fund and of any compensation paid by the Fund without any restriction.

TRANSITIONAL PROVISIONS

Article 35

1. The Fund shall incur no obligation whatsoever under Article 4 or 5 in respect of incidents occurring within a period of one hundred and twenty days after the entry into force of this Convention.

2. Claims for compensation under Article 4 and claims for indemnification under Article 5, arising from incidents occurring later than one hundred and twenty days but not later than two hundred and forty days after the entry into force of this Convention may not be brought against the Fund prior to the elapse of the two hundred and fortieth day after the entry into force of this Convention.

Article 36

The Secretary-General of the Organization shall convene the first session of the Assembly. This session shall take place as soon as possible after entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

FINAL CLAUSES

Article 37

1. This Convention shall be open for signature by the States which have signed or which accede to the Liability Convention, and by any State represented at the Conference on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. The Convention shall remain open for signature until 31 December 1972.

2. Subject to paragraph 4, this Convention shall be ratified, accepted or approved by the States which have signed it.

3. Subject to paragraph 4, this Convention is open for accession by States which did not sign it.

4. This Convention may be ratified, accepted, approved or acceded to, only by States which have ratified, accepted, approved or acceded to the Liability Convention.

Article 38

1. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention with respect to all existing Contracting States or after the completion of all measures required for the entry into force of the amendment with respect to those Parties shall be deemed to apply to the Convention as modified by the amendment.

Article 39

Before this Convention comes into force a State shall, when depositing an instrument referred to in Article 38, paragraph 1, and annually thereafter at a date to be determined by the Secretary-General of the Organization, communicate to him the name and address of any person who in respect of that State would be liable to contribute to the Fund pursuant to Article 10 as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.

Article 40

1. This Convention shall enter into force on the ninetieth day following the date on which the following requirements are fulfilled:

(a) at least eight States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization, and

(b) the Secretary-General of the Organization has received information in accordance with Article 39 that those persons in such States who would be liable to contribute pursuant to Article 10 have received during the preceding calendar year a total quantity of at least 750 million tons of contributing oil.

2. However, this Convention shall not enter into force before the Liability Convention has entered into force.

3. For each State which subsequently ratifies, accepts, approves or accedes to it, this Convention shall enter into force on the ninetieth day after deposit by such State of the appropriate instrument.

Article 41

1. This Convention may be denounced by any Contracting State at any time after the date on which the Convention comes into force for that State.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

4. Denunciation of the Liability Convention shall be deemed to be a denunciation of this Convention. Such denunciation shall take effect on the same date as the denunciation of the Liability Convention takes effect according to paragraph 3 of Article XVI of that Convention.

5. Notwithstanding a denunciation by a Contracting State pursuant to this Article, any provisions of this Convention relating to the obligations to make contributions under Article 10 with respect to an incident referred to in Article 12, paragraph 2 (b), and occurring before the denunciation takes effect shall continue to apply.

Article 42

1. Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for remaining Contracting States, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not later than sixty days after receipt of the request.

2. The Director may convene, on his own initiative, an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if he considers that such denunciation will result in a significant increase in the level of contributions for the remaining Contracting States.

3. If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which that denunciation takes effect, denounce this Convention with effect from the same date.

Article 43

1. This Convention shall cease to be in force on the date when the number of Contracting States falls below three.

2. Contracting States which are bound by this Convention on the date before the day it ceases to be in force shall enable the Fund to exercise its functions as described under Article 44 and shall, for that purpose only, remain bound by this Convention.

Article 44

1. If this Convention ceases to be in force, the Fund shall nevertheless

(a) meet its obligations in respect of any incident occurring before the Convention ceased to be in force;

(b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under sub-paragraph (a), including expenses for the administration of the Fund necessary for this purpose.

2. The Assembly shall take all appropriate measures to complete the winding up of the Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund.

3. For the purposes of this Article the Fund shall remain a legal person.

Article 45

1. A Conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The Organization shall convene a Conference of the Contracting States for the purpose of revising or amending this Convention at the request of not less than one-third of all Contracting States.

Article 46

1. This Convention shall be deposited with the Secretary-General of the Organization.

2. The Secretary-General of the Organization shall:

(a) inform all States which have signed or acceded to this Convention of:

(i) each new signature or deposit of instrument and the date thereof;

(ii) the date of entry into force of the Convention;

(iii) any denunciation of the Convention and the date on which it takes effect;

(b) transmit certified true copies of this Convention to all Signatory States and to all States which accede to the Convention.

Article 47

As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 48

This Convention is established in a single original in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared by the Secretariat of the Organization and deposited with the signed original.

IN WITNESS WHEREOF the undersigned plenipotentiaries being duly authorized for that purpose have signed the present Convention.

DONE at Brussels this eighteenth day of December one thousand nine hundred and seventy-one.

4. INTERNATIONAL ATOMIC ENERGY AGENCY

Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material. Done at Brussels on 17 December 1971

[For the text of the Convention, see p. 100 of this *Yearbook*]

Chapter V

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Decisions of the Administrative Tribunal of the United Nations ¹

1. JUDGEMENT NO. 153 (14 APRIL 1972):² JAYARAM V. UNITED NATIONS JOINT STAFF PENSION BOARD

Request for the commutation into a lump sum of a pension payable at the minimum annual rate—Interpretation of article 29 (d) of the Pension Fund Regulations

The applicant had been informed by the Secretary of the Joint Staff Pension Board that article 29 (d) of the Pension Fund Regulations did not authorize commutation into a lump sum of a part of a pension payable at the minimum annual rate.

This interpretation was upheld by the Standing Committee of the Board, and the applicant then filed an application with the Tribunal. Article 29 of the Pension Fund Regulations reads as follows:

“Article 29

“*Retirement benefit*

“(a) A retirement benefit shall be payable to a participant whose age on separation is sixty years or more and whose contributory service was five years or longer.

“(b) The benefit shall be payable either:

“(i) At the standard annual rate which is obtained by multiplying the years of the participant’s contributory service, not exceeding thirty, by 1/50 of his final average remuneration, or

¹ Under article 2 of its Statute, the Administrative Tribunal of the United Nations is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. Article 14 of the Statute states that the competence of the Tribunal may be extended to any specialized agency upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. By the end of 1972, two agreements of general scope, dealing with the non-observance of contracts of employment and of terms of appointment, had been concluded, pursuant to the above provision, with two specialized agencies: the International Civil Aviation Organization; the Inter-Governmental Maritime Consultative Organization. In addition, agreements limited to applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund had been concluded with the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the International Telecommunication Union, the International Civil Aviation Organization, the World Meteorological Organization and the International Atomic Energy Agency.

The Tribunal is open not only to any staff member, even after his employment has ceased, but also to any person who has succeeded to the staff member’s rights on his death, or who can show that he is entitled to rights under any contract or terms of appointment.

² Mr. R. Venkataraman, President; Mr. Z. Rossides, Member; Sir Roger Stevens, Member.

“(ii) At the minimum annual rate which is obtained by multiplying the years of the participant’s contributory service, not exceeding ten, by the smaller of 180 dollars or 1/30 of his final average remuneration, if the benefit so calculated would be greater than the amount under (i) above.

“(c) A benefit payable at the standard annual rate may be commuted by the participant into a lump sum:

“(i) If the rate is 300 dollars or more, to the extent of one third of its actuarial equivalent or the amount of his own contributions, whichever is greater, or

“(ii) If the rate is less than 300 dollars, to the extent of its full actuarial equivalent; if a male participant is married, the prospective benefit payable to his spouse may also be commuted at the standard annual rate of such benefit.

“(d) A benefit payable at the minimum annual rate may be commuted into a lump sum as in (c) above, if the participant elects to receive it instead at the standard annual rate.”

The Tribunal felt that the terms used in clause (d) clearly indicated that in order to have a pension payable at the minimum annual rate commuted, the participant must elect to receive a pension at the standard annual rate instead of at the minimum annual rate. Accordingly, it rejected the application.

2. JUDGEMENT NO. 154 (18 APRIL 1972):³ MONASTERIAL V. SECRETARY-GENERAL OF THE UNITED NATIONS

Decision to withhold payment of a special post allowance—Granting of such an allowance is a matter within the Secretary-General’s discretion—Criterion applied by the defendant organization to determine whether a staff member has assumed “the full duties and responsibilities of a post at a higher level than his own”

The applicant, a staff member at the G-5 level, requested that a special post allowance should be granted to him “in recognition of [his] performance of professional functions for the last three consecutive years”. He attached to the request documentation which he claimed would prove beyond a doubt that he had assumed “the full duties and responsibilities of a post at a clearly recognizable higher level than his own”, in accordance with Staff Rule 103.11 (b).

His request was denied on the grounds that, according to the official manning table of his department, he had always occupied a G-5 post.

The matter was brought before the Tribunal, which pointed out that the granting of a special post allowance under Staff Rule 103.11 was a matter within the Secretary-General’s discretion and that it was not competent to enter into the merits of such decisions. It noted, however, that according to the applicant the respondent had based his decision not on his discretionary power but on the contention that the applicant had not assumed the responsibilities of a higher-level post.

In that connexion the Tribunal recalled that in order to qualify for a special post allowance it was not enough that a staff member should have assumed the duties and responsibilities of a higher level post as stipulated in Staff Rule 103.11 (a); he must also have complied with the requirements of paragraph (b) and, in particular, he must have assumed “the full duties and responsibilities of a post at a clearly recognizable higher level than his own”. The Tribunal considered that it was beyond its purview to make a factual assessment as to whether a staff member had assumed the full duties and responsibilities

³ Mr. R. Venkataraman, President; Mrs. S. Bastid, Vice-President; Mr. Z. Rossides, Member; Sir Roger Stevens, Alternate Member.

of a post at a clearly recognizable higher level than his own. The Secretary-General was entitled to establish criteria for deciding such issues. At the Tribunal's request, the respondent gave the following explanations in that connexion:

"... Secretary-General consistently exercises his discretion under Staff Rule 103.11 only in cases where he may effect payment of allowance with funds allocated to post at higher level authorized by official manning table approved in budget by General Assembly. Under budgetary procedure, Secretary-General cannot consider granting allowance attaching to post which does not exist in official manning table... they [Office of Personnel] are aware of no precedent where higher responsibilities for purposes of allowance were not evidenced by assignment to a post at the higher level authorized in official manning table."

In the view of the Tribunal, the criterion thus defined was a reasonable one and within the authority of the Secretary-General to prescribe. It added, however, that the litigation might have been avoided if the criterion had been made known to the staff in some official manner.

As the applicant had never been assigned to a post at the higher level on the official manning table, the Tribunal considered that he failed to meet the requirements of Staff Rule 103.11 as applied by the Respondent and accordingly rejected the application.

3. JUDGEMENT NO. 155 (19 APRIL 1972):⁴ BELAINEH V. SECRETARY-GENERAL OF THE UNITED NATIONS

Decision to withhold payment of a special post allowance

The applicant, a Programming Clerk at the GS-6 level, was transferred and on 1 July 1966 his functional title was changed to Administrative Assistant. The Administration having decided to terminate his services on 30 April 1969, the applicant requested that he be paid retroactively for the work he had performed at a higher level for almost three years. When his request was denied, he appealed to the Tribunal, invoking Staff Rule 103.11 in support of his claim.

The Tribunal dismissed the request, recalling that in accordance with paragraph (a) of the above-mentioned rule, staff members shall be expected to assume temporarily, as a normal part of their customary work and without extra compensation, the duties and responsibilities of higher level posts. In the conditions specified in paragraphs (b) and (c), a special post allowance might be granted; the granting of that allowance was, however, entirely within the discretion of the Secretary-General, who might or might not grant it. Consequently, the Secretary-General was not legally bound to grant a special post allowance to the applicant because the latter had assumed the duties and responsibilities of a higher level post. As to the applicant's claim that the contested decision was motivated by prejudice, the Tribunal acknowledged that the length of time during which the staff member assumed those increased responsibilities and the manner in which he discharged them could legitimately be included among the criteria for determining the existence of the exceptional cases mentioned in paragraph (b) of Staff Rule 103.11. The Tribunal was of the opinion, however, that those factors could not on their own be considered as decisive and that in any event the applicant had not proved the existence of prejudice in the case under consideration.

⁴ Mrs. S. Bastid, Vice-President, presiding; Mr. Z. Rossides, Member; Mr. V. Mutuale, Member.

4. JUDGEMENT NO. 156 (20 APRIL 1972):⁵ GARNETT V. SECRETARY-GENERAL OF THE UNITED NATIONS

Calculation of salary at promotion—according to the provisions of the relevant Staff Rule a staff member who is promoted shall receive compensation, during the first year following promotion, in the amount of one step in the new position's salary scale more than he would have received without a promotion.

On 1 September 1969, the applicant, a Professional Assistant at the G-5, step IX level, was promoted to the P-2 level and her salary rate was computed at the P-2, step I level in accordance with Staff Rule 103.9 (i), which provides, on promotion, for an increase in salary equivalent to one full step in the new level except where promotion to the lowest step of the level yields a greater amount. On 1 January 1970, there was a general increase in the salary scale for the General Service category which was not taken into account in the application of Staff Rule 103.9 to the applicant. The latter sought an adjustment of the steps in her grade on the ground that, notwithstanding Staff Rule 103.9 (i), the amount of her salary during the first year following her promotion had not been one full step more than she would have received without promotion. The claim was rejected.

The matter was brought before the Tribunal, which recalled that Staff Rule 103.9 provided as follows:

“(i) During the first year following promotion a staff member in continuous service shall receive in salary the amount of one full step in the level to which he has been promoted more than he would have received without promotion, except where promotion to the lowest step of the level yields a greater amount. The step rate and date of salary increment in the higher salary level shall be adjusted to achieve this end.”

The respondent maintained that the calculation called for by paragraph (i) should be made, at the time of promotion (i.e. at the beginning of the first year following promotion), solely on the basis of the salary scale then prevailing in the position from which the staff member was promoted and that increases in the salary scale for that position occurring thereafter during the first year following promotion should be disregarded.

The Tribunal felt that that claim was contrary to the wording of paragraph (i): the initial phrase “during the first year following promotion” clearly implied a computation continuing throughout the year and not one made solely at the beginning of the year. To disregard increases made during the year in the salary scale for the position from which the staff member was promoted would be inconsistent with the obvious purpose of the Staff Rule to ensure that the promotion should result in his receiving during the year compensation in the amount of one step in the new position's salary scale more than he would have received in the prior position during that year. No retroactivity was, involved since calculation was to be made for the entire year taking into account any changes as from their effective date.

The Tribunal accordingly rescinded the contested decision and ordered the respondent to recompute the applicant's salary in accordance with Staff Rule 103.9 (i) as construed by the Tribunal or to pay the applicant a corresponding amount in compensation.

⁵ Mrs. S. Bastid, Vice-President, presiding; Mr. F. T. P. Plimpton, Vice-President; Mr. Mutuale-Tshikantshe, Member.

5. JUDGEMENT NO. 157 (26 APRIL 1972):⁶ NELSON V. SECRETARY-GENERAL OF THE UNITED NATIONS

Termination of a permanent appointment—Right of the Administration, in case of plurality of grounds for termination, to rely on the ground of its choice—Requirement of a complete, fair and reasonable procedure

The applicant, who had a permanent appointment, had rebutted a periodic report where he had been rated as “on the whole an unsatisfactory staff member”. After receiving advice from a panel of three senior officers of the Department, the Officer-in-Charge of the Office of General Services concluded that there was no need to amend the entries in the periodic report. One month later, the applicant was the subject of a special report by his immediate superior, where he was rated as “an unsatisfactory staff member”. The applicant was then notified that the Secretary-General had decided to terminate his permanent appointment on the ground of unsatisfactory service in accordance with Staff Regulation 9.1 (a).

Before the Tribunal, the applicant sought the rescission of the decision to terminate his appointment. His first contention was that the real ground for termination of his appointment was an unfounded suspicion of unauthorized outside employment, that the respondent had substituted unsatisfactory services for the real ground in order to avoid reference to the Joint Disciplinary Committee and that the contested decision was therefore vitiated by extraneous motives. The Tribunal noted that in a memorandum from the applicant’s immediate superior reference was made both to the applicant’s having an unauthorized second job with a private concern and to his irregularity in attendance, as well as to the fact that he was unsatisfactory. The Tribunal noted that the Administration had two grounds for its decision, and it felt that the Administration could validly rely on the ground of unsatisfactory services.

The applicant’s second contention was that a complete, fair and reasonable procedure had not been accorded to him prior to the termination of his appointment and that the contested decision was therefore vitiated by procedural irregularity. The Tribunal, basing itself on precedent (judgements No. 98⁷ and No. 131⁸), felt it was necessary to consider whether the procedure followed for the termination of the applicant’s appointment was complete, fair and reasonable. It observed in that connexion that the panel from which the Officer-in-Charge of the Office of General Services had taken advice had only had the limited scope of investigating the periodic report and the rebuttal by the applicant and had not considered the question as to whether or not the applicant’s appointment should be terminated for unsatisfactory services. Neither in its composition, nor in the procedure followed by it, nor in its terms of reference did the panel provide the complete, fair and reasonable procedure required. The Tribunal recalled that in its judgement No. 98 it had ruled that when a case was referred to the Appointment and Promotion Board, a review by that Board or its subsidiary bodies constituted the complete, fair and reasonable procedure. It stated that where the Staff Rules did not provide for reference to the Appointment and Promotion Board, an equivalent procedure must be followed prior to the decision to terminate a permanent appointment for unsatisfactory services. It endorsed the reasoning of the Joint Appeals Board and added that the Staff Rules would lack consistency if permanent appointments could be terminated on grounds of unsatisfactory services without prior reference to a joint review body whereas probationary appointments could not.

⁶ Mr. R. Venkataraman, President; Mrs. S. Bastid, Vice-President; Mr. F. T. P. Plimpton, Vice-President.

⁷ See *Juridical Yearbook*, 1966, p. 213.

⁸ *Ibid.*, 1969, p. 193.

The Tribunal felt that the requirement of a “complete, fair and reasonable procedure” would be adequately met if the action contemplated was subject to a fair review by a “joint body”. The Tribunal did not rule that a review must necessarily be carried out by the Appointment and Promotion Board or its subsidiary bodies; what the Tribunal did rule was that a complete, fair and reasonable procedure to ensure the substantial rights granted to staff members with permanent appointments must be provided prior to the termination of such appointments, either by the Appointment and Promotion Board where the Staff Rules so provided or by a similar joint review body in the absence of such a provision. Finally, the Tribunal added that the requirement of due process had not been fulfilled by the intervention of the Joint Appeals Board, because the complete, fair and reasonable procedure should be carried out prior to the decision and not subsequently by an appellate body such as the Joint Appeals Board.

The Tribunal accordingly ruled that the case should be remanded for institution or correction of the appropriate procedure. It also ordered that the applicant be paid as compensation a sum equivalent to three months’ net base salary for loss caused by the procedural delay.

6. JUDGEMENT NO. 158 (28 APRIL 1972):⁹ FASLA V. SECRETARY-GENERAL OF THE UNITED NATIONS

Non-renewal of a fixed-term contract—Obligation of the respondent with regard to periodic reports—Annulment of a periodic report which was prejudiced—Commitment by the respondent to make every effort to find another assignment for the applicant—Failure to fulfil this commitment—Question of which allowances are payable in a case where an assignment for one year or more is cut short

The applicant entered the service of the Organization on 30 June 1964 under a fixed-term appointment which was extended several times. After assignments in a number of countries, he was reassigned on 15 September 1968 to the UNDP Office at Taiz (Yemen). Upon this reassignment he received an installation allowance and an assignment allowance and, as his family did not join him, his post adjustment was calculated at the New York rate. On 1 December 1968, however, his family having joined him in Taiz, his post adjustment at the New York rate was discontinued and replaced by a post adjustment at the—lower—Taiz rate. Strained relations soon developed between him and his superior. After a number of investigations into the UNDP operations in Yemen, the applicant was recalled to Headquarters, where he was informed that every effort would be made to secure another assignment for him and that if no possibilities presented themselves he would be placed on special leave with full pay until he was assigned, or until the expiry of his contract on 31 December 1969, whichever was earlier. On 20 November 1969, UNDP notified the applicant that it had not been possible to find another assignment for him and that no extension of his contract could therefore be envisaged. When that decision had been confirmed, the applicant lodged an appeal with the Joint Appeals Board.

It should be noted that the applicant’s services were evaluated in three periodic reports. The first covered the period from 30 June 1964 to 30 June 1965 and rated him “a staff member who maintains only a minimum standard”. The second covered the period from June to October 1966 and described him as “an efficient staff member giving complete satisfaction”. The third report, covering the period from November 1966 to November 1967, described him as “a staff member who maintains only a minimum standard”. Other

⁹ Mrs. S. Bastid, Vice-President, presiding; Mr. R. Venkataraman, President; Mr. Mutuale-Tshikantshe, Member.

periodic reports concerning the work of the applicant were prepared upon the recommendation of the Joint Appeals Board after the applicant had left the service of the United Nations.

The Joint Appeals Board reached the conclusion that UNDP had not violated any Staff Regulations or Staff Rules or the terms and conditions of appointment of the applicant in not renewing his fixed-term appointment. Nevertheless, the Board took account of the following aspects of the case:

(1) Very difficult conditions prevailed in the UNDP Office in Yemen. Because of the circumstances in which the applicant was called upon to work, he was placed in a disadvantageous position with respect to his future assignments with UNDP or other international organizations.

(2) UNDP had not followed administrative procedures with respect to the periodic reports, since there were substantial gaps in his service not covered by reports.

(3) UNDP had not followed the required practice with regard to rebuttals of periodic reports by staff members.

(4) Complimentary assessments of the applicant's work over one particular period had not been included in his Official Status file or mentioned on the fact sheet.

(5) UNDP's efforts to assign the applicant elsewhere were inadequate, especially since the fact sheet (which had been attached to the letters to the United Nations and the specialized agencies proposing the applicant's candidacy) was incomplete.

Accordingly, the Board recommended:

- (i) That UNDP should re-examine the applicant's files with a view to filling the gaps in the records and, if necessary, placing additional material on his fact sheet;
- (ii) That UNDP should make further serious efforts to place the applicant in a suitable post;
- (iii) That, if UNDP failed in those efforts, an *ex gratia* payment equivalent to six months' salary should be made to the applicant.

The Secretary-General decided to refer the recommendations in subparagraphs (i) and (ii) to the UNDP administration and to take no action on the recommendation in subparagraph (iii). UNDP, for its part, decided to implement the Board's first recommendation and indicated, with regard to the second recommendation, that it did not intend to offer the applicant another appointment in the future as all possible efforts had been made in that regard.

In addition to this first appeal to the Joint Appeals Board, the applicant lodged a second appeal in which he contended that he was entitled to subsistence allowance for the duration of his stay in Yemen from 15 September 1968 to 17 May 1969 and to the difference between the Yemen post adjustment and the New York post adjustment for the period from 22 May to 31 December 1959. In that connexion, the Board noted that, when the applicant had been assigned to Yemen, that assignment had been expected to last for at least one year, and it considered that his salary and allowances had been correctly determined on that basis. For the period from 23 May to 31 December 1969, the Board considered that the applicant's duty station had been changed to New York and that he should have been paid the New York post adjustment. In the absence of any guidance in the relevant rules and instructions as to whether salary and allowances should be recalculated when an assignment for one year or more is cut short, the Board decided to restrict itself to recommending an *ex gratia* payment to the applicant in the amount of any losses that he could show he had suffered as a consequence of his precipitate recall from Yemen. Accordingly, the Secretary-General advised the applicant that sympathetic consideration would

be given to such claims as he might be able to substantiate for financial losses which occurred as a result of his recall to Headquarters on short notice and that he would be paid an amount equivalent to the difference between the post adjustments for New York and Taiz for the period from 23 May to 31 December 1969.

In considering the case, the Tribunal recalled that Staff Rule 112.6 required supervisors to make reports from time to time on the service and conduct of their subordinates and that Administrative Instruction ST/AI/115 of 11 April 1956 specified that for staff serving under temporary appointments the report would be made each year. The Tribunal noted that the periodic reports were the basis for the fact sheet which the respondent used when he was required to find a suitable post for a staff member. In that connexion, the Tribunal noted that UNDP had made a formal commitment to make "every effort" to find another assignment for the applicant; that commitment, in the Tribunal's view, obviously implied an obligation to act in a correct manner and in good faith. The Tribunal further noted that, at the time when the search had been undertaken, no periodic report had been made on the applicant's service from July 1965 to May 1966 and from November 1967 to December 1969; the established procedure for the rebuttal of reports had not been observed; and, lastly, certain complimentary assessments of the applicant's service did not appear in the file. The fact sheet drawn up solely on the basis of the existing reports was thus incomplete. The Tribunal therefore considered that the commitment undertaken by the respondent had not been correctly fulfilled.

The Tribunal noted that, following the recommendations of the Joint Appeals Board, UNDP had stated its readiness to fill the gaps in the applicant's file and, if necessary, to place additional material on the applicant's fact sheet, thereby recognizing that the file in question did not conform to the established rules at the time when the search for an assignment was being made and that the fact sheet was incomplete if not inaccurate. UNDP had, however, refused to resume its effort to find a post for the applicant. In those circumstances, the Tribunal observed, the preparation of a corrected fact sheet became meaningless. Even assuming, therefore, that action to complete the file had been taken in a correct manner, it could not *per se* have any effect on the respondent's obligation to find a post for the applicant. The Tribunal nevertheless felt it necessary to consider the manner in which UNDP had acted to fill the gaps in the file. It noted that the applicant had strongly contested the actual circumstances in which additions had been made to his file and, in particular, had contended that one of the reports drawn up *a posteriori* was prejudiced. The Tribunal noted that the report in question contained comments couched in unusually strong terms. It considered that a report of that kind, written more than one year after the supervisor had relinquished his duties, testified to uncontrolled personal feelings. In addition, the Tribunal noted that the assessments of the applicant's linguistic ability in that report were much less favourable than those in previous reports. In the Tribunal's view, it was scarcely conceivable that knowledge of a language should deteriorate with practice and it should be recognized that the assessments given in that last report could not constitute a reasonable and well-considered opinion. The Tribunal accordingly concluded that the first reporting officer was guilty of prejudice. It also observed that the second reporting officer had not taken into consideration the comments from an authorized person who had been requested to make an investigation of the mission in Yemen, but had simply acknowledged that the ratings made by the first reporting officer led to the conclusion that the applicant was "on the whole, an unsatisfactory staff member". In view of the above, the Tribunal decided that the periodic report in question was invalid and must be treated as such for all appropriate purposes.

The Tribunal, having reached the conclusion that the respondent did not perform in a reasonable manner the obligation which he had undertaken to seek an assignment for the

applicant, noted that it was not possible to remedy that situation by rescinding the contested decision or by ordering performance of the obligation contracted in 1969. Accordingly, it awarded the applicant a sum equal to six months' net base salary.

Turning to the question of allowances, the Tribunal recalled that, according to Staff Rule 103.22 (c), "When a staff member is assigned to a duty station for less than one year, the [assignment] allowance will normally not be paid. However, appropriate subsistence payments will be made where no assignment allowance is payable". The Tribunal observed that that text left the respondent a margin of discretion with respect to the payment of an assignment allowance. In addition, the text laid down a very strict rule: the subsistence allowance was payable only where an assignment allowance had not been paid. Since the applicant had received an assignment allowance, he was not entitled to a subsistence allowance. Nevertheless, the Tribunal granted the applicant a period of two months in which to avail himself of the option given him by the respondent in offering to compensate him for any losses he had suffered as a result of his precipitate recall from Yemen.

7. JUDGEMENT NO. 159 (4 OCTOBER 1972):¹⁰ GRANGEON V. SECRETARY-GENERAL OF THE UNITED NATIONS

Time-limit for filing of appeals before the Joint Appeals Board—Claims found unfounded or frivolous by the Board—Such claims not receivable by the Tribunal

The applicant, who had submitted various claims, was informed in a reply dated 27 May 1970 of the action which had been taken on his claims and of the recourse procedure laid down in the Staff Rules. A copious correspondence followed; on 30 September 1970, the applicant requested the Secretary-General to review the case and was informed by the Director of Personnel on 16 October 1970 that, in accordance with Staff Rule 111.3, the points raised by him had been reviewed; the results of the review in respect of each of the claims were indicated, and it was pointed out that the time-limit for appeals, as laid down by Staff Rule 111.3, had expired in respect of some of those claims.

The Joint Appeals Board, in dealing with the case, concluded that in view of the dates of the notification of the various decisions appealed against to the appellant, and particularly in view of the letter of 27 May 1970 referred to above, the request for administrative review made on 30 September 1970 was not within the time-limit of one month prescribed by Staff Rule 111.3 (a). The Board accordingly found that the appeal was not receivable. It added *obiter* that its consideration of the merits of the case led it to the conclusion that the claims made by the applicant, except possibly for one of them, were unfounded and, indeed, frivolous.

On the question of the receivability of the appeal by the Joint Board, the Tribunal noted that on several occasions in its letters to the applicant, the Administration had informed him that his claims would be reviewed. Subsequently, the Administration did indeed undertake such a review, specifying that, by so doing, it was acting in accordance with Staff Rule 111.3, as could be seen from its letter of 16 October 1970. The Tribunal added that in view of Staff Rule 112.2 (b), under which the Secretary-General might make exceptions to the Rules, the Administration had, at least in respect of certain claims, offered the applicant, and the latter had moreover exercised, the option of appealing to the Board within a time-limit which began to run from the date on which he received the letter of 16 October 1970. With regard to the claims in question, the Tribunal therefore considered that, since the appeal was made on 21 October 1970, it was within the prescribed time-limit and accordingly the Joint Appeals Board was bound to receive it.

¹⁰ Mrs. S. Bastid, Vice-President, presiding; Mr. F. A. Forteza, Member; Mr. Mutualc-Tshikantshe, Member.

With regard to the receivability of the application by the Tribunal, the latter noted that the Joint Appeals Board had unanimously felt that the claims were unfounded or frivolous, except for one concerning an installation grant. It therefore concluded, in application of article 7.3 of its Statute, that it could receive only the claim concerning the installation grant. With regard to that claim, however, the Administration had notified applicant of its rejection of the claim on 28 July 1969. Thus, since the request for a review for the purpose of appeal was submitted to the Administration on 30 September 1970, it was clear that a review of the claim in question was not requested within the time-limit laid down in Staff Rule 111.3 (a). The claim was therefore not receivable.

8. JUDGEMENT NO. 160 (9 OCTOBER 1972):¹¹ ACINAPURA V. SECRETARY-GENERAL OF THE UNITED NATIONS

Decision refusing payment of post adjustment "at the dependency rate"—Definition of the term "child" for the purposes of the Staff Regulations and the Staff Rules

The applicant, who received post adjustment at the dependency rate on account of his daughter, asked the Office of Personnel whether his post adjustment would continue to be paid at the dependency rate after the date on which his daughter, who was attending a university, became 21 years of age. On receiving a negative reply, he filed an application before the Tribunal claiming entitlement to receive post adjustment at the "dependency rate" instead of at the "single rate".

The Tribunal noted that the claim rested on an interpretation of Staff Rule 103.7 (b) (i), which reads as follows:

"(b) (i) The rate of post adjustment shown on the schedules for staff members with dependants shall apply to a staff member if his spouse is recognized as a dependant under Rule 103.24 or if it is recognized that the staff member provides substantial and continuing support of one or more of his children."

The applicant interpreted the above rule to mean that post adjustment at the dependency rate was payable to any staff member who provided substantial and continuing support of one or more of his children, whatever their age and dependency status.

The Tribunal pointed out that Rule 103.24 (b) defined the term "child" as follows:

"For the purposes of the Staff Regulations and Staff Rules, a 'child' shall be the unmarried child of a staff member under the age of 18 years or, if the child is in full-time attendance at a school or university (or similar educational institution), under the age of 21 years. If the child is totally and permanently disabled, the requirements as to school attendance and age shall be waived."

It pointed out that since Rule 103.7 (b) (i) was part of the Staff Rules, and since Rule 103.24 (b) defined the term "child" "for the purposes of the Staff Regulations and Staff Rules", the definition in question should also apply to the words "one or more of his children" in Rule 103.7 (b) (i). The Tribunal added that the applicant's interpretation of Rule 103.7 (b) (i) would lead to an absurd result since it would allow a staff member to claim indefinitely post adjustment at the higher rate on the ground that he provided substantial and continuing support to one or more of his children. Accordingly the Tribunal rejected the application.

¹¹ Mr. R. Venkataraman, President; Mr. Mutuale-Tshikantshe, Member; Sir Roger Stevens, Member.

9. JUDGEMENT NO. 161 (10 OCTOBER 1972):¹² NOEL V. SECRETARY-GENERAL OF THE UNITED NATIONS

Termination for abolition of post of a staff member holding a permanent appointment—Allegation that the Joint Appeals Board which considered the matter had been improperly constituted—Obligation of the respondent with regard to the reassignment of a locally recruited staff member.

The applicant, locally recruited and the holder of a permanent appointment, had been terminated for abolition of post after he had declined an offer of transfer and after all efforts by the Administration to reassign him had failed.

Before the Tribunal he contended, firstly, that the Joint Appeals Board which had considered his case had been improperly constituted, as the alternate elected by the staff had worked for a department in which the applicant himself had been employed and, furthermore, the member elected by the staff should have sat in the case, rather than the fourth staff-elected alternate. Secondly, he contended that in terminating his permanent appointment for abolition of post, the respondent had failed to fulfil his obligations under Staff Rule 109.1 (c) and that the applicant had, in fact, been the victim of a campaign designed to bring about his termination for reasons that did not appear in the file.

With regard to the composition of the Joint Appeals Board, the Tribunal noted that the applicant's objection to the participation of the fourth staff-elected alternate in the proceedings on the ground of that alternate's relation to the applicant had been overruled by the Chairman of the Board under the discretion granted to him by Staff Rule 111.2 (e). The applicant's contention that the member elected by the staff should have sat in the case rather than the fourth staff-elected alternate was based on a restrictive interpretation of Staff Rule 111.2 (b) and ignored the practical realities of a situation in which, owing to the number of appeals, recourse had to be had to all the alternates if unnecessary delays in hearings were to be avoided. The Tribunal noted that in that connexion the following words of a memorandum of the Convening Chairman:

"The Board adopted a crash programme... Accordingly the members of the panel of Chairmen held a meeting... in the course of which they distributed all the cases pending before the Board among themselves and among the members and alternates... The staff-elected member was assigned six cases, and each alternate three or more cases, in the order in which they received votes in the election. It was considered that after having been designated to serve on a certain number of cases, the member and the alternates became unavailable, in the meaning of Staff Rule 111.2 (b), for serving on more cases."

It was the Tribunal's view that those dispositions represented a reasonable interpretation of Staff Rule 111.2 (b).

With regard to the obligations of the respondent, the Tribunal pointed out that since the applicant had been recruited locally, the provisions of Staff Rule 109.1 (c) (ii) (a), reading as follows:

"The provisions of paragraph (i) above in so far as they relate to locally recruited staff members shall be deemed to have been satisfied if such locally recruited staff members have received consideration for suitable posts available at their duty stations",

applied in his case, so that the obligation of the respondent had been limited to ensuring that the applicant received consideration for a suitable post in New York. The Tribunal noted in that connexion that the applicant had been offered a post and had declined it, although he had been warned that the alternative to acceptance might be termination.

¹² Mr. R. Venkataraman, President; Mrs. S. Bastid, Vice-President; Sir Roger Stevens, Member.

It also recalled that the Administration had made a search for alternative posts for the applicant in good faith over a considerable period. Accordingly, the Tribunal found that the respondent had fully complied with the requirements of Staff Rule 109.1, and it rejected the application.

10. JUDGEMENT NO. 162 (10 OCTOBER 1972):¹³ MULLAN V. SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting a decision denying a staff member payment of her husband's travel expenses in connexion with her home leave—Any staff member who invokes non-compliance with his contract and his terms of appointment may have recourse to sources of law other than the provisions of the Staff Regulations and Rules—Under the Staff Regulations, the Organization pays the travel expenses of "dependants"—The staff rule which makes a distinction between wife and husband with regard to the payment of travel expenses in connexion with home leave is contrary to Article 8 of the Charter—The provision that entitles a female staff member to payment of her husband's travel expenses only if he is a "dependent husband" is consistent with the Statute of the Tribunal

The applicant had claimed payment of travel expenses for her husband in connexion with her forthcoming home leave to Argentina. Upon rejection of her claim, she addressed a memorandum to the Secretary-General, requesting him to review that decision; the memorandum read in part:

"... My husband is not a dependant within the meaning of Staff Rule 103.24, and under Staff Rule 107.5 a female staff member is entitled to payment of her spouse's travel expenses only if he is a 'dependent husband'.

"However, I should like to point out that under such rule, a non-dependent wife of a staff member is entitled to accompany her husband at the expense of the Organization, whereas a non-dependent husband does not benefit in the same way.

"This situation seems to be in contradiction of the fundamental principle of equality of rights as laid down in the Charter, specifically in Article 8, and in other international instruments. It also runs counter to the principle of equal remuneration and equal conditions of employment, in so far as the rule denies female staff members a benefit which can be claimed automatically by male staff members even when they are exactly in the same position as I am now, and regardless of the earning capacity of their wives.

"That is why I respectfully request you, Sir, to review and rescind the decision quoted above, as it is based on a rule which is inconsistent with those basic principles and with the policy of non-discrimination pursued and advocated by the United Nations in all fields."

The Secretary-General having refused to rescind the contested decision, the applicant lodged an appeal with the Joint Appeals Board; the Board held that the appeal, which in substance challenged not an administrative decision but a staff rule as being contrary to applicable provisions considered higher and prevalent, was beyond the powers of the Board. Accordingly, the Board made no recommendation on the appeal.

The Tribunal, when the case was brought before it, first considered the respondent's contention that the application was aimed not at ensuring the fulfilment of obligations deriving from the Staff Regulations and Rules but at invalidating Staff Rule 107.5 (a) and therefore did not come within the competence of the Tribunal.

The Tribunal noted that the respondent's objection alleging incompetence was based not on the pleas of the applicant but on the argument she submitted in support of them. It observed that the pleas concerned a dispute relating to the applicant's own contract of

¹³ Mr. R. Venkataraman, President; Mrs. S. Bastid, Vice-President; Sir Roger Stevens, Member.

employment and that any decision on those pleas would affect only her own individual situation. Article 2.1 of the Statute of the Tribunal referred, in defining the competence of the Tribunal, to applications alleging non-observance of contracts of employment of staff members or of their terms of appointment. The words "contracts" and "terms of appointment" were stated to include all pertinent regulations and rules in force at the time, but that phraseology could not be assumed to exclude the possible application of any other sources of law, particularly the Charter, which was indeed the constitution of the United Nations and contained certain provisions relating to staff members; nor did it exclude the fundamental principles of law, especially of the law of contracts. Consequently, the Tribunal decided that the case came within its competence.

With regard to the substance of the case, the Tribunal noted that the respondent did not dispute that the provisions of the Charter might affect the legal status of staff members but contended that the latter could not rely on the Charter in order to avoid the application of a staff rule. The applicant, on the other hand, argued that in the event of a conflict between the Charter and the Staff Rules, the Charter should prevail. The Tribunal noted that there was no text comparable to Article 103 of the Charter applicable to the Staff Regulations and Rules. In the view of the Tribunal, it would be difficult to assert that a general principle of law concerning the effects of the hierarchy of legal provisions had definitely emerged from the practice of States. The Tribunal believed that in considering a specific case, the most appropriate course was to identify the source and ascertain the scope of the texts which had been relied on in the case. It asserted that Article 8 of the Charter, which it described as "a provision of great historic scope", contained a rule which was legally binding on United Nations organs. However, responsibility for its implementation fell upon those who were competent to make rules applicable to the staff, which meant primarily the General Assembly, under Article 101, paragraph 1, of the Charter. The Tribunal pointed out that in Staff Regulation 7.1* the General Assembly had laid down in principle an obligation on the part of the United Nations to pay the travel expenses of persons other than the staff member, namely his dependants, but had left the Secretary-General broad authority to implement the principle. However, the Staff Regulations also used the concept of dependency for another purpose in Regulation 3.4, which provided for dependency allowances and set their levels "for a dependent wife or dependent husband" and "for each dependent child".

The Tribunal noted that Staff Rule 103.24 defined dependency for the purpose of payment of dependency allowances without making any distinction between staff members in respect of sex and that the "conditions of equality" enunciated in Article 8 of the Charter were thereby realized. For the purpose of official travel the definition of dependants was dealt with in another rule, namely Staff Rule 107.5 (a). The Tribunal noted that the two parties had recognized that that provision was open to a number of interpretations. One of those interpretations, the Tribunal noted, was in keeping with the principle of conditions of equality for staff members; however, besides being open to certain logical objections, that interpretation had not prevailed in practice, and the respondent did not deny that in applying the text he distinguished between female staff members and their male colleagues.

In referring to "a wife", Staff Rule 107.5 (a) had probably assumed that the latter was always dependent, apparently applying a traditional sociological and economic yardstick but departing from the legal criterion used for the "dependent husband", which was established in another rule. However, there was every reason to think that social and

* Staff Regulation 7.1 reads as follows:

"Subject to conditions and definitions prescribed by the Secretary-General, the United Nations shall in appropriate cases pay the travel expenses of staff members and their dependants."

economic changes had, since the text had been drafted, led to an increase in the number of wives who were not dependent according to the definition of dependency in Staff Rule 103.24 (a). In any event, the distinction between wife and husband for the payment of travel expenses in connexion with home leave was a distinction by reason of sex and would appear contrary to the principle of equal conditions of employment enunciated in Article 8 of the Charter. It was the responsibility of the Secretary-General to implement that principle with regard to payment of a spouse's travel under Staff Regulation 7.1, and while he possessed a wide discretion in that respect, his discretion must be exercised in accordance with Article 8 of the Charter. However, the Tribunal observed that the part of Staff Rule 107.5 (a) which entitled a woman staff member to payment of her husband's travel expenses only if he was a "dependent husband" was consistent with Staff Regulation 7.1 adopted by the General Assembly under the authority granted to it by Article 101 of the Charter. The validity of that part of Staff Rule 107.5 (a) was not affected by the fact that another part of the same staff rule enabled payment of travel expenses for a staff member's wife, whether dependent or not. Accordingly, the Tribunal rejected the application.

11. JUDGEMENT NO. 163 (11 OCTOBER 1972):¹⁴ TOUHAMI V. SECRETARY-GENERAL OF THE UNITED NATIONS

Application for revision of a judgement of the Tribunal—Rejection of the application on the ground of expiration of the time-limit

The applicant requested revision of judgement No. 146,¹⁵ by which the Tribunal had rejected an application for revision of judgement No. 135¹⁶ rendered on 26 October 1970. The Tribunal held that in substance the application was for the revision of judgement No. 135 and that the applicant was seeking reliefs which had been rejected in that judgement. It recalled that article 12 of its Statute read in part:

"The application [for revision] must be made within thirty days of the discovery of the [new] fact and within one year of the date of the judgement."

The time-limits fixed in that provision were mandatory, and the Tribunal had no power either to extend them or to condone any delay.

Noting that the application had not been made within one year of the date of judgement No. 135, which the applicant in substance was seeking to revise, the Tribunal rejected the application.

12. JUDGEMENT NO. 164 (12 OCTOBER 1972):¹⁷ SABILLO V. SECRETARY-GENERAL OF THE UNITED NATIONS

Application for rescission of a decision of termination

The applicant, a driver employed by the Manila office of the Technical Assistance Board/Special Fund, was injured in a traffic accident while driving a car in the performance of his official duties. An Administrative Investigating Committee was formed to investigate the circumstances leading to the accident. The Committee recommended the applicant's suspension from assignment as a United Nations driver until such time as the case was

¹⁴ Mr. R. Venkataraman, President; Mr. F. T. P. Plimpton, Vice-President; Mr. Z. Rossides, Member.

¹⁵ See *Juridical Yearbook*, 1971, p. 158.

¹⁶ *Ibid.*, 1970, p. 137.

¹⁷ Mr. R. Venkataraman, President; Mrs. S. Bastid, Vice-President; Mr. F. T. P. Plimpton, Vice-President.

decided in the Philippine courts. It subsequently decided that the applicant should be reinstated and agreed that his appointment should be terminated on the ground of redundancy. The applicant contested that decision and requested a copy of the rules or regulations governing his appointment with the office. He received a reply stating that his appointment was a temporary appointment governed by rules applicable to temporary employees of the Government and that there was no copy of the rules governing his appointment which could be furnished to him.

The applicant then filed with the Philippine Department of Labour a claim against the UNTAB for compensation, to which no reply was made. He therefore filed with the Philippine Workmen's Compensation Commission a complaint against the UNTAB. The Deputy Resident Representative having asserted the immunities of the United Nations from every form of legal process, the Chief Hearing Officer of the Commission dismissed the complaint, that decisions being subsequently reaffirmed by the Chairman of the Commission, who, however, added the following comments:

"But there is a point raised by the claimant which we cannot ignore—that the immunity claimed by the respondent to evade a just liability runs counter to the lofty and humanitarian principles for which it stands for [sic]. It is believed that the respondent will not only dispel this erroneous impression but also alleviate to some measure the sufferings of the claimant if it could extend financial aid to him in any other way, by reason of the accident."

The Advisory Board on Compensation Claims, reviewing the case, reimbursed the applicant for his medical expenses and awarded him a lump-sum compensation for 20 per cent loss of function of the left arm. After numerous representations to various bodies, the applicant lodged an appeal with the Joint Appeals Board contesting the decision of termination. The Board, finding that the decision in question had been properly taken, made no recommendation in the matter. On the other hand, the Board considered that the uncertainty about the rules governing the appellant's employment and the respondent's failure to inform the appellant of the rules governing his employment or of the proper channels of appeal had unnecessarily delayed for many years the consideration of the appellant's claim for compensation and of his appeal against the termination decision. The Board therefore recommended that the respondent should make an *ex gratia* payment to the appellant in an amount equivalent to one year's salary plus a sum to cover expenses in connexion with the submission of his appeal. The Secretary-General decided to maintain the termination decision and not to accept the Board's recommendation for an *ex gratia* payment.

The Tribunal, reviewing the case, noted that the respondent, although having indicated to the applicant that the latter's employment was governed by rules applicable to temporary employees of the Philippine Government, conceded to the Tribunal that the applicant's employment was governed by the Staff Regulations and by the 100 Series of the Staff Rules. The Tribunal took the position that it had to consider the application on the basis of the Staff Regulations and Rules which were applicable to the applicant as the holder of a temporary indefinite appointment. The contested decision fell under Staff Regulation 9.1 (c), which provided that in the case of staff members holding temporary indefinite contracts the Secretary-General could terminate the appointment if, in his opinion, such action would be in the interest of the United Nations. While characterizing the creation, composition and procedure of the Administrative Investigating Committee as objectionable, the Tribunal noted that, in view of the surplus of drivers, the Acting Resident Representative had considered the relative qualifications and length of service of all drivers and had himself concluded that the applicant's appointment was the one to be terminated. As the contested decision had been within the authority of the Secretary-General and no prejudice had been shown, the decision had to be maintained.

Nevertheless, the Tribunal ordered the respondent to pay the applicant all sums which would have been due him if the Staff Rules and Regulations had been applied in his case. It further awarded him an amount equal to one year's salary in compensation for the injury he had suffered as a result of being deprived of the status of United Nations staff member and by reason of the respondent's failure to inform him of his rights under the Staff Regulations and Rules.

13. JUDGEMENT NO. 165 (20 OCTOBER 1972):¹⁸ KAHALE V. SECRETARY-GENERAL OF THE UNITED NATIONS

Application directed, on the one hand, against measures which allegedly imposed discriminatory conditions of service on the applicant and, on the other hand, against a decision concerning the applicant's transfer—Measures which were not administrative decisions cannot be the subject of an appeal to the Joint Appeals Board—Rule that an application shall not be receivable unless the dispute has first been submitted to the appeals body provided for in the Staff Regulations—The Secretary-General's power to relieve a staff member of his duties or invest him with other duties—The head of a unit is competent to reassign a staff member within his unit—An application for relief for injury resulting from an improper decision must be incident to an application for rescission of the decision in question

The applicant, who was Chief of the Social Defence Section, had written to the Secretary-General to complain of the conditions of service imposed on him and to request an investigation. At approximately the same time, he was informed by the Director of his Division, on 8 May 1969, that it had been decided to transfer him to a new post at the same level with the functional title of Senior Officer for Special Assignments. He requested the Secretary-General to review that decision and, having received no reply within the following month, he addressed himself to the Joint Appeals Board. A few weeks later, the Secretary-General decided that the case should be personally investigated by the Legal Counsel in collaboration with the Office of Personnel. The conclusions of the investigation report were that there was no evidence of improper motive on the part of the Director of the Division and that the applicant should be transferred to another P-5 post within the Social Development Division with the functional title of Senior Adviser to the Director and Secretary of the Commission for Social Development. Those conclusions were accepted by the Secretary-General. Throughout the whole period of the investigation ordered by the Secretary-General, the proceedings before the Joint Appeals Board had been kept in abeyance. A few months after notification and confirmation of the Secretary-General's decision based on the investigation report, the Board submitted a report indicating that the transfer decision of 8 May 1969 was valid and that it was unable to make any recommendation in support of the appeal.

The case was filed with the Tribunal, which noted that the application contained, firstly, conclusions concerning the conditions of service of the applicant and, secondly, conclusions concerning the arbitrary enforcement of a legally ineffective decision. With regard to the first group of conclusions, it noted that the applicant complained of discriminatory conditions of service allegedly imposed on him. The Tribunal recalled that under Staff Rule 111.3 (a) "A staff member who, under the terms of Regulation 11.1, wishes to appeal an administrative decision, shall as a first step address a letter to the Secretary-General, requesting that the administrative decision be reviewed". In the Tribunal's opinion, it did not appear from the pleadings that the applicant had observed the require-

¹⁸ Mr. R. Venkataraman, President; Mrs. S. Bastid, Vice-President; Mr. F. T. P. Plimpton, Vice-President.

ments of Staff Rule 111.3 (a). While the applicant had written to the Secretary-General, many of the measures of which he complained he had been the victim had not taken the form of administrative decisions which would have been subject to appeal under Staff Regulation 11.1. In any case, the applicant had not requested review of any decisions as a first step within one month from the date of such decisions. Therefore, the alleged violations of the applicant's conditions of service were not properly raised before the Joint Appeals Board. Under article 7, paragraph 1, of the Statute of the Tribunal, an application could not be receivable unless the person concerned had previously submitted the dispute to the joint appeals body provided for in the Staff Regulations. The Tribunal accordingly found that the alleged violations of the applicant's conditions of service had not been properly raised before it.

Nevertheless, the Tribunal examined the substance of the more serious charges enumerated by the applicant during the oral proceedings. It concluded that either there was no substance in the charges or they fell within the administrative competence of the respondent and were not violations of the conditions of service of the applicant. As to the applicant's statement that the conditions of service allegedly imposed on him were "para-disciplinary action", the Tribunal noted that no charge of misconduct had been made against the applicant and that no measure of suspension from duty had been taken against him; it therefore held that it was not necessary for the respondent to follow the procedures in disciplinary matters prescribed by the Staff Regulations and Rules in respect of any of the complaints enumerated by the applicant.

With regard to the second group of conclusions, the Tribunal examined the applicant's contention that "the illegal enforcement of a legally ineffective decision of transfer constituted an infringement upon the terms of his employment". The Tribunal noted that when the Director of the Division to which the applicant belonged had decided to transfer him to a new post as Senior Officer for Special Assignments the Office of Personnel had withheld its approval of the relevant personnel action form and that the Secretary-General's decision to transfer the applicant to the post of Senior Adviser to the Director and Secretary of the Commission for Social Development had been taken only 18 months later. It appeared that there had been a *de facto* interruption of the applicant's duties as Chief of the Social Defence Section during those 18 months. The Tribunal had therefore considered whether the respondent had acted in disregard of the applicant's contractual rights and whether the Director was justified in relieving the applicant of his duties. It had concluded that the Director had had reasons to feel worried about the work of the Social Defence Section. Staff Regulation 1.2 authorized the Secretary-General to relieve a staff member of certain duties or invest the staff member with other duties according to the exigencies of the service, of which he was the sole judge, and that power could be exercised by supervisory officers in the normal course of administration. The Director had therefore been competent to relieve the applicant of certain functions.

The applicant also argued that the Director of his Division had exceeded her competence by ordering his "transfer" without the authorization of the Director of Personnel. The respondent stated that in fact the applicant had not been transferred (moved from one major organizational unit to another) but reassigned (moved within the same major organizational unit) and that a reassignment did not normally require the approval of the Director of Personnel. The Tribunal noted that this was indeed a case of reassignment of duties. While the Office of Personnel, in view of the investigation concerning the applicant ordered by the Secretary-General, had withheld the personnel action form concerning the "transfer", the initial action taken by the Director of the Division to which the applicant belonged had been within her authority.

With regard to the applicant's allegations of improper or extraneous motivation on

the part of the Director, the Tribunal held that they had not been established by positive evidence and must be rejected.

Finally, the applicant sought relief of injury caused by the enforcement of an allegedly ineffective order (the decision to transfer him to the post of Senior Officer for Special Assignments). The Tribunal recalled that, according to its Statute, the applicant could only seek rescission of the final decision and relief on ancillary matters connected therewith and that the applicant, by confining his pleas to such ancillary matters, could not oust the jurisdiction of the Tribunal to pass judgement on the substance of the case. Since it had been found that the decision in question had been justified on the merits, that it had been within the administrative competence of the Director of the Division and that it had not been motivated by extraneous considerations, the question of the payment of any compensation did not arise.

The Tribunal therefore rejected the application.

14. JUDGEMENT NO. 166 (20 OCTOBER 1972):¹⁹ KAHALE V. SECRETARY-GENERAL OF THE UNITED NATIONS (REQUEST FOR REMAND OF CASE)

Application for the sole purpose of obtaining remand of the case for correction of procedure and denying the Tribunal an opportunity to render a decision on the merits—Non-receivability of such application—Objections to Joint Appeals Board proceedings—Concept of res judicata—Non-receivability of appeal to Joint Appeals Boards on the ground of non-observance of the provisions of the Staff Regulations or Rules with regard to another staff member

The applicant had been transferred from the post of Chief of the Social Defence Section to another post at the same level. A staff member was subsequently appointed to the post of Chief of the Social Defence Programmes. The applicant requested the Secretary-General to reconsider this decision. The decision was confirmed, and the applicant appealed to the Joint Appeals Board. The Board declared the appeal non-receivable because the appellant's transfer had already been reported on by a previous Board and the administrative decision concerning the said transfer had become definitive and could not be modified or rescinded unless and until the Administrative Tribunal reversed the findings of the previous Board.

The applicant then requested the Tribunal to order the remand of the case to the Board for correction of procedure. The Tribunal observed that under article 9, paragraph 2, of its Statute, if it found that the procedure prescribed in the Staff Regulations or Rules had not been observed, it might, at the request of the Secretary-General and "prior to the determination of the merits", order the case remanded for institution or correction of the required procedure; under article 18, paragraph 2, of its Rules, the Tribunal was to "decide on the substance of the case" if, on the expiry of a certain time-limit, no request for a remand had been made by the Secretary-General. It followed from the foregoing provisions that an application to the Tribunal must be such as to enable the Tribunal to proceed to a determination of the merits of the case. An application which did not comply with that requirement but merely requested a remand of the case for institution or correction of the required procedure was not contemplated under the Statute of the Tribunal. The application was therefore not receivable.

The Tribunal observed, however, that the appeal before the Joint Appeals Board was directed against a decision rejecting the applicant's claim against the appointment of a

¹⁹ Mr. R. Venkataraman, President; Mrs. S. Bastid, Vice-President; Mr. F. T. P. Plimpton, Vice-President.

staff member to a certain post. Consequently, it had considered whether the Board had followed a regular procedure and had taken a valid decision that the appeal was not receivable.

The applicant complained that he had not been notified of the composition of the Board before it undertook consideration of his appeal. However, on examination of the file the Tribunal accepted the respondent's statement that the applicant had been orally informed of the Board's composition before the hearing. It conceded that it was good administrative practice to notify the staff member concerned in writing of the composition of the Board before it undertook consideration of an appeal, but it concluded in the case in point that since the applicant had not apparently been prejudiced or adversely affected and since he had raised no objection at the hearing, the failure to make such notification in writing had not vitiated the proceedings.

The applicant also alleged violation of Staff Rule 111.2 in the selection of members of the Joint Appeals Board. The Tribunal considered that for the reasons given in its judgement No. 161²⁰ the Chairman had a wide discretion in deciding on the availability of a member, and it concluded that there was no substance in the applicant's plea that the selection of members of the Board had been in violation of Staff Rule 111.2. Nor did the Tribunal consider that it was improper for the same Board to consider related matters. In any event, in the absence of evidence that the applicant had suffered any prejudice and since he had failed to raise objections at the appropriate time, he could not question the validity of the decisions taken in this respect. The applicant also complained that the Board had disposed of his case without affording him the protection of representation by counsel. The Tribunal considered that it was for the applicant to state at the hearing that he needed the assistance of a counsel and to ask for a delay until one had been appointed. On several other points—as to whether the Board could notify its decision directly to the applicant, the delay in disposal of the case by the Board, whether the applicant had had an opportunity to meet the respondent's preliminary objection regarding the receivability of the appeal—the Tribunal concluded that the proceedings of the Board had not been vitiated in any way.

On the validity of the Board's decision declaring the appeal non-receivable, the Tribunal observed that a plea of *res judicata* must show that the same point had been decided between the same parties. It noted that the appeal brought before a previous Board related to the applicant's transfer from the post of Chief of the Social Defence Section. The present appeal challenged the appointment of another staff member to a post at a higher level with considerably wider duties. The appeal was not therefore barred by the principle of *res judicata* or any principle analogous to it. However, the Tribunal emphasized that while Staff Regulation 11.1 authorized staff members to appeal against an administrative decision by alleging the non-observance of their terms of appointment, the applicant had alleged before the Joint Appeals Board the non-observance of "pertinent regulations and rules" with regard to another staff member. The conclusion reached by the Board that the appeal was non-receivable was therefore valid.

²⁰ See p. 132 of this *Yearbook*.

B. Decisions of the Administrative Tribunal of the International Labour Organisation^{21,22}

I. JUDGEMENT NO. 187 (15 MAY 1972): JAKESCH V. INTERNATIONAL ATOMIC ENERGY AGENCY

Complaint impugning a decision made by a national court—The Tribunal is not competent to hear such a complaint

When the IAEA was admitted to the United Nations Joint Staff Pension Fund in 1958, the complainant ceased to be a member of the Austrian Pension Scheme as he had been up to then. After several approaches to the Austrian Ministry of Social Affairs and to his superiors within the Agency, he lodged a formal complaint with the IAEA on 5 March 1963 asking that he be allowed to resume compulsory membership of the Austrian Pension Scheme. His request was rejected on 9 August 1963, and the Director-General confirmed that decision on 3 October 1963.

On 18 September 1970 the complainant sued the IAEA before the Labour Court of the City of Vienna for payment of damages for interruption of his membership of the Austrian Pension Scheme. The Agency refused to waive the immunity from legal process which it enjoyed under article VIII (section 19) of the Headquarters Agreement of 11 December 1957 between the IAEA and the Austrian Government,²³ and the Labour Court of the City of Vienna accordingly held, by judgement of 8 July 1971, that it was not competent to hear the case.

The complainant then appealed to the Administrative Tribunal, stating that the decision which he impugned was the judgement of 8 July 1971. The Tribunal dismissed the complaint. It recalled that, under its own Statute and the Staff Regulations and Staff Rules of the IAEA, it could hear only complaints made against decisions of the Director-General, as a general rule after all internal remedies had been exhausted. The complaint, which was directed against a decision of the Labour Court of the City of Vienna, was lodged with a tribunal which was not competent to hear it. Even if the complainant had sought to impugn a decision of the Director-General, that decision could only be the one taken on 3 October 1963. In that event the complaint would be time-barred, not having been

²¹ The Administrative Tribunal of the International Labour Organisation is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment, and of such provisions of the Staff Regulations as are applicable to the case, of officials of the International Labour Office and of officials of the international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1972, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the Interim-Commission for the International Trade Organization/General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organization for the Safety of Air Navigation, the Universal Postal Union, the International Patent Institute and the European Southern Observatory. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Office and disputes relating to the application of the Regulations of the former Staff Pensions Fund of the International Labour Organisation.

The Tribunal is open to any official of the International Labour Office and of the above-mentioned organizations, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death, and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely.

²² Mr. M. Letourneur, President; Mr. A. Grisel, Vice-President; Lord Devlin, Judge.

²³ United Nations, *Treaty Series*, vol. 339, p. 110.

submitted within the time-limit of 90 days prescribed by article VII, paragraph 2, of the Statute of the Tribunal. It would also be irreceivable because of the complainant's failure to exhaust all the internal remedies available to him.

2. JUDGEMENT NO. 188 (15 MAY 1972): DUTREILLY V. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Complaint seeking the rescinding of a decision falling within the discretion of the Director-General—Limits of the Tribunal's authority to review such a decision

The complainant impugned a decision by which the Director-General of UNESCO had (i) decided to retain in the complainant's dossier the performance report which she (the complainant) considered to be incorrect and prejudicial to her and (ii) withheld a salary increment to which she believed she was entitled.

The Tribunal stressed that the decision in question lay within the discretion of the Director-General, and could thus not be reviewed by the Tribunal unless it was taken without authority, was irregular in form or tainted by procedural irregularities or by illegality, or was based on incorrect facts, or essential facts had not been taken into consideration, or there had been misuse of authority or, finally, conclusions which were clearly false had been drawn from the documents in the dossier. The Tribunal dismissed the complaint, considering (1) that the complainant's allegations that the decision was tainted by irregularities of procedure could not be accepted; (2) that there were no grounds for holding that the Director-General's decision, taken in the light of the complainant's performance report, was based on incorrect facts; (3) that, contrary to what the complainant implied, the fact that she had had her salary increment withheld as a result of critical comments relating to a specific period of service did not imply that a general assessment had not been made of her performance taking into account her previous service; and (4) that, in the light of the facts which emerged from the evidence in the dossier, the Director-General was justified in ordering that the performance reports made on the complainant should be maintained, and that he had not exceeded his discretion in considering the temporary withholding of a salary increment to be justified.

3. JUDGEMENT NO. 189 (15 MAY 1972): SMITH V. WORLD HEALTH ORGANIZATION

Request that a period of absence should be regarded as sickness leave—Obligation of any staff member on sickness leave to submit to the administration such reports on his condition as the Staff Physician shall require

The complainant, whose contract of appointment was due to expire on 31 March 1970, had sent the Staff Physician of the Organization a medical certificate relating to the period 11 March-23 March and, on 26 March, a second certificate attesting his continued incapacity for work for an indeterminate period. During the weeks which followed, the Organization tried in vain to reach the complainant. On 14 April 1970, the Chief of Personnel informed the complainant that the only period which could be treated as sickness leave was 11 to 23 March and that the four working days between 24 and 31 March would be debited to his accrued annual leave. Finally, however, the Administration offered to settle the dispute amicably and to treat the four days in question as special leave with pay. The complainant replied that he would agree only if the Administration admitted that he had been on sickness leave during the four days. He met with a refusal.

The Tribunal, to which the case was submitted, recalled that Staff Rule 670.3 required that in any case of illness the staff member should submit such periodic reports on his condition as the Staff Physician might require. Whether the complainant had done all

that was reasonable to comply with his obligation under that Rule was open to doubt, and the Administration's suggested settlement was thus a sensible and reasonable one; the making of it left the claim without substance unless it could be said that some question of principle was involved. The Tribunal considered that there was no such question, and accordingly dismissed the complaint.

4. JUDGEMENT NO. 190 (15 MAY 1972): WALIULLAH V. UNITED NATIONS EDUCATIONAL SCIENTIFIC AND CULTURAL ORGANIZATION

Complaint impugning a decision not to renew a fixed-term contract—Death of the complainant during the course of proceedings—The person succeeding to the rights of a decedent may not submit any claims to the Tribunal other than those which the decedent himself was entitled to present

The complainant was appointed to a P-5 post for a period of two years. At the end of those two years, he was assigned to another post, and his appointment was extended for another year. A few months before the end of this one-year period, he was informed that his post would cease to exist. He was then assigned to the Secretariat of the General Conference of the Organization, but was shortly afterwards informed—his appointment having been extended for six months in the meantime—that he could not be employed in the Secretariat after the date of expiry of his final appointment. He was accordingly informed by the Director of the Bureau of Personnel that if his application for two other posts was unsuccessful, his appointment would terminate on its normal date of expiry in accordance with Staff Rule 104.6 (b) relating to fixed-term appointments. The complainant then appealed to the Appeals Board. The Director-General refused to endorse the Board's recommendation, but offered the complainant a one-year appointment at grade P-4 in Bangkok. The complainant refused this offer and appealed to the Tribunal, praying it to order the renewal of his contract for a period and on terms equivalent to those of his original appointment or, failing that, the payment of compensation. The complainant having died a few months later, his widow resumed proceedings in accordance with article II, paragraph 6, of the Statute of the Tribunal, and lodged an amended statement of claims in which she prayed the Tribunal, *inter alia*, "to award additional compensation amounting to one year's salary as partial damages for the grave moral prejudice suffered by the late complainant and his family owing to his unwarranted treatment, which affected his health".

The counsel for the complainant and his widow contended that Staff Rule 104.6 (b), which provides that:

"A fixed-term appointment may, at the discretion of the Director-General, be extended, or converted to an indeterminate appointment; it shall not, however, carry any expectation of, nor imply any right to, such extension or conversion and shall, unless extended or converted, expire according to its terms, without notice or indemnity"

was inapplicable to the complainant since, in view of the many transfers and reassignments which had occurred throughout the complainant's career, it was correct to hold that the complainant had not been given a single appointment, but a succession of appointments which exceeded the fixed duration of his original appointment, which had therefore reached its term without being either extended or converted as such. The matter did not therefore fall within the Director-General's discretion, and the Tribunal was fully competent to censure the irregularities committed. Besides, the Administration could not invoke Staff Rule 104.6 (b) even if it were applicable because of the impropriety which it had committed in appointing the complainant without having available or providing a post with precise functions for him, an action which violated Staff Regulation 4.1.

The Tribunal first considered the receivability of the complaint submitted by the complainant's widow. It recalled that article II, paragraph 6, of the Statute of the Tribunal provided that:

"The Tribunal shall be open—

(a) to the official, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death;".

It followed that the widow of an official or former official could resume proceedings before the Tribunal instituted by her husband before his death, but that she could not submit any claims other than those which her husband was entitled to present, and specifically could not make a personal claim and in particular claim compensation for any injury which she alleges that she herself has suffered.

As to the legality of the decision impugned, the Tribunal considered, on the basis of the evidence in the file, that the complainant's claim that the provisions of Staff Regulation 4.1 had not been properly applied was without foundation. Secondly, in extending the complainant's original contract several times, the Director-General had acted within the authority conferred on him by Staff Rule 104.6 (b). Thirdly, in transferring the complainant to a series of posts, the Director-General had simply been applying the provisions of Staff Regulation 1.2; even supposing that the Organization had been gravely at fault in not employing him on the work for which he had been recruited, that circumstance would not have been such as to vitiate the impugned decision not to renew his contract. Lastly, the Tribunal observed that the offer of a P-4 post made to the complainant by the Organization did not imply any demotion, entailing as it did the conclusion of a new contract. To avoid incurring the injury for which he had claimed compensation, the complainant could have accepted that offer, which in the circumstances of the case appeared to be a reasonable one. The Tribunal accordingly dismissed the complaint.

5. JUDGEMENT NO. 191 (15 MAY 1972): BALLO v. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Complaint seeking the rescinding of a decision not to renew a fixed-term contract—Limits of the Tribunal's authority to review such a decision—Illegality of a decision based on a partial assessment of the work of a staff member

The complainant, a Czechoslovak national, received a two-year appointment on 29 July 1968; on 4 May 1970, he was informed orally by the Permanent Delegate of the Czechoslovak Socialist Republic that he was to return to Czechoslovakia on the expiry of his appointment. In a minute dated 5 May 1970 addressed to two senior officials of UNESCO, the Director-General criticized the work being done by a team of officials which included the complainant, and added that changes were required in the team's composition. The complainant's superiors having shortly after submitted to the Director-General a proposal for a two-year extension of his appointment, the Director-General expressed serious reservations with regard to the complainant and extended his appointment for only one year. In February 1971, the complainant received a highly commendatory performance report from his superiors and, a few weeks later, the Senior Personnel Advisory Board unanimously recommended granting him a three-year extension of his appointment. In a minute dated 30 April 1971 the Director-General described this appraisal as unduly laudatory and indicated that his assessment of the complainant's services was "decidedly unfavourable". He accordingly opposed renewal of the complainant's appointment. On 18 June 1971 the Director of Personnel informed the complainant that his appointment would terminate on 31 August 1971 in accordance with Staff Rule 104.6 (b). The com-

plainant having fallen ill, his appointment was extended several times. Meanwhile, the acting chargé d'affaires of the Permanent Delegation of Czechoslovakia to UNESCO had, in a letter dated 11 May 1971, informed the Director-General that the Czechoslovak Government "could not agree to extension of the contract" of the complainant. The Director-General replied that an offer of extension of appointment to a member of the staff of the Organization was a matter within the Director-General's entire discretion and must be made solely on account of the official's merits or qualifications and his usefulness to the Organization; he added that those were the criteria on which he had based his decision not to extend the complainant's appointment.

The Appeals Board, to which the complainant had appealed, recommended the Director-General to reject the appeal. The complainant then submitted the case to the Tribunal, requesting it, *inter alia*, (1) to order "production by UNESCO of every document in the complainant's file, whether it concerns correspondence between the Organization and the Czechoslovak Government regarding his services or attempts by his superiors to obtain his reclassification in UNESCO and (2) to quash the Director-General's decision not to renew his appointment".

The Tribunal ordered some documents to be produced and, noting that they were of a confidential character, merely informed the complainant of the tentative conclusions it had drawn from them, namely, that, under proposals for reorganization made by the Assistant Director-General responsible and rejected by the Director-General, it would have been possible to retain the complainant in the Organization's service in another post. After further consideration, however, the Tribunal reached its decision without relying on these documents.

As to the legality of the impugned decision, the Tribunal recalled that, under Staff Rule 104.6 (b), the decision not to renew a fixed-term appointment lay within the discretionary authority enjoyed by the Director-General. The Tribunal added, however, that discretionary authority must not be confused with arbitrary power; it must, among other things, always be exercised lawfully, and the Tribunal, which had before it an appeal against a decision taken by virtue of that discretionary authority, must determine whether that decision was taken with authority, was in regular form, whether the correct procedure had been followed and, as regards its legality under the Organization's own rules, whether the Administration's decision was based on an error of law or fact, or whether essential facts had not been taken into consideration, or again, whether conclusions which were clearly false had been drawn from the documents in the dossier, or, finally, whether there had been a misuse of authority.

The Tribunal noted that in refusing to extend the complainant's appointment, the Director-General had based his decision solely on the fact that on every occasion on which he had personally seen the complainant at work the latter had shown himself quite inadequate for his assignments. The Director-General had thus formed a general opinion of the complainant which took account merely of a very small part of his work. While the Director-General was entitled to differ from the opinion expressed by the high-ranking officials who were the complainant's supervisors, he should have taken into account not only the complainant's attitude on the occasions on which he had "personally seen him at work", but also the quality of the complainant's general performance of his duties as attested by his immediate supervisors in highly favourable terms. The Director-General had fallen into the error of supposing that because the limited part of the complainant's work which he himself had seen was bad in his opinion, therefore the complainant's work as a whole was to be condemned. In treating as of no account the unanimous opinion of those who were familiar with the whole of the complainant's performance, he had failed to take into consideration essential facts of the case.

The Tribunal accordingly quashed the impugned decision and decided that the complainant was entitled to renewal of his appointment for three years or, failing that, the compensation amounting to 100,000 French francs as full and final settlement.

6. JUDGEMENT NO. 192 (13 NOVEMBER 1972): BARACCO V. WORLD HEALTH ORGANIZATION

Complaint impugning a decision to terminate the appointment of a staff member during his probationary period on medical grounds—Such a decision lies within the Director-General's discretion

The complainant, who was engaged for a post in Africa under a two-year contract with a probation period of one year, fell ill during the first weeks of his appointment. Following four months' sickness leave, he was interviewed by the Medical Adviser of the WHO Medical Service, who informed the Personnel Department that it would be ill-advised to reassign the complainant to Africa before several months had elapsed. The Organization then decided to terminate the complainant's appointment under Staff Rule 960. The complainant impugned that decision, and a Medical Board was set up, consisting of the WHO Medical Adviser, the complainant's own physician and a doctor chosen by the two others. Two of the doctors found that the medical reasons invoked for not confirming the appointment were valid, and the Director-General informed the complainant that his decision stood.

The Tribunal, to which the case was submitted, recalled that under Staff Rule 960 provision was made for termination of the appointment of a staff member who, during his probationary period, proved unsuitable for his post on medical grounds. Any decision taken under that provision lay within the Director-General's discretion, and could therefore be set aside by the Tribunal only if it had been taken without authority, was irregular in form or tainted by procedural irregularities or by illegality, or was based on incorrect facts, or if essential facts had not been taken into consideration, or if there had been a misuse of authority, or if conclusions which were clearly false had been drawn from the documents in the dossier. In the first place, the complainant charged the Organization with having failed to give him a medical examination before he took up his post. The Tribunal observed, however, that that procedure was in accordance with practice, and that it did not infringe the applicable regulations; moreover, a further examination at the Organization's headquarters would in all probability not have revealed the causes of the breakdown which was the reason for the decision to terminate the complainant's appointment. The complainant further argued that he had not been seen by the Medical Board to which his case had been referred for consideration. The Tribunal considered that, under Staff Rule 1020.2, the Medical Board was authorized to carry out such examinations as it might deem necessary, and was therefore justified in making its recommendation in the light of the dossier. Lastly, the complainant contended that his breakdown was due to unsuitable working conditions, and that the Director-General should have inquired into those conditions. The Tribunal considered that the Director-General had not exceeded his discretion in failing to undertake such an inquiry: whether or not the complainant's criticisms were justified, the fact remained that he had reacted to the alleged difficulties in an abnormal manner which gave plausibility to the possibility of a relapse and appeared to justify his termination under Staff Rule 960.

The Tribunal accordingly dismissed the complaint.

7. JUDGEMENT NO. 193 (13 NOVEMBER 1972): BERGIN V. UNITED NATIONS FOOD AND AGRICULTURE ORGANIZATION

Claim submitted by a staff member for compensation for damages—Such damages can only serve as the basis for a claim for compensation before the Tribunal if they flow from an unlawful decision by the Director-General

The complainant was assigned in 1967 to a project in Iran and at that time resigned from the Agricultural Institute in Dublin, at which he had held a permanent appointment before his entry to the FAO. The Project Manager having requested his transfer (indicating that the complainant knew nothing of the action taken in his regard), and the allegations made in support of that request having been fully borne out by a headquarters official on an inspection visit, the complainant was transferred to Rome, and subsequently to a post in Jordan. Once in 1969, and again in 1970, his annual increment was withheld. The Appeals Committee, to which the case was submitted, held that the complainant's transfer had not been tainted by any irregularity and that the FAO had made proper efforts to find him another assignment. It held, however, that the complainant had not been informed of the steps taken by the Project Manager to obtain his transfer and that it had not been proved that the Project Manager had held full and frank discussions with him on the subject beforehand. Similarly, the complainant had had the second annual increment due to him withheld without first receiving an appraisal report criticizing his work performance. The Appeals Committee accordingly recommended that the complainant should receive a certificate of satisfactory service and that, if he should submit any further application for employment, it should be treated on an equal footing with those of other applicants; it further recommended that the first decision to withhold an annual increment should be quashed (the second decision had already been annulled by the Administration) since there were reasonable grounds for doubting whether the procedural requirements in respect of withholding an increment had been fully complied with. The Committee held, however, that the complainant's further claims were ill-founded. The Director-General accepted the Appeals Committee's recommendations.

Before the Tribunal, the complainant requested compensation "for the other damages inflicted", in particular, the loss of a permanent post in the Agricultural Institute in Ireland and the disruption of his children's education.

The Tribunal considered that those claims were not sustainable except as an element of damage flowing from some unlawful decision by the Director-General. The only unlawful decision alleged by the complainant was the decision which had resulted in his transfer to Rome. There had been certain irregularities in that connexion (which had been remedied by the acceptance of the Appeals Committee's recommendations), but they did not invalidate the decision to transfer; that decision had been taken following an inquiry which had been regularly conducted and after the complainant himself had been heard, and indeed it had not been contested by the complainant at the time it was made. The Tribunal accordingly dismissed the complaint.

8. JUDGEMENT NO. 194 (13 NOVEMBER 1972): VRANCHEVA V. WORLD HEALTH ORGANIZATION

Decision to terminate a probationary contract—Quashing of the decision as being based on insufficient grounds—Remittal of the case to the Director-General

The complainant was engaged on a one-year probationary contract, at the end of which her supervisor prepared a partially unfavourable report on her and recommended that her probationary period should be extended by one year. At the end of that second

year, she received a further unfavourable report and was informed that her appointment would be terminated at the end of her probationary period. The decision not to renew her appointment was confirmed shortly afterwards. Having appealed against that decision to the Director-General, and having failed in that appeal, the complainant appealed to the Tribunal, maintaining, *inter alia*, that the criticisms contained in the two appraisal reports were not supported by any specific allegation which was open to refutation; that her supervisor had failed to instruct and guide her in learning to perform her functions; and that the decision had already been taken before she had had an opportunity to submit comments in response to the criticisms of her.

The Tribunal recalled that, under WHO Staff Rule 960, if, during an initial or extended probationary period, a staff member's performance was not satisfactory, the appointment would not be confirmed but terminated. It stressed that although the reason given for the decision impugned was that the complainant's services were unsatisfactory, no real evidence had been produced to substantiate that allegation. Moreover, at no stage in the procedure, in spite of repeated requests on her part, was the complainant able to obtain clarification of the specific facts motivating the unfavourable appraisal by the chief of her branch of the manner in which she carried out her duties. In addition, the Organization, in its submission to the Tribunal itself, had not supplied any further explanations concerning the complainant's work performance. The impugned decision was thus based on insufficient grounds, and it was therefore for the Director-General to reopen the case and to consider, by such means as he might deem appropriate, whether the appraisal made by her immediate supervisor was well-founded. The Tribunal accordingly quashed the impugned decision and remitted the case to the Director-General for a new decision after a proper examination of the facts.

9. JUDGEMENT NO. 195 (13 NOVEMBER 1972): CHWALA V. WORLD HEALTH ORGANIZATION

Request for the quashing of a decision not to renew a fixed-term appointment

The complainant had first been assigned to Nepal, and later transferred to Afghanistan. His appointment was extended for several further periods and his performance reports were always satisfactory. On 22 November 1968 he was informed that his appointment would not be extended after 28 February 1969. That decision was based on the comments of the Senior Malariologist of the Regional Office who had indicated in writing that the complainant was not up to the required standard. The Regional Board of Inquiry and Appeal, to which the case was submitted, held that he had been the subject of prejudice and recommended, *inter alia*, that the Regional Director should extend the complainant's appointment from 1 March 1969. The Regional Director accepted that recommendation; he extended the complainant's contract for one year and, on 1 March 1969, the Afghan Government was informed that the complainant would shortly resume work.

On 1 June 1969 the President of the Malaria Institute of Afghanistan informed the Regional Office that the Afghan authorities did not desire the complainant's return. The Regional Office asked the other Regional Offices to try to find the complainant another post. All sent negative replies, except the Regional Office for the Western Pacific, which did have a post free, but one to which the complainant had not been appointed because of the opposition of the Senior Malariologist of the Regional Office. A further offer from the Regional Office for Africa came to nothing. On 14 November 1969 the complainant was informed that his appointment would terminate on 30 November 1969. The headquarters Board of Inquiry and Appeal nevertheless recommended that the decision to

renew the complainant's appointment for one year from 1 March 1969 should be honoured in full and that the complainant should be paid all his entitlements under the one-year appointment.

The Tribunal, which the complainant prayed to quash the decision in question, noted that the reason given by the Organization for not renewing the complainant's contract was that the Afghan Government had expressed the wish that the Organization could arrange that the complainant should not return to Afghanistan; and that thereafter it had not been possible to find for him any other assignment. The Tribunal observed that the reason for the Regional Director's decision not to renew the complainant's contract was an assertion by the Senior Malariologist of the Regional Office that the staff member was not up to the required standard. Subsequently, the Regional Director had reversed his decision, following the advice of the Regional Board of Appeal, which had found that there had been "administrative prejudice... possibly based on personal prejudice" against the complainant. Having examined the dossier, the Tribunal considered that that finding was correct and that the Senior Malariologist had been strongly and quite unjustifiably prejudiced against the complainant.

Further, the Tribunal recalled that, when the President of the Malaria Institute of Afghanistan had expressed his wish that it should be arranged for the complainant not to return to work in Afghanistan, he had said that he considered that the complainant was below the standards required. The Tribunal noted:

(1) that that conclusion was the same as that contained in the adverse report by the Senior Malariologist;

(2) that the conclusion gave no particulars;

(3) that the conclusion ran contrary to all previous reports about the complainant's work;

(4) that the Afghan Government had not at any time previously during the four years of the complainant's service expressed any dissatisfaction with his work; and

(5) that the President of the Malaria Institute of Afghanistan had only been expressing a wish.

In those circumstances, the Organization was under a duty to the complainant to ensure that all relevant matters were brought to the attention of the Government of Afghanistan. Having examined the dossier, the Tribunal could not conclude that the Organization had satisfactorily discharged its duty as aforesaid.

The Tribunal accordingly quashed the impugned decision and awarded the complainant compensation amounting to \$US 20,000 to cover both moral and material damage.

10. JUDGEMENT NO. 196 (13 NOVEMBER 1972): TEWFIK V. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Complaint seeking either reclassification of a post to a specific grade or a transfer to a post at that grade—Irreivability of claims submitted for the first time by the complainant in his rejoinder subsequent to the expiry of the prescribed time-limit for appeals—The rule concerning exhaustion of internal appeal procedures—The rule that when an appointment is made it must be assumed that the authority making it has had the opportunity of choosing between a number of possible candidates, except in cases where a candidate has been deprived of his post after a long period of service

The complainant was appointed to a D.1 post in New Delhi; his appointment was extended twice. Having been informed on 17 March 1971 by the Director-General that

he was to be transferred to Paris to a P.5 post but that he would continue to be graded D.1 and to receive the remuneration corresponding to that grade, he appealed against that decision on 7 April 1971 and sent a request for a hearing to the secretary of the Appeals Board. On 27 April he lodged with the Appeals Board a request that his post be reclassified or that he be reassigned to his old post in New Delhi and that his appointment be renewed for six years. The Appeals Board recommended that the complainant should be authorized to submit a request for the reclassification of his post through the normal channels, despite any exceeding of the statutory time-limits, and that the remainder of his appeal should be dismissed. That recommendation was accepted by the Director-General, who granted the complainant a time-limit of one month (ending on 11 September 1971) for submission of the request for reclassification to the appropriate body. On 10 September 1971 the complainant submitted that request, and, on 8 November, appealed to the Tribunal requesting it to order the Organization (1) to reclassify his post at the D.1 grade or to transfer him to any other D.1 post compatible with his experience or qualifications and (2) to guarantee him a normal professional future. Following the Organization's reply, the complainant submitted a rejoinder in which he requested cancellation of his transfer, reinstatement in his former post and, in the event of his present post not being regraded or being abolished, transfer to a D.1 post at Headquarters.

The Tribunal, to which the case was submitted, first stressed that it could not go beyond the claims submitted to it by the complainant within the time-limit of 90 days laid down by article VII, paragraph 2, of its Statute. The claims put forward subsequently by the complainant, either in his rejoinder or in another memorandum, could thus be considered only in so far as they did not go beyond the claims submitted within the prescribed time-limit. Otherwise the purpose of the rule requiring the complainant to take action within 90 days on pain of irreceivability would be frustrated. In that connexion, the Tribunal observed that the claims submitted in the rejoinder either duplicated those in the original complaint or went beyond them: in the first case, therefore, they were superfluous, and in the second, irreceivable.

As to the receivability of the appeal before the Appeals Board, the Tribunal recognized that the approach to the Appeals Board on 7 April was in fact premature, since it was not preceded by a decision by the Director-General on a request for reconsideration. However, the Tribunal observed that the appeal addressed to the Director-General on 7 April had been dismissed on 15 April, and that the complainant could thus properly file an appeal as from 15 April: the claims he had submitted to the Appeals Board on 27 April were thus receivable.

As to the claim for reclassification, the complainant's claims were irreceivable because they were submitted contrary to the principle concerning exhaustion of internal appeal procedures. It was true that the complainant had submitted a claim to the Consultative Committee on Classification but he had not waited for the Committee to make its recommendation, for the Director-General to take a decision on that recommendation and for the Director-General's decision to be confirmed, if necessary, after an appeal to the Appeals Board, before lodging an appeal with the Tribunal. Admittedly, the request which had been submitted to the Consultative Committee on Classification had been refused, on the recommendation of that Committee, in a decision notified on 24 February 1972. However, the complaint before the Tribunal was not directed against that decision and therefore the Tribunal did not have to consider it. Moreover, as that decision had not been resisted by the internal means available, it had become final and could no longer be impugned before the Tribunal.

As the claim for transfer to a D.1 post, the Tribunal stressed that, in principle, when an appointment was made it must be assumed that the authority making it had had the opportunity of choosing between a number of possible candidates. While, therefore, the

complainant was entitled to resist the refusal to appoint him to a specific post which had been put up for competition, he could not claim to be appointed to any D.1 post without the appointing authority having had the opportunity to appraise the various candidates who might have applied. Any other procedure would have been justified only if the complainant had been deprived of his post after serving the Organization for a particularly lengthy period of time, and that did not apply in the complainant's case.

Finally, as to the claim for guarantees, the Tribunal recalled that at the date when that request had been addressed to it, no decision had yet been taken as to whether the complainant should be kept in the service of the Organization after the expiry of his current contract. The Tribunal could thus not deal with that claim. It was true that the complainant had been informed on 15 March 1972 that, failing his appointment to another post, and in the event of the proposal to abolish his unit being approved by the General Conference, his contract would be terminated on 31 December 1972. However, while that communication might be regarded as a decision, it could not be impugned before the Tribunal since the complainant had not availed himself of the internal means of resisting it which were available to him. The Tribunal accordingly dismissed the complaint.

11. JUDGEMENT NO. 197 (13 NOVEMBER 1972): STERNFIELD V. WORLD HEALTH ORGANIZATION

Termination of an appointment at the end of the probationary period—Authority competent to prepare periodic reports on a staff member—Limits of the Tribunal's authority with regard to decisions falling within the discretion of the Director-General

The complainant was granted a two-year appointment, which was subject to a minimum probation period of one year. Since the Organization decided not to confirm the appointment at the end of his probation period, the complainant lodged a complaint with the Tribunal contending (1) that he had not received the minimum probation period, the Director of his unit having in fact decided to terminate his appointment just over five months after the beginning of his appointment; (2) that, in violation of Staff Rule 430.3, his periodic report had been prepared not by his supervisor, the Assistant to the Director, but by the Director himself; (3) that his supervisors had not discussed their conclusions with him; (4) that his work was of a high professional calibre.

As the procedural arguments set out in points (1) to (3) above, the Tribunal reached the following conclusions: (1) there was no statutory provision or general rule of law that made it mandatory for the Organization to retain a staff member on probation in its service for at least a year if, before the year had expired, the competent authority had come to the conclusion that the staff member concerned was unsuitable for the post to which he had been assigned. In any event, the Tribunal added, the complainant's appointment had not in fact been terminated until one year after his appointment; (2) the principle that reports on every staff member must be made in the first place by his immediate supervisor could not be strictly applied in some units in which, because of their nature, activities or the very form of their organization, a small number of officials were associated in a specific common task. In the case at issue, all the texts published by the unit to which the complainant had been assigned had to be presented in a co-ordinated manner and in a style conforming to certain standards of uniformity and clarity for the benefit of readers of different nationalities. Hence the Director of the unit was qualified to report directly on the complainant, whose work he had been in a position to appraise on a day-by-day basis, merely consulting the complainant's immediate supervisor, as in fact he had done; (3) it was within the Director-General's discretion to decide whether, in order to establish the facts, it was necessary to give a personal hearing to the staff member. In the case at issue

the Director-General was entitled to consider, on the basis of the evidence submitted both by the complainant and by his supervisors, that it was unnecessary for him to interview the complainant.

As to substance, the Tribunal considered that, in making his appraisal of the claimant, the Director-General's decision was not tainted by illegality or based on incorrect facts, that he had not failed to take account of essential facts and that he had not drawn from the evidence conclusions that were clearly false. The Tribunal's power to review the substance of the case was limited to the foregoing four points, and it could not substitute its own judgement for that of the head of the Organization. The complaint was accordingly dismissed.

Chapter VI

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

Legal opinions of the Secretariat of the United Nations (Issued or prepared by the Office of Legal Affairs)

1. QUESTION OF THE POSSIBLE ACCESSION OF INTERGOVERNMENTAL ORGANIZATIONS TO THE GENEVA CONVENTIONS FOR THE PROTECTION OF WAR VICTIMS¹

Memorandum to the Under-Secretary-General for Special Political Affairs

1. This memorandum deals with the question of the accession of the United Nations to the Geneva Conventions for the protection of war victims,¹ with particular reference to proposals made at the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, recently held in Geneva.²

2. The question of the application of the Geneva Conventions to United Nations peace-keeping operations is one of long standing, having been raised at least since the days of the Congo operation. The question was raised again at the Conference, this time in the form of a suggestion to insert in the draft Additional Protocol to the Conventions a clause providing for accession by the United Nations. The International Committee of the Red Cross has been of the opinion that the United Nations should formally undertake by accession to apply the Conventions each time Forces of the United Nations are engaged in operations.

3. We have always maintained, however, that the United Nations is not substantively in a position to become a party to the 1949 Conventions, which contain many obligations that can only be discharged by the exercise of juridical and administrative powers which the Organization does not possess, such as the authority to exercise criminal jurisdiction over members of the Forces, or administrative competence relating to territorial sovereignty. Thus the United Nations is unable to fulfil obligations which for their execution require the exercise of powers not granted to the Organization, and therefore cannot accede to the Conventions.

4. However, the United Nations by exchanges of letters, binds governments contributing contingents to its Forces to ensure respect for the Conventions by their respective contingents,³ and it has itself requested the Forces, in Regulations issued by the Organ-

¹ United Nations, *Treaty Series*, vol. 75.

² For a survey of the second session of the Conference, see document A/8781.

³ See for example the Exchange of Notes, dated 21 February 1966, between the United Nations and the United Kingdom of Great Britain and Northern Ireland concerning the service with the United Nations Peace-Keeping Force in Cyprus of the national contingent provided by the Government of the United Kingdom, reproduced in the *Juridical Yearbook*, 1966, pp. 41-44, paras. 10 and 11.

ization,⁴ to respect the humanitarian principles and spirit of the Conventions. On the basis of the foregoing, the Secretariat, in the Conference mentioned above, opposed the inclusion in the draft Protocol of a clause providing for accession to the Geneva Conventions by the United Nations or intergovernmental organizations.⁵

5. Finally, the Commission IV of the Conference decided not to include in the draft Protocol any clause providing for accession of intergovernmental organizations. The position taken by the Secretariat on this matter has been nearly unanimously supported by all the delegations.

15 June 1972

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2. DECISION OF THE SECRETARY-GENERAL TO WITHDRAW THE ACCREDITATION OF THE CORRESPONDENTS OF THE "CENTRAL NEWS AGENCY OF CHINA"—ACCREDITATION POLICY OF THE UNITED NATIONS—BY DECIDING IN RESOLUTION 2758 (XXVI) TO "RECOGNIZE THE REPRESENTATIVES OF THE PEOPLE'S REPUBLIC OF CHINA AS THE ONLY REPRESENTATIVES OF CHINA TO THE UNITED NATIONS", THE GENERAL ASSEMBLY IPSO FACTO DECIDED ON RECOGNITION OF A GOVERNMENT

Summary of a "Note to correspondents"

1. The following points are made in clarification of the decision of the Secretary-General to withdraw the accreditations of the correspondents of the "Central News Agency of China" (CNA).

I. *Issues of fact*

2. One main issue of fact involves the status of CNA. When the matter of the CNA correspondents was first raised, the Chief of Bureau of the Agency stated that "Our status as a national agency is attested to in the study 'News Agencies: Their Structure and Operation' published by UNESCO". The study in question states, *inter alia*, as follows:

"Juridical Status

"Ever since it was detached from the Kuomintang headquarters, CNA has been operated and subsidized by the National Government. Since its head office was moved to Formosa, CNA has been owned and wholly maintained by the Government.

"Budget

"At present, CNA operates with funds annually provided and voted in the Government budget.

"Administrative Organization and Personnel

"The CNA Administrative Committee, which is its highest authority, consists of nine members appointed by the Government."

3. It is therefore established without any doubt or qualification whatsoever that the CNA is "an official news agency" and it is an organ owned, wholly maintained, financed and controlled by the authorities on Taiwan who claim to be the Government of China.

4. Another important issue of fact relates to the accreditation policy of the United Nations. The guidelines in this respect are contained in a "Handbook for Correspondents" published by the Office of Public Information (OPI), the latest edition of which has been put out in 1970. The relevant extract reads as follows:

⁴ *Ibid.*, 1964, p. 177.

⁵ See document A/8781, para. 218.

“OPI must be satisfied that those applying for accreditation (a) represent a *bona fide* news or information outlet whether in press, radio television, films or photos; (b) that they themselves are *bona fide* professionals.

“As initial evidence of fulfilling the requirement of (a) above, OPI will accept an official communication from the head of the *organization seeking accreditation*. This should state the name of the person to be accredited....” [italics added.]

5. The extract just quoted illustrates the close and necessary connexion between an individual seeking accreditation and the agency or other media which he represents. This is borne out by practice. Free lance correspondents are given only temporary accreditation, for the period of their particular assignment to cover some aspect of United Nations work. Permanent accreditations are only granted to correspondents who are employed by, or provide coverage for, permanent “organization(s) seeking accreditation” to cover continuously the work of the United Nations. If the agency or organization whose representative is accredited ceases to exist, either in fact or in law, the accreditation also comes to an end and must be reapplied for in the name of another agency or organization.

6. Furthermore, practice also establishes a practical distinction between “official news agencies” and “international agencies” on the one hand, and other news media. While this distinction does not extend to facilities for gathering news, the former are granted private office facilities in United Nations Headquarters which are not generally available to the latter. In the period prior to 25 October 1971, the CNA was accorded such private facilities as a “government” or “national” news agency.

II. *Issues of Law and of Policy*

7. By its resolution 2758 (XXVI) of 25 October 1971, after recognizing “that the representatives of the Government of the People’s Republic of China are the only lawful representatives of China to the United Nations and that the People’s Republic of China is one of the five permanent Members of the Security Council”, the General Assembly of the United Nations decided:

“... to restore all its rights to the People’s Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it.”

8. It is to be observed that when the General Assembly of the United Nations decides, for its purposes, that certain representatives are the only lawful representatives of a Member State to the United Nations, it follows automatically that the authorities accrediting those representatives constitute in the view of the General Assembly—again for its purposes—the only lawful Government of that Member State. This is the only possible conclusion which has any meaning. If the General Assembly were to determine questions of representation without reference to the status of the accrediting authority, no criteria would exist and decisions would be entirely arbitrary. The conclusion cannot therefore be escaped that a decision on recognition of a Government was taken when General Assembly resolution 2758 (XXVI) was adopted and it is irrelevant that, in their bilateral relationships, some Member States may take a different stand. By that resolution, the General Assembly determined for its own purposes that the Government of the People’s Republic of China was the only legitimate Government of China and that the authorities on Taiwan had no lawful claim to that Government.

9. The law, as just indicated, must be applied to the facts of the case in question and within the general context of United Nations accreditation policies. At the outset it

may be observed that the law in a specific and definite instance such as this would necessarily override general policies to the extent that any conflict existed, although it is submitted that in reality no such conflict did exist. Furthermore, it must be noted that it is the responsibility of the Secretary-General under the Charter to give effect to the decisions of the principal deliberative organs of the United Nations.

10. It has been shown that the CNA was "an official news agency", owned, wholly maintained, financed and controlled by the authorities on Taiwan (see paragraphs 2 and 3 above). Prior to 25 October 1971, it was also accorded within the United Nations the treatment given to official news agencies (see paragraph 6 above). After the adoption of General Assembly resolution 2758 (XXVI), the Secretary-General, in discharge of his responsibilities, could no longer recognize the CNA as the *bona fide* official news agency of China, and consequently, could not continue the accreditation of the CNA correspondents if they continued to act as representatives of a Government agency. As indicated in paragraphs 4 and 5 above, there is an indissoluble link between an accredited correspondent and the agency he represents, and, if the latter ceases to exist in fact or in law, the accreditation ceases. With the adoption of General Assembly resolution 2758 (XXVI), the CNA, as a national news agency, ceased in law to exist for United Nations purposes.

1. With the above factors in mind, shortly after the adoption of General Assembly resolution 2758 (XXVI), the correspondents of the CNA were approached and were informed that, in view of the decision of the General Assembly, their accreditation could only be continued if they were to act on behalf of a private news agency, and not one claiming to be the official news agency of an authority purporting to represent China. As a first step, on the proposal of these correspondents it was agreed to drop the words "of China" from the title of their agency and to admit correspondents of other agencies to what were previously private office facilities, thus denoting they no longer claimed the facilities accorded to government news agencies. However, information was received that the CNA correspondents continued to dispatch from United Nations Headquarters news which was published as emanating from the "Central News Agency of China", namely an official organ of authorities which for United Nations purposes had ceased to exist. In such circumstances the Secretary-General had no alternative but to give effect to the decision of the General Assembly and, on 17 December 1971, to withdraw the accreditations of the correspondents concerned. Should, however, those correspondents wish to apply for accreditation as *bona fide* representatives of *bona fide* private news media on Taiwan, those applications would be treated in the same manner as any other application from any part of the world.

10 February 1972

3. PROPOSAL THAT THE UNITED NATIONS JOIN WITH A MEMBER STATE IN SPONSORING THE AWARD TO A PERSON OR AN INSTITUTION OF A PRIZE IN THE FIELD OF HUMAN ENVIRONMENT—QUESTION WHETHER THERE ARE LEGAL OBJECTIONS TO SUCH A PROPOSAL ⁶

*Memorandum to the Special Assistant to the Secretary-General
of the Conference on Human Environment*

1. You have requested our views on whether there would be any legal objection to a proposal that the United Nations join with Iran in sponsoring the annual award of an

⁶ See also *Juridical Yearbook*, 1965, p. 232.

“international prize” to a person or institution for outstanding achievement in the preservation and enhancement of the human environment.

2. The following questions appear to be relevant from the legal point of view:

(a) Is the proposal consistent with the purposes and objectives which the General Assembly sought to pursue when it took up the environment issue?

(b) Is the United Nations empowered to award prizes to individuals and non-governmental institutions?

(c) Are there precedents for such action?

3. As regards the first question, one of the purposes which the General Assembly stressed in calling the Stockholm Conference was that the Conference should serve “to focus the attention of Governments and public opinion on the importance and urgency of this question” namely the protection and enhancement of the human environment (thirteenth preambular paragraph of resolution 2398 (XXIII)). This statement followed the expression of the Assembly’s conviction in the same resolution “that increased attention to the problems of the human environment is essential for sound economic and social development” and that there is a “need for intensified action at the national, regional and international level in order to limit and, where possible, eliminate the impairment of the human environment and in order to protect and improve the national surroundings in the interest of man” (fifth and eleventh preambular paragraphs).

4. In the light of the foregoing, it appears that the establishment of a prize “for outstanding achievement in the preservation and enhancement of the human environment” could reasonably be considered as one of possible measures and activities which the General Assembly might adopt in furtherance of the above stated purposes.

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

6. As to precedents, “United Nations prizes” for the most outstanding scientific research work in the causes and control of cancerous diseases were instituted by the General Assembly in resolution 1398 (XIV). In 1962, seven outstanding scientists selected by WHO, received this prize (six awards of \$10,000 each). The presentation of the awards was made by the President of the General Assembly and the Secretary-General. Another instance of United Nations awards is the medallion commemorating the International Co-operation Year and the twentieth anniversary of the United Nations which was presented in 1965 to a number of personalities by the Secretary-General. “Human Rights prizes”, established pursuant to General Assembly resolution 2217A (XXI) (Annex, Recommendation C), for outstanding contributions to the promotion and protection of the human rights and fundamental freedoms, and the Nansen Medal Award, instituted in 1954 by the United Nations High Commissioner for Refugees for outstanding work on behalf of refugees are further examples of United Nations prizes. In 1968, a number of persons received United Nations “Human Rights Prizes” on the occasion of the celebration of the twentieth anniversary of the Universal Declaration on Human Rights; and the Nansen Medal is awarded each by the High Commissioner.

7. A difference between the present proposal and previous precedents is that the present proposal contemplates the United Nations joining with a particular Member State in sponsoring the award of the prize but this does not seem to give rise to any legal objection.

8. To summarize, it would seem that the proposal that the United Nations and one of its Member States co-sponsor an annual prize to be awarded for outstanding achievement in the preservation and enhancement of the environment would be

(a) consistent with the purposes and objectives sought by the General Assembly in the field of the environment;

(b) within the powers of the Organization and consistent with its purposes under the Charter; and

(c) in accordance with precedents.⁷

17 April 1972

4. QUESTION WHETHER THE UNITED NATIONS MAY CLAIM EXEMPTION FROM "PRODUCTION DUTIES" LEVIED ON GASOLINE BY A MEMBER STATE⁸

*Memorandum to the Chief of the Field Operations Service,
Office of General Services*

1. You have asked for our views on a statement by the authorities of a Member State that the granting to UNTSO of exemption from "production duties" on gasoline is not legally justified.

2. Section 7 of the Convention on the Privileges and Immunities of the United Nations⁹ provides that the United Nations shall be "exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services".

3. With regard to the definition of the term "direct" taxes, the principle is that the Convention should be uniformly applied in all Member States and therefore the characterization given to that term by municipal law or municipal officials cannot be controlling if the nature and incidence of the tax affect the United Nations and increase the financial expenses of the Organization to the advantage of a Member State. The interpretation of the term "direct" in accordance with the stated principle is intended to achieve equality in the implementation of the Convention among Member States within the spirit and the provision of Article 105 of the Charter and to relieve the Organization from undue financial burdens.

4. It is foreseen, however, that the authorities of the Member State concerned may maintain that excise duties on gasoline are indirect taxes which form part of the price of sale and from which the Convention does not accord to the United Nations automatic exemption. Even assuming for the purpose of argument that excise duties on gasoline constitute an indirect tax, the Organization is entitled to request that the Government make administrative arrangements for the remission or return of the amount of the excise duty under Section 8 of the Convention which provides:

"While the United Nations will not as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price

⁷ By resolution 3003 (XXVII) of 15 December 1972, the General Assembly *inter alia* welcomed the initiative of the Government of Iran in establishing an annual prize by that Government for the most outstanding contribution on the field of the environment to be awarded through the United Nations.

⁸ See also *Juridical Yearbook*, 1967, p. 315.

⁹ United Nations, *Treaty Series*, vol. 1, p. 15.

to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax."

5. Where the United Nations purchases goods or commodities on a recurring basis in the territory of a Member State, such purchases constitute "important" purchases on which the United Nations is entitled to request the remission or return of the amount of duties. Particularly in the case of purchases of gasoline, the amount of duty and the proportion that amount bears to the total purchase price is sufficient to consider the purchases as "important" and the tax as an undue burden upon the Organization. Moreover, whether characterized as "direct" or "indirect", all taxes which are important enough to make their remission return administratively possible fall within the provisions of Article 105 of the Charter, which clearly contemplates the exemption of the United Nations from the financial burden of taxation.

6. It may be mentioned, incidentally, that the United Nations is normally exempted from excise duties on gasoline required for its operations in the territories of Member States.

26 January 1972

5. FACILITIES ACCORDED TO OBSERVERS AT UNITED NATIONS CONFERENCES AND MEETINGS HELD AWAY FROM HEADQUARTERS

Internal memorandum

1. You have asked information on the facilities accorded to observers at United Nations conferences and meetings away from Headquarters. In that respect a distinction is to be made between observers officially invited by the convening organ and observers invited by the Secretariat.

1. *Observers officially invited by the convening organ*

2. When observers are officially invited by the General Assembly or other organs competent to convene conferences or meetings to attend such conferences or meetings away from Headquarters, those observers are generally given seats on the floor of the Conference room. The exact nature of the seating arrangements necessarily depends upon the facilities available, but the seats are usually provided either on the side of the meeting room or in a bloc separate from those of full participants. The observers are provided with name-plates indicating, if they represent a country, the name of that country, or, if they represent an organization, the name of that organization.

3. Observers are provided with the official documentation of the conference or meeting concerned, and they have pigeon-holes provided for such documentation at the documents desk. These pigeon-holes are usually in a bloc separate from those of participants but they bear the name of the country or organization concerned.

4. Observers are distinguished from participants without the right to vote. The latter may take part fully in the discussions and, in some instances where the rules so provide, have been permitted to make proposals which, however, are usually only put to the vote if a full participant so requests. The function of an observer is defined by his title, that is his role is essentially to "observe." As such he may not automatically take part in the

discussion and cannot submit proposals. An observer may, nevertheless, deliver a statement from time to time after making a request to the presiding officer who consults the conference or meeting on whether the request should be granted.

II. *Observers invited by the Secretariat*

5. There have been a few instances where the Secretariat has agreed to extend certain facilities to representatives of countries not officially invited to the conference or meeting concerned. These facilities are limited to seats in the distinguished visitors gallery, without any name-plate being displayed, and to receipt of documentation. No pigeon-hole is reserved for such documentation which is instead obtained upon request from the documents officer. The representatives concerned are not entitled to take part in any way in the official proceedings of the conference or meeting concerned.

26 January 1972

6. REQUIREMENT UNDER ARTICLE 18, PARAGRAPH 2 OF THE CHARTER THAT DECISIONS OF THE GENERAL ASSEMBLY ON BUDGETARY QUESTIONS BE MADE BY A TWO-THIRDS MAJORITY—QUESTIONS WHICH MAY BE CHARACTERIZED AS BUDGETARY QUESTIONS

Statement made by the Legal Counsel at the 2108th plenary meeting of the General Assembly held on 13 December 1972

You have requested my views on the question whether draft resolutions A, B, C and D contained in the report of the Fifth Committee on the item "Scale of assessments for the apportionment of the expenses of the United Nations"¹⁰ require a two-thirds majority under Article 18 (2) of the Charter and rule 85 of the rules of procedure of the General Assembly.

The text of Article 18 (2) specifies that:

"Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting."

¹⁰ For the text of the draft resolutions see *Official Records of the General Assembly, Twenty-seventh Session, Annexes*, agenda item 77 (document A/8952, para. 27). Draft resolution A dealt with the question of the assessment of four newly admitted Member States and of Switzerland as a member of the Economic Commission for Europe. Draft resolution B proposed that the General Assembly should take the following decisions:

"(a) As a matter of principle, the maximum contribution of any one Member State to the ordinary expenses of the United Nations shall not exceed 25 per cent of the total;

"(b) In preparing scales of assessment for future years, the Committee on Contributions shall implement subparagraph (a) above as soon as practicable so as to reduce to 25 per cent the percentage contribution of the Member State paying the maximum contribution, utilizing for this purpose to the extent necessary:

"(i) The percentage contributions of any newly admitted Member States immediately upon their admission;

"(ii) The normal triennial increase in the percentage contributions of Member States resulting from increases in their national incomes;

"(c) Notwithstanding subparagraph (b) above the percentage contribution of Member States shall not in any case in the United Nations, the specialized agencies or the International Atomic Energy Agency be increased as a consequence of the present resolution".

Draft resolution C dealt with the rate of assessment of low *per capita* income countries and draft resolution D *inter alia* requested the Committee on Contributions, in formulating the coming scale of assessment, to lower the floor for minimum contributions from 0.04 per cent to 0.02 per cent.

It further specifies that these include certain categories, among which are “budgetary questions”. It must therefore be determined whether the proposed resolutions relate to a “budgetary question”.

In the first instance it is necessary to examine what are budgetary questions. It is clear that in General Assembly practice not every resolution having financial implications or otherwise involving expenditures is such a question. In general, it would seem that three types of questions come within the category. First, under Article 17 (1), there is the budget itself, which includes both income and expenditures; secondly, there is the apportionment of expenses under Article 17 (2); and thirdly, there are questions of principle which basically affect decisions as to the first and second categories.

It seems obvious that the first two—the budget itself and the actual apportionment of expenses—which are dealt with respectively in paragraphs 1 and 2 of Article 17 of the Charter, must be characterized as budgetary questions. This is so because the budgetary process has two aspects: as Financial Regulation 3.2 indicates, budget estimates cover both the expected expenditures and the expected income of the financial year to which they relate. And, of course, the largest source of income of the United Nations which predominates over all others, is the contributions assessed on Member States pursuant to Article 17(2) of the Charter. The estimate of this income, which must be approved by the General Assembly, is thus an integral part of the budget. Since the total of the assessed contributions consists of the individual contributions of Member States, the adoption of the scale according to which these assessments are determined must be considered as part of the budgetary process.

Even if it should be argued that the assessment of contributions were technically not a “budgetary question” within the meaning of Article 18 (2) of the Charter, it cannot be denied that it is intrinsically as important a matter as the determination of the expenditure side of the budget. From the point of view of any Member State, the amount that it will have to contribute to the United Nations depends on the one hand on the total amount of expenditures approved for a given year, and on the other on the scale that determines the percentage of these expenses that that State is to contribute. Consequently, the adoption of a scale should be considered as an “important” question under that same paragraph of the Charter.

There are no Assembly precedents directly in point, largely because in the past all resolutions approving scales of contributions or instructing the Committee on Contributions have been adopted by majorities considerably in excess of two thirds. In only one instance do the records reflect an apparent determination that a two-thirds majority is required: when the Assembly at its twelfth session adopted resolution 1137 (XII)—the resolution that established the limit of 30 per cent for the largest contributor. The vote on that resolution was 39 in favour, 16 opposed and 13 abstentions, and the result was recorded, without however any ruling of the President, as: “The draft resolution was adopted, having obtained the required two-thirds majority”.¹¹

The draft resolutions at present before the Assembly, like resolution 1137 (XII), would not actually adopt or change the scale of contributions and thus would not entail any direct financial consequences for any State; instead, they would merely instruct the Committee on Contributions as to the formulation of a new scale, which itself would require approval by the Assembly.

They thus fall into the third category I mentioned earlier: questions that involve basic principles in relation to either the budget or the apportionment of expenditures. In my

¹¹ *Official Records of the General Assembly, Twelfth Session, Plenary meetings 705th meeting, para. 8.*

view, this third category into which the proposed resolution falls, should also be considered budgetary since decisions on questions of fundamental principle necessarily affect decisions on the other “budgetary questions”. Otherwise, the purpose of protecting a minority against a decision by a simple majority on such questions would not be achieved. This position is not based on clear precedent. In fact, none of the precedents is directly relevant. I have already observed that with respect to certain preliminary decisions, the mere fact that a resolution has financial implications does not make it a budgetary question, and thus resolutions having only an indirect effect on the budget, such as those that called for meetings of the General Assembly in Europe (184 (II), 497 (V), 499 (V)) for the addition of Spanish and Russian to the working languages (247 (III), 2479 (XXIII)) or for the preparation of special records (1333 (XXII)) have generally been held not to require a two-thirds majority.

Of possibly greater significance was the decision taken with respect to resolution 2186 (XXI) for the establishment of the Capital Development Fund. One paragraph of the draft Statute—Article IV, paragraph 2—provided that:

“Expenses for administrative activities shall be borne by the regular budget of the United Nations which shall include a separate budgetary provision for such expenses...”.

The United States representative argued that, although a two-thirds majority was not required on all proposals involving any financial considerations, an important principle was being decided which would determine the way in which the matter should be settled in the budget: he therefore moved that this provision be regarded as an important question within the meaning of Article 18 (2) of the Charter. The representative of Lebanon, on the other hand, argued that the resolution would not put any financial burden on the Organization for the following year, and that the time to invoke the two-thirds majority rule would be at the next session of the General Assembly, when it would deal with actual expenditures.¹²

The General Assembly, voting by roll-call, rejected the United States motion, by 71 votes to 35, with 7 abstentions, thus deciding that a two-thirds majority was not required on this question of principle.

On the other hand, there are a few contrary instances where the General Assembly has decided that questions of a preliminary character required a two-thirds majority. One may note in this connexion particularly the question of a proposed instruction to the ACABQ to study the question of the amortization and payment of interest on United Nations bonds.¹³

In conclusion, there are three types of questions which may be argued as coming within the ambit of the reference to “budgetary questions” in Article 18 (2) of the Charter: first, the budget itself; secondly, the apportionment of expenses; and, thirdly, questions of principle basically affecting decisions as to the first and second.

The first two categories are clearly budgetary questions. With respect to the third, there are conflicting precedents. But it is my considered belief that, in the interests of the Organization and all its Members, such questions of principle which basically affect the financing of the Organization have to be considered as budgetary ones which require a two-thirds majority. The purpose of requiring a two-thirds majority is to protect the minority against a decision by a simple majority on certain important questions, among which, surely, are “budgetary questions”. In order to accomplish this purpose, the require-

¹² *Ibid.*, *Twenty-first Session*, Plenary meetings, 1492nd meeting, paras. 17-21 and 26.

¹³ *Ibid.*, *Twenty-third Session*, Plenary meetings, 1752nd meeting, paras. 362-373.

ment of a two-thirds majority should include questions of principle of a fundamental character which necessarily affect decisions on the apportionment of expenses.

It is therefore my conclusion that the draft resolutions at present before the General Assembly, which involve such questions of principle, do require a two-thirds majority.¹⁴

7. CONVENTION ON THE ELIMINATION OF RACIAL DISCRIMINATION—QUESTION WHETHER UNDER THE CONVENTION THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION MAY SOLICIT OR USE INFORMATION FROM SOURCES OTHER THAN STATES PARTIES TO THE CONVENTION—CONDITIONS UNDER WHICH A COOPERATION COULD BE ESTABLISHED BETWEEN THE COMMITTEE AND ILO AND UNESCO BODIES DEALING WITH DISCRIMINATION

Memorandum to the Assistant Secretary-General for Inter-Agency Affairs

1. You have asked us to look into the question of the cooperation which might be envisaged between the Committee on the Elimination of Racial Discrimination (CERD) on the one hand and the International Labour Organisation and the United Nations Education, Scientific and Cultural Organization on the other, in the light of the provisions of the International Convention on the Elimination of all Forms of Racial Discrimination,¹⁵ hereafter referred to as the Racial Discrimination Convention.

A. *Does the Racial Discrimination Convention restrict the sources of information on which CERD may rely in discharging its functions under the Convention?*

2. All the forms of co-operation that might be envisaged between CERD and the organs of ILO (Committee of Experts on the Application of Conventions and Recommendations and Conference Committee on the Application of Conventions and Recommendations) and UNESCO (Executive Board's Committee on Conventions and Recommendations in Education) performing similar functions, would result in and indeed have as a principal objective the supply of information to the members of CERD, in particular on the application of the relevant ILO and UNESCO Conventions, namely, the 1958 ILO Discrimination (Employment and Occupation) Convention¹⁶ and the 1960 UNESCO Convention against Discrimination in Education,¹⁷ whether through written statements, or the participation of observers in CERD meetings, or the participation of CERD representatives in ILO and UNESCO meetings. A basic question therefore is: may CERD solicit or even use information from sources other than States Parties to the Racial Discrimination Convention?

3. CERD was established and its authority and functions are defined by the Racial Discrimination Convention. Consequently the reply to the above question must first be

¹⁴ After hearing the statement reproduced above, the President of the General Assembly ruled, under Article 18 (2) of the Charter, that the four draft resolutions in question required a two-thirds majority for adoption. The ruling was not challenged. The draft resolutions which became resolutions 2961 A (XXVII), 2961 B (XXVII), 2961 C (XXVII) and 2961 D (XXVII) were adopted respectively by 128 votes to none with no abstentions, 81 votes to 27 with 22 abstentions, 99 votes to 9 with 19 abstentions and 111 votes to none with 20 abstentions.

¹⁵ United Nations, *Treaty Series*, vol. 660, p. 195.

¹⁶ *Ibid.*, vol. 362, p. 31.

¹⁷ *Ibid.*, vol. 429, p. 93.

sought in that instrument—which, however, contains no explicit indication. If the Convention is construed narrowly, recourse to sources of information not specified in the Convention would seem to be precluded; on the other hand, considered as the constitutional instrument of CERD, a more liberal interpretation of the instrument and even the discovery of implied powers in the Committee might be justified. As the Convention is silent as to the means of its interpretation (except with respect to complaints of non-observance, and disputes between States), it is for the Committee itself to decide, at least in the first instance, how it is to exercise its functions; since it reports to the General Assembly (which formulated the Convention), that organ is in a position to review the decisions of CERD—and such a review did indeed take place at the twenty-sixth session; in addition the States Parties, which meet periodically (pursuant to article 8, paragraph 4 of the Convention), might exercise some supervision as suggested at the Second Meeting of States Parties (CERD/SP/SR.6, p. 2).

4. An analysis of the structure of the Convention discloses four separate types of proceedings for which CERD is responsible:

(a) Administrative proceedings under *article 9*, by which CERD considers reports submitted by States Parties, may request further information from these States, reports annually to the United Nations General Assembly and may make suggestions and general recommendations “based on the examination of the reports and information received from States Parties”. Question A relates primarily to this function of CERD. It is thus clear from the Convention (and from paragraph 3 of the recently adopted procedural rule 66A based thereon¹⁸ that the suggestions and general recommendations that CERD is to make must be based on data received from the Parties to the Convention. However, it is not specified that the Committee is limited to these sources in its preliminary consideration of the reports of States and in particular in formulating requests for further information.

(b) Obligatory contentious proceedings under *articles 11-13*, by which CERD is to help resolve disputes among States Parties. In view of the quasi-arbitral/judicial nature of such proceedings, it would appear proper normally to limit the information on which CERD or *ad hoc* Conciliation Commissions established by it can rely to that supplied by the contending parties—not only in formulating the reports to be prepared pursuant to article 13, paragraph 1, but perhaps even in considering what other relevant information to request under article 12, paragraph 8. In any event, due to the contentious nature of these proceedings it can be assumed that one party or the other will submit any relevant information to CERD or the Commission.

(c) Optional quasi-contentious proceedings under article 14, by which CERD can consider communications from individuals or groups (provided the State concerned has especially subjected itself to such challenges). Again, in view of the quasi-judicial nature of these proceedings and in view of the explicit enumeration in article 14, paragraph 7 (a), CERD should normally restrict its consideration to the communications received and to “all information made available to it by the State Party concerned and by the petitioner”.

(d) Proceedings under *article 15*, whereby CERD can receive and consider almost any type of information relevant to the Convention, but only in respect of non-self-governing territories of the type covered by that article.

5. The *travaux préparatoires* contain little relevant material on this point. The representative of Canada did remark that article 9, paragraph 2 “was somewhat restrictive in providing that the suggestions and recommendations of the proposed committee would have to be based on information received from States Parties to the Convention. The

¹⁸ *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 18 (A/8718)*, p. 37.

Third Committee should not be unduly concerned over that point at the present stage, however, and should rely on the committee itself to establish its own jurisdiction on a pragmatic basis.”¹⁹

6. CERD itself has as yet had little opportunity to develop any relevant practice. However, the following might be taken into account:

(a) The Provisional Rules of Procedure adopted by CERD²⁰ contain nothing directly relevant either in the general provisions or in section XIV (rules 64-67) on “Reports and Information from States Parties under article 9 of the Convention”. However, at its fifth session, the Committee debated but then deferred action on a new procedural rule that would explicitly allow its members to introduce and the Committee to use information which is known to them as experts otherwise than from documents laid before the Committee.^{21,22}

(b) At its first session, CERD did take a somewhat restrictive view of article 15 of the Convention, in that it concluded it was only empowered to receive petitions through the channels enumerated in sub-paragraph 2 (a) of that article; however, the Committee indicated that it would consider what procedures to follow should a petition be addressed directly to it, so that a strict interpretation of its terms of reference should not deprive a petitioner of the opportunity to have his petition considered by an appropriate international body.²³

(c) In considering, under article 9 of the Convention, a report by Panama in relation to the Panama Canal Zone, a member of the Committee argued, *inter alia*, that article 9 forbids CERD from seeking or receiving information from any source other than the States Parties concerned.²⁴ On the other hand, decision 4 (IV) of CERD indicates that in respect of information supplied by Syria relating to the situation in the Golan Heights, “the Committee takes note also of the resolutions adopted by competent organs of the United Nations, and of the reports of the Committees set up by the General Assembly and by the Commission on Human Rights to investigate the situation, to which the report submitted by the Syrian Government makes reference”.²⁵ Similarly, in considering the report submitted by Greece one member of CERD argued that additional information was required because “according to information which was in the public domain” some legal provisions cited by Greece in its report had been suspended.²⁶

7. Though the second report of CERD²⁷ specifically mentioned the question of the Committee’s co-operation with ILO and UNESCO, and both the Director of the Division on Human Rights and the representative of Sierra Leone specifically invited the Third

¹⁹ *Ibid.*, *Twentieth Session*, Third Committee, 1352nd meeting, para. 2.

²⁰ *Ibid.*, *Twenty-fifth Session, Supplement No. 27 (A/8027)*, p. 17 and *Twenty-seventh Session, Supplement No. 18 (A/8718)*, p. 37.

²¹ See CERD/C/R.38 and CERD/C/SR.91, pp. 12 and 13.

²² In the course of its sixth session held after the drafting of the present memorandum the Committee resumed consideration of the amendment. At the end of the discussion summarized in paragraphs 27 to 32 of the report of the Committee to the General Assembly (*Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 18 (A/8718)*), the Chairman stated that it appeared from the discussion that the Committee would continue the practice it had followed to date allowing members to use any information they might have as experts.

²³ *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 27 (A/8027)*, p. 38.

²⁴ *Ibid.*, *Twenty-sixth Session, Supplement No. 18 (A/8418)*, para. 64(iii).

²⁵ *Ibid.*, p. 34.

²⁶ *Ibid.*, para. 47.

²⁷ *Ibid.*, paras. 111-117.

Committee's attention to this question,²⁸ neither the Assembly formally nor even the Third Committee informally expressed itself on this point. Solely the representative of the Libyan Arab Republic hoped that close co-operation would be established between CERD and the specialized agencies.²⁹

8. *Conclusion.* The Racial Discrimination Convention to some extent defines and delimits the types of information on which CERD may rely in various types of proceedings. These limits are quite broad in respect of article 15, and relatively narrow in respect of articles 11-13 and 14 however, especially in respect of article 9 it is not clear that CERD is precluded from using extraneous information for ancillary purposes, i.e. in evaluating the completeness of the reports submitted to it and in formulating requests for supplementary data, and the early practice of the Committee indicates that it does indeed rely on such information. Thus there would not seem to be any legal bar to the utilization, within the indicated limits, of information obtained from ILO or UNESCO.

B. *Are ILO and UNESCO entitled to be represented at meetings of CERD?*

9. The Racial Discrimination Convention is silent as to the establishment of contacts between CERD and other organizations (except for the United Nations, with which an intimate nexus is foreseen). The preamble to the Convention does refer to the 1958 ILO Discrimination (Employment and Occupation) Convention and to the 1960 UNESCO Convention against Discrimination in Education; though of limited legal significance in this context, this citation could be used as an argument for limiting the precedential effect of any special relations established with ILO and UNESCO.

10. The Relationship Agreements between the United Nations and respectively ILO and UNESCO provide for the representation of these organizations at meetings of the Economic and Social Council and of its commissions and committees, in the Main Committees of the General Assembly (and to a limited extent in the plenary) and in the Trusteeship Council. Since CERD does not fall within any of these categories (even assuming that it is a United Nations organ), these agreements clearly do not entitle ILO and UNESCO to such participation. However, since CERD may be considered as a "treaty organ" of the United Nations,³⁰ as has already been determined in connection with the privileges and immunities of the Committee,³¹ or at least as operating under the aegis of the Organization, some means of co-operation might be considered to be within the spirit of the Relationship Agreements.

11. What may be called the quasi-judicial functions of CERD and its composition of experts serving "in their personal capacity" rather than of governmental representatives, suggest that it would not be appropriate for persons not elected to CERD to participate fully in its deliberations. The only context in which the Convention explicitly foresees participation by outsiders is in a contentious proceeding under article 11, when the States concerned are each entitled to send non-voting representatives to take part in the proceedings of CERD (article 11, paragraph 5). However, the General Assembly suggested that the Committee should invite States Parties to be present at CERD meetings when their reports are examined (resolution 2783 (XXVI), operative paragraph 5), in order to permit them to furnish additional information³² and the Committee amended its Provisional Rules

²⁸ See *ibid.*, *Third Committee*, 1845th meeting, para. 13 and 1852nd meeting, para. 14.

²⁹ *Ibid.*, 1856th meeting, para. 7.

³⁰ *Repertory of Practice of United Nations Organs*, Vol. I, Article 7, paras. 22 and 23 and Supplement No. 1, Vol. I, Article 7, paras. 7-11.

³¹ See *Juridical Yearbook*, 1969, p. 207.

³² *Official Records of the General Assembly, Twenty-sixth Session, Annexes*, agenda item 54, document A/8542, para. 17.

of Procedure accordingly (rule 64A).³³ In any event, the extent and modalities of such participation of the representatives of specialized agencies should be regulated in the Rules of Procedure of CERD, which at present have no applicable provisions; presumably such Rules might provide for attendance at all open, and perhaps some closed meetings, with the right to intervene by invitation of the Chairman.

C. *Is CERD entitled to be represented at meetings of the appropriate organs of ILO and UNESCO?*

12. The Relationship Agreements do provide for representatives of the United Nations to attend meetings of the general representative organs of ILO and UNESCO and their committees and of their governing bodies and their committees, as well as other general, regional or special meetings of the organizations. Thus the United Nations is entitled to be represented in the committees of ILO and UNESCO charged with the supervision of the Conventions initiated by these organizations. CERD itself has no independent right to be represented, but if considered as a United Nations organ might benefit from the rights of the Organization (as to the modalities, see paragraph 13 below); if not considered as a United Nations organ, it is of course not covered by the Relationship Agreements.

D. *Should the competent ILO and UNESCO organs and CERD be represented by members of the ILO, UNESCO and United Nations Secretariats respectively or by members of the corresponding committees?*

13. If CERD is assimilated to the status of a United Nations organ, then it should normally be represented at meetings of organs of other agencies by the Secretary-General, as is the practice of most United Nations organs,³⁴ though recently some exceptions have developed (e.g. the attendance of the Chairman of the International Law Commission at sessions of the Asian-African Legal Consultative Committee.³⁵ Presumably this question can be resolved in consultations between CERD and representatives of the Secretary-General.

14. The competent ILO and UNESCO Committees are clearly organs of these organizations. As their practice is similar to that of the United Nations, their contacts with outside groups are also normally via the respective Secretariats. In the case of the ILO however it is to be noted that there are instances in which the Director-General designates members of the ILO Governing Body and that he might designate members of the ILO's Committee of Experts on the Application of Conventions and Recommendations to attend CERD meetings.³⁶

29 March 1972

³³ *Ibid.*, Twenty-seventh Session, Supplement No. 18 (A/8718), p. 37.

³⁴ *Repertory of Practice of United Nations Organs*, Vol. 5, Article 98, paras. 142-143.

³⁵ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1)*, para. 135.

³⁶ At its 115th meeting held on 21 August 1971 in the course of its sixth session, the Committee adopted the following decision:

"2(VI). *Co-operation with the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO)*.

"Without prejudice to such decisions as the Committee on the Elimination of Racial Discrimination may take in the future regarding the possibility of participation in its meetings by representatives of the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization under certain circumstances, the Committee decides that:

"1. The Committee authorizes the Secretary-General of the United Nations to invite
(Continued on next page.)

8. AD HOC COMMITTEE ON COOPERATION BETWEEN UNDP AND UNIDO—PARTICIPATION OF SPECIALIZED AGENCIES—QUESTION WHETHER MEMBER STATES NOT MEMBERS OF THE COMMITTEE MAY PARTICIPATE IN ITS WORK

Memorandum to the Secretary of the Ad Hoc Committee on Cooperation between the United Nations Development Programme and the United Nations Industrial Development Organization

1. You have asked our advice on the question whether specialized agencies may participate in the work of the *Ad Hoc* Committee on Cooperation between the United Nations Development Programme and the United Nations Industrial Development Organization. You have also referred to us the question of the participation in the *Ad Hoc* Committee of Member States not members of the Committee.

2. Operative paragraph 11 of General Assembly resolution 2823 (XXVI) of 16 December 1971 reads as follows:

"The General Assembly

"..."

"Decides to set up an Ad Hoc Committee on Cooperation between the United Nations Development Programme and the United Nations Industrial Development Organization composed of those Member States whose representatives are serving as officers of the Governing Council of the Programme and the Industrial Development Board to examine in detail, in consultation with the Administrator of the United Nations Development Programme and the Executive Director of the United Nations Industrial Development Organization, all aspects of co-operation between the two organizations, especially those related to the formulation, appraisal and approval of industrial projects, and to submit a report thereon to the General Assembly at its twenty-seventh session, through the Economic and Social Council, together with the comments of the Governing Council of the Programme and those of the Industrial Development Board;"

The *Ad Hoc* Committee is therefore a subsidiary organ of the General Assembly to which, in accordance with rule 163 of the rules of procedure of the Assembly, the rules relating

(Footnote 36 continued.)

representatives of the ILO and of UNESCO to attend the meetings of the Committee. The Committee shall decide at any private meeting it holds whether the observers of the ILO and UNESCO may attend the private meeting in question.

"2. In accordance with rules 34(1) and 62 of its Provisional Rules of Procedure, the Committee authorizes the Secretary-General to make the records of its public meetings and the texts of its reports, formal decisions and other official documents available to the ILO Committee of Experts and the UNESCO Executive Board's Committee on Conventions and Recommendations in Education.

"3. Written statements submitted by the ILO and UNESCO, providing information on the application of the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and the Convention and Recommendation against Discrimination in Education, 1960, in the Territories mentioned in paragraph 2 (a) of article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination shall be transmitted by the Secretary-General of the United Nations to the Committee on the Elimination of Racial Discrimination, in accordance with paragraph 4 of article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination and paragraph 3 (b) of the "Statement of the responsibilities of the Committee under article 15 of the Convention", adopted by the Committee on the Elimination of Racial Discrimination on 29 January 1970.

"4. Written statements submitted by the ILO and UNESCO, providing information on the application of the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and the Convention and Recommendation against Discrimination in Education, 1960, in Territories other than those mentioned in the preceding paragraph shall be distributed by the Secretary-General of the United Nations to the members of the Committee on the Elimination of Racial Discrimination."

to the procedure of committees of the General Assembly as well as rules 45 and 62 shall apply.

3. Participation of specialized agencies in the meetings of the General Assembly is governed by the agreements between the United Nations and the specialized agencies. These agreements all contain a provision on reciprocal representation, in so far as representation of agencies in the General Assembly is concerned; in the case of the Agreement between the United Nations and WMO for example, this provision reads as follows:

“The Organization shall be invited to send representatives to attend the meetings of the General Assembly during which questions within the competence of the Organization are under discussion for purposes of consultation, and to participate, without vote, in the deliberations of the Main Committees of the General Assembly with respect to items concerning the Organization.”

A specialized agency is therefore entitled to participate in the plenary meetings and the meetings of the Main Committees of the General Assembly during which questions within the competence of the agency are under discussion. However unlike the provisions concerning representation in the Economic and Social Council which cover the Council's commissions and committees,³⁷ the above quoted provision refers to the Main Committees but does not mention other committees or subsidiary organs of the General Assembly. Consequently should the question of participation of a specialized agency in the *Ad Hoc* Committee arise, it is for the Committee itself to take a decision.

4. Regarding the question of participation in the *Ad Hoc* Committee of Member States not members of the Committee, it is to be recalled that the Office of Legal Affairs has consistently held the view that, unless the General Assembly has specifically accorded observer status in a subsidiary organ to Member States not members of that organ (such as the Sea-Bed Committee),³⁸ participation in an organ of limited membership established by the General Assembly should be limited to its members. In some cases a subsidiary organ has decided to seek information from a particular Member State which was not its member or to grant the request of such a State to make a statement. This does not imply a general authorization for participation by non-members. *A fortiori*, participation in closed meetings of such an organ is limited to its membership.³⁹ In the past, only under exceptional circumstances has a subsidiary organ decided to permit the representatives of non-member States to attend its closed meetings.⁴⁰

23 March 1972

³⁷ The standard provision reads:

“The Organization shall be invited to send representatives to attend meetings of the Economic and Social Council of the United Nations (hereinafter called the Council), of its commissions and committees and to participate, without vote, in the deliberations thereof with respect to items on the agenda in which the Organization may be concerned.”

³⁸ See General Assembly resolution 2750 C (XXV), operative paragraph 10.

³⁹ See *Juridical Yearbook*, 1971, p. 195.

⁴⁰ For example, the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly decided “that it would hold closed meetings but that the representatives of Member States which were not represented in the Committee would be allowed to attend meetings and to elaborate orally on the replies submitted by their Government.” (See *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 26 (A/8426)*, para. 6.)

9. QUESTION WHETHER A STATE NOT MEMBER OF THE UNITED NATIONS MAY ADDRESS THE ECONOMIC AND SOCIAL COUNCIL OR ATTEND A SESSION OF THE COUNCIL

Memorandum to the Secretary of the Economic and Social Council

You have asked for advice concerning the right of a non member State of the United Nations to address the Economic and Social Council or to attend a session of the Council.

The opinion of 9 July 1954 reproduced below indicates that it is fully within the discretion of the Council to extend to a non-member State an invitation to speak.

May the representative of a State which is not a Member of the United Nations address the Economic and Social Council on a matter of particular concern to that State?

1. There is no provision in the Charter of the United Nations or in the Rules of Procedure of the Economic and Social Council which provides for the participation or the making of statements by representatives of States not members of the United Nations.

2. The rule of procedure which concerns participation of non-members of the Council (rule 75) applies only to non-members of the Council which are Members of the United Nations.

3. This rule of procedure (the first sentence of which reproduces Articles 69 of the Charter) makes it obligatory on the Council to invite a Member of the United Nations which is not a member of the Council to participate in its deliberations on any matter which the Council considers is of particular concern to that Member.

4. It is clear that the Council is under no obligation to invite a State which is not a member of the United Nations to participate in the Council even though the item under consideration is admittedly of particular concern to that State.

5. There remains, however, the question of whether the Council may, at its own discretion, decide to invite a representative of a non-member State to address the Council on an item which concerns that State. As stated above, there is no rule of procedure on this point.

6. The Council has, however, decided on at least one occasion to hear a representative of a non-member State on a question of concern to that State. This occurred at the sixteenth session of the Council when the President invited the Observer for the Government of Libya to speak in connexion with the question of assistance to Libya which was an agenda item.⁴¹ There have also been at least two other occasions when representatives of States not members of the United Nations have made statements before Committees of the Whole of the Council during a Council session. One such statement was made by the representative of Italy at the Social Committee during the sixteenth session in respect of the item in Prevention Discrimination and Protection of Minorities.⁴² The representative of Libya was also invited at the sixteenth session to make a statement before the Technical Assistance Committee.⁴³

7. In the three instances mentioned above, the representatives of the non-member States were invited to speak by the Chairman without objection from any members of the Council.

8. It may be observed in this connexion that the Council invitations to representatives of non-member States follow similar precedents in other organs of the United Nations,

⁴¹ *Official Records of the Economic and Social Council, Sixteenth Session, 746th meeting, para. 24.*

⁴² E/AC.7/SR.253.

⁴³ E/TAC/SR.41.

particularly the General Assembly which has on several occasions invited representatives of non-member States to speak in its Main Committees on questions of particular concern to those States. This was done in the absence of a rule of procedure on the point. It is entirely clear that in such cases the organ on the basis of its own interest and as a matter of its own discretion in extending the invitation to speak. The non-member State itself has no right to be heard, but is dependent upon the decision of the Council normally taken through its President.

7 December 1972

10. VOTING BY CORRESPONDENCE IN THE COMMISSION ON NARCOTIC DRUGS UNDER COMMISSION RESOLUTION 1 (XX)—ARRANGEMENTS WHICH THE SECRETARY-GENERAL IS EMPOWERED TO MAKE UNDER THE RESOLUTION ⁴⁴

*Note based on a cable sent to the Director, Division on Narcotic Drugs,
Department of Economic and Social Affairs*

1. You have referred to us the question of the arrangements to be made for the Commission on Narcotic Drugs to take a decision by correspondence.

2. Commission resolution 1 (XX), adopted in 1965, ⁴⁵ provides as follows:

"The Commission on Narcotic Drugs,

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

"...

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

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

3. The Secretary-General therefore has authority to make all necessary arrangements, including setting time limit for voting, which can be justified by "the importance of ensuring that new narcotic substances are brought under control as quickly as possible". The time limit should be reasonable but in no event longer than three months since operative paragraph 1 of the resolution quoted above envisages completion of the vote by correspondence within that period.

4. The Secretary-General can also establish any other necessary arrangements for the vote; he can in particular inform members, by way of a statement in the communication transmitting the WHO recommendation, that if he receives no reply within a specified period, he will interpret such silence as abstention.

4 January 1972

⁴⁴ See also *Juridical Yearbook*, 1970, p. 171.

⁴⁵ See *Official Records of the Economic and Social Council, Fortieth Session, Supplement No. 2* (E/4140), para. 60.

11. PROCEDURE TO BE FOLLOWED WITH RESPECT TO A POSSIBLE APPLICATION FOR ASSOCIATE MEMBERSHIP IN THE ECONOMIC COMMISSION FOR ASIA AND THE FAR EAST FOR THE TRUST TERRITORY OF THE PACIFIC ISLANDS

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

1. You have requested our advice on the legal implications of an eventual application for associate membership in the Economic Commission for Asia and the Far East (ECAFE) for the Trust Territory of the Pacific Islands.

2. Under article 1 of the Trusteeship Agreement for the former Japanese Mandated Islands,⁴⁶ approved by the Security Council on 2 April 1947, the Territory of the Pacific Islands, consisting of the islands formerly held by Japan under mandate in accordance with Article 22 of the Covenant of the League of Nations, was designated as a strategic area and placed under the Trusteeship System established in the Charter of the United Nations. Under article 2 of the Agreement, the United States of America was designated as the Administering Authority of the Trust Territory.

3. In accordance with article 3 of the Agreement "the Administering Authority shall have full powers of administration, legislation and jurisdiction over the Territory" subject to the provisions of the Agreement.

4. Article 10 of the Trusteeship Agreement reads thus:

"The Administering Authority, acting under the provisions of article 3 of this Agreement, may accept membership in any regional advisory commission, regional authority, or technical organization, or other voluntary association of States, may co-operate with specialized international bodies, public or private, and may engage in other forms of international co-operation."

From the foregoing it is clear that the United States as the Administering Authority of the Pacific Islands, is competent to present a request for associate membership for the Trust Territory in ECAFE.

5. The first sentence of paragraph 5 of the terms of reference of ECAFE⁴⁷—reads as follows:

"Any territory, part or group of territories within the geographical scope of the Commission as defined in paragraph 2 may, on presentation of its application to the Commission by the member responsible for the international relations of such territory, part or group of territories, be admitted by the Commission as an associate member of the Commission."

In accordance with this paragraph in its terms of reference, ECAFE should receive a formal request from the Government of the United States concerning the associate membership of the Pacific Islands in order that the question might be discussed in the Commission.

6. Under paragraph 2 of the terms of reference of ECAFE, the "territories of Asia and the Far East" are enumerated which demarcate the geographical scope of the Commission. Paragraph 2 would therefore have to be amended by the Economic and Social Council to include the Pacific Islands in the geographical scope of ECAFE. This could of course be done even before the formal application for associate membership is received from the United States.

7. In accordance with paragraph 5 of the terms of reference of ECAFE, it is entirely within the competence of ECAFE to consider and decide on applications for associate

⁴⁶ United Nations, *Treaty Series*, vol. 8, p. 189.

⁴⁷ *Official Records of the Economic and Social Council, Fifty-third Session, Supplement No. 4 (E/5134)*, p. 234.

membership in the Commission. If the Commission decides to admit a territory to associate membership, this decision can take effect immediately provided paragraph 2 of the terms of reference has been amended by the Economic and Social Council. If the territory concerned has not been included in paragraph 2, the admission to associate membership cannot become effective until the Council has acted under paragraph 2.

8. Paragraph 4 of the terms of reference of ECAFE enumerates the associate members of the Commission. After the decision to admit the Pacific Islands to associate membership has been reached in the Commission, this paragraph in the terms of reference of the Commission has to be amended by the Economic and Social Council merely as a matter of formality.

9. From the above it may be concluded that it would be necessary to take the following procedural steps for the Trust Territory of the Pacific Islands to be admitted to associate membership in ECAFE:

- (i) The Economic and Social Council has to amend paragraph 2 of the Commission's terms of reference to include the Pacific Islands within the geographic scope of the Commission.
- (ii) A formal application has to be presented by the United States in accordance with paragraph 5 of the Commission's terms of reference.
- (iii) The Commission has to consider and take a decision on the application to associate membership of the Pacific Islands in accordance with paragraph 5 of its terms of reference.
- (iv) As a formality, paragraph 4 of the terms of reference of the Commission has to be amended by the Economic and Social Council to include the Pacific Islands among the territories listed by associate members.

10. The Council can amend paragraph 2 of the Commission's terms of reference at the time when it amends paragraph 4 of those terms of reference but in that case, the decision of the Commission to admit the Pacific Islands in associate membership would not become effective until paragraph 2 of the terms of reference of the Commission had been amended by the Council.

1 May 1972

12. PARTICIPATION OF A STATE NOT MEMBER OF THE UNITED NATIONS AS AN OBSERVER IN THE ECONOMIC COMMISSION FOR ASIA AND THE FAR EAST—REQUIREMENT OF A SPECIFIC DECISION OF THE ECONOMIC AND SOCIAL COUNCIL TO THAT EFFECT

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

1. You have asked our views on the possibility for a State not member of the United Nations to attend as an observer the twenty-eighth session of the Economic Commission for Asia and the Far East (ECAFE).

2. Neither the terms of reference of ECAFE nor its rules of procedure provide for the participation of a State not member of the United Nations as an observer at the meetings of the Commission. The terms of reference of the regional economic commissions each contain a provision relating to the participation in a consultative capacity by a Member State of the United Nations not a member of the Commission concerned.

3. Except in the case of ECE, which, in accordance with paragraph 8 of its terms of reference, may admit in consultative capacity European nations not members of the United Nations, a practice has been established whereby the participation of a non-Member State in a regional economic commission required a resolution by the Economic and Social Council (see Council resolutions 515 B (XVII), 581 (XX), 616 (XXII), 617 (XXII), 763 D (XXX), 860 (XXXII), 861 (XXXII) and 925 (XXIV). In this regard it is worth noting that a decision by the Economic and Social Council has been considered necessary even in the case of States which already had ties with the United Nations family. It may be recalled for example that when the Council, in its resolution 763 D (XXX), authorized the attendance of the Federal Republic of Germany at sessions of the Economic Commission for Africa, the Federal Republic of Germany had already attended several sessions of the Council and had acquired membership in several specialized agencies as well as the Economic Commission for Europe. Similarly, when the Council, by resolutions 860 (XXXII), 861 (XXXII) and 925 (XXIV), authorized Switzerland to attend sessions of ECAFE, ECLA and ECA respectively, Switzerland was already in consultative status with the Economic Commission for Europe and contributed to the budget of the United Nations in connexion with various activities of the Organization.

4. In each of the resolutions referred to above, the non-Member State concerned was authorized to attend the sessions of the Commission on conditions similar to those set out in the terms of reference of that Commission in respect of any Member State not a member of the Commission. In other words, a non-Member State was allowed to participate in a consultative capacity in the consideration of any matter of particular concern to it.

5. It is true that observers are distinguished from participants in consultative capacity, i.e. participants without the right to vote.⁴⁸ Nonetheless we are of the opinion that even the grant of observer status at meetings of a regional economic commission to a State which is not a Member of the United Nations requires a decision of the Economic and Social Council.

6. A non-Member State may, of course, follow the proceedings of a regional economic commission at its public meetings without having been granted observer status.

9 March 1972

13. QUESTION WHETHER NON-GOVERNMENTAL ORGANIZATIONS NOT IN CONSULTATIVE STATUS WITH THE ECONOMIC AND SOCIAL COUNCIL MAY BE INVITED TO SEND OBSERVERS TO SECOND ASIAN POPULATION CONFERENCE

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

1. You have asked whether various non-governmental organizations and foundations which are not in consultative status with the Council could be invited to send observers to the second Asian Population Conference to be held in Tokyo from 1 to 13 November 1972.

2. By its resolution 74 (XXIII) of 17 April 1967, ECAFE decided to establish the Asian Population Conference as a statutory organ of the Commission, to be convened

⁴⁸ For an analysis of the distinction, see the memorandum reproduced on p. 159 of this *Yearbook*.

every ten years synchronizing with the decennial population and related censuses. The Commission also requested the Executive Secretary "to initiate preparations as soon as possible for the Asian Population Conference to be convened towards 1970."⁴⁹

3. ECAFE resolution 74 (XXIII) did not lay down any specific instructions for the guidance of the Executive Secretary; nor did it deal with the question of participation at the Conference. In the absence of any provisions in this respect in the convening resolution, the Executive Secretary should be guided by the terms of reference, rules of procedure, and general practice of ECAFE relevant to the question.

4. Paragraph 11 of ECAFE's terms of reference reads as follows:

"The Commission shall make arrangements for consultation with non-governmental organizations which have been granted consultative status by the Economic and Social Council, in accordance with the principles approved by the Council for this purpose and contained in Council resolution 288 B (X), parts I and II."⁵⁰

The arrangements for consultation with non-governmental organizations set out in resolution 288 B (X) have been superseded by those set out in Council resolution 1296 (XLIV) of 23 May 1968, as amended in accordance with Council resolution 1391 (XLVI) of 3 June 1969.

5. Chapter XII (rules 52-56) of the rules of procedure of ECAFE regulate the Commission's relations with non-governmental organizations in consultative status (Categories I and II and the Roster) with the Economic and Social Council. Non-governmental organizations in Categories I and II and on the Roster may have representatives present at certain meetings of the Commission (rule 52) and may also be heard by the Commission or its subsidiary bodies (rule 55). Written statements relevant to the work of the Commission or its subsidiary bodies may be submitted by non-governmental organizations in Categories I and II on subjects for which these organizations have a special competence (rule 53).

6. The provisions in the terms of reference and its rules of procedure of ECAFE relating to non-governmental organizations are applicable only to non-governmental organizations in consultative status with the Economic and Social Council. Neither its terms of reference nor its rules of procedure authorize ECAFE and its subsidiary bodies to accord observer status to non-governmental organizations not in consultative status with Economic and Social Council. Therefore, the Second Asian Population Conference convened by ECAFE is not competent to accord observer status to various organizations and foundations which are not in consultative status with the Economic and Social Council. These organizations and foundations cannot enjoy the same privileges as those organizations in consultative status with the Council.

7. Nonetheless, if it is the wish of the Asian Population Conference to have these organizations participate in its deliberations, they could participate in other capacities than that of observer and be invited as guests of the ECAFE secretariat. The final paragraph of ECAFE resolution 74 (XXIII) which reads as follows:

"Calls upon all members and associate member countries of ECAFE, other members of the United Nations which are interested in the solution of population problems, and other appropriate international, regional and national institutions to extend all possible co-operation and support in implementing the expanded regional population programme"

could be used as an authority for ECAFE to establish contact at the secretariat level with

⁴⁹ *Official Records of the Economic and Social Council, Forty-third Session, Supplement No. 2 (E/4358)*, p. 198.

⁵⁰ *Ibid.*, *Fifty-third Session, Supplement No. 4 (E/5134)*, p. 235.

national institutions interested in the solution of population problems. Representatives of these organizations could, therefore, speak as experts in their personal capacity on certain agenda items of the Conference and could make oral interventions, if it is the wish of the Conference.

8. As regards the submission of written statements, it is doubtful whether these organizations could be permitted to submit written papers formally to the Conference. However, since other non-governmental organizations in consultative status with the Council are permitted to submit written statements, the representatives of these organizations not in formal status could concur in these statements orally in the Conference.

12 May 1972

14. REQUEST OF A NON-GOVERNMENTAL ORGANIZATION TO PARTICIPATE WITH OBSERVER STATUS IN THE UNITED NATIONS COCOA CONFERENCE—QUESTION WHETHER IT IS WITHIN THE COMPETENCE OF THE CONFERENCE TO TAKE ACTION ON SUCH A REQUEST

*Note to the Legal Liaison Officer, United Nations
Conference on Trade and Development*

1. You have asked whether the question of allowing a non-governmental organization to participate with observer status in the forthcoming United Nations Cocoa Conference could properly be raised at the Conference.

2. The General principles and guidelines for the calling of commodity conferences was originally spelt out in Economic and Social Council resolution 296 (XI) of 2 August 1950. This resolution provided that the list of States to be invited to commodity conferences shall be prepared by the Interim Co-ordinating Committee for International Commodity Arrangements and shall "include all Members of the United Nations, of the Interim Commission for the International Trade Organization, of the Food and Agriculture Organization of the United Nations, and of the inter-governmental study group concerned. Non-member States may also be included if they are substantially interested in the production or consumption of or trade in the commodity concerned. Specialized agencies in relationship with the United Nations may also be invited to take part."

3. There was no mention in the resolution that non-governmental organizations were to be invited to commodity conferences.

4. The United Nations Cocoa Conference was convened in 1963 by the Secretary-General of the United Nations pursuant to a request by the FAO Cocoa Study Group and in accordance with Economic and Social Council resolution 296 (XI). This resolution was thus the "convening resolution" of the United Nations Cocoa Conference which is still holding sessions.

5. In accordance with paragraph 3 (e) of General Assembly resolution 1995 (XIX), the United Nations Conference on Trade and Development (UNCTAD) was given the authority to "initiate action... for the negotiation and adoption of multilateral legal instruments in the field of trade". This implied that UNCTAD was empowered to convene commodity conferences.

6. Furthermore, under paragraph 23 (a) of General Assembly resolution 1995 (XIX), the Committee on Commodities of the Trade and Development Board, a permanent organ

of UNCTAD, was authorized to "carry out the functions which are now performed by the Commission of International Commodity Trade and the Interim Co-ordinating Committee for International Commodity Arrangements. In this connexion, the Interim Co-ordinating Committee shall be maintained as an advisory body of the Board".

7. Under paragraph 5 (c) of the terms of reference of the Committee on Commodities approved by the Trade and Development Board, the Committee on Commodities was authorized "to make recommendations for the convening of international commodity conferences with the object of concluding international commodity arrangements".⁵¹

8. In pursuance of operative paragraph 2 of resolution 36 (V) adopted by the Trade and Development Board at its fifth session, the Secretary-General of UNCTAD was requested, "with a view to drawing up a single document concerning the purposes and principles of international commodity arrangements and the promotion and the convening of international commodity conferences, as is stipulated by the General Assembly resolution 1995 (XIX), part II, paragraph 3 (e), to prepare a draft general agreement on commodity arrangements in order that it may be examined by the second session of the United Nations Conference on Trade and Development or at an appropriate time in the future."

Further to that request, the Secretary-General submitted a report (TD/30) where it was specified in the Foreword "the sections dealing with procedures are based essentially on current United Nations practice (except where specifically stated), derived partly from Economic and Social Council resolution 296 (XI) and partly from decisions of the Trade and Development Board and of the Committee on Commodities".

9. The section of the report dealing with United Nations Commodity Conferences contained the following paragraphs:

"44. All States members of UNCTAD shall be invited to attend a commodity conference if they consider themselves interested in the production or consumption of, or trade in, the commodity concerned.* Appropriate specialized agencies of the United Nations and the General Agreement on Tariffs and Trade shall also be invited to be represented at such conferences.

"45. Following present practice, inter-governmental organizations having a particular interest in the commodity may be invited by the executive committee of a commodity conference to participate, on a consultative basis, in the work of the conference with regard to the specific items on the agenda concerning which such consultation may be useful".

10. The second United Nations Conference on Trade and Development, at its 77th plenary meeting, in its resolution 17 (II)⁵² recommended that the Secretary-General of UNCTAD invited the Governments of member States of UNCTAD to make their comments on the above mentioned report. The resolution further urged "the Committee on Commodities to study carefully at its third session the replies of the Governments, and to suggest further steps it deems useful in order that the Trade and Development Board at its eighth session would be in a position to establish a suitable procedure for the preparation and adoption of a general meeting". However, a General Agreement on Commodity Arrangements has not been concluded.

⁵¹ See document TD/B/C.1/L.1.

* This is based on the decision of the Committee on Commodities of the Trade and Development Board regarding invitations to the Sugar Conference: see in this respect paragraph 86 of the report of the Committee on Commodities on its first session (TD/B/21/Rev.1), and paragraph 49 of the report of the Trade and Development Board on its second session (A/6023/Rev.1, Part Two).

⁵² *United Nations Conference on Trade and Development, Second Session*, document TD/97, volume I, p. 36.

11. Neither the original convening resolution nor the practice emerging under the new UNCTAD machinery makes any provision that non-governmental organizations could participate in any capacity in commodity conferences.

12. It is a well-established practice in the United Nations that where the convening resolution adopted by the competent organ calling a conference has spelt out the States, categories of States, or organizations to be invited to the Conference, neither the Conference nor the Secretariat is competent to invite any other State or organization to participate in any capacity in the meetings of the Conference. Similarly, any State or organization invited pursuant to the convening resolution cannot be excluded by the Conference. Therefore, in the case of the United Nations Cocoa Conference, the determination of States or organizations entitled to participate in the Conference is exclusively within the competence of UNCTAD, and is outside the competence of the Conference.

13. It is my conclusion, therefore, that it would not be proper for a delegation to propose that the United Nations Cocoa Conference grant "some sort of observer status" to a non-governmental organization, as it would be outside the competence of the Conference to take any action on such a proposal.

2 May 1972

15. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT—VARIOUS COURSES OPEN TO THE CONFERENCE TO ACHIEVE THE ENLARGEMENT OF THE TRADE AND DEVELOPMENT BOARD

Internal memorandum

1. This memorandum deals with a proposal to enlarge the membership of the Trade and Development Board, submitted to the United Nations Conference on Trade and Development at its third session in connexion with agenda item 10: "Review of the institutional arrangements of UNCTAD".

2. It is within the competence of the Conference to recommend the enlargement of the Trade and Development Board by amending General Assembly resolution 1995 (XIX) on the establishment of UNCTAD. The Conference may also *provisionally* elect the entirety of members of the enlarged Board. To become legally effective, however, this action would be *subject to the decision by the General Assembly* on the question of the enlargement itself; these provisionally elected members would not assume office prior to the decision of the General Assembly.

3. The desired objective of the enlargement of the Board is therefore legally realizable and the methods by which this may be done are outlined in paragraph 5 below.

4. There are, however, the following legal constraints which must be borne in mind:

(a) The Conference must ensure that a Board with a membership of fifty-five as provided for in paragraph 5 of General Assembly resolution 1995 (XIX) exists as a legal entity until the recommendation of the Conference is adopted by the Assembly, at which time the enlarged membership would assume office.

(b) Consequently, there must be a clear distinction between the membership of the Board of fifty-five and the enlarged pre-elected membership of the Board, which will assume office upon action by the Assembly.

(c) The Conference cannot prescribe that this fifty-five member Board shall *not* meet prior to this Assembly action, since under paragraph 13 of General Assembly resolution 1995 (XIX) meetings of the Board are within its own competence.

(d) It must be realized that, should the Assembly *not* act on the Conference's recommendation to enlarge the Board, the membership of fifty-five, as constituted by the Conference at its third session, will be maintained until the fourth session of the Conference, unless the General Assembly suspends the provisions of General Assembly resolution 1995 (XIX) and decides itself to elect the new members of the Board.

(e) Any *enlarged* Board could not meet prior to the adoption by the Assembly of the Conference's recommendation on enlargement.

(f) Conference action must be consistent with the requirement that the Board meet and submit its report to the General Assembly through the Economic and Social Council some time prior to the end of the twenty-seventh session of the General Assembly, and prior to the end of the resumed autumn session of the Council. Should the Assembly take action early in its twenty-seventh session, the enlarged Board could then meet, adopt its report and transmit it to the Assembly through the Economic and Social Council at the latter's resumed session, as provided for in paragraph 22 of resolution 1995 (XIX). On the other hand, should the Assembly not take this early action, there would have to be a meeting of the Trade and Development Board in what might be called its "interim membership" so that *its* report could be similarly submitted.

5. In order to achieve the desired objective, while at the same time observing these legal constraints the following courses may be considered:

(a) The Conference could *elect* fifty-five new members of the Trade and Development Board and could provisionally elect an additional number of new members, the latter members to assume office upon Assembly action on the recommendations for enlargement;

(b) The Conference could formally *re-elect* the present membership of the Board to serve until the Assembly takes a decision, or could *decide* that the present membership of the Board will be deemed to continue in office until the election of its successors is completed by Assembly action on the recommended enlargement; it could then provisionally elect a new enlarged Board which, upon action by the Assembly on the recommendation on enlargement, could come into being as the new expanded Board;

(c) The Conference could provisionally elect an enlarged Board, and then elect fifty-five named States from among those provisionally elected which would constitute the Board pending Assembly action on enlargement, and the additional pre-elected members would assume office upon action by the Assembly. To that effect the Conference could:

(i) request each of the groups corresponding to the lists in the Annex to resolution 1995 (XIX) to indicate those members, among those which have been provisionally elected, that would serve as members in the fifty-five member Board; or

(ii) decide that those members will be designated by lot, separately for each list.

It will, however, be borne in mind that:

—individual member States from any list can put forward their candidature independently from any group's slate, and

—although the method of drawing lot would satisfy the requirements of paragraph 5 of resolution 1995 (XIX) regarding geographical distribution, it would not necessarily cover the language of paragraph 5 regarding the desirability of continuing representation for the principal trading States.

(d) If the Conference wishes to proceed as per (c) above, i.e. first by provisionally electing an enlarged Board, it could decide that the present members of the Board should

be included among the candidates. By this method, there would be a greater assurance that there would be the required representation of principal trading States than would be the case under subparagraph (c) above.⁵³

21 June 1972

16. ADOPTION OF AN INSTRUMENT OR INSTRUMENTS TO GIVE EFFECT TO THE AMENDMENTS APPROVED BY THE UNITED NATIONS CONFERENCE TO CONSIDER AMENDMENTS TO THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961⁵⁴—FORM OF SUCH AN INSTRUMENT OR INSTRUMENTS

*Memorandum prepared at the request of the General Committee
of the Conference*⁵⁵

1. *Methods of altering treaty rights and obligations.* The problem of altering existing treaty rights and obligations is a familiar one in international practice, and several different means of doing so are available. The means chosen depend upon certain legal and practical considerations, which will be set out hereafter.

⁵³ Resolution 80(III) adopted by the Conference contains a section A entitled "Enlargement of the Trade and Development Board", which *inter alia* provides the following:

"[The United Nations Conference on Trade and Development]

"1. *Recommends* to the General Assembly of the United Nations at its twenty-seventh session to adopt the following amendments to paragraph 5 of General Assembly resolution 1995(XIX) of 30 December 1964:

- (i) in the first line replace "fifty-five" by "sixty-eight";
- (ii) in (a) replace "twenty-two" by "twenty-nine";
- (iii) in (b) replace "eighteen" by "twenty-one";
- (iv) in (c) replace "nine" by "eleven";
- (v) in (d) replace "six" by "seven".

"2. *Decides* to elect provisionally, subject to decision by the General Assembly on the recommendation contained in paragraph 1 above, sixty-eight members of the Trade and Development Board, to assume office immediately after decision of the General Assembly.

"3. *Decides* that the present membership of the Trade and Development Board shall continue in office until the election of their successors is completed by a decision taken by the General Assembly on the recommendation contained in paragraph 1 above".

By resolution 2904 A (XXVII) of 26 September 1972, the Assembly *inter alia* decided to amend paragraph 5 of its resolution 1995 (XIX) to read:

"The Board shall consist of sixty-eight members elected by the Conference from among its membership. In electing the members of the Board, the Conference shall have full regard for both equitable geographical distribution and the desirability of continuing representation for the principal trading States, and shall accordingly observe the following distribution of seats:

"(a) Twenty-nine from the States listed in part A of the annex to the present resolution as revised in accordance with paragraph 6 below;

"(a) Twenty-nine from the States listed in part A of the annex to the present resolution as revised in accordance with paragraph 6 below;

"(b) Twenty-one from the States listed in part B of the annex as revised;

"(c) Eleven from the States listed in part C of the annex as revised;

"(d) Seven from States listed in part D of the annex as revised."

⁵⁴ United Nations, *Treaty Series*, vol. 520, p. 151.

⁵⁵ Circulated under the symbol E/CONF.63/C.3/L.1.

2. *Conclusion of a new treaty relating to the same subject matter.* When all the parties to an earlier treaty become parties to a later treaty relating to the same subject matter, the earlier treaty is terminated or suspended if the later treaty so provides, and only the later treaty then applies. Thus the Single Convention on Narcotic Drugs, 1954 in its article 44 provides for the termination of certain earlier treaties in the narcotics field as between parties to the Single Convention. If the later treaty does not provide for termination or suspension of the earlier one, then the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty. If not all the parties to the earlier treaty become parties to the later one, then the earlier treaty remains in effect between those which have accepted the later treaty and those which have not done so. The method of conclusion of a new treaty is especially appropriate when a comprehensive review is made of all the rights and obligations in a particular field, or when the changes to be made are very extensive.

3. *Conclusion of a supplementary convention or protocol.* If the object is primarily to supplement existing rights and obligations rather than transforming them, then a supplementary convention or protocol is appropriate. The Protocol Bringing under International Control Drugs Outside the Scope of the Convention of 13 July 1931, as amended, signed at Paris on 19 November 1948,⁵⁶ and the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, opened for signature at New York on 23 June 1953,⁵⁷ are examples of agreements in this category (though the 1953 Protocol by its article 6, paragraph 4 does modify one provision of the 1925 Convention). Another example is the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, done at Geneva on 7 September 1956.⁵⁸

4. *Conclusion of an amending protocol.* If the actual wording of an earlier treaty is to be altered in part, then the most natural method of proceeding is a protocol of amendment. In the practice of the United Nations there are ten such protocols, which are listed in the Annex to this memorandum. The first seven protocols amended treaties concluded before the United Nations came into existence; the last three amended United Nations treaties. The first example (Annex, No. 1) is the Protocol of 11 December 1946, amending prior treaties on narcotics. The practice thereafter changed somewhat as the result of certain difficulties encountered in respect to the Protocols adopted in 1946 and 1947 (Annex, Nos. 1, 2 and 3), and the Protocols concluded between 1948 and 1953 (Annex, Nos. 4, 5, 6 and 7) are in some respects technically improved. The three further protocols (Annex, Nos. 8, 9 and 10) which were concluded in order to amend treaties concluded under the auspices of the United Nations have each of them special features reflecting the particular problems in regard to the earlier treaties involved.

5. *Legal effect of amending protocols.* A party to the earlier treaty which becomes a party to the amending protocol obviously becomes a party to the treaty as amended. Only one of the ten United Nations protocols (Annex, No. 8) requires that, for the entry into force of the amending protocol, all the parties to the earlier treaty should have bound themselves by the protocol; the other nine provide that the protocols and the amendments they contain were to come into force on much less rigorous conditions. Those nine protocols therefore raise the question of the treaty relations between those parties to the earlier treaty who have, and those who have not, become parties to the protocol. The protocol cannot bind any State which has not become a party to it; therefore the treaty in its

⁵⁶ United Nations, *Treaty Series*, vol. 44, p. 277.

⁵⁷ *Ibid.*, vol. 456, p. 3.

⁵⁸ *Ibid.*, vol. 266, p. 3.

unamended form applies between those parties which have accepted the protocol and those which have not accepted it.

6. There is, however, a further principle which appears to have been accepted in practice, relating to the effect of an amendment transferring to a new organ the functions provided by the treaty, or changing the composition of an organ. When the functions conferred on organs of the League of Nations by narcotics treaties were transferred to United Nations organs by the 1946 Protocol (Annex, No. 1), no State party to the earlier treaties refused to recognize the competence of the United Nations organs, even if it did not become party to the Protocol. The same thing happened when the International Narcotics Control Board was established pursuant to the Single Convention, and took over the functions of the former Permanent Central Narcotics Board and Drug Supervisory Body. No State party to the earlier treaties contested the competence of the new Board, even if it did not become party to the Single Convention. Thus it seems to have been recognized that when pursuant to a new agreement a body responsible for the administration of the international narcotics control system is reconstituted or replaced by a new body, the new body succeeds smoothly to the competence of the old one. Naturally, however, the new body would not be entitled to exercise new powers conferred on it by the later agreement in respect of any State not party to the later agreement which objected to such exercise.

7. A question arises as to the rights of States which wish to become parties to the treaty after the amendments have come into force: can such States become parties to the unamended treaty, or are they limited to accepting the treaty in its amended form? The Vienna Convention on the Law of Treaties⁵⁹ though not yet in force, may indicate that States consider that there is a presumption on the matter, since it provides in article 40, paragraph 5:

“Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:

“(a) be considered as a party to the treaty as amended; and

“(b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.”

Some of the United Nations amending protocols (Annex, Nos. 4, 5, 6, 7, 8 and 9) go farther than a presumption, and contain express provisions to the effect that “... any State becoming a party to the Convention, after the amendments thereto have come into force, shall become a party to the Convention as so amended.”

8. The question of the legal effect of amending protocols having been thus examined, it is appropriate to turn to the matters which within this legal framework remain for the choice of the Conference.

9. *States which may become parties to an amending protocol.* Nine of the ten amending protocols of the United Nations (Annex, Nos. 1-9) are open only to the parties to the treaties being amended. They are purely subsidiary, dependent agreements, having no other object than to amend the treaties, and hence it would be meaningless for any State not already bound by the treaties to become party to the protocols. The tenth instrument (Annex, No. 10), however, has a different character; it not only broadens certain obligations of the Convention relating to the Status of Refugees, but it also binds States to observe the substantive provisions of that Convention, and thus is an independent and complete international instrument. Accordingly, the Protocol relating to the Status of Refugees

⁵⁹ *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference (A/CONF.39/11/Add.2)*, p. 288.

(Annex, No. 10) is open to accession "on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations" (Article V). That Protocol also has much more extensive final clauses than the others, since it contains articles on the settlement of disputes, on federal States, on reservations and on denunciation.

10. *Methods of becoming party to the protocols.* Most of the protocols (Annex, Nos. 1, 2, 3, 4, 5, 6, 7 and 8) contain provisions like the 1946 Narcotics Protocol (Annex, No. 1), which provides in article VI that:

"States may become Parties to the present Protocol by

"(a) signature without reservation as to approval,

"(b) signature subject to approval followed by acceptance or

"(c) acceptance.

"Acceptance shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations".

One protocol (Annex, No. 9) provides only for signature, and one (Annex, No. 10) only for accession. The degree of formality of the procedure required for States to become parties depends mainly upon the importance of the obligations undertaken.

11. *Entry into force.* Seven of the protocols (Annex, Nos. 1-7) have separate and differing requirements for the entry into force of the protocols themselves, and for the entry into force of the amendments they contain. These requirements will be described below. This double entry into force is not essential to the amendment procedure, and the three last protocols (Annex, Nos. 8-10) provide simply that the amendments take effect at the same time as the protocols.

12. *Entry into force of the protocols.* The earliest of the protocols (Annex, No. 1) contains an annual provision to the effect that the Protocol shall come into force in respect of each party on the date of signature without reservation as to approval or on the date of deposit of an instrument of acceptance; that is, apparently only one party would have been necessary. The other protocols which, like the first one, have separate conditions for entry into force of the amendments (Annex, Nos. 2-7) and one further Protocol (Annex, No. 9), all require two parties for the entry into force of the protocols. One protocol (Annex, No. 8) requires that all the parties to the earlier agreement should become parties to the protocol. The remaining protocol (Annex, No. 10) entered into force on the date of deposit of the sixth instrument of accession.

13. *Separate entry into force of amendments.* The earliest protocols (Annex, Nos. 1-3) provided that the amendments to each treaty would enter into force when "a majority" of the parties to that treaty had become parties to the protocol. It is, however, not always possible, because of unsettled questions of succession of States, because of non-recognition of some States by others, etc., to draw up a universally accepted list of the parties to a treaty, and consequently the calculation of how many States constitute "a majority of the parties" may be controversial. For this reason, later protocols (Annex, Nos. 4-7) specify the number of parties to the treaties which must become parties to the protocol in order to bring the amendments into force. These numbers vary considerably. One protocol (Annex, No. 4) requires 15; another (Annex, No. 5) requires 20; another (Annex, No. 6) requires 13; and another (Annex, No. 7) requires 23.

14. *Effect of entry into force of amendments.* Under the usual United Nations procedure of amendment (Annex, Nos. 1-9), the entry into force of amendments has the effect of bringing into being a new international instrument, the treaty as amended, and the

Secretary-General transmits certified true copies of it to States not already bound by it. Those States may become parties directly to the treaty as amended, in accordance with its final clauses, and do not first become parties to the original treaty and then to the amending protocol.

15. As has been said above (para. 9), one protocol (Annex, No. 10) is an independent and complete instrument, covering the full range of obligations in its field. That protocol did not bring into being a "convention as amended", and States not already bound may become so simply by becoming party to the protocol.

16. *Transitional provisions.* The amendments proposed to the Single Convention include changes in the composition and terms of office of the International Narcotics Control Board. If these amendments are accepted by the Conference, it will need to consider not only the questions of entry into force of the amending instrument and of the amendments, but also that of transitional provisions like article 45 of the Single Convention, whereby after entry into force of the amendments the Board in its old composition would perform the new functions conferred by the amendments until such time as the Economic and Social Council decides that the new composition will come into effect. The time of entry into force is rarely exactly foreseeable, and if it came unexpectedly before the Council had been able to carry out the necessary elections, then in the absence of transitional provisions the Board would not be regularly constituted from the moment that the amendments took effect.

17. *Reservations.* Only one of the United Nations protocols (Annex, No. 10) contains a reservations clause, and it would seem to be the only one of them to which reservations have in fact been made. If the Conference decides to include in the amending instrument a clause permitting reservations to particular amendments, the same clause should also be inserted by amendment in article 50 of the Single Convention in order that it may be incorporated in the Convention as amended (see para. 14 above), and thus make the same reservations available to States not already bound by the Convention.

18. *Decisions to be taken by the Conference.* It may be convenient to recapitulate the decisions which the Conference should take in order to make possible the drafting of final clauses for submission to it. It would seem, on the basis of the proceedings thus far, that the most appropriate form of instrument for amending the Single Convention would be an amending protocol (see paras. 4-9 above). If that view is accepted, should such a protocol:

- i. be a simple subsidiary instrument like nine of the United Nations protocols, having no object apart from effecting the amendments (see para. 9 above), and hence open only to States parties to the Single Convention, or should it be a comprehensive independent instrument, like one United Nations protocol, which would incorporate the obligations of the Convention, would be open to a wider category of States, and would require more elaborate final clauses?
- ii. provide a possibility for States to become parties by simple signature (see para. 10 above), or should ratification or accession be required?
- iii. provide separate and different conditions for the entry into force of the protocol and of the amendments (see paras. 11-13 above), or the same conditions for both, and what should the conditions be?
- iv. include transitional provisions regarding the composition and terms of office of the International Narcotics Control Board (see para. 16 above)?
- v. include a reservations clause (see para. 17 above)?

10 March 1972

ANNEX

Amending protocols concluded under the auspices of the United Nations

1. Protocol amending the Agreements, Conventions and Protocols on Narcotic Drugs, concluded at the Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936. Signed at Lake Success, New York, on 11 December 1946.

Entered into force on 11 December 1946.
United Nations, *Treaty Series*, vol. 12, p. 179.

2. Protocol to amend the Convention for the Suppression of the Traffic in Women and Children, concluded at Geneva on 30 September 1921, and the Convention for the Suppression of the Traffic in Women of Full Age, concluded at Geneva on 11 October 1933. Signed at Lake Success, New York, on 12 November 1947.

Entered into force on 12 November 1947.
United Nations, *Treaty Series*, vol. 53, p. 13.

3. Protocol to amend the Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, concluded at Geneva on 12 September 1923. Signed at Lake Success, New York, on 12 November 1947.

Entered into force on 12 November 1947.
United Nations, *Treaty Series*, vol. 46, p. 169.

4. Protocol amending the International Convention relating to Economic Statistics, signed at Geneva on 14 December 1928. Signed at Paris on 9 December 1948.

Entered into force on 9 December 1948.
United Nations, *Treaty Series*, vol. 20, p. 229.

5. Protocol amending the International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904, and the International Convention for the Suppression of White Slave Traffic, signed at Paris on 4 May 1910. Signed at Lake Success, New York, on 4 May 1949.

Entered into force on 4 May 1949.
United Nations, *Treaty Series*, vol. 30, p. 23.

6. Protocol amending the Agreement for the Suppression of the Circulation of Obscene Publications, signed at Paris on 4 May 1910. Signed at Lake Success, New York, on 4 May 1949.

Entered into force on 4 May 1949.
United Nations, *Treaty Series*, vol. 30, p. 3.

7. Protocol amending the Slavery Convention signed at Geneva on 25 September 1926. Done at United Nations Headquarters on 7 December 1953.

Entered into force on 7 December 1953.
United Nations, *Treaty Series*, vol. 182, p. 51.

8. Additional Protocol amending certain provisions of the Agreement providing for the provisional application of the Draft International Customs Conventions on Touring, on Commercial Road Vehicles and on the International Transport of Goods by Road. Done at Geneva on 28 November 1952.

Entered into force on 7 July 1955.
United Nations, *Treaty Series*, vol. 212, p. 296.

9. Protocol amending the International Agreement on Olive Oil, 1956. Done at Geneva on 3 April 1958.

Entered into force on 11 April 1958.
United Nations, *Treaty Series*, vol. 302, p. 121.

10. Protocol relating to the Status of Refugees. Done at New York on 31 January 1967. Entered into force on 4 October 1967. United Nations, *Treaty Series*, vol. 606, p. 267.

17. EXTENT TO WHICH A DIPLOMATIC CONFERENCE CAN IMPOSE ON THE SECRETARY-GENERAL OR OTHER ORGANS OF THE UNITED NATIONS DUTIES AND OBLIGATIONS IN REGARD TO THE IMPLEMENTATION OF ANY INSTRUMENT THE CONFERENCE COULD ADOPT

Memorandum to the Chief of the Transport Section, Resources and Transport Division, Department of Economic and Social Affairs

1. You have asked, in connexion with the forthcoming UN/IMCO Conference on International Container Traffic, to what extent administrative functions could be conferred on the Secretary-General or other organs of the United Nations in regard to the implementation of any instrument which could be adopted by that Conference. You draw our attention in that respect to the draft Convention on containers⁶⁰ and in particular to Variant 4 of article 23 of the draft, reading as follows:

"Article 23

"VARIANT 4

"1. Independently of the amendment procedure set out in article 22, after the present Convention has been in force for [...] year(s), its annexes may be modified by [a decision] [agreement] of the competent [administrations] [authorities] of all States Parties to the Convention. The [decision] [agreement] of the said competent [administrations] [authorities] may provide that, during a transitional period, the [existing] [unmodified] annexes shall remain in force, wholly or in part, concurrently with the [amended] [modified] annex [or annexes]. Proposals for such modifications shall be prepared by the Administrative Committee whose composition and rules of procedure are set out in annex 7. The [depository of the Convention] shall communicate [without delay] the modifications proposed by the Administrative Committee to the competent [administrations] [authorities] of the States Parties to the Convention and inform the States, referred to in article 19, which are not Parties to the Convention.

"2. Any modification proposed by the Administrative Committee shall be deemed to have been [accepted] [agreed upon] unless:

"(a) in the case of amendments to annexes 1 to 5 and 7 the competent [administration] [authorities] of a State Party to the Convention [has] [have] notified the [depository of the Convention], within a period of [three] months from the date on which the proposed modification has been communicated by the [depository of the Convention] to the States Parties to the Convention, that [it] [they] object(s) to the proposal.

"(b) in the case of amendments to annex 6 the competent [administrations] [authorities] of at least [five] States Parties to the Convention have notified the [depository of the Convention], within a period of [three] months from the date on which the proposed modification has been communicated by the [depository of the Convention] to the States Parties to the Convention, that they object to the proposal.

"3. The [depository of the Convention] shall notify the date of the entry into force of the amended annex[es] to the competent [administrations] [authorities] of the States Parties to the Convention and inform the States, referred to in article 19, which are not Parties to the Convention."

⁶⁰ See document E/CONF.59/22 and Corr.1 and Add.1 and 2.

The text of Annex 7 reads as follows:

“COMPOSITION AND RULES OF PROCEDURE OF THE ADMINISTRATIVE COMMITTEE,
PROVIDED FOR UNDER ARTICLE 23 OF THE CONVENTION (VARIANT 4)

“*Article 1*

“1. The competent [authorities] [administrations] of States Parties to the Convention shall be members of the Administrative Committee.

“2. The Committee may decide that the competent [authorities] [administrations] of the States, referred to in article 19 of the Convention, which are not Parties to the present Convention or representatives of international organizations may, for questions which are of interest to them, attend the sessions of the Committee as observers.

“*Article 2*

“The competent [authorities] [administrations] of the States Parties to the Convention shall communicate to [the depositary of the Convention] proposed amendments to the annexes to the present Convention and the reasons therefor, together with any requests for the inclusion of items on the agenda of the meetings of the Committee. [The depositary of the Convention] shall bring these communications [without delay] to the attention of the competent [authorities] [administrations] of the States Parties to the Convention [and of the States, referred to in article 19 of the Convention, which are not Parties to the Convention].

“*Article 3*

“1. The [depositary of the Convention] shall convene the Committee whenever the necessity arises or at the request of the competent [authorities] [administrations] of at least five States Parties to the Convention. He shall circulate the draft agenda to the competent [authorities] [administrations] of the States [Parties to the Convention] [mentioned in article 2 of these rules] at least six weeks before each session.

“2. On the decision of the Committee, taken by virtue of the provisions of article 1, paragraph 2 of these rules, [the depositary of the Convention] shall invite the competent [authorities] [administrations] of the States, referred to in article 19 of the Convention, which are not Parties to the Convention and the international organization concerned to be represented by observers at the sessions of the Committee.

“*Article 4*

“[The depositary of the Conventions shall provide the Committee with secretariat services.

“*Article 5*

“The Committee shall, at its first meeting each year, elect a chairman and a vice-chairman.

“*Article 6*

“Proposals shall be put to the vote. The competent [authorities] [administration] of each State Party to the Convention represented at the meeting shall have one vote. A proposal shall be adopted by the Committee by a majority of the competent [authorities] [administrations] present and voting.

“*Article 7*

“Before the closure of its session, the Committee shall adopt a report.

“*Article 8*

“In the absence of relevant provisions in this annex, the rules of procedure of the [body to be designated] shall, where appropriate, be applicable.”

2. It is obviously not possible for a diplomatic conference to impose duties and obligations upon the Secretary-General or other organs of the United Nations, particularly

if carrying out those duties has financial implications. It is, however, not uncommon for United Nations conferences to draft conventions providing that administrative functions of a wide variety of different kinds shall be performed either by the Secretary-General or by various bodies. Such provisions, at the time they are drafted, simply constitute proposals or requests to the United Nations; but when those proposals or requests are accepted by a United Nations organ having authority to do so, and the convention has entered into force, they become legally effective.

3. A rather similar case to the one involved is presented by the Vienna Convention on the Law of Treaties,⁶¹ adopted by a United Nations conference in 1969, which provides in its Annex for a conciliation commission, to which the Secretary-General is to furnish assistance and facilities and the expenses of which are to be borne by the United Nations. The General Assembly, by resolution 2534 (XXIV) of 8 December 1969, approved the provisions in question and requested the Secretary-General to take action accordingly.

4. Another example is the United Nations Convention on Psychotropic Substances,⁶² approved in 1971, which confers various functions on the Economic and Social Council, the Secretary-General, the Commission on Narcotic Drugs and the International Narcotics Control Board. Economic and Social Council resolution 1576 (L) of 20 May 1971 "Accepts the functions assigned by the Convention to the United Nations in regard to its execution" (the last five words having been added in order to distinguish the administrative functions in question from the depositary functions, which of course had already been accepted by the Secretary-General).

5. Therefore if the Conference should adopt something along the lines of Variant 4 of article 23 and Annex 7 on the composition and procedures of an Administrative Committee, steps should be taken to obtain the acceptance by the General Assembly or the Economic and Social Council of the functions involved.

28 September 1972

18. ADOPTION BY THE AUTHORITIES OF A MEMBER STATE OF AN ACT PROVIDING FOR VARIOUS CONTROLS OVER THE RENEWAL AND ISSUE OF PASSPORTS—EXTENT TO WHICH SUCH AN ACT MIGHT HINDER THE ORGANIZATION IN THE EXECUTION OF ITS FUNCTIONS AND PLACE CERTAIN STAFF MEMBERS OR CANDIDATES TO SECRETARIAT POSTS AT A DISADVANTAGE

Letter to the Permanent Representative of Member State

The adoption by the authorities of your country of an Act concerning passports and exit permits has recently been called to our attention. Under the provisions of this Act, certain controls are as you know introduced over the issue and renewal of passports, including in particular, as regards the renewal of passports of national of your country who are abroad, the remission to the Government of up to ten per cent of the person's monthly salary. While it is not of course for me to express any opinion on this legislation in a general way, I should like to make it clear that I do understand, and have indeed sympathy

⁶¹ *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference (A/CONF.39/11/Add.2)*, p. 288.

⁶² See E/CONF.58/6 and Corr.1 and 2.

for, the motives of the Government in putting forward this legislation, designed as it is (as I understand it) to help remedy the economic difficulties in which the country is presently placed. The same I am sure applies with respect to those United Nations officials who are affected by the Act.

It is nevertheless the case that the application of the new Act to existing staff members, or to persons whom the Secretariat might otherwise hire, does present certain difficulties for the Secretary-General, both from the standpoint of principle and as regards its practical implications. I am therefore writing to you at the present time to explain the situation, as it affects the Secretariat, and to ask if you could be good enough to intercede with your Government with a view to the adoption of suitable arrangements whereby exemption could be granted for the special case of nationals of your country who are officials of the United Nations or of the specialized agencies or of the International Atomic Energy Agency.

From the standpoint of principle, the exclusively international responsibilities of United Nations officials (and, similarly, of officials of other organizations forming part of the United Nations family) and the position of the Secretary-General are, at least potentially, considerably affected by the nature and extent of the controls which the Act seeks to introduce. Quite apart from the over-all situation created by the Act, the requirement that passports shall be valid only for one year would, in practical terms, restrict the ability of the Secretary-General to send the staff members concerned on mission or to different duty stations, which, in turn, would hinder both the Organization itself in the execution of its functions and place the staff members themselves at a disadvantage by comparison with their colleagues. Experience has shown that it is extremely important for United Nations staff members to be in a position to move (whether for a short period, to attend a meeting for example, or for more lengthy periods) at relatively short notice. It would be very much appreciated therefore if the competent authorities of your country could arrange to issue passports for United Nations officials valid for a longer period; it would perhaps be possible to grant persons in this category passports valid for three or five years (as in the case of diplomatic passports).

While the reasons advanced above apply to existing staff members, similar considerations would apply, *mutatis mutandis*, in the case where the Organization wished to hire someone from your country; delays might ensue and the Organization might eventually decide that it should take a candidate more readily available from another country.

In the event that a staff member concerned declined to renew or obtain a passport and chose to rely instead on his United Nations laissez-passer for entry into, and exit from the country, complications might also arise. By so doing he would, in all probability, commit a violation of the terms of the Act, thus creating a situation which might prove embarrassing for the Government as well as for the United Nations.

As regards the requirement of the remission of ten per cent of monthly income as a condition for the grant or renewal of a passport, it would be our view that, in so far as the person concerned has no choice over the disposal of this money, which is required from him by official enactment, the requirement constitutes a tax and, as such, is contrary to the general principles of law relating to the status, privileges and immunities of international agents, as set out, for example, in the Convention on the Privileges and Immunities of the United Nations. Quite apart from that, as you will know, United Nations officials already pay a form of taxation under the Tax Equalization Fund, a proportional part of the proceeds of which are credited to your country. A distinction is drawn under the United Nations Staff Rules between "gross" and "net" salary. Pension Fund contributions for example, are based on the staff member's gross salary. More immediately for present purposes, the different amounts between "gross" and "net" salary are consolidated to form the Tax

Equalization Fund. The total amount so gained is then credited to the Member States' account, in the proportion to which they contribute to the regular budget of the United Nations. Thus, in the event that a given State was assessed to contribute two per cent of the regular budget, it would receive two per cent of the Tax Equalization Fund. The amount returned to Member States in this way is, however, reduced to the extent to which the Organization has had to reimburse officials of that country for taxes they have paid. Unless this were done, staff members of different nationality working side by side would be placed in an obviously unequal position. The authority for the scheme outlined is to be found in General Assembly resolution 13 (I) of 13 February 1946, resolutions 239 C and D (III) of 18 November 1948, resolution 359 (IV) of 10 December 1949, resolution 973 (X) of 15 December 1955 and resolution 1099 (XI) of 27 February 1957. An account is also to be found in *Yearbook of the International Law Commission 1967*, vol. II. pp. 270-271.

I would therefore request that the authorities of your country consider the granting of passports on a three or five year basis, and the exemption of the staff members concerned from the ten per cent remission requirement. This would, in our view, be the appropriate course of action for the Government to take, and one which would be fully justified in view of the economic benefits which the Government receives, in various ways, through the employment by the United Nations of the officials concerned.

27 April 1972

19. PRIVILEGES AND IMMUNITIES OF LOCALLY RECRUITED STAFF MEMBERS OF THE UNITED NATIONS—OBLIGATION OF MEMBER STATES UNDER ARTICLE 105 OF THE CHARTER TO ACCORD ALL STAFF MEMBERS WHETHER INTERNATIONALLY OR LOCALLY RECRUITED SUCH PRIVILEGES AND IMMUNITIES AS ARE NECESSARY FOR THE INDEPENDENT EXERCISE OF THEIR FUNCTIONS—PRINCIPLE OF EQUITY AMONG MEMBERS AND EQUALITY AMONG PERSONNEL OF THE UNITED NATIONS, ASSERTED IN GENERAL ASSEMBLY RESOLUTION 78 (I) OF 7 DECEMBER 1946

*Memorandum to the Chief of the Field Operations Service,
Office of General Services*

1. You have asked for our advice in connexion with the stated intention of the Government of a Member State to levy an income tax on the salaries received from the United Nations by local employees of an Information Centre located on that Member State's territory.

2. The Member State in question has not acceded to the Convention on the Privileges and Immunities of the United Nations. It has however concluded with the Special Fund an agreement which embodies the conditions under which the Special Fund (now UNDP) shall provide the Government with assistance and which stipulates in article VIII that the Government:

“shall apply to the United Nations and its organs, including the Special Fund, its property, funds and assets, and to its officials, the provisions of the Convention on the Privileges and Immunities of the United Nations”.

In this connexion, the General Assembly by resolution 76 (I) approved the granting of the privileges and immunities laid down in articles V and VII of the Convention—which includes the exemption from taxation on salaries and emoluments—to all members of the staff of the United Nations, with the exception of those who are recruited locally *and* are assigned

to hourly rates. Consequently, under the aforementioned Agreement, locally recruited staff of the UNDP who are not assigned to hourly rates are entitled, irrespective of their nationality, to exemption from income tax on the salaries paid to them by the UNDP.

3. With regard to Secretariat staff members serving in the Information Centre, it appears that the Ministry for Foreign Affairs of the Member State concerned informed the Secretary-General of the United Nations of the willingness of the Government to accord to the Information Centre and its international officials the privileges and immunities laid down in the Convention on the Privileges and Immunities of the United Nations.

4. Although the Government referred only to "international officials", the use of this term is not sufficient to reserve the Government's position with respect to immunity from taxation on salaries paid by the United Nations to local employees. The Government, pursuant to Article 105 of the Charter, is under an obligation to accord to United Nations officials, whether international or locally recruited, such privileges and immunities as are necessary for the independent exercise of their functions. Consequently, any reservation with regard to a generally recognized functional immunity or privilege has to be made in explicit form, if only to allow the Organization to decide whether or not the reservation is compatible with the provisions of Article 105 of the Charter.

5. The rationale of the immunity from taxation of salaries paid by the United Nations is to achieve equality of treatment for all officials independently of nationality and to ensure that funds contributed by all Members to the budget of the Organization are not channelled into the Treasury of a State by levying taxes on staff members' salaries. These principles were clearly enunciated by the General Assembly in resolution 78 (I) of 7 December 1946 as follows:

"In order to achieve full application of the principle of equity among Members and equality among personnel of the United Nations, Members which have not yet completely exempted from taxation, salaries and allowances paid out of the budget of the Organization are requested to take early action in the matter."

6. In the light of the foregoing, we believe that the exemption from income tax of salaries paid by the Information Centre to its local employees, with the exception of those paid at hourly rates, should be asserted. In the event that the Member State concerned were to levy taxes on the salaries of the Information Centre local employees, the amount of the taxes so paid would need to be reimbursed to the staff members by the Organization, which in turn would charge the credit of that State in the Tax Equalization Fund.

21 April 1972

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20. PRIVILEGES AND IMMUNITIES OF UNITED NATIONS OFFICIALS WHO ARE NATIONALS OR RESIDENTS OF THE LOCAL STATE—ANY STATE PARTY TO THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS HAS THE OBLIGATION TO RESOLVE POSSIBLE CONFLICTS BETWEEN ITS INCOME TAX LEGISLATION AND THE TERMS OF THE CONVENTION BY ADAPTING ITS LAWS TO THE CONVENTION ⁶³

Letter to the Minister of Foreign Affairs of a Member State

The question of the liability of officials of the UNICEF Regional Office who are of the nationality of your country, or permanently resident in that country, to pay income

⁶³ See also *Juridical Yearbook*, 1964, p. 264.

tax is one which has, in the past, been the subject of considerable discussion, both formally and informally between officials of the Foreign Ministry and UNICEF officials. Since a case involving this question has recently arisen, we should like to draw your attention to this issue and to request that consideration should once more be given to the matter.

The United Nations (of which UNICEF is an integral part) has always taken the position that all UNICEF staff are exempt from taxation on their salaries and emoluments received from UNICEF. The attitude of the United Nations has been based on the text of the Convention on the Privileges and Immunities of the United Nations, to which your country is a party. Section 18 (b) of the Convention provides that officials of the United Nations shall "be exempt from taxation on the salaries and emoluments paid to them by the United Nations". In pursuance of Section 17 of the Convention, the General Assembly adopted resolution 76 (I), which provides that all members of the staff of the United Nations, irrespective of nationality or residence, are officials of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates. None of the UNICEF staff members in question are within the latter category. Thus, by virtue of the Convention, staff members of UNICEF who are of the nationality of your country or who are permanent residents of that country should be entitled to exemption from income taxation on the salaries and emoluments paid to them by UNICEF. Article IX of the Basic Agreement between UNICEF and your country provides expressly in Article IX that

"the Government recognizes that the Fund, as a subsidiary organ of the United Nations, and its personnel are entitled to the privileges and immunities contained in the Convention on Privileges and Immunities adopted by the General Assembly of the United Nations..."

The United Nations has regarded the texts referred to, in particular Article IX of the Basic Agreement, as over-riding provisions, entitling all UNICEF officials employed in your country, without exception, to be exempt from taxation on their salaries and emoluments. This interpretation has been supported by practice; no UNICEF officials in your country have actually been required to pay income tax.

The competent authorities, however, have sought to rely on Article VII, paragraph B, of the Basic Agreement, in asserting that UNICEF officials who are nationals of, or permanently resident in, your country, should be subject to income tax. That provision reads:

"No tax, fee, toll or duty shall be levied by the Government or any subdivision thereof or any other public authority on or in respect of salaries or remunerations for personal services paid by the Fund to its officers, employees or other Fund personnel who are not subjects of [the country] or permanent residents thereof."

It is on the basis of this article and of the pertinent national income tax legislation that the tax authorities of your country have recently stated that a former staff member of UNICEF is liable to pay taxation on the salary and emoluments he received from UNICEF when he was a UNICEF official between 19 November 1964 and 15 November 1970.

As indicated above, in the view of the United Nations the qualification at the end of Article VII, paragraph B, was never intended to limit the terms of the accession of your country to the Convention itself, or the language of Article IX.

In so far as a conflict may exist between the income tax legislation referred to in the letter of the tax authorities and the terms of the Convention, it may be pointed out that your country, being a party to the Convention, has undertaken a legal obligation to resolve any such conflict by adapting its laws to the Convention. Section 34 of the Convention reads:

“It is understood that when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this Convention.”

The obligation remains valid irrespective of subsequent agreements, such as the Basic Agreement with UNICEF.

In summary of the position of the United Nations therefore, the United Nations considers that, by virtue of the terms of the Convention and of the Basic Agreement, all UNICEF staff employed in your country are exempt from income tax. We are confident that Your Excellency will give favourable consideration to this view. It would accordingly be very much appreciated if Your Excellency would intervene with the tax authorities in order that an early solution may be found to this particular problem. In this connexion, it would seem particularly urgent to postpone any further action by the authorities in the case of the individual concerned until the general question has been settled. It may be that the Basic Agreement should now be revised, either generally or with respect to particular provisions, most notably as regards the wording of Article VII, paragraph B, which is the cause of the present conflict of views which has arisen. We should like to emphasize that the activities of UNICEF in your country, and the functions of the UNICEF Regional Office which is maintained there, are directed solely with a view to benefiting those in the area who are in need of help, and not in any sense on the basis of commercial gain.

4 July 1972

21. SECTION 19 (b) OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES ⁶⁴—THE SALARIES AND EMOLUMENTS PAID BY SPECIALIZED AGENCIES SHOULD NOT BE TAKEN INTO ACCOUNT IN SETTING THE RATE OF TAX ON NON-EXEMPT INCOME—COOPERATION REQUIRED FROM STAFF MEMBERS IN LAWFULLY MINIMIZING THEIR TAXES ⁶⁵

*Memorandum to the Deputy Chief of the Payroll Section, Accounts
Division, Office of the Controller*

1. You have asked for our views on the case of a staff member whose ICAO salary was taken into account by the authorities of a State in establishing the tax rate applicable to his non-exempt income and who is claiming reimbursement of the additional tax he is thus required to pay.

2. In our view, it is not legally correct for the State concerned, which is a party to the Convention on the Privileges and Immunities of the Specialized Agencies, to take into account specialized agencies salaries in establishing tax rates on non-exempt private income under section 19 (b) of the Convention: such salaries and emoluments should not in any manner be taken into consideration for national taxation purposes. This is the position we have taken with respect to United Nations salaries: the exemption provided in section 18 (b) of the Convention on the Privileges and Immunities of the United Nations precludes any tax amendment based directly or indirectly on the exempted income.

3. On the question of reimbursement of the additional tax the staff member concerned is required to pay, we would like to point out that the faulty assessment should in the first place be contested by the staff member on the ground that it violates Section 19 (b) of the

⁶⁴ United Nations, *Treaty Series*, vol. 33, p. 261.

⁶⁵ See *Juridical Yearbook*, 1969, p. 226.

Convention on the Privileges and Immunities of the Specialized Agencies. There is no evidence that he has used any appeal procedures, administrative or other, that may be available to him under the law of the State concerned, to seek the annulment of the income tax assessment. Under United Nations reimbursement procedures, the staff member is under an obligation to co-operate in lawfully minimizing his taxes, including seeking such exemptions as the government is bound by treaty provision to grant. We believe this principle applies equally to staff members of the specialized agencies.

4. In that respect we refer to a decision which upheld the appeal of a United Nations staff member against a similar assessment of his income tax by the Dutch fiscal authorities and ordered the annulment of the tax assessment on the ground that it violated Section 18 (b) of the Convention on the Privileges and Immunities of the United Nations.⁶⁶

16 October 1972

22. QUESTION WHETHER THE PROVISIONS OF ARTICLES 39 AND 41 OF THE UNITED NATIONS CHARTER ON SANCTIONS WHICH MAY BE DECIDED ON BY THE SECURITY COUNCIL ARE EXCLUSIVE OF ALL OTHER COLLECTIVE SANCTIONS IMPOSED BY OTHER MEANS

*Statement presented by the United Nations Observer at the
ICAO Special Subcommittee on the [ICAO] Council Resolution of
19 June 1972*

With regard to the question whether the provisions of Articles 39 and 41 of the United Nations Charter on sanctions which may be decided on by the Security Council are exclusive of all other collective sanctions imposed by other means, it may be pertinent to make some remarks about the Charter and to cite certain actions of States within the framework of the United Nations.

It is evident that any decision of the Security Council which under the Charter is binding on States takes precedence over their obligations under any other international agreement; this is expressly provided in Article 103 of the Charter. One form of binding decision of the Security Council is sanctions decided on under Article 41, after the determination of the existence of a threat to the peace, breach of the peace or act of aggression under Article 39. If the Council decides upon such measures, then obviously any inconsistent sanctions imposed under any other agreement must cease to apply. But what if the Security Council has made no determination under Article 39, and has not decided on measures under Article 41? If there is no threat to the peace, breach of the peace or act of aggression, then the Security Council will presumably not impose sanctions. Have States, acting within the United Nations framework, recognized the possibility of collective action in such circumstances?

In at least one field States have recognized such a possibility, i.e., in the United Nations narcotics treaties. The system of international narcotics control, ever since a treaty concluded in 1925,⁶⁷ has envisaged the imposition of an embargo on import or export, or both, of narcotics from or to a country or territory where a situation exists which endangers the aims of the control system. The earlier treaties were taken over and amended by the United Nations, without eliminating this feature. In 1953 a United Nations conference

⁶⁶ *Ibid.*, p. 239.

⁶⁷ League of Nations, *Treaty Series*, vol. LI, p. 337.

adopted the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium.⁶⁸ This Protocol provides, in articles 12 and 13, for a mandatory embargo which may be imposed by the Permanent Central Narcotics Board either upon a party or upon a non-party to that treaty. The conference which adopted the Protocol was called by the Economic and Social Council, which in doing so had before it a draft treaty providing for the mandatory embargo. The Opium Protocol entered into force, and has probably not yet been completely superseded by later treaties.

Other narcotics treaties, in particular the Single Convention on Narcotic Drugs, 1961,⁶⁹ and the Convention of 1971 on Psychotropic Substances,⁷⁰ also provide for an embargo by States against both parties and non-parties in respect of all substances covered by the Conventions, although, like the treaties before 1953, they authorize the international organ concerned only to recommend an embargo rather than taking a mandatory decision.

Mention may also be made of the Constitution of the International Labour Organisation, as it existed at the time that the General Assembly approved the relationship agreement which made it a specialized agency of the United Nations.⁷¹ It was provided therein that any member could file a complaint against any other member for failure of effective observance of an international labour convention to which both were parties; that the complaint could be referred to a Commission of Enquiry; and that the Commission was empowered to indicate in its report economic sanctions against the member at fault, which could, as a last resort, be applied by the other members.⁷²

It is not desired to draw any conclusion as to whether the legal situations under the treaties which have just been mentioned constitute fully applicable precedents in regard to the problem under discussion in the Subcommittee. It may nevertheless be observed that in some circumstances States have considered that the provisions of the Charter on sanctions by the Security Council did not necessarily exclude the possibility of providing for sanctions in certain other agreements.

12 September 1972

23. DRAFT ARTICLES ON SUCCESSION OF STATES IN RESPECT OF TREATIES—PROCEDURE FOLLOWED BY THE WORLD HEALTH ORGANIZATION CONCERNING THE SUCCESSION OF NEWLY INDEPENDENT STATES TO WHO REGULATIONS

*Letter to the Director of the Legal Division,
World Health Organization*

In your letter of 28 September 1972, you have analysed on the light of the draft articles on succession of States in respect of treaties, recently adopted by the International Law Commission,⁷³ the procedure followed by WHO concerning the succession of newly

⁶⁸ United Nations, *Treaty Series*, vol. 456, p. 3.

⁶⁹ *Ibid.*, vol. 520, p. 151.

⁷⁰ Reproduced in E/CONF.58/6 and Corr.1 and 2.

⁷¹ United Nations, *Treaty Series*, vol. 1, p. 183.

⁷² Article 28, paragraph 2 of the ILO Constitution as it existed until 20 April 1948, date of entry into force of the Instrument for the Amendment of the Constitution, adopted by the International Labour Conference at its twenty-ninth session, Montreal, 9 October 1946: *ibid.*, vol. 15, p. 35.

⁷³ *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10 (A/8710/Rev.1)*.

independent States to WHO Regulation's and have drawn my attention to certain difficulties in that respect.

In my opinion, the International Law Commission has rightly chosen the "contracting in" procedure *as a general rule* for participation of a newly independent State in multilateral treaties applied to the territory to which the succession of States relates prior to the date of the succession. That procedure, embodied in articles 11 and 12 of the Commission's draft is supported by recent State practice, is consistent with the general law of treaties as codified in the 1969 Vienna Convention on the Law of Treaties, and takes duly into account basic principles of general international law and of the Charter of the United Nations, such as the principle of self-determination and the principle of the sovereign equality of States. To formulate the general rule on the matter in terms of a "contracting out" procedure would be tantamount to making the presumption that a newly independent State *consents to be bound by any treaty* previously in force internationally with respect to its territory, unless within a reasonable time it declares a contrary intention. This latter approach, suggested in 1968 by the International Law Association, has been criticized by several delegations in the Sixth Committee of the General Assembly during the last years and does not correspond to the practice followed by the Secretary-General as depositary of multilateral treaties. As indicated by the International Law Commission, in paragraph 36 of its report ⁷⁴ "one thing is to admit on the plane of policy the general desirability of a certain continuity in treaty relations upon the occurrence of a succession and another thing to convert that policy into a legal presumption".

Having based in articles 11 and 12 the general rule in a "contracting in" procedure, article 4 of the Commission's draft deals, *inter alia*, with the specific case of *treaties adopted within an international organization* along the same lines as article 5 of the Vienna Convention on the Law of Treaties. Article 4 provides that the draft articles apply to the effects of succession of States in respect of any treaty adopted within an international organization "without prejudice to any relevant rules of the organization". This proviso safeguards any present or future rules of international organizations with regard to treaties adopted within them and makes it clear that the application of the draft articles to those treaties is not intended to impair the application to them of the relevant existing rules of the international organization concerned, including established "contracting out" procedures. Moreover, article 11 itself expressly states, in its opening words, that the general rule on the position of newly independent States in respect of the predecessor State's treaties, namely the "clean slate" principle, is "subject to the provisions of the present articles", a part of which is, of course, article 4.

In paragraph (13) of its commentary to article 4, the Commission recalls that in the context of that article *the term "rules"*, as in article 5 of the Vienna Convention on the Law of Treaties, applies "both to written rules and to unwritten customary rules of the organization, but not to mere procedures which have not yet reached the stage of mandatory legal rules". The WHO "contracting out" procedure for participation in Regulations adopted by the Health Assembly under article 21 of the WHO Constitution is established, as you are well aware, in article 22 of the Constitution itself according to which such Regulations "shall come into force for *all Members* after due notice has been given of their adoption by the Health Assembly except for such Members as may notify the Director-General of rejection or reservations within the period stated in the notice" (emphasis supplied). This constitutional provision has been supplemented by the final provisions of the International Sanitary Regulations ⁷⁵ adopted by the Health Assembly, Articles 105 to 113 of which elaborate in detail certain aspects of the WHO "contracting out" procedure. It seems

⁷⁴ *Ibid.*

⁷⁵ United Nations, *Treaty Series*, vol. 175, p. 215.

beyond any doubt whatsoever that that procedure is quite a "rule" of the Organization—a constitutional written rule conveniently supplemented by provisions inserted in the Regulations themselves—and not a mere procedure which has not yet reached the stage of a mandatory legal rule. As established, that "rule" of the Organization is safeguarded by article 4 and the opening words of article 11 of the Commission's draft.

But the question arises whether the "contracting out" procedure established by those written rules of the Organization is able to solve by itself the problem of ensuring continuity in the participation of a newly independent State in Regulations applied or extended prior to independence to the territory to which the succession of States relates. Paragraph 2 of Article 109 of the International Sanitary Regulations provides that any State which becomes a Member of the Organization after the date fixed for the entry into force of the Regulations and which is not already a party hereto "may notify its rejection of, or any reservation to, these Regulations within a period of *three months* from the date on which that State becomes a Member of the Organization. *Unless rejected, these Regulations shall come into force with respect to that State, subject to the provisions of Article 107 [Reservations], upon the expiry of that period*" (emphasis supplied). It is obvious from this wording that continuity in the participation of newly independent States in Regulations previously applied or extended to the territory to which the succession of States relates cannot be preserved on the basis of that provision, although it embodies a "contracting out" procedure. A legal basis other than the "contracting out" procedure established by the written rules of the WHO has to be found for ensuring such a continuity.

It appears from your letter that you are inclined to believe that the *practice* followed hitherto by the WHO Secretariat of considering WHO Regulations as continuing to bind newly independent States if they were in force previously for the territory to which the succession of States relates has not become an unwritten or customary rule of the Organization within the meaning of the term "rule" in article 4 of the Commission's draft. You are of course in a better position than we are to appreciate if that is the case. Allow me nevertheless to observe that sometimes a "secretariat practice" is nothing else but a reflection of the general position taken on a legal question by member States or by the competent representative organ of the Organization concerned. A "secretariat practice" may be also a starting point for a true legal rule of an organization when by reason of their conduct it appears that member States or the competent representative organ of the Organization apply generally such a practice and accept it as an unwritten or customary rule of the Organization.

Assuming that the said WHO Secretariat practice is not a "rule" of the Organization falling under article 4 of the Commission's draft, the question arises whether it is advisable to establish within WHO specific legal rules on the matter or whether the general régime of the Commission's draft is quite enough to preserve the desired continuity. The answer to that question is essentially a matter of legal policy to be decided by WHO. In this connexion, it should be borne in mind that the real problem is not one of "contracting out" *versus* "contracting in", but rather a question of the *kind* of "contracting out" or "contracting in" procedure adopted. After all, both procedures are based on the same principle, namely the consent of the participating State.

For instance, the "contracting in" procedure adopted by the International Law Commission as a general rule for participation of newly independent States in multilateral treaties is supplemented by certain provisions of the draft intended to facilitate continuity in treaty relationships in the event of a succession of States, such as paragraph 2 or article 18 (Effects of a notification of succession) and paragraph 1 of article 22 (Provisional application of multilateral treaties). According to the first of these two provisions and subject to the exceptions listed in sub-paragraphs (a) to (c), when a newly independent State, having

made a notification of succession, is considered a party to a treaty which was in force at the date of the succession of States, "the treaty is considered as being in force in respect of that State from the date of the succession of States". And paragraph 1 of article 22 provides that a multilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as applying provisionally between the newly independent State and a particular State party to the treaty by express or tacit agreement between them. On the other hand, a "contracting out" procedure as the one embodied in paragraph 2 of Article 109 of the International Sanitary Regulations quoted above does not mention provisional application and prevents considering the Regulations as being in force in respect of a newly independent State from the date of the succession. Actually, it could even be claimed, on the basis of paragraph 2 of Article 109 that the general rule of article 18, paragraph 2 of the Commission's draft does not apply, because sub-paragraph (a) of that article excepts from the rule treaties providing "otherwise".

Moreover, although a certain kind of "contracting out" procedure may be, in some well defined contexts, the best *prima facie* solution to ensure continuity, such an approach entails also some inherent problems. As you said in your letter, governmental authorities have difficulties with the existing constitutional procedures for the adoption and entry into force of WHO Regulations and in some cases purport to "ratify" Regulations, even after the date that they entered into force for the State concerned. These difficulties could still be greater in the always sensitive context of a succession of States, particularly when it involved a newly independent State.

I understand your concern for avoiding procedures which might encourage reservations where none had existed before. But I doubt that depriving altogether newly independent States participating in WHO Regulations through a succession procedure of the possibility of making reservations, otherwise expressly permitted, will be the best solution to facilitate continuity. On the contrary it might lead newly independent States to exercise their right of "contracting out" of the Regulations creating a more serious, wider and longer discontinuity. On the other hand, Article 107 of the International Sanitary Regulations provides a strong safeguard by centralizing in the Health Assembly the control of the compatibility of a reservation with "the character and purpose" of the Regulations. The provisions of Article 107 of the Regulations as a rule of the WHO are, in any event, preserved by article 4 of the Commission's draft.

With regard to cases of State succession other than those of newly independent States the Commission's draft distinguishes: (a) transfer of territory; (b) uniting of States; (c) dissolution of a State; (d) separation of part of a State. The provisions on transfer of territory (article 10) follow the traditional "moving treaty frontiers" rule. Those concerning uniting of States (article 26), dissolution of a State (article 27) and the State which continues to exist in case of a separation (paragraph 1 of article 28) are based on the principle of continuity. Only the new State emerging from a separation is assimilated in the Commission's draft to the régime provided for newly independent States (paragraph 2 of article 28).

If in the light of the general régime of the International Law Commission's draft it is considered advisable to establish specific WHO written rules concerning State succession in respect of WHO Regulations, a possible procedural solution to formulate them might be, as you suggested, to include express clauses dealing with the matter in future WHO Regulations. A solution of that kind would be, in my opinion, quite compatible with the draft articles prepared by the Commission. Another procedural solution could be the adoption by the Health Assembly of a resolution formulating the rules and requesting the Director-General to act accordingly in the performance of its functions as depositary of

the Regulations. This course of action would have the advantage of testing the practice hitherto followed in the matter by the WHO Secretariat and, if the resolution was appropriately drafted, could not only be viewed as a rule for the future but also as a recognition of that practice as an already existing rule of the WHO.

30 November 1972

Part Three

**JUDICIAL DECISIONS ON QUESTIONS RELATING
TO THE UNITED NATIONS AND RELATED
INTERGOVERNMENTAL ORGANIZATIONS**

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

1. INTERNATIONAL COURT OF JUSTICE

APPEAL RELATING TO THE JURISDICTION OF THE ICAO COUNCIL (INDIA V. PAKISTAN): JUDGMENT OF 18 AUGUST 1972¹

The Facts and the Main Contentions of the Parties (paras. 1-12 of the Judgment)

The Court has emphasized in its Judgment that it had nothing whatever to do with the facts and contentions of the Parties relative to the substance of the dispute between them, except in so far as those elements might relate to the purely jurisdictional issue which alone had been referred to it.

Under the International Civil Aviation Convention² and the International Air Services Transit Agreement,³ both signed in Chicago in 1944, the civil aircraft of Pakistan had the right to overfly Indian territory. Hostilities interrupting overflights broke out between the two countries in August 1965, but in February 1966 they came to an agreement that there should be an immediate resumption of overflights on the same basis as before 1 August 1965. Pakistan interpreted that undertaking as meaning that overflights would be resumed on the basis of the Convention and Transit Agreement, but India maintained that those two Treaties had been suspended during the hostilities and were never as such revived, and that overflights were resumed on the basis of a special régime according to which they could take place only after permission had been granted by India. Pakistan denied that any such régime ever came into existence and maintained that the Treaties had never ceased to be applicable since 1966.

On 4 February 1971, following a hijacking incident involving the diversion of an Indian aircraft to Pakistan, India suspended overflights of its territory by Pakistan civil aircraft. On 3 March 1971 Pakistan, alleging that India was in breach of the two Treaties, submitted to the ICAO Council (a) an Application under Article 84 of the Chicago Convention and Article II, Section 2, of the Transit Agreement; (b) a Complaint under Article II, Section 1, of the Transit Agreement. India having raised preliminary objections to its jurisdiction, the Council declared itself competent by decisions given on 29 July 1971. On 30 August 1971 India appealed from those decisions, founding its right to do so and the Court's jurisdiction to entertain the appeal on Article 84 of the Chicago Convention and Article II, Section 2, of the Transit Agreement (hereinafter called "the jurisdictional clauses of the Treaties").

¹ The analysis of the judgment reproduced above has been prepared by the Registry. It in no way involves the responsibility of the Court. It cannot be quoted against the actual text of the Judgment of which it does not constitute an interpretation.

² United Nations, *Treaty Series*, vol. 15, p. 295.

³ *Ibid.*, vol. 84, p. 389.

Jurisdiction of the Court to entertain the Appeal (paras. 13-26 of the Judgment)

Pakistan advanced certain objections to the jurisdiction of the Court to entertain the appeal. India pointed out that Pakistan had not raised those objections as *preliminary* objections under Article 62 of the Rules, but the Court observes that it must always satisfy itself that it has jurisdiction and, if necessary, go into that matter *proprio motu*. Pakistan had argued in the first place that India was precluded from affirming the competence of the Court by its contention, on the merits of the dispute, that the Treaties were not in force, which if correct, would entail the inapplicability of their jurisdictional clauses. The Court however has held that Pakistan's argument hereon was not well founded, for the following reasons: (a) India had not said that these multilateral Treaties were not in force in the definitive sense, but that they had been suspended or were not as a matter of fact being applied as between India and Pakistan; (b) a merely unilateral suspension of a treaty could not *per se* render its jurisdictional clause inoperative; (c) the question of the Court's jurisdiction could not be governed by preclusive considerations; (d) parties must be free to invoke jurisdictional clauses without being made to run the risk of destroying their *case on the merits*.

Pakistan had further asserted that the jurisdictional clauses of the Treaties made provision solely for an appeal to the Court against a final decision of the Council on the merits of disputes, and not for an appeal against decisions of an interim or preliminary nature. The Court considers that a decision of the Council on its jurisdiction does not come within the same category as procedural or interlocutory decisions concerning time-limits, the production of documents etc., for (a) although a decision on jurisdiction does not decide the ultimate merits, it is nevertheless a decision of a substantive character, inasmuch as it might decide the whole case by bringing it to an end; (b) an objection to jurisdiction has the significance *inter alia* of affording one of the parties the possibility of avoiding a hearing on the merits; (c) a jurisdictional decision may often involve some consideration of the merits; (d) issues of jurisdiction can be as important and complicated as any that might arise on the merits; (e) to allow an international organ to examine the merits of a dispute when its competence to do so has not been established would be contrary to accepted standards of the good administration of justice.

With regard more particularly to its Complaint to the ICAO Council, Pakistan had submitted that it was relying on Article II, Section 1, of the Transit Agreement (whereas the Application relied on Article 84 of the Chicago Convention and on Article II of Section 2 of the Transit Agreement). The point here was that decisions taken by the Council on the basis of Article II, Section 1, are not appealable, because, unlike decisions taken under the other two provisions mentioned above, they do not concern illegal action or breaches of treaty but action lawful, yet prejudicial. The Court found that the actual Complaint of Pakistan did not, at least for the most part, relate to the kind of situation for which Section 1 of Article II was primarily intended, inasmuch as the injustice and hardship alleged therein were such as resulted from action said to be illegal because in breach of the Treaties. As the Complaint made exactly the same charges of breach of the Treaties as the Application, it could be assimilated to the latter for the purposes of appealability; unless that were so, paradoxical situations might arise.

To sum up, the objections to the Court's jurisdiction based on the alleged inapplicability of the Treaties as such or of their jurisdictional clauses could not be sustained. The Court was therefore invested with jurisdiction under those clauses and it became irrelevant to consider objections to other possible bases of the Court's jurisdiction.

Furthermore, since it was the first time any matter had come to the Court on appeal, the Court observed that in thus providing for an appeal to the Court from the decisions

of the ICAO Council, the Treaties had enabled a certain measure of supervision by the Court of the validity of the Council's acts and that, from that standpoint, there was no ground for distinguishing between supervision as to jurisdiction and supervision as to merits.

By 13 votes to 3, the Court rejected the Government of Pakistan's objections on the question of its competence and found that it had jurisdiction to entertain India's appeal.

*Jurisdiction of the ICAO Council to entertain the merits of the case
(paras. 27-45 of the Judgment)*

With regard to the correctness of the decisions given by the Council on 29 July 1971, the question was whether Pakistan's case before the Council disclosed, within the meaning of the jurisdictional clauses of the Treaties, a disagreement relating to the interpretation or application of one or more provisions of those instruments. If so, the Council was *prima facie* competent, whether considerations claimed to lie outside the Treaties might be involved or not.

India had sought to maintain that the dispute could be resolved without any reference to the Treaties and therefore lay outside the competence of the Council. It had contended that the Treaties had never been revived since 1965 and that India had in any case been entitled to terminate or suspend them as from 1971 by reason of a material breach of them for which Pakistan was responsible, arising out of the hijacking incident. India had further argued that the jurisdictional clauses of the Treaties allowed the Council to entertain only disagreements relating to the interpretation and application of those instruments, whereas the present case concerned their termination or suspension. The Court found that, although those contentions clearly belonged to the merits of the dispute, (a) such notices or communications as there had been on the part of India from 1965-1971 appeared to have related to overflights rather than to the Treaties as such; (b) India did not appear ever to have indicated which particular provisions of the Treaties were alleged to have been breached; (c) the justification given by India for the suspension of the Treaties in 1971 was said to lie not in the provisions of the Treaties themselves but in a principle of general international law, or of international treaty law. Furthermore, mere unilateral affirmation of those contentions, contested by the other party, could not be utilized so as to negative the Council's jurisdiction.

Turning to the positive aspects of the question, the Court found that Pakistan's claim did in fact disclose the existence of a disagreement relating to the interpretation or application of the Treaties and that India's defences likewise involved questions of their interpretation or application. In the first place, Pakistan had cited specific provisions of the treaties as having been infringed by India's denial of overflight rights, while India had made charges of a material breach of the Convention by Pakistan: in order to determine the validity of those charges and counter-charges, the Council would inevitably be obliged to interpret or apply the Treaties. In the second place, India had claimed that the Treaties had been replaced by a special régime, but it seemed clear that Articles 82 and 83 of the Chicago Convention (relating to the abrogation of inconsistent arrangements and the registration of new agreements) must be involved whenever certain parties purported to replace the Convention or some part of it by other arrangements made between themselves; it followed that any special régime, or any disagreement concerning its existence, would raise issues concerning the interpretation or application of those articles. Finally Pakistan had argued that, if India maintained the contention which formed the substratum of its entire position, namely that the Treaties were terminated or suspended between the Parties, then such matters were regulated by Articles 89 and 95 of the Chicago Convention and Articles 1

and III of the Transit Agreement; but the two Parties had given divergent interpretations of those provisions, which related to war and emergency conditions and to the denunciation of the Treaties.

The Court concluded that the Council was invested with jurisdiction in the case and that the Court was not called upon to define further the exact extent of that jurisdiction, beyond what it had already indicated.

It had further been argued on behalf of India, though denied by Pakistan, that the Council's decisions assuming jurisdiction in the case had been vitiated by various procedural irregularities and that the Court should accordingly declare them null and void and send the case back to the Council for re-decision. The Court considered that the alleged irregularities, even supposing they were proved, did not prejudice in any fundamental way the requirements of a just procedure, and that whether the Council had jurisdiction was an objective question of law, the answer to which could not depend on what had occurred before the Council.

By 14 votes to 2, the court held the Council of the International Civil Aviation Organization to be competent to entertain the Application and Complaint laid before it by the Government of Pakistan on 3 March 1971, and in consequence rejected the appeal made to the Court by the Government of India against the decision of the Council assuming jurisdiction in those respects.

For these proceedings the Court was composed as follows:

Vice-President Ammoun (Acting President), President Sir Muhammad Zafrulla Khan, Judges Sir Gerald Fitzmaurice, Padilla Nervo, Forster, Gros, Bengzon, Petrán, Lachs, Onyeama, Dillard, Ignacio-Pinto, de Castro, Morozov and Jiménez de Aréchaga, and Judge *ad hoc* Nagendra Singh.

President Sir Muhammad Zafrulla Khan and Judge Lachs have appended Declarations to the Judgment.

Judges Petrán, Onyeama, Dullard, de Castro and Jiménez de Aréchaga have appended Separate Opinions.

Judge Morozov and Judge *ad hoc* Nagendra Singh have appended Dissenting Opinions.

2. ARBITRATION CASE

BALAKHANY (CHAD) LIMITED V. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS: AWARD OF THE ARBITRATOR DATED 29 JUNE 1972⁴

In 1969 the parties concluded a contract under which the contracting firm undertook to carry out for FAO certain work and services in connexion with a survey of the water resources of the Chad Basin. Under this contract, the contractor was entitled, in addition to the remuneration for his work and services, to

(a) the actual cost of the shipment of equipment and material "up to a total amount not to exceed Sterling pounds 5,000"

(b) the actual cost of air passages from the United Kingdom to Fort Lamy (Chad) "up to a total amount not to exceed Sterling pounds 2,500"

⁴ Barend van Marwijk Kooy, arbitrator. Summary kindly provided by the Secretariat of FAO.

In 1970, the parties agreed to raise the amount under (a) to pounds Sterling 11,719 6s. 10d. After performance of the contract work, the contractor contended that the above amounts proved inadequate and claimed reimbursement of

(a) additional shipment costs of pounds Sterling 6,500

(b) additional costs of air passages of pounds Sterling 4,000

As FAO declined to make these additional payments the contractor submitted the case, in accordance with the terms of the contract, to the Court of Arbitration of the International Chamber of Commerce.

The Arbitrator appointed by the Court of Arbitration briefly considered the question of the law applicable to the contract. In this respect the Organization had submitted that the contract deliberately contained no choice of law, as the Organization considered that such contract should not be governed by any particular system of municipal law but rather by generally accepted principles of law. The Arbitrator did not find it necessary to decide this question as the contract itself was clear on the point of remuneration in dispute between the parties. The Arbitrator held that the amounts mentioned in the contract were "maximal", the contractor bearing the risk, if the estimates proved to be too low. The Arbitrator found further that the contractor's claim could not be admitted on the basis of principles of fairness invoked by the contractor, and in particular that, in agreeing once to an increase of the maximum amount for reimbursement, the Organization had not given the contractor good reason to believe that further expenses would also be refunded. With regard to the contractor's plea, that the extra expenditure was the result of unforeseeable circumstances, entirely beyond his control, the Arbitrator held that the question of the effects of unforeseeable circumstances need not be decided as the circumstances referred to by the contractor (e.g. late arrival of essential equipment and payment of taxes) could indeed have been anticipated. Consequently the Arbitrator dismissed the claim and ordered the contractor to pay the costs of the arbitration.

Chapter VIII
DECISIONS OF NATIONAL TRIBUNALS

1. Austria

LABOUR COURT OF VIENNA

ANTON JAKESCH V. INTERNATIONAL ATOMIC ENERGY AGENCY:
DECISION OF 8 JULY 1971¹

*Immunity of the IAEA from legal process under the Headquarters Agreement
concluded between the Agency and Austria*²

Plaintiff had instituted an action before the Court in connexion with an employment relationship which had at one time existed between him and the defendant. Pursuant to article IX, paragraph 3, of the Federal Act on Civil Jurisdiction (*Bundesgesetz zur Jurisdiktionsnorm*), the Court asked the Federal Ministry of Justice to indicate whether, in the present instance, the defendant was prepared to accept the jurisdiction of the Austrian courts under the Agreement concluded on 11 December 1957 between Austria and the IAEA. The Court was informed that the defendant was not prepared to do so.

Under article VIII, section 19, of the above-mentioned Agreement, "The IAEA and its property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case the IAEA shall have expressly waived its immunity". Noting that the IAEA had not waived its immunity from legal process, the Court declared itself incompetent in the matter and dismissed the action.

2. Netherlands

COURT OF CASSATION (HOGE RAAD)

STATE SECRETARY FOR FINANCIAL AFFAIRS V. PASSER:
DECISION NO. 16786 OF 7 JUNE 1972

Exemption of United Nations officials from all taxation on the salaries and emoluments paid to them by the United Nations—These salaries and emoluments are not to be taken into account in calculating the taxation on income from other sources

In this case concerning the applicability of the progressive taxation reservation (progressie-voorbehoud), the Court concluded that the income of a United Nations official

¹ Kindly provided by the Secretariat of IAEA.

² United Nations, *Treaty Series*, vol. 339, p. 110.

of Netherlands nationality may not be taken into consideration, under the terms of article V, section 18 of the Convention on the Privileges and Immunities of the United Nations of 12 February 1946, in determining the rate of tax on the taxable income of that official in the Netherlands. Thus, the above-mentioned article excludes the applicability of article 40 of the General Act on State Taxes (Algemene Wet inzake Rijksbelastingen) to a salary paid by the United Nations.

The Court held *inter alia* that the provision in article V, section 18 of the Convention on the Privileges and Immunities of the United Nations differs from the arrangements concerning the prevention of double taxation, which are intended to assure the individual taxpayer that taxes will be levied only once on the same element of income or capital—whether this be done by his own country or abroad—since such provision exempts altogether the salaries and emoluments concerned from taxation by the States party to the Convention.

The Court further stated that the exemption, which according to article V, section 20 of the Convention has been granted exclusively in the interest of the United Nations and not for the personal benefit of the individual staff member, aims primarily at enabling the United Nations to set net salaries for the persons which it recruits in different States, thereby assuring the equality of remuneration, without having to take into consideration the impact of this United Nations salary on the fiscal position of the person concerned in any individual State.

The Court observed that the intended purpose could not be attained if each individual State were left the discretion, in determining the rate of tax to be levied on income other than that derived from the work for the United Nations, to take into consideration also the emoluments derived from the United Nations. And since the above cited exemption must be interpreted in the light of its intended purpose, it does not permit a State party to the Convention to take into account in any way the emoluments paid by the United Nations to its staff members for establishing tax rates on non-exempt income.

3. Philippines

SUPREME COURT

WORLD HEALTH ORGANIZATION AND DR. L. VERSTUYFT V. HON. BENJAMIN
AQUINO ET AL.: DECISION OF 29 NOVEMBER 1972

Claim of diplomatic immunity under the Host Agreement between the Philippine Government and the World Health Organization—Where such a claim is recognized and affirmed by the executive branch of the Government, it is the duty of the courts to accept it—Where there is reason to suspect an abuse of diplomatic immunity, the matter should be dealt with in accordance with Article VII of the Convention on the Privileges and Immunities of the Specialized Agencies

The petitioner had been assigned to the Regional Office of WHO in Manila as Acting Assistant Director of Health Services. Pursuant to the Host Agreement of 22 July 1951 between the Philippine Government and the World Health Organization,³ he was entitled to diplomatic immunity and, in particular, to personal inviolability, inviolability of the official's properties, exemption from local jurisdiction and exemption from taxation and

³ United Nations, *Treaty Series*, vol. 149, p. 197.

customs duties. When his personal effects contained in twelve crates entered the Philippines as unaccompanied baggage, they were accordingly allowed free entry and sent directly to a warehouse. Nevertheless, the respondent judge issued a few weeks later, at the request of the Constabulary Off-shore Action Center, a search warrant directing the search and seizure of the dutiable items in the crates. Upon protest of the petitioner, the Secretary of Foreign Affairs requested suspension of the search warrant order. The respondent judge however maintained the effectivity of the warrant on the ground that there were strong reasons to believe that the crates contained dutiable items. In that respect he observed: "The Court is certain that the World Health Organization would not tolerate violations of local laws by its officials and/or representatives under a claim of immunity granted to them by the Host Agreement. Since the right of immunity is admittedly relative and not absolute, and there are strong and positive indications of violation of local laws, the Court declines to suspend the effectivity of the search warrant issued in the case at bar."

At a subsequent hearing, the Office of the Solicitor-General maintained that the petitioner was entitled to diplomatic immunity, that he had not abused his diplomatic immunity and that in any event court proceedings in the receiving or host State were not the proper remedy in the case of abuse of diplomatic immunity. The Solicitor-General referred in that respect to Article VII of the Convention on the Privileges and Immunities of the Specialized Agencies.⁴ The respondent judge having denied quashal of the search warrant, the petitioner, joined by WHO, brought before the Supreme Court an action to set aside the respondent judge's decision.

The Supreme Court declared null and void the questioned search warrant. It noted that the executive branch of the Philippine Government had expressly recognized that the petitioner was entitled to diplomatic immunity, a conclusion which had also been reached by the Solicitor General. The Court observed that in accordance with international law and under the Philippine system of separation of powers, diplomatic immunity was essentially a political question and that courts should refuse to look beyond a determination by the executive branch of the government. Where the plea of diplomatic immunity was recognized and affirmed by the executive branch of the government, it was the duty of the courts to accept the claim of immunity. Hence, in adherence to the settled principle that courts may not so exercise their jurisdiction by seizure and detention of properties as to embarrass the executive arm of the government in conducting foreign relations, it was accepted doctrine that in such cases, the judicial department of the government followed the action of the political branch and would not embarrass the latter by assuming an antagonistic jurisdiction.

Even assuming, the Court went on to say, that the respondent judge had some reason to suspect an abuse of diplomatic immunity, he should have acceded to the quashal of the search warrant and forwarded his findings to the Department of Foreign Affairs for it to deal with the matter in accordance with Article VII of the Convention on the Privileges and Immunities of the Specialized Agencies to which the Philippine Government was a party.

⁴ *Ibid.*, vol. 33, p. 261. Article VII, Section 24, reads as follows: "If any State party to this Convention considers that there has been an abuse of a privilege or immunity conferred by this Convention, consultations shall be held between that State and the specialized agency concerned to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the State and the specialized agency concerned, the question whether an abuse of a privilege or immunity has occurred shall be submitted to the International Court of Justice in accordance with section 32. If the International Court of Justice finds that such an abuse has occurred, the State party to this Convention affected by such abuse shall have the right, after notification to the specialized agency in question, to withhold from the specialized agency concerned the benefits of the privilege or immunity so abused."

Finally, the Court noted with concern the apparent lack of co-ordination between the various departments involved. It referred in that respect to Republic Act 75 of 21 October 1946 which declares null and void writs and processes issued out or prosecuted whereby *inter alia* the person of an ambassador or public minister is arrested or imprisoned or his goods and chattels are seized or attached and makes it a penal offence for "every person by whom the same is obtained or prosecuted, whether as party or as attorney, and every officer concerned in executing it" to obtain such writ or process.

4. United States of America

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT

CHARLES COLES DIGGS ET AL. V. GEORGE P. SHULTZ, SECRETARY OF
TREASURY ET AL.: DECISION OF 31 OCTOBER 1972⁵

Action for declaratory and injunction relief in respect of the importation of metallurgical chromite from Southern Rhodesia—Question whether the personal interest of appellants in the controversy was sufficient to confer standing on them—Power of Congress to set treaty obligations at naught

The plaintiffs—appellants who included, among others, persons unable to return to their homeland of Rhodesia and an author one of whose books was banned from sale in Rhodesia, sought declaratory and injunctive relief in respect of the issuance, by the Office of Foreign Assets Control, of licenses authorizing the importation of metallurgic chromite from Rhodesia notwithstanding Security Council resolution 232 (1966) which directs that all States Members of the United Nations impose an embargo on trade with Southern Rhodesia. The lower Court had dismissed the complaint on the ground firstly that the plaintiffs lacked standing and secondly that the case was not one in respect of which relief could be granted.

On appeal, the judgement of dismissal was confirmed.

The Court of Appeals noted that in compliance with Security Council resolution 232 (1966) the President of the United States had issued Executive Order establishing criminal sanctions for violation of the embargo. In 1971, however, Congress had adopted the so-called Byrd Amendment to the Strategic and Critical National Stock Piling Act, Section 10 of which provided as follows: "Sec. 10. Notwithstanding any other provision of law . . . the President may not prohibit or regulate the importation into the United States of any material determined to be strategic and critical pursuant to the provisions of this Act, if such material is the product of any foreign country or area not listed as a Communist-country or area . . . for so long as the importation into the United States of material of that kind which is the product of such Communist-dominated countries or areas is not prohibited by any provisions of law." The Court observed that since Southern Rhodesia was not a Communist-controlled country, and inasmuch as the United States imported from Communist countries substantial quantities of metallurgical chromite and other materials available from Rhodesia, the Byrd Amendment contemplated the resumption of trade by the United States with Southern Rhodesia.

On the question of standing, the Court observed that the appellants, along with many other persons, had suffered, and continued to suffer, tangible injuries at the hands of Southern

⁵ 470 F. 2d 461 (1972).

Rhodesia. In an attempt to terminate the policies giving rise to those wrongs, the United Nations, with the United States as an assenting member, had established the embargo. The precise injury of which appellants complained in this law suit was allegedly illegal present action *by the United States* which tended to limit the effectiveness of the embargo and thereby to deprive appellants of its potential benefits. That quarrel was directly and immediately with the United States Government, and not with Southern Rhodesia.

Appellees suggested that the prospects of significant relief by means of the embargo were so slight that this relationship of intended benefit was too tenuous to support standing. But this, in the view of the Court, was tantamount to saying that because the performance of the United Nations was not always equal to its promise, the commitments of a member might be disregarded without having to respond in court to a charge of treaty violation. It might be that the particular economic sanctions invoked against Southern Rhodesia in this instance would fall short of their goal, and that appellants would ultimately reap no benefit from them. But, the Court observed, to persons situated as were appellants, United Nations action constituted the only hope; and they were personally aggrieved and injured by the dereliction of any Member State which weakened the capacity of the world organization to make its policies meaningful.

Of course it was true that appellants' plight stemmed initially from acts done by Southern Rhodesia, and that their primary quarrel was with it. But this did not foreclose the existence of a judicially cognizable dispute between appellants, on the one hand, and appellees, on the other, who were said to be acting in derogation of the solemn treaty obligation of the United States to adhere to the embargo for so long as it was in being.⁶

On the question of non-justiciability of the case, the Court observed that appellants sought to show that, in the Byrd Amendment, Congress did not really intend to compel the Executive to end United States observance of the Security Council's sanctions, and that, therefore, it was the Executive which was, without the essential shield of Congressional dispensation, violating a treaty engagement of the United States. Appellants pointed out in this regard that the Byrd Amendment did not in terms require importation from Southern Rhodesia, but left open two alternative courses of action. The Statute said the President might not ban importation from Rhodesia of materials classified as critical and strategic unless importation from Communist countries was also prohibited. Instead of permitting resumption of trade with Rhodesia, the President, so it was argued, could (1) have banned importation of these materials from Communist nations as well as from Rhodesia, or (2) have taken steps to have these materials declassified, thereby taking them in either case out of the scope of the Byrd Amendment.

Citing the canon of construction that a statute should, if possible, be construed in a manner consistent with treaty obligations, appellants argued that the Byrd Amendment, although discretionary on its face, should be construed to compel the President to take one or the other of these two steps as a means of escape from the necessity of breaching the United Nations Charter. But these alternatives raised questions of foreign policy and national defense as sensitive as those involved in the decision to honor or abrogate the United treaty obligations. To attempt to decide whether the President chose properly among the three alternatives confronting him "would be, not to decide a judicial contro-

⁶ The passage of the Byrd Amendment was the subject of widespread notice and comment within the United Nations, resulting in the reaffirmation by the Security Council on 8 February 1972 of the sanctions against Southern Rhodesia. The resolution to this end declared that any legislation passed by any Member State "with a view to permitting, directly or indirectly, the importation from Southern Rhodesia of any commodity falling within the scope of the obligations imposed (by the 1968 resolution), including chrome ore, would undermine sanctions and would be contrary to the obligations of States".

versy, but to assume a position of authority over the governmental acts of another and coequal department, an authority which plainly we do not possess”.

In the view of the Court, the purpose and effect of the Byrd Amendment was to detach the United States from the United Nations boycott of Southern Rhodesia in blatant disregard of the United States’ treaty undertaking. The so-called options given to the President were, in reality, no option at all. In any event, they were in neither case alternatives which were appropriately to be forced upon him by a Court.

The Court recalled that under the constitutional scheme of the United States, Congress could denounce treaties if it saw fit to do so. The Court considered that this was precisely what Congress had done in this case and that the lower Court was therefore correct to the extent that it found the complaint to state no tenable claim in law.

Part Four
BIBLIOGRAPHY

LEGAL BIBLIOGRAPHY OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

MAIN HEADINGS

- A. INTERNATIONAL ORGANIZATIONS IN GENERAL
 - 1. General
 - 2. Particular questions
- B. UNITED NATIONS
 - 1. General
 - 2. Particular organs
 - 3. Particular questions or activities
- C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS
 - Particular organizations

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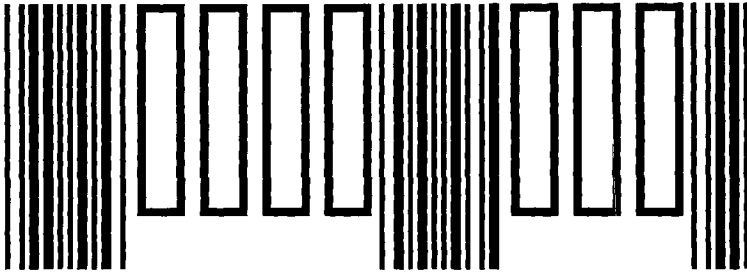
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