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UNITED NATIONS 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 twelfth 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 1974. Decisions given 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 in 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 1974 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

ECA	Economic Commission for Africa
ECAFE	Economic Commission for Asia and the Far East
ECE	Economic Commission for Europe
ECWA	Economic Commission for Western Asia
EEC	European Economic Community
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
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
IMF	International Monetary Fund
ITU	International Telecommunication Union
OAS	Organization of American States
OAU	Organization of African Unity
OECD	Organization for Economic Co-operation and Development
ONUC	United Nations Operation in the Congo
OPEX	Operational and Executive Personnel Programme
UNCDF	United Nations Capital Development Fund
UNCTAD	United Nations Conference on Trade and Development
UNDOF	United Nations Disengagement Observer Force
UNDP	United Nations Development Programme
UNEF	United Nations Emergency Force
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UPU	Universal Postal Union
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. Ireland

INTERNATIONAL ATOMIC ENERGY AGENCY (DESIGNATION AND IMMUNITIES) ORDER, 1972[1]

WHEREAS it is enacted by subsection (1) of section 40 of the Diplomatic Relations and Immunities Act, 1967 (No. 8 of 1967),[2] that the Government may by order designate an international organisation, community or body of which the State or the Government is or intends to become a member to be an organisation to which Part VIII of that Act applies and may, by the order, make provision for the purposes of section 42 of that Act, as respects certain matters specified in that subsection:

AND WHEREAS the State is a member of the International Atomic Energy Agency:

NOW the Government, in exercise of the powers conferred on them by section 40 of the Diplomatic Relations and Immunities Act, 1967, hereby order as follows:

1. This order may be cited as the International Atomic Energy Agency (Designation and Immunities) Order, 1972.

2. In this Order—

"the Act" means the Diplomatic Relations and Immunities Act, 1967;

"the scheduled agreement" means the agreement on the privileges and immunities of the International Atomic Energy Agency of which a copy is set out in the Schedule hereto;

"the proposed provision" means the provision as respects matters specified in subsection (1) of section 40 of the Act which is proposed for acceptance in the scheduled agreement.

3. The International Atomic Energy Agency is hereby designated to be an organisation to which Part VIII of the Act applies.

4. The proposed revision is hereby made for the purposes of section 42 of the Act.

SCHEDULE

AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL ATOMIC ENERGY AGENCY

[*Not reproduced*][3]

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[1] S.I. No. 26 of 1972. Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 21 January 1972.

[2] See *Juridical Yearbook*, 1967, p. 37.

[3] See United Nations, *Treaty Series*, vol. 374, p. 147.

2. United Kingdom of Great Britain and Northern Ireland

(*a*) The International Atomic Energy Agency (Immunities and Privileges) Order 1974[4]

Laid before Parliament in draft

Made ..... *25th July 1974*
Coming into Operation ..... *1st August 1974*

At the Court at Buckingham Palace, the 25th day of July 1974

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 1968*[5] (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 sections 1 and 12(6) of the Act 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:—

Part I

General

1. This Order may be cited as the International Atomic Energy Agency (Immunities and Privileges) Order 1974 and shall come into operation on 1st August 1974.

2.—(1) In this Order "the 1961 Convention Articles" means the Articles (being certain Articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in Schedule 1 to the Diplomatic Privileges Act 1964.**

(2) The Interpretation Act 1889*** shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament, and as if this Order and the Order hereby revoked were Acts of Parliament.

3. The International Atomic Energy Agency (Immunities and Privileges) Order 1961**** is hereby revoked.

Part II

The Agency

4. The International Atomic Energy Agency (hereinafter referred to as the Agency) is an organisation of which the United Kingdom and foreign sovereign Powers are members.

5. The Agency shall have the legal capacities of a body corporate.

6. Except in so far as in any particular case it has expressly waived its immunity, the Agency shall have immunity from suit and legal process. No waiver of immunity shall be deemed to extend to any measure of execution.

7. The Agency shall have the like inviolability of official archives and premises as in accordance with the 1961 Convention Articles is accorded in respect of the official archives and premises of a diplomatic mission.

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[4] *Statutory Instruments*, No. 1256, 1974.

*1968 c. 48.

[5] See *Juridical Yearbook*, 1968, p. 20.

**1964 c. 81.

***1889 c. 63.

****S.I. 1961/65 (1961 I p. 132).

8. The Agency shall have the like exemption or relief from taxes, other than customs duties and taxes on the importation of goods, as is accorded to a foreign sovereign Power.

9. The Agency shall have the like relief from rates as in accordance with Article 23 of the 1961 Convention Articles is accorded in respect of the premises of a diplomatic mission.

10. The Agency shall have exemption from customs duties and taxes on the importation of goods imported by the Agency for its official use in the United Kingdom and on the importation of publications of the Agency imported by it, such exemption to be subject to compliance with such conditions as the Commissioners of Customs and Excise may prescribe for the protection of the Revenue.

11. The Agency shall have exemption from prohibitions and restrictions on importation or exportation in the case of goods imported or exported by the Agency for its official use and in the case of any publications of the Agency imported or exported by it.

12. The Agency shall have relief, under arrangements made by the Commissioners of Customs and Excise, by way of refund of customs duty paid on any hydrocarbon oil (within the meaning of the Hydrocarbon Oil (Customs and Excise) Act 1971* which is bought in the United Kingdom and used for the official purposes of the Agency, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

13. The Agency shall have relief, under arrangements made by the Secretary of State, by way of refund of car tax paid on any vehicles and value added tax paid on the supply of any goods which are used for the official purposes of the Agency, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

PART III

REPRESENTATIVES

14.—(1) Except in so far as in any particular case any privilege or immunity is waived by the Government of the member which they represent, representatives of members on the Board of Governors and at meetings of the General Conference and on any organ, committee or other subordinate body of the Agency (including any sub-committee or other subordinate body of a subordinate body) shall enjoy:—

(*a*) immunity from suit and legal process in respect of things done or omitted to be done by them in their official capacity;

(*b*) while exercising their functions and during their journeys to and from the place of meeting, the like immunity from personal arrest or detention and from seizure of their personal baggage and the like inviolability for all papers and documents as is accorded to a diplomatic agent; 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 1961 Convention Articles 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:—

(*a*) the official staff of a representative other than alternates, advisers, technical experts and secretaries of delegations, or

(*b*) the family of a representative or of a member of the official staff of a representative.

(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 United Kingdom or as a

*1971 c. 12.

member of the official staff of such a representative or on any person who is a citizen of the United Kingdom and Colonies.

PART IV

OFFICERS

High Officers

15.—(1) Except in so far as in any particular case any privilege or immunity is waived by the Agency, and subject to the provisions of paragraph (2) of this Article, the Director-General of the Agency, including any officer acting on his behalf during his absence from duty, and any Deputy Director-General or officer of equivalent rank shall enjoy:

(*a*) the like immunity from suit and legal process, the like inviolability of residence and the like exemption or relief from taxes, other than customs duties and taxes on the importation of goods, and rates as are accorded to or in respect of a diplomatic agent;

(*b*) the like exemption from customs duties and taxes on the importation of articles imported for his personal use or the use of members of his family forming part of his household, including articles intended for his establishment, as in accordance with paragraph 1 of Article 36 of the 1961 Convention Articles is accorded to a diplomatic agent;

(*c*) the like exemption and privileges in respect of his personal baggage as in accordance with paragraph 2 of Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent;

(*d*) relief, under arrangements made by the Commissioners of Customs and Excise, by way of refund of customs duty paid on any hydrocarbon oil (within the meaning of the Hydrocarbon Oil (Customs & Excise) Act 1971) which is bought in the United Kingdom by him or on his behalf, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements; and

(*e*) exemptions whereby, for the purposes of the enactments relating to national insurance and social security, including enactments in force in Northern Ireland,—

(i) services rendered for the Agency by the officer shall be deemed to be excepted from any class of employment in respect of which contributions of premiums under those enactments are payable, but

(ii) no person shall be rendered liable to pay any contribution or premium which he would not be required to pay if those services were not deemed to be so excepted;

provided that until the day appointed for the coming into force of section 2 of the Social Security Act 1973* the following shall apply in substitution for the foregoing provisions of this sub-paragraph—

"exemptions whereby for the purposes of the National Insurance Acts 1965 to 1973, the National Insurance (Industrial Injuries) Acts 1965 to 1973, any enactment for the time being in force amending any of those Acts, and any enactment of the Parliament of Northern Ireland corresponding to any of those Acts or to any enactment amending any of those Acts,—

(i) services rendered for the Agency by the officer shall be deemed to be excepted from any class of employment which is insurable employment, or in respect of which contributions are required to be paid, but

(ii) no person shall be rendered liable to pay any contribution which he would not be required to pay if those services were not deemed to be so excepted."

(2) This Article shall not apply to any person who is a citizen of the United Kingdom and Colonies or a permanent resident of the United Kingdom.

*1973 c. 38.

(3) Part IV of Schedule 1 to the Act shall not operate so as to confer any privilege or immunity on any member of the family of any officer to whom this Article applies other than his spouse and minor children.

All Officers

16. Except in so far as in any particular case any privilege or immunity is waived by the Agency, officers of the Agency (other than those who are locally recruited and assigned to hourly rates of pay) shall enjoy:—

(*a*) immunity from suit and legal process in respect of things done or omitted to be done by them in their official capacity;

(*b*) exemption from income tax in respect of emoluments received by them as officers of the Agency; and

(*c*) the like exemption from customs duties and taxes on the importation of articles which—

(i) at or about the time when they first enter the United Kingdom to take up their posts as officers of the Agency are imported for their personal use or that of members of their families forming part of their households, including articles intended for their establishment, and

(ii) are articles which were in their ownership or possession or that of such members of their families or which they or such members of their families were under contract to purchase, immediately before they so entered the United Kingdom,

as in accordance with paragraph 1 of Article 36 of the 1961 Convention Articles is accorded to a diplomatic agent.

PART V

EXPERTS

17. Except in so far as in any particular case any immunity or privilege is waived by the Agency, experts (other than officers of the Agency) serving on committees of the Agency or performing missions for the Agency, including missions as inspectors under Article XII of the Statute of the Agency*[6] or as project examiners under Article XI thereof shall enjoy:—

(*a*) immunity from suit and legal process in respect of things done or omitted to be done by them in the performance of their official functions;

(*b*) while exercising their functions and during their journeys in connection with service on such committees or missions, the like immunity from personal arrest or detention and from seizure of their personal baggage and the like inviolability for all papers and documents as is accorded to a diplomatic agent; and

(*c*) while exercising their functions and during their journeys in connection with service on such committees or missions, the like exemptions and privileges in respect of their personal baggage as in accordance with Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent.

(*b*) THE SPECIALIZED AGENCIES OF THE UNITED NATIONS (IMMUNITIES AND PRIVILEGES) ORDER 1974

Laid before Parliament in draft

Made ..... *25th July 1974*
Coming into Operation ..... *1st August 1974*

*Cmnd. 450.

[6] United Nations, *Treaty Series*, vol. 276, p. 3.

At the Court at Buckingham Palace, the 25th day of July 1974

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 1968* (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 sections 1 and 12(6) of the Act 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:—

PART I

GENERAL

1. This Order may be cited as the Specialized Agencies of the United Nations (Immunities and Privileges) Order 1974 and shall come into operation on 1st August 1974.

2.—(1) In this Order "the 1961 Convention Articles" means the Articles (being certain Articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in Schedule 1 to the Diplomatic Privileges Act 1964.**

(2) The Interpretation Act 1889*** shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament and as if this Order and the Orders hereby revoked were Acts of Parliament.

3. The Orders listed in Schedule 3 to this Order are hereby revoked.

PART II

THE ORGANISATION

4. The organisations listed in Schedule 1 to this Order (each of which is hereinafter referred to as the Organisation) are organisations of which the United Kingdom and foreign sovereign Powers are members.

[Paragraphs 5 to 13 are identical, *mutatis mutandis*, to paragraphs 5 to 13 of the International Atomic Energy Agency (Immunities and Privileges) Order 1974 reproduced above under (*a*).]

PART III

REPRESENTATIVES AND OTHER PERSONS

14.—(1) Except in so far as in any particular case any privilege or immunity is waived by the Government of the member which they represent, representatives of members of the Organisation (and representatives of Associate Members of the Food and Agriculture Organization and of the World Health Organization) at the meetings of any organ, committee or other subordinate body of the Organisation (including any sub-committee or other subordinate body of a subordinate body) shall enjoy:—

(*a*) immunity from suit and legal process in respect of things done or omitted to be done by them in their official capacity;

(*b*) while exercising their functions and during their journeys to and from the place of meeting, the like immunity from personal arrest or detention and from seizure of their personal baggage and the like inviolability for all papers and documents as is accorded to a diplomatic agent; and

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*1968 c. 48.

**1964 c. 81.

***1889 c. 63.

(*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 1961 Convention Articles are accorded to a diplomatic agent.

[Subparagraphs 2, 3 and 4 are identical to subparagraphs 2, 3 and 4 of paragraph 14 of the International Atomic Energy Agency (Immunities and Privileges) Order 1974, reproduced above under (*a*).]

(5) Except in so far as in any particular case any privilege or immunity is waived by the organ indicated in Schedule 2 to this Order, the additional persons specified in that Schedule shall, unless they are representatives of the United Kingdom or citizens of the United Kingdom and Colonies, enjoy the privileges and immunities provided for in paragraphs (1) and (2) of this Article.

(6) Part IV of Schedule 1 to the Act shall not operate so as to confer any privilege or immunity on the official staffs or families of any person to whom paragraph (5) of this Article applies.

PART IV

OFFICERS

High Officers

15.—(1) Except in so far as in any particular case any privilege or immunity is waived by or on behalf of the Organisation, and subject to the provisions of paragraph (2) of this Article, any person mentioned in Schedule 1 to this Order shall enjoy:—

(*a*) the like immunity from suit and legal process, the like inviolability of residence and the like exemption or relief from taxes, other than customs duties and taxes on the importation of goods, and rates as are accorded to or in respect of the head of a diplomatic mission;

[The remainder of paragraph 15 is identical, *mutatis mutandis*, to the corresponding provisions in paragraph 15 of the International Atomic Energy Agency (Immunities and Privileges) Order 1974, reproduced above under (*a*).]

All Officers

16. Except in so far as in any particular case any privilege or immunity is waived by or on behalf of the Organisation, officers of the Organisation (other than those who are locally recruited and assigned to hourly rates of pay) shall enjoy:—

[The remainder of paragraph 16 is identical, *mutatis mutandis*, to the corresponding provisions in paragraph 16 of the International Atomic Energy Agency (Immunities and Privileges) Order 1974, reproduced above under (*a*).]

PART V

EXPERTS

17. Except in so far as in any particular case any privilege or immunity is waived by or on behalf of the Organisation, experts (other than officers of the Organisation) serving on committees of, or performing missions for, the Organisation shall enjoy:—

(*a*) immunity from suit and legal process in respect of things done or omitted to be done by them in the exercise of their functions;

(*b*) during the period of their service on committees or missions, including the time spent on journeys in connection with service on such committees or missions, the like immunity from personal arrest or detention and from seizure of their personal baggage and the like inviolability for all papers and documents as is accorded to a diplomatic agent; and

(*c*) during the period of their service on committees or missions, including the time spent on journeys in connection with service on such committees or missions, the like exemptions and privileges in respect of their personal baggage as in accordance with Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent.

Provided that this Article shall not apply to experts serving on committees of, or performing missions for, the Universal Postal Union, the International Telecommunication Union or the World Meteorological Organization.

SCHEDULE 1

INTERNATIONAL ORGANISATIONS TO WHICH THIS ORDER APPLIES, AND HIGH OFFICERS OF SUCH ORGANISATIONS ENJOYING PRIVILEGES AND IMMUNITIES UNDER ARTICLE 15 OF THIS ORDER

Food and Agriculture Organization

The Director-General
The Deputy Director-General
Any Assistant Director-General
Any official acting on behalf of the Director-General during his absence from duty

International Civil Aviation Organization

The Secretary-General
The President of the Council
Any official acting on behalf of the Secretary-General during his absence from duty

International Labour Organisation

The Director-General
Any Deputy Director-General
Any Assistant Director-General
Any official acting on behalf of the Director-General during his absence from duty

International Telecommunication Union

The Secretary-General
Any official acting on behalf of the Secretary-General during his absence from duty

United Nations Educational, Scientific and Cultural Organization

The Director-General
The Deputy Director-General
Any official acting on behalf of the Director-General during his absence from duty

Universal Postal Union

The Director of the International Bureau
Any official acting on behalf of the Director during his absence from duty

World Health Organization

The Director-General
Any Deputy Director-General
Any Assistant Director-General
Any Regional Director
Any official acting on behalf of the Director-General during his absence from duty

World Meteorological Organization

The Secretary-General

Any official acting on behalf of the Secretary-General during his absence from duty

SCHEDULE 2

ADDITIONAL PERSONS ENJOYING PRIVILEGES AND IMMUNITIES UNDER ARTICLE 14 OF THIS ORDER

Organisation	*Additional Persons*	*Organ with power to waive*
International Labour Organisation	The employers' and workers' members and deputy members of the Governing Body and their substitutes	The Governing Body
Food and Agriculture Organization	The Chairman of the Council	The Council
United Nations Educational, Scientific and Cultural Organization	The President of the Conference and members of the Executive Board, their substitutes and advisers	The Executive Board
World Health Organization	Persons designated to serve on the Executive Board, their alternates and advisers	The Executive Board

SCHEDULE 3

Orders Revoked

[*Not reproduced*]

(*c*) THE UNITED NATIONS AND INTERNATIONAL COURT OF JUSTICE (IMMUNITIES AND PRIVILEGES) ORDER 1974

Laid before Parliament in draft

Made ..... *25th July 1974*
Coming into Operation ..... *1st August 1974*

At the Court at Buckingham Palace, the 25th day of July 1974

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 1968* (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 sections 1, 5 and 12(6) of the Act 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:—

*1968 c. 48.

PART I

GENERAL

1. This Order may be cited as the United Nations and International Court of Justice (Immunities and Privileges) Order 1974 and shall come into operation on 1st August 1974.

2.—(1) In this Order "the 1961 Convention Articles" means the Articles (being certain Articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in Schedule 1 to the Diplomatic Privileges Act 1964.**

(2) The Interpretation Act 1889*** shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament, and as if this Order and the Orders hereby revoked were Acts of Parliament.

3. The Diplomatic Privileges (United Nations and International Court of Justice) Order in Council 1947**** the Diplomatic Privileges (United Nations and International Court of Justice) (Amendment) Order in Council 1949***** and the Diplomatic Privileges (General Amendment) Order in Council 1950****** are hereby revoked.

PART II

THE UNITED NATIONS

The United Nations

[Paragraphs 4 to 13 are identical, *mutatis mutandis*, to paragraphs 4 to 13 of the International Atomic Energy Agency Act (Immunities and Privileges) Order 1974 reproduced above under (*a*).]

Representatives

14.—(1) Except in so far as in any particular case any privilege or immunity is waived by the Government of the member which they represent, representatives of members to any organ, committee or other subordinate body of the United Nations (including any sub-committee or other subordinate body of a subordinate body of the United Nations) 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, car tax and value added tax) and rates as is accorded to the head of a diplomatic mission;

(*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 1961 Convention Articles are accorded to a diplomatic agent; and

(*d*) while exercising their functions and during their journeys to and from the place of meeting, exemptions whereby, for the purposes of the enactments relating to national insurance and social security, including enactments in force in Northern Ireland,—

**1964 c. 81.

***1889 c. 63.

****S.R. & O. 1947/1772 (Rev. V, p. 882: 1947-I, p. 520).

*****S.I. 1949/1428 (1949-I, p. 1488).

******S.E. 1950/515 (1950-I, p. 541).

(i) services rendered for the United Nations by them shall be deemed to be excepted from any class of employment in respect of which contributions or premiums under those enactments are payable, but

(ii) no person shall be rendered liable to pay any contribution or premium which he would not be required to pay if those services were not deemed to be so excepted;

provided that until the day appointed for the coming into force of section 2 of the Social Security Act 1973* the following shall apply in substitution for the foregoing provisions of this subparagraph—

"while exercising their functions and during their journeys to and from the place of meeting, exemptions whereby for the purposes of the National Insurance Acts 1965 to 1973, the National Insurance (Industrial Injuries) Acts 1965 to 1973, any enactment for the time being in force amending any of those Acts, and any enactment of the Parliament of Northern Ireland corresponding to any of those Acts or to any enactment amending any of those Acts,—

(i) services rendered for the United Nations by them shall be deemed to be excepted from any class of employment which is insurable employment, or in respect of which contributions are required to be paid, but

(ii) no person shall be rendered liable to pay any contribution which he would not be required to pay if those services were not deemed to be so excepted."

[Subparagraphs 2, 3 and 4 are identical to subparagraphs 2, 3 and 4 of paragraph 14 of the International Atomic Energy Agency (Immunities and Privileges) Order 1974, reproduced above under (*a*).]

High Officers

15.—(1) Except in so far as in any particular case any privilege or immunity is waived in the case of the Secretary-General by the Security Council and in the case of an Assistant Secretary-General by the Secretary-General, and subject to the provisions of paragraph (2) of this Article, the Secretary-General of the United Nations and any Assistant Secretary-General shall enjoy:—

[The remainder of the paragraph is identical, *mutatis mutandis*, to the corresponding provisions in paragraph 15 of the International Atomic Energy Agency (Immunities and Privileges) Order 1974, reproduced above under (*a*).]

All Officers

16. Except in so far as in any particular case any privilege or immunity is waived by the Secretary-General, officers of the United Nations (other than those who are locally recruited and assigned to hourly rates of pay) shall enjoy:—

[The remainder of the paragraph is identical, *mutatis mutandis*, to the corresponding provisions in paragraph 16 of the International Atomic Energy Agency (Immunities and Privileges) Order 1974, reproduced above under (*a*).]

Experts

17. Except in so far as in any particular case any privilege or immunity is waived by the Secretary-General, experts (other than officers of the United Nations) performing missions on behalf of the United Nations shall enjoy:—

(*a*) immunity from suit and legal process in respect of things done or omitted to be done by them in the course of the performance of their missions;

*1973 c. 38.

(*b*) during the period of their missions, including the time spent on journeys in connection with service on such missions, the like immunity from personal arrest or detention and the like inviolability for all papers and documents as is accorded to a diplomatic agent; and

(*c*) during the period of their missions, including the time spent on journeys in connection with service on such missions, the like exemptions and privileges in respect of their personal baggage as in accordance with Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent.

PART III

THE INTERNATIONAL COURT OF JUSTICE

Judges and Registrar

18. Except in so far as in any particular case any privilege or immunity is waived by the Court, the judges and Registrar of the Court and any officer of the Court acting as Registrar shall enjoy, when engaged on the business of the Court and on journeys in connection with the exercise of their functions and, in the case of judges who are not citizens of the United Kingdom and Colonies, when residing in the United Kingdom for the purpose of holding themselves permanently at the disposal of the Court, the like privileges and immunities as in accordance with the 1961 Convention Articles are accorded to the head of a diplomatic mission.

19. The judges and Registrar shall have exemption from income tax in respect of emoluments received by them as judges or Registrar.

All Officers

20. Except in so far as in any particular case any privilege or immunity is waived by the Registrar of the Court with the approval of the President of the Court, officers of the Court shall enjoy:—

(*a*) immunity from suit and legal process in respect of things done or omitted to be done by them in the exercise of their functions; and

(*b*) exemption from income tax in respect of emoluments received by them as officers of the Court.

Agents, counsel and advocates

21.—(1) Except in so far as in any particular case any privilege or immunity is waived, in the case of persons representing States by the government of the State which they represent and in the case of persons representing international organisations by the organisation which they represent, the agents, counsel and advocates appearing before the Court 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 agents, counsel or advocates;

(*b*) during the period of their missions, including the time spent on journeys in connection with their missions, the like inviolability of residence, the like immunity from personal arrest or detention, the like inviolability for all papers and documents and the like exemption or relief from taxes (other than customs and excise duties, car tax and value added tax) and rates as are accorded to the head of a diplomatic mission; and

(*c*) during the period of their missions, including the time spent on journeys in connection with their missions, the like exemptions and privileges in respect of their personal baggage as in accordance with Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent.

(2) Where the incidence of any form of taxation depends upon residence, an agent, counsel or advocate 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) This Article shall not apply to any agent, counsel or advocate representing the United Kingdom or to any person who is a citizen of the United Kingdom and Colonies.

Assessors, witnesses, experts and persons performing missions

22. Except in so far as in any particular case any privilege or immunity is waived by the Court or, when the Court is not sitting, by the President of the Court, assessors, witnesses, experts and persons performing missions by order of the Court shall enjoy:—

(*a*) immunity from suit and legal process in respect of things done or omitted to be done by them in the course of the performance of their missions;

(*b*) during the period of their missions, including the time spent on journeys in connection with their missions, the like immunity from personal arrest or detention and from seizure of their personal baggage and the like inviolability for all papers and documents as are accorded to a diplomatic agent; and

(*c*) during the period of their missions, including the time spent on journeys in connection with their missions, the like exemptions and privileges in respect of their personal baggage as in accordance with Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent.

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 1974:[2]

State	*Date of receipt of instrument of accession*
Colombia	6 August 1974
Spain	31 July 1974

This brought up to 110 the number of States parties to the Convention.[3]

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2. AGREEMENTS RELATING TO MEETINGS AND INSTALLATIONS

(*a*) Agreement between the United Nations and the Netherlands regarding the arrangements for the Symposium on Population and Human Rights to be held at Amsterdam from 21 to 29 January 1974.[4] Signed at New York on 17 January 1974

ARTICLE VI

Facilities, privileges and immunities

1. For the purposes of the Symposium, the Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which the Kingdom of the Netherlands is a party, shall apply.

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[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] For the list of those States, see *Multilateral treaties in respect of which the Secretary-General Performs Depositary Functions* (ST/LEG/SER.D/8, United Nations publication, Sales No. E.75.V.9), p. 35.

[4] Came into force on the date of signature.

2. The Government shall impose no impediment to transmit to and from meetings of any persons whose presence at the Symposium is authorized by the United Nations and shall grant any visas required for such persons promptly and without charge.

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 IV, section 4 (*a*) and (*b*) above; (*b*) injury or damage to person or property caused or incurred in using transportation referred to in Article IV, section 4 (*i*) and (*j*); (*c*) the employment for the Symposium of the personnel referred to in Article IV, sections 2, 3 and 4 (*e*), (*f*) and (*g*), and 5, and the Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims and other demands.

(*b*) Memorandum of understanding between the United Nations and Japan on the United Nations Panel Meeting on a Satellite Broadcasting System for Education.[5] Signed at New York on 8 February 1974

7. *Privileges and immunities*

(1) The Conventions on the Privileges and Immunities of the United Nations and of the specialized agencies, to which Japan is a party, will be applicable with respect to the Panel, the participants defined in paragraph 2, the officials of the United Nations and the officials of the specialized agencies.

(2) Any visa required for the persons referred to in paragraph 2 above will be granted promptly and without charge.

8. *Liability for claims*

In relation to any activity connected with the Panel, the Government will, as necessary, secure appropriate insurance or take other measures available under the laws and regulations in force in Japan, to cover any damage that might occur in Japan to any participant and any claim that might be made against the United Nations or its officials.

(*c*) Agreement between the United Nations and Venezuela regarding the arrangements for the second session of the Third United Nations Conference on the Law of the Sea, 1974.[6] Signed at Caracas on 23 May 1974

ARTICLE XIV

Privileges and immunities

1. The Convention on the Privileges and Immunities of the United Nations shall be applicable with respect to the Conference. Accordingly, the Conference, the Representatives of States invited to attend the Conference, officials of the United Nations performing functions in connexion with the Conference and experts on mission for the United Nations at the Conference, shall enjoy the privileges and immunities provided in the said Convention, respectively, for the United Nations, representatives of Members, officials, and experts on mission for the United Nations.

2. The representatives of the specialized agencies, the International Atomic Energy Agency and other intergovernmental organizations attending the Conference shall enjoy the same privileges and immunities as accorded to officials of comparable rank of the United Nations.

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[5] Came into force on the date of signature.

[6] Came into force on the date of signature.

3. Personnel provided by the Government under Article XI of this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connexion with the Conference with the exception of those who are assigned to hourly rates.

4. Without prejudice to the preceding paragraphs in this Article, all other persons performing functions in connexion with the Conference, including representatives of non-governmental organizations, representatives of the information media, and other persons invited to the Conference by the United Nations, shall enjoy immunity from legal process in respect of words spoken or written or any act performed by them in the exercise of their functions in connexion with the Conference, and such facilities and courtesies as are necessary for the independent exercise of their functions in connexion therewith.

5. The Government shall ensure that no impediment is imposed on transit to and from the Conference of the following categories of persons attending the Conference: representatives of Governments and their immediate families; officials and experts of the United Nations and their immediate families; representatives of the specialized agencies, the International Atomic Energy Agency and intergovernmental organizations and their immediate families; observers of non-governmental organizations invited to the Conference; representatives of the Press or of radio, television, film or other information agencies accredited by the United Nations in its discretion after consultation with the Government; and other persons officially invited to the Conference by the United Nations.

6. All persons referred to in this Article, with the exception of those referred to in paragraph three above, shall have the right of entry into and exit from Venezuela. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible, and when applications are received at least two and a half weeks before the opening of the Conference, not later than two weeks before the date of the Conference. If the application for the visa is not made at least two and a half weeks before the opening of the Conference, the visa shall be granted not later than three days from the receipt of the application. Exit permits, where required, shall be granted free of charge and as speedily as possible, in any case not later than three days before the closing of the Conference.

7. During the Conference, including the preparatory and final stage of the Conference, the buildings and areas referred to in Article I shall be deemed to constitute United Nations premises and access thereto shall be subject to the authority and control of the United Nations.

8. The Government shall allow the temporary importation of, and waive import duties and taxes for all equipment and supplies necessary for the Conference, including those needed for the official requirements and for the entertainment schedule of the Conference and such personal effects as would be reasonably required in the exercise of responsibilities and functions in connexion with the Conference. It shall issue without delay to the United Nations any necessary import and export permits.

ARTICLE XV

Liability for injury, property loss or damage

1. The Government shall be responsible for dealing with any actions, claims or other demands arising out of:

(a) injury to person or damage or loss of property (whether United Nations property or otherwise) in the premises, including damage to the premises, referred to in Articles I through IV of this Agreement;

(b) injury to person or property loss or damage caused by, or incurred in using, the transportation referred to in Article X of this Agreement; and the Government shall indemnify and hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands except when it is agreed by the parties hereto that such injury, loss or damage was caused by the gross negligence or wilful misconduct of United Nations personnel.

2. The Government shall secure adequate insurance coverage to discharge any financial obligations which may arise under paragraph 1 of this article. The United Nations shall provide the Government as required all information pertinent to the determination of such insurance coverage for United Nations.

3. The Government shall also be responsible for dealing with, and shall indemnify and hold the United Nations and its personnel harmless in respect of any actions, claims or other demands arising out of the employment for the Conference of the personnel referred to in Article XI of this Agreement.

(*d*) Agreement between the United Nations and Mexico regarding the arrangements for the UNCTAD Working Group on the Charter of the Economic Rights and Duties of States.[7] Signed at Geneva on 20 May 1974 and at New York on 24 May 1974

VII. *Privileges and immunities*

[Similar to article XIV of the agreement referred to under (*c*) above except that paragraph 3 reads as follows:

> "Without prejudice to the application of the Convention as provided above, the local staff provided by the Government under Section I, paragraph 2, of this Agreement shall enjoy the privileges and immunities necessary for the independent exercise of their functions in connexion with the Meeting."

and that the words "and such personal effects as would reasonably be required in the exercise of responsibilities and functions in connexion with the Conference" do not appear in paragraph 8.]

IX. *Liability*

1. The Government shall be responsible for dealing with any claim, action, or proceeding arising out of,

(*a*) damages or loss to the land or premises within the Meeting area referred to in Section II, paragraph 1, or in respect of any injury to the person or property suffered within such area.

(*b*) damages or loss to property or in respect of injury to the person caused or incurred in using transportation for the purpose of the Meeting referred to in Section III, paragraph 4.

2. The Government shall hold the United Nations and its personnel harmless in respect to any actions, claims or demands referred to above, except where it is agreed by the parties hereto that such damage, loss or injury is caused by the gross negligence or wilful misconduct of United Nations personnel.

3. The Government agrees to indemnify and save harmless the United Nations from any and all actions, causes of action, claims or other demands arising out of the employment for the United Nations of the personnel referred to in Section I, paragraph 2.

(*e*) Agreement between the United Nations and the Philippines regarding the arrangements for the eighteenth session of the Governing Council of the United Nations Development Programme.[8] Signed at New York on 24 May 1974

ARTICLE XI

Privileges and immunities

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and the Convention on the Privileges and Immunities of the Specialized

[7] Came into force on 24 May 1974.

[8] Came into force on the date of signature.

Agencies of 21 November 1947, to which the Government is a party, shall be applicable in respect of the Session.

2. Representatives of States Members of the United Nations and representatives of States not members of the United Nations attending the Session shall enjoy the privileges and immunities accorded to representatives of States Members of the United Nations by Article IV of the Convention on the Privileges and Immunities of the United Nations.

3. Officials of the Secretariat of the Session shall enjoy the privileges and immunities provided by Articles V, VI and VII of the Convention on the Privileges and Immunities of the United Nations. The local personnel provided by the Government to perform functions in connexion with the Session shall enjoy only 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 Session.

4. Officials of the specialized agencies and of the International Atomic Energy Agency and representatives of other intergovernmental organizations participating in the Session shall enjoy the privileges and immunities accorded to officials of the specialized agencies under the Convention on the Privileges and Immunities of the Specialized Agencies.

5. Without prejudice to the preceding paragraphs of this article, all persons performing functions in connexion with the Session and all those invited to the Session shall enjoy the necessary privileges, immunities and facilities in connexion with their participation in the Session.

6. The Government shall impose no impediment to transit to and from the Session of any persons whose presence at the Session is authorized by the United Nations and of any member of their immediate families. Any entry or exit visa required for such persons shall be granted immediately on application and without charge.

7. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the conference premises referred to in article III above shall be deemed to constitute premises of the United Nations and access thereto shall be under the control and authority of the United Nations.

8. The participants in the Session, representatives of information media and officials of the Secretariat of the Session shall have the right to take out of the Philippines at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into the Philippines in connexion with the Session, or which they received during their presence at the Session, at the United Nations operational rate of exchange.

ARTICLE XII

Import duties and tax

1. The Government shall allow the temporary importation tax and duty-free of all equipment, including technical equipment accompanying representatives of information media, and shall waive import duties and taxes on supplies necessary for the Session. It shall issue without delay any necessary import and export permits for this purpose.

2. The Government hereby waives import and export permits for the supplies needed for the Session and which the United Nations certifies are required for official use at the Session.

(*f*) Exchange of letters constituting an agreement between the United Nations and the Federal Republic of Germany regarding arrangements for the United Nations Interregional Seminar on Cadastral Surveying and Urban Mapping to be held in Berlin (West) from 24 June to 12 July 1974.[9] New York, 20 June 1974

[9]Came into force on 20 June 1974.

I

. . .

(3) (*a*) Representatives of Member States, officials and experts of the United Nations participating in or performing functions in connection with the Seminar shall enjoy the same privileges and immunities as are accorded by the Convention on the Privileges and Immunities of the United Nations adopted on 13 February 1946.

(*b*) Officials of the specialized agencies participating in the Seminar shall be accorded the privileges and immunities provided under the Convention on the Privileges and Immunities of the Specialized Agencies.

(*c*) The persons mentioned under (3)(*a*) and (*b*) shall have the right of unimpeded entry to and exit from the place of the Seminar.

. . .

The Government of the Federal Republic of Germany shall be responsible for dealing with any actions, claims or other demands (*a*) which may be brought against the United Nations for damage to facilities or premises used in the course of the meeting, (*b*) or which arise out of injury or damage to persons or property caused or incurred in using the premises, facilities or transportation referred to under (1), (*c*) or which arise out of the employment of local personnel by the Government, and the Government shall indemnify and hold harmless the United Nations and its personnel in respect of any such actions, claims or other demands, except where it is agreed by the United Nations and the Government that the injury or damage is attributable to gross negligence or wilful misconduct on the part of the United Nations or its officials.

. . .

II

. . .

I wish to express agreement with the arrangements set forth in your letter and to confirm that our exchange of letters shall be deemed to constitute an agreement between the United Nations and the Government of the Federal Republic of Germany.

. . .

(*g*) Agreement between the United Nations and Austria for the establishment of the European Centre for Social Welfare Training and Research.[10] Signed at New York on 24 July 1974

ARTICLE II

Legal status of the Centre

1. The host Government shall take the necessary steps to establish the Centre as an autonomous, non-profitmaking entity, having legal personality under Austrian law. . .

. . .

(*h*) Exchange of letters constituting an agreement between the United Nations and Austria regarding privileges and immunities of United Nations officials being members of the European Centre for Social Welfare Training and Research.[11] New York, 23 December 1974

. . .

(1) Officials of the United Nations as defined in Article V of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 being members of the

[10] Came into force on 7 August 1974.

[11] Came into force, retroactively, on 7 August 1974.

European Centre for Social Welfare Training and Research shall enjoy *mutatis mutandis* such privileges and immunities as granted to officials of the United Nations Industrial Development Organization in Article XII of the Agreement between the United Nations and the Republic of Austria regarding the Headquarters of the United Nations Industrial Development Organization of 13 April 1967.[12]

. . .

II

. . .

I have the honour to inform you that the Republic of Austria agrees to the text of your letter and that therefore your letter and my answer constitute an Agreement between the United Nations and the Republic of Austria. . .

(*i*) Agreement between the United Nations and Italy regarding the arrangements for the World Food Conference 1974.[13] Signed at Rome on 4 November 1974

ARTICLE VII

Privileges and immunities

1. Representatives of States Members of the United Nations invited to the Conference shall enjoy the privileges and immunities specified in Article IV of the Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as "the United Nations Convention"). Representatives of other States invited to the Conference shall enjoy the privileges and immunities specified in Article XII, Section 25 of the Agreement of 31 October 1950 between the Government of the Italian Republic and FAO regarding the Headquarters of FAO (hereinafter referred to as "the Headquarters Agreement").

2. Officials of the United Nations shall enjoy the privileges and immunities specified in Articles V and VII of the United Nations Convention.

3. Officials of FAO shall enjoy the privileges and immunities specified in Article XIII of the Headquarters Agreement. Officials of other specialized agencies of the United Nations and the International Atomic Energy Agency shall enjoy the privileges and immunities specified in Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies (hereinafter referred to as "the Specialized Agencies Convention"), and in Articles VI and IX of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency (hereinafter referred to as the "IAEA Convention"), respectively.

4. Officials and experts of other intergovernmental organizations invited to the Conference shall enjoy the privileges and immunities provided in the corresponding Convention in force.

5. All persons performing functions relating to the Conference and all those invited to the Conference shall enjoy the necessary privileges, immunities and facilities in connection with their participation in the Conference.

6. Taking into account the provisions of the United Nations Convention, the Specialized Agencies Convention, the IAEA Convention and the Headquarters Agreement, the Government shall impose no impediment to transit to and from the Conference of the following categories of persons, and shall afford them any necessary protection in transit:

(*a*) representatives of states and of entities invited to the Conference pursuant to Economic and Social Council Resolution 1840 (LVI);

(*b*) officials of the United Nations performing functions in connection with or otherwise attending the Conference;

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[12] Reproduced in the *Juridical Yearbook*, 1967, p. 44.

[13] Came into force on the date of signature.

(*c*) representatives of the press or of other information media accredited by the United Nations, at its discretion after consultation with the Government;

(*d*) other persons whose presence at the Conference is authorized by the United Nations;

(*e*) members of the families of persons specified in subparagraphs (*a*) and (*b*).

Any visas required for such persons shall be granted promptly and without charge.

7. For the purpose of the application of the Convention, the premises of the Conference as specified in the exchange of letters to be concluded pursuant to Article I of this Agreement shall be deemed to constitute premises of the United Nations and access thereto shall be under the control and authority of the United Nations for the entire duration of the Conference.

ARTICLE VIII

Liability

The Government shall secure appropriate insurance, in relation to all activities connected with the Conference, covering any damage that might occur to the United Nations or to any of its officials or to any participant in the Conference on the premises of the Conference. The Government undertakes to provide, if requested, all appropriate legal assistance in the event that the United Nations or any of its officials or a participant in the Conference should be a plaintiff or defendant before an Italian court for injuries or damage to persons or property.

ARTICLE IX

Import duties and tax

1. The Government shall grant, in response to an appropriate request by the United Nations and on its behalf by the Secretary-General of the Conference;

(*a*) the temporary importation, free of duties and all other levies and taxes, of the equipment needed for the organization and conduct of the Conference, subject to the obligation to re-export said equipment;

(*b*) the exemption from duties and all other levies and taxes on the importation of supplies and expendable goods, including those for protocol purposes, intended for the official and exclusive use of the Conference, and subject to the prohibition on the diversion thereof for other purposes, pursuant to Article II, Section 7 (*b*) of the United Nations Convention;

(*c*) the right to import, subject to no financial restriction whatever, the materials and products referred to in (*a*) and (*b*) above.

2. The Government shall further grant exemption from duties for the temporary importation by representatives of the information media of the equipment brought by them into Italy for the performance of their functions on the occasion and for the purposes of the Conference, subject to the obligation to re-export said equipment.

(*j*) Agreement between the United Nations and Yugoslavia regarding the arrangements for the Seminar on the Promotion and Protection of Human Rights of National, Ethnic and other Minorities, to be held in Ohrid, Yugoslavia, from 25 June to 8 July 1974.[14] Signed at New York on 21 January 1974

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

[14] Came into force on the date of signature.

(*k*) Agreement between the United Nations and Egypt regarding arrangements for the United Nations and the Food and Agriculture Organization's Regional Seminar on Remote Sensing of Earth Resources and the Environment, to be held at Cairo from 4 to 13 September 1974.[15] Signed at New York on 2 August 1974

This agreement contains provisions similar to articles V and VI of the agreement between the United Nations and Yugoslavia referred to under (*j*) above, except that

(i) An additional paragraph reading as follows appears between paragraphs 2 and 3 of Article V:

"3. Participants attending the seminar in pursuance of Article II (*a*) of this Agreement shall enjoy the privileges and immunities of exports on mission under Article VI of the Convention on the Privileges and Immunities of the United Nations.";

(ii) The following text is substituted for the last three sentences of paragraph 5 of Article V:

"Entry visas shall be granted free of charge, as speedily as possible and within five days of an application being made. Exit permits, when required, shall be granted free of charge and without delay, in any case not later than three days before the closing of the seminar."

(*l*) Agreement between the United Nations and Israel regarding arrangements for the Expert Group Meeting on the Achievement of Efficiency in the Use and Re-Use of Water, to be held at Tel Aviv from 11 to 22 November 1974.[16]

This agreement contains provisions similar to Articles V and VI of the agreement between the United Nations and Yugoslavia referred to under (*j*) above, except that the following text is substituted for the last three sentences of Article V.

"Visas, entry and exit permits, where required, shall be granted not later than three days before the closing of the Meeting."

(*m*) Understanding between the United Nations and Canada regarding the arrangements for the Seminar on National Machinery to Accelerate the Integration of Women in Development and to Eliminate Discrimination on Grounds of Sex, to be held at Ottawa from 4 to 17 September 1974.[17]

This understanding contains provisions similar to Articles V and VI of the agreement between the United Nations and Yugoslavia referred to under (*j*) above, except that:

(i) Paragraph 1, of Article V reads as follows:

"1. The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the seminar. Accordingly, the participants and alternates referred to in Article II (a) and the officials of the United Nations performing functions in connexion with the seminar shall enjoy the privileges and immunities provided under Articles IV and V, respectively, and Article VII of the said Convention.";

(ii) the last sentence of paragraph 4 of Article V does not appear;

(iii) Article VI includes two additional paragraphs reading as follows:

"2. Canada shall be subrogated to the rights and remedies of the United Nations in respect of any action, causes of action, claims or other demands referred to in Article VI.1

[15] Came into force on the date of signature.

[16] Came into force on the date of signature.

[17] Came into force on 4 September 1974.

of this Understanding, except that it is understood that Canada shall not be subrogated to immunity from legal process enjoyed by the United Nations.

"3. The United Nations and Canada shall cooperate in procurement of evidence for a fair hearing and disposal of actions, causes of action, claims and other demands referred to in Article VI.1 of this Understanding."

(*n*) Agreement between the United Nations and Brazil regarding the arrangements for the Interregional Seminar on Remote Sensing for Cartography (Surveying and Mapping), to be held in Sao Jose dos Campos, Brazil, from 4 to 15 November 1974.[18] Signed at New York on 21 October 1974

This agreement contains provisions similar to Articles V and VI of the agreement between the United Nations and Yugoslavia referred to under (*j*) above, except that:

(i) An additional paragraph similar to the paragraphs quoted under (*k*) (i) above appears between paragraphs 2 and 3 of Article V;

(ii) An additional paragraph reading as follows appears between paragraphs 3 and 4 of Article V:

"4. Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and all persons performing functions in connexion with the seminar shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the seminar.";

(iii) The last three sentences of paragraph 5 of Article V have been replaced by a text similar to that appearing under (*k*) (ii) above.

(*o*) Agreement between the United Nations and Romania regarding the arrangements for the twenty-ninth session of the Economic Commission for Europe, to be held at Bucharest in April 1974.[19] Signed at Geneva on 4 April 1974

This agreement contains provisions similar to articles XIII, XIV and XV of an agreement between the United Nations and Romania reproduced on pp. 17 and 18 of the *Juridical Yearbook*, 1973.

(*p*) Agreement between the United Nations and Romania relating to the establishment of a demographic centre in Bucharest.[20] Signed at Bucharest on 28 August 1974

ARTICLE I

Objectives and activities of the Centre

. . .

5. The Centre shall have a legal personality distinct from that of the Parties and shall not be considered as a body of the United Nations or of the Government. The Government shall publish statutory orders concerning the legal status of the Centre.*

. . .

[18] Came into force on the date of signature.

[19] Came into force on the date of signature.

[20] Came into force on 31 October 1974.

*Provisional translation.

ARTICLE VI

Participation of the Government

. . .

2. The Government will grant the Centre all the assistance it might need in order to deal with any claims concerning the affairs of the Centre which might be brought by third parties residing within the territory of the Socialist Republic of Romania against the United Nations and its personnel and in order to hold the United Nations and its personnel harmless in case of such claims; the Government will exempt the United Nations and its personnel from any liabilities resulting from operations under this Agreement, except where it is agreed by the parties that such claims or liabilities arise from gross negligence or the wilful misconduct of such personnel.*

ARTICLE VII

Facilities, privileges and immunities

[Similar to article VII of an agreement between the United Nations and the United Arab Republic, reproduced on pp. 41 and 42 of the *Juridical Yearbook*, 1968, except that the following text is substituted for paragraph 4:

"All holders of United Nations fellowships at the Centre shall have the right of entry into and exit from the Socialist Republic of Romania, and of sojourn there for the period necessary for their training. All persons referred to in this Article shall enjoy facilities for speedy travel, and visas shall be granted to them promptly and free of charge."*]

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3. AGREEMENTS RELATING TO THE UNITED NATIONS CHILDREN'S FUND: REVISED MODEL AGREEMENT CONCERNING THE ACTIVITIES OF UNICEF[21]

ARTICLE VI

Claims against UNICEF

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

ARTICLE VII

Privileges and immunities

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

AGREEMENT BETWEEN UNICEF AND BHUTAN CONCERNING THE ACTIVITIES OF UNICEF.[22] SIGNED AT NEW DELHI ON 24 SEPTEMBER 1974

This agreement contains articles similar to articles VI and VII of the revised model agreement.

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*Provisional translation.

[21] UNICEF, *Field Manual*, vol. II, part IV-2, Appendix A (1 October 1964).

[22] Came into force on the date of signature.

4. AGREEMENTS RELATING TO THE UNITED NATIONS DEVELOPMENT PROGRAMME: STANDARD BASIC AGREEMENT CONCERNING ASSISTANCE BY THE UNITED NATIONS DEVELOPMENT PROGRAMME[23]

ARTICLE III

Execution of Projects

. . .

5. [See *Juridical Yearbook*, 1973, p. 24.]

. . .

ARTICLE IX

Privileges and Immunities

[See *Juridical Yearbook*, 1973, p. 25.]

ARTICLE X

Facilities for execution of UNDP assistance

[See *Juridical Yearbook*, 1973, pp. 25 and 26.]

ARTICLE XIII

General provisions

. . .

4. . . . [See *Juridical Yearbook*, 1973, p. 26.]

(*a*) Agreements between the United Nations (United Nations Development Programme) and the Government of Haiti, Benin,* Oman, the Republic of Viet-Nam, Colombia, Cyprus, the Dominican Republic, Mauritius, Barbados and Gabon, concerning assistance by the United Nations Development Programme.[24] Signed, respectively, at Port-au-Prince on 28 June 1973, at Cotonou on 18 January 1974, Muscat on 19 January 1974, Saigon on 7 May 1974, Bogota on 29 May 1974, Nicosia on 10 June 1974, Santo Domingo on 11 June 1974, Port Louis on 29 August 1974, Bridgetown on 21 October 1974, Libreville on 11 November 1974

These agreements contain provisions similar to articles III, 5, (IX), X and XIII, 4 of the standard basic agreement.

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[23] Document UNDP/ADM/LEG/34 of 6 March 1973. The standard basic agreement, prepared by the Bureau of Administration and Finance in consultation with the Executing Agencies of UNDP, represent a consolidation of the standard Special Fund, Technical Assistance, Operational Assistance and Office Agreements of the UNDP, which it is designed to replace.

*Then Dahomey.

[24] Came into force respectively on 28 June 1973, 18 January 1974, 19 January 1974, 7 May 1974, 29 May 1974 (provisionally), 10 June 1974, 11 June 1974 (provisionally), 29 August 1974, 21 October 1974 and 11 November 1974

(*b*) Agreement between the United Nations (United Nations Development Programme) and the United States of America concerning assistance by the United Nations Development Programme to the Trust Territory of the Pacific Islands.[25] Signed at New York on 10 June 1974

This agreement contains provisions similar to articles III, 5, IX, X and XIII, 4 of the standard basic agreement.

It is accompanied with the following exchange of letters:

I

. . .

This letter is to confirm our understanding that the United States, as Administering Authority for the TTPI, will assume international responsibility for the performance of the obligations set forth in Article X only to the extent of its authority under the Trusteeship Agreement for Former Japanese Mandated Islands and applicable United States law. I would appreciate your confirmation of this understanding.

. . .

II

. . .

I have the honour to inform you that the UNDP has taken note of the contents of your letter and hereby confirms the understanding reflected in it.

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5. AGREEMENT BETWEEN THE UNITED NATIONS CAPITAL DEVELOPMENT FUND AND BOLIVIA CONCERNING ASSISTANCE FROM THE UNITED NATIONS CAPITAL FUND.[26] SIGNED AT LA PAZ ON 13 DECEMBER 1973

ARTICLE III

Liability to third Parties

The UNCDF assistance under this Agreement being provided for the benefit of the Government, the latter shall bear all risks of use of the equipment. The Government shall be responsible for dealing with any claims which may be brought by third Parties against the UNCDF, its officials or other persons performing services on its behalf and shall hold it harmless in respect of claims and liabilities arising from the use of such equipment. The foregoing provision shall not apply where the Parties are agreed that a claim or liability arises from the gross negligence or wilful misconduct of such officials of UNCDF or other persons performing services on its behalf.

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[25] Came into force on the date of signature.

[26] Came into force on the date of signature.

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.[27] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

In 1974, 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:[28]

State		*Date of receipt of instrument of accession or notification*	*Specialized agencies*
German Democratic Republic	Accession	4 October 1974	ILO, UNESCO, WHO (third revised text of Annex VII), UPU, ITU, WMO, IMCO (revised text of Annex XII)[29]
Iran	Accession	16 May 1974	ILO, FAO (second revised text of Annex II),[30] ICAO, UNESCO, IMF, IBRD, WHO (third revised text of Annex VII), UPU, ITU, WMO, IMCO (revised text of Annex XII),[29] IFC, IDA
Mongolia	Notification	20 September 1974	FAO (second revised text of Annex II)[30]
Romania	Notification	23 August 1974	IMF, IBRD
Spain	Accession	26 September 1974	ILO, FAO (second revised text of Annex II),[30] ICAO, UNESCO, IMF, IBRD, WHO (third revised text of Annex VII), UPU, ITU, WMO, IMCO (revised text of Annex XII),[29] IFC, IDA

As of 31 December 1974, 81 States were parties to the Convention.[31]

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[27] United Nations, *Treaty Series*, vol. 33, p. 261.

[28] 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.

[29] See *Juridical Yearbook*, 1968, p. 66.

[30] See *Juridical Yearbook*, 1965, p. 43.

[31] For the list of those States, see *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions* (ST/LEG/SER. D/8—United Nations publication, Sales No. E.75.V.9), p. 40.

2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

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

Agreements concerning specific sessions held outside FAO Headquarters and containing provisions on privileges and immunities of FAO and participants similar to the standard text (published in the *Juridical Yearbook*, 1972, p. 32)[32] were concluded in 1974 with the governments of the following countries acting as hosts to such sessions:

Colombia, Cyprus, Greece, India, Ivory Coast, Jamaica, Japan,[33] Jordan, Kenya, Lebanon, Malaysia, Mali, Mauritius, Panama, Philippines, Senegal, Switzerland,[33] Thailand,[33] United Kingdom,[33] United States of America, Venezuela.

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

Agreements concerning specific training courses, etc., and containing provisions on privileges and immunities of FAO and participants similar to the standard text (published in the *Juridical Yearbook*, 1972, p. 33), were concluded in 1974 with the governments of the following countries acting as hosts to such training courses, etc.:

Austria, Ecuador, Egypt, Gabon, Hungary, India, Iran,[33] Jamaica, Lebanon, Mexico,[33] Nigeria, Peru, Romania, Saudi Arabia, Senegal, Thailand, Tunisia, United States of America,[33] Uruguay,[33] Zambia.

3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Agreements relating to meetings and installations

(*a*) Agreement between the Arab Republic of Egypt and the United Nations Educational, Scientific and Cultural Organization concerning the establishment and operation of a Centre for Social Science Research and Documentation for the Arab Region.[34] Signed at Paris on 23 October 1974

[32] Due to re-numbering of the provisions of the General Rules of the Organization, reference is now made in paragraph 9 of the standard text of the agreement to Rule XXXVI-4 (rather than XXXIV-4).

[33] Certain exceptions to or amendments of the standard text were introduced at the request of the Host Government.

[34] Came into force upon its signature.

ARTICLE 10

1. The Centre shall enjoy on the territory of the Arab Republic of Egypt the personality and legal capacity necessary for the exercise of its functions.

2. The Government shall apply to the Organization and its officials and experts, including those who are made available to the centre, and to the representatives of Arab Member States attending the sessions of the Governing Board or the Standing Committee, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies to which it has been party since 25 September 1954.

3. The members of the Centre's Governing Board and its Director shall enjoy, during their stay in the Arab Republic of Egypt and while exercising their duties, the privileges, facilities and immunities accorded to members of foreign diplomatic missions accredited to the Government.

4. The agents made available to the Centre under the UNESCOPAS programme or any other equivalent programme shall enjoy the status, privileges, facilities and immunities set out in the agreement concluded to this effect.

5. The Government shall authorize the entry, free of visa charges, the sojourn on its territory and the exit of any person invited to attend the sessions of the Governing Board on proceeding to the Centre on official business.

6. The goods, assets and income of the Centre shall be exempt from all direct taxes. Further, the Centre shall be exempt from the payment of any fees or taxes with respect to equipment, supplies and material imported or exported for its official use.

7. The Centre may have accounts in any currency, hold funds and foreign exchange of any kind and transfer them freely.

8. The Government shall be responsible for dealing with any claims which may be brought by third persons against the Organization, against members of its staff or against other persons employed by the Centre and shall hold the Organization and the above-mentioned persons harmless from any claims or liabilities resulting from operations of the Centre under this agreement, except where it is agreed by the Organization and the Government that such claims or liabilities arise from the gross negligence or wilful misconduct of such persons.

(*b*) Agreement between the Government of Mexico and the United Nations Educational, Scientific and Cultural Organization on the establishment and functioning of a regional centre of adult education and functional literacy for Latin America.[35] Done at Paris on 21 October 1974

This Agreement contains provisions similar to article X of the Agreement referred to under (*a*) above, except that paragraph 4 is omitted.

(*c*) Agreement between the National Executive Council of the Republic of Zaire and the United Nations Educational, Scientific and Cultural Organization on the establishment of a centre for the co-ordination of social science, research and documentation covering Africa South of the Sahara.[36] Signed at Paris on 23 September 1974

This agreement contains provisions similar to article X of the agreement referred to under (*a*) above except that the word "freely" at the end of paragraph 7 is replaced by the words "in accordance with the regulations in force concerning currency exchange".

[35] Came into force upon its signature.

[36] Came into force upon its signature.

(*d*) Agreements were also concluded between UNESCO and the Governments of Argentina, Belgium, Benin,* Brazil, Colombia, Costa Rica, Denmark, Egypt, Indonesia, Iran, Malaysia, Mali, Mauritania, Mexico, Monaco, Nepal, New Zealand, Niger, Peru, Philippines, Poland, Singapore, Sri Lanka, the USSR, the United Republic of Tanzania and Venezuela 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

(*a*) Agreement on the Privileges and Immunities of the International Atomic Energy Agency.[37] Approved by the Board of Governors of the Agency on 1 July 1959

(1) *Deposit of Instruments of Acceptance*

The following Member States accepted the Agreement on the Privileges and Immunities of the International Atomic Energy Agency in 1974, on the dates as indicated:[38]

Iran ..... 21 May 1974
German Democratic Republic[39] ..... 30 October 1974

This brought up to 44 the number of States parties to this Agreement.

*Then Dahomey.

[37] United Nations, *Treaty Series*, vol. 374, p. 147.

[38] The Agreement enters into force as between the Agency and the accepting State on the date of deposit of the Instrument of Acceptance.

[39] With the following reservation:

"The German Democratic Republic does not consider itself bound by the provisions of Sections 26 and 34 of the Agreement, under which there is an obligation to submit to the jurisdiction of the International Court of Justice. With regard to the competence of the International Court of Justice in respect of disputes arising out of the interpretation or application of the Agreement, the German Democratic Republic holds the view that the consent of all parties involved in a dispute must be obtained in each individual case before the dispute can be referred to the International Court of Justice for settlement.

"This reservation applies equally to the provision in Section 34, that the opinion delivered by the International Court of Justice shall be accepted as decisive."

The German Democratic also appended the following declaration to its Instrument of Acceptance:

"As regards the application of the Agreement to West Berlin, the German Democratic Republic maintains, in accordance with the Quadripartite Agreement of 3 September 1971 between the Governments of the Union of Soviet Socialist Republic, the United Kingdom of Great Britain and Northern Ireland, the United States of America and the French Republic, that West Berlin is not a part of the Federal Republic of Germany and may not be governed by it. The declaration of the Federal Republic of Germany to the effect that the Agreement on the Privileges and Immunities of the International Atomic Energy Agency should apply also to West Berlin conflicts with the Quadripartite Agreement, in which it is established that treaties concerning questions of security and status may not be extended to West Berlin by the Federal Republic of Germany".

(2) *Incorporation of provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency by reference in other Agreements*

(i) Article 10 of the Agreement between the Republic of Viet-Nam and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force: 9 January 1974 (INFCIRC/219).

(ii) Article 10 of the Agreement between Iran and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force: 15 May 1974 (INFCIRC/214).

(iii) Article 10 of the Agreement between the Government of the Kingdom of Thailand and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force: 16 May 1974.

(iv) Article V.2 of the Agreement between the International Atomic Energy Agency and the Government of Turkey for assistance by the Agency to Turkey in continuing a sub-critical assembly project; entry into force: 17 May 1974 (INFCIRC/212).

(v) Article 10 of the Agreement between Australia and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force: 10 July 1974 (INFCIRC/217).

(vi) Article 10 of the Agreement between the Government of Iceland and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force: 16 October 1974 (INFCIRC/215).

(vii) Article 10 of the Agreement between the Republic of the Philippines and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons; entry into force: 16 October 1974 (INFCIRC/216).

(viii) Section 5 of the Agreement between the International Atomic Energy Agency and the Government of Spain relating to the application of safeguards; entry into force: 19 November 1974 (INFCIRC/218).

(ix) 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 Embalse Power Reactor facility; entry into force: 6 December 1974 (INFCIRC/224).

(x) Section 6 of the Agreement between the International Atomic Energy Agency and the Government of the Republic of Chile relating to the application of safeguards; entry into force: 31 December 1974.

(*b*) Provisions affecting the Privileges and Immunities of the International Atomic Energy Agency in Austria

Agreement between the International Atomic Energy Agency and the Republic of Austria concerning Social Security for Officials of that Organization; entry into force: 1 July 1974 (INFCIRC/15/Rev.1, Part V).

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

I. DISARMAMENT AND RELATED MATTERS

1. Meetings of the Conference of the Committee on Disarmament

During its two series of meetings in 1974, 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 the cessation of nuclear weapon tests. Effective measures relating to the early cessation of the nuclear arms race and to nuclear disarmament as well as general and complete disarmament were also considered. Informal meetings were held to discuss questions relating to the scope and verification of a prohibition of the development, production and stockpiling of chemical weapons. All aspects of the work of the Committee in 1974 are covered in its report to the General Assembly.[1]

2. World Disarmament Conference

The *Ad Hoc* Committee on the World Disarmament Conference held 16 meetings in 1974 and submitted a report to the General Assembly in accordance with resolution 3183 (XXVIII) of 18 December 1973.[2] During its meetings, the Committee examined the views and suggestions expressed by Governments on the convening of a world disarmament conference and related problems.

By resolution 3260 (XXIX) of 9 December 1974, the General Assembly, *inter alia*, reiterated its conviction that all peoples of the world have a vital interest in the success of disarmament negotiations and that all States should be in a position to contribute to the adoption of measures towards that goal, stressed anew its belief that a world disarmament conference, adequately prepared and convened at an appropriate time, could promote the realization of such aims and requested the *Ad Hoc* Committee to reconvene in 1975.

3. Napalm and other incendiary weapons and all aspects of their possible use

By resolution 3255 A (XXIX) of 9 December 1974, the General Assembly, after taking note of a report of the Secretary-General[3] on the work done in the field under consideration by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Geneva, 20 February–29 March 1974) as well as of a report—circulated informally—of the Conference of Governments Experts held under the

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[1] A/9708-DC/237. For the printed text, see *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 27* (A/9627).

[2] *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 28* (A/9628). For other relevant documents, see *ibid., Twenty-ninth Session, Annexes*, agenda item 34.

[3] A/9726; for other relevant documents, see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 27.

auspices of the International Committee of the Red Cross (Lucerne, 24 September–18 October 1974), *inter alia* noted that the work of these two conferences had resulted in the emergence of new valuable data and suggestions and proposals for possible restrictions on the use of certain conventional weapons and invited the Diplomatic Conference to continue its consideration of the question of the use of napalm and other incendiary weapons and its search for agreement on possible rules prohibiting or restricting the use of such weapons.

By resolution 3255 B (XXIX), also of 9 December 1974, the General Assembly, *inter alia*, condemned the use of napalm and other incendiary weapons in armed conflicts in circumstances where it might affect human beings or might cause damage to the environment and/or natural resources and urged all States to refrain from the production, stockpiling, proliferation and use of such weapons, pending the conclusion of agreements on their prohibition.

4. Chemical and bacteriological (biological) weapons

In considering this item, the General Assembly had before it the report of the Conference of the Committee on Disarmament.[4]

By resolution 3256 (XXIX) of 9 December 1974, the General Assembly reaffirmed the objective of reaching agreement on the effective prohibition of the development, production and stockpiling of all chemical weapons and on their elimination from the arsenals of all States; urged all States to make every effort to facilitate such an agreement; and requested the Conference of the Committee on Disarmament to continue negotiations as a matter of high priority, bearing in mind existing proposals, with a view to reaching early agreement on effective measures for the prohibition of the development, production and stockpiling of all chemical weapons and for their destruction. Furthermore, the Assembly invited all States that had not yet done so to sign and ratify the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction;[5] it also invited all States that had not yet done so to accede to or ratify the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,[6] and called anew for the strict observance by all States of the principles and objectives contained therein.

5. Urgent need for cessation of nuclear and thermonuclear tests and conclusion of a treaty designed to achieve a comprehensive test ban

In considering this item, the General Assembly had before it the report of the Conference of the Committee on Disarmament.[7]

On 9 December 1974, the General Assembly adopted resolution 3257 (XXIX) by which it condemned all nuclear weapon tests, in whatever environment they might be conducted; reaffirmed its deep concern at the continuance of testing, in the atmosphere and underground, and at the lack of progress towards a comprehensive test ban agreement; called upon all States not yet parties to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water[8] to adhere to it forthwith; emphasized once more the urgency of concluding a comprehensive test ban agreement; reminded the nuclear-weapon States of their special responsibility to initiate proposals to that end; called upon all States to refrain from the testing of nuclear weapons, in any environment, pending conclusion of an agreement; and

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[4] See foot-note 1 above. For other relevant documents, see *ibid.*, *Twenty-ninth Session, Annexes*, agenda item 28.

[5] Resolution 2826 (XXVI), Annex.

[6] League of Nations, *Treaty Series*, vol. XCIV, p. 65.

[7] See foot-note 1 above. For other relevant documents see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 29.

[8] Reproduced in the *Juridical Yearbook*, 1963, p. 107.

requested the Conference of the Committee on Disarmament to give the highest priority to the conclusion of a comprehensive test ban agreement and to report to the General Assembly at its thirtieth session on the progress achieved.

6. Implementation of General Assembly resolution 3079 (XXVIII) concerning the signature and ratification of Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco)[9]

In considering this item, the General Assembly had before it a report of the Secretary-General,[10] which contained, *inter alia*, a communication of the Union of Soviet Socialist Republics stating the reasons why it could not sign the Protocol.

By resolution 3258 (XXIX) of 9 December 1974, the General Assembly reiterated its conviction that, for the maximum effectiveness of any treaty establishing a nuclear-weapon-free zone, the co-operation of the nuclear-weapon States was necessary. Further, the Assembly noted with satisfaction that Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America had entered into force for the United Kingdom, the United States, France and China; it urged the Union of Soviet Socialist Republics to sign and ratify Additional Protocol II, as had been done by the other four nuclear-weapon States.

7. General and complete disarmament

In considering this item, the General Assembly had before it the report of the Conference of the Committee on Disarmament.[11]

By resolution 3261 A (XXIX) of 9 December 1974, the Assembly, *inter alia*, recalled that in resolution 2602 E (XXIV) of 16 December 1969 it had proclaimed the 1970s a Disarmament Decade and reaffirmed the purposes and objectives of the Disarmament Decade.

By resolution 3261 C (XXIX) of 9 December 1974, the General Assembly noted the statements made in the Assembly by the Secretary of State of the United States on 23 September 1974 and by the Minister for Foreign Affairs of the Union of Soviet Socialist Republics on 24 September 1974, and stated that it fully shared the deep concern reflected in those statements with regard to the gravity of the situation created by existing nuclear arsenals and the continued nuclear arms race. The Assembly urged the USSR and the United States to broaden the scope and accelerate the pace of their strategic arms limitation talks; stressed once again the urgency of reaching agreement on important qualitative limitations and substantial reductions of their strategic nuclear-weapon systems as a positive step towards nuclear disarmament; and invited the two countries to keep the Assembly informed of the results of their negotiations.

By resolution 3261 D (XXIX) of the same date, the General Assembly, *inter alia*, appealed to all States, in particular nuclear-weapon States, to exert concerted efforts in all the appropriate international forums with a view to working out effective measures to halt the nuclear arms race and to prevent the further proliferation of nuclear weapons; expressed the hope that the Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, to be held at Geneva in May 1975, would also give consideration to the role of peaceful nuclear explosions as provided for in the Treaty and would inform the Assembly at its thirtieth session of the results of its deliberations and invited the Union of Soviet Socialist

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[9] Reproduced in the *Juridical Yearbook*, 1967, p. 284.

[10] A/9797. For other relevant documents, see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 30.

[11] See foot-note 1 above. For other relevant documents, see *ibid., Twenty-ninth Session, Annexes*, agenda item 35.

Republics and the United States to provide the Review Conference with information on steps they had taken, or intended to take, for the conclusion of the special basic international agreement on nuclear explosions for peaceful purposes envisaged in article V of the Treaty.

By resolution 3261 G (XXIX) also of 9 December 1974, the General Assembly declared its firm support for the independence, territorial integrity and sovereignty of non-nuclear-weapon States; and recommended that Member States should consider in all appropriate forums, without loss of time, the question of strengthening the security of non-nuclear-weapon States.

8. Implementation of General Assembly resolution 2286 (XXII) concerning the signature and ratification of Additional Protocol I of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco)[12]

This item was included in the agenda of the twenty-ninth session of the General Assembly at the request of 18 Latin American States.[13] In an explanatory memorandum the sponsors of the item referred, *inter alia*, to a resolution adopted on 8 March 1974 by the Agency for the Prohibition of Nuclear Weapons in Latin America, emphasizing the desirability of having the Assembly consider this question.

By resolution 3262 (XXIX) of 9 December 1974, the General Assembly, taking into account that certain territories which were not sovereign political entities lay within the Latin American nuclear-weapon-free zone and were in a position to receive the benefits of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) through its Additional Protocol I to which the States responsible for those territories could become parties, noted with satisfaction that the United Kingdom and the Netherlands had ratified that Protocol; urged the other two States which under the Treaty might become parties to Additional Protocol I to sign and ratify it as soon as possible.

9. Prohibition of action to influence the environment and climate for military and other purposes incompatible with the maintenance of international security, human well-being and health

This item was included in the agenda of the twenty-ninth session of the General Assembly at the request of the Union of Soviet Socialist Republics.[14] In an explanatory memorandum, the USSR drew attention to the danger that the achievements of science and technology might be used to create new types of weapons of mass destruction and to devise new means of waging war and stressed the need to draw up and conclude an international convention to outlaw action to influence the environment for military purposes.

By resolution 3264 (XXIX) of 9 December 1974, the General Assembly, taking into account the profound interest of States and peoples in the adoption of measures to preserve and improve the environment and to modify the climate solely for peaceful purposes, *inter alia* considered it necessary to adopt, through the conclusion of an appropriate international convention, effective measures to prohibit action to influence the environment and climate for military and other hostile purposes incompatible with the maintenance of international security, human well-being and health.

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[12] Reproduced in the *Juridical Yearbook*, 1967, p. 283.

[13] For the request and other relevant documents, see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 100.

[14] For the request and other relevant documents, see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 103.

II. OTHER POLITICAL AND SECURITY QUESTIONS

1. Strengthening of international security[15]

On 17 December 1974, the General Assembly adopted resolution 3332 (XXIX), in which it, *inter alia*, reaffirmed the principles and provisions contained in the Declaration on the Strengthening of International Security,[16] appealing to all States to implement them, to broaden the scope of détente, to reduce armaments, and to reaffirm the principles contained in the Declaration on friendly relations among States as the basis of relations among all States; reaffirmed that all States have the right to participate on a basis of equality in the settlement of major international problems; reaffirmed that any measure or pressure directed against any State while exercising its sovereign right freely to dispose of its natural resources constituted a flagrant violation of the right of self-determination and the principle of non-intervention, as set forth in the Charter of the United Nations; reaffirmed the legitimacy of the struggle of peoples under alien domination to achieve self-determination; and appealed to all States to implement the United Nations resolutions on the elimination of colonialism, racism and *apartheid*.

2. Strengthening of the role of the United Nations[17]

By resolution 3283 (XXIX) of 12 December 1974, the General Assembly drew the attention of States to the machinery established under the Charter of the United Nations for the peaceful settlement of international disputes, urged Member States not parties to instruments establishing the various facilities and machinery available for the peaceful settlement of disputes to consider becoming parties to such instruments and, in the case of the International Court of Justice, recognized the desirability that States study the possibility of accepting the compulsory jurisdiction of the Court; and called upon Member States to make full use and seek improved implementation of the means and methods provided for in the Charter and elsewhere for the exclusively peaceful settlement of any dispute or situation which is likely to endanger the maintenance of international peace and security, including negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, good offices including those of the Secretary-General, or other peaceful means of their own choice.

3. Peaceful uses of outer space

In the course of its seventeenth session held in New York from 1 to 12 July 1974, the Committee on the Peaceful Uses of Outer Space noted with gratification the outstanding work done by the Legal Sub-Committee on the draft convention on registration of objects launched into outer space[18] and endorsed the draft convention for submission to the General Assembly. It agreed that, at its fourteenth session, the Sub-Committee should consider as matters of high priority the draft treaty relating to the Moon, the elaboration of principles governing the use by States of artificial earth satellites and the legal implications of remote sensing of the earth from space.

In regard to the report of the Working Group on Direct Broadcast Satellites on the work of its fifth session,[19] the Committee, while unable to come to definite conclusions on various issues arising from the report or on suggestions for future meetings of the Working Group, noted with appreciation the contributions made by the Working Group to the work under-

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[15] For relevant documents, see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 36.

[16] Resolution 2734 (XXV), reproduced in the *Juridical Yearbook*, 1970, p. 62.

[17] For relevant documents, see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 20.

[18] A/AC.105/C.2/13.

[19] A/AC.105/127.

taken by the Legal Sub-Committee on direct broadcast satellites, and endorsed its view that further in-depth studies on the economic and social factors of the subject should be encouraged, with special attention given to improving the existing and planned infrastructure to meet changing educational and development needs, in particular those of the developing countries.[20]

In resolution 3234 (XXIX) of 12 November 1974, the General Assembly, after noting with satisfaction that the Committee on the Peaceful Uses of Outer Space had completed the text of the draft Convention on Registration of Objects Launched into Outer Space,[21] recommended that at its fourteenth session the Legal Sub-Committee should consider with the same high priority the draft treaty relating to the Moon, with a view to completing it as soon as possible; the elaboration of principles governing the use by States of artificial earth satellites for direct television broadcasting with a view to concluding an international agreement or agreements, in accordance with General Assembly resolution 2916 (XXVII) of 9 November 1972; and the legal implications of remote sensing of the earth from space, taking into account the various views expressed on the subject, including proposals for draft international instruments. The Assembly recommended that the Legal Sub-Committee should consider at its fourteenth session, as time permits, matters relating to the definition and/or delimitation of outer space and outer space activities; and noted the useful work carried out by the Working Group on Direct Broadcast Satellites, *inter alia* in facilitating the work of the Legal Sub-Committee in elaborating principles governing the use by States of artificial earth satellites for direct television broadcasting.

III. ECONOMIC, SOCIAL AND HUMANITARIAN ACTIVITIES

1. Human rights questions

(a) *International Convention on the Elimination of all Forms of Racial Discrimination*[22]

In resolution 3225 (XXIX) of 6 November 1974, the General Assembly appealed to States which had not yet done so to accede to the Convention.

The Committee on the Elimination of Racial Discrimination established under article 8 of the Convention[23] submitted its fifth annual report to the General Assembly, covering its ninth and tenth sessions.[24]

(b) *International Convention on the Suppression and Punishment of the Crime of* Apartheid[25]

Under the provisions of Article XV, the Convention will enter into force on the thirtieth day after the deposit with the Secretary-General of the United Nations of the twentieth

[20] For the report of the Committee on the Peaceful Uses of Outer Space, see *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 20* (A/9620). For other relevant documents, see *ibid., Annexes*, agenda items 32 and 33.

[21] The text of the Convention on Registration of Objects Launched into Outer Space is reproduced on p. 89 of this *Yearbook*.

[22] Reproduced in the *Juridical Yearbook*, 1965, p. 63. The Convention came into force on 4 January 1969. For the list of States parties to the Convention as at 31 December 1974, see *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions* (ST/LEG/SER.D/8, United Nations publication, Sales No. E.75.V.9).

[23] For the membership of the Committee, see *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 18* (A/9618), para. 3.

[24] *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 18* (A/9618). For other relevant documents, see *ibid., Annexes*, agenda item 33.

[25] Reproduced in the *Juridical Yearbook*, 1973, p. 70.

instrument of ratification or accession. As at 31 December 1974, the Secretary-General had received instruments of ratification or accession from 5 States.[26]

In resolution 3223 (XXIX) of 6 November 1974, the General Assembly urged all Member States to sign and ratify the Convention.

(c) *Human rights and scientific and technological developments*[27]

In resolution 3268 (XXIX) of 10 December 1974, the General Assembly, while acknowledging the indispensable role of science and technology for development, considered that it was necessary, on the one hand, to ensure that scientific and technological developments were not used in a manner contrary to the principles of international law and, on the other hand, to protect human rights and fundamental freedoms in situations of scientific and technological development; and drew the attention of States to the advantages that might be derived from the elaboration and adoption, by the competent national authorities, of measures designed to adopt national legislation and practices, where appropriate, not only to take account of new technology but also to safeguard the fundamental rights of the individual and of groups or organizations in all sectors of social life.

(d) *International Covenants on Human Rights*[28]

In resolution 3270 (XXIX) of 10 December 1974, the Assembly, *inter alia*, recommended that Member States should give special attention to the possibilities of accelerating as far as possible the internal procedures that would lead to the ratification of the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights and the Optional Protocol to the latter, expressed the hope that those instruments would come into force in the near future, if possible by the thirtieth session of the Assembly, and invited all States to become parties to the International Covenants on Human Rights.[29]

2. Economic and social questions

(a) *Charter of Economic Rights and Duties of States*

By resolution 3281 (XXIX) of 12 December 1974, the General Assembly, having recalled that the United Nations Conference on Trade and Development, in its resolution 45 (III) of 18 May 1972,[30] had stressed the urgency to establish generally accepted norms to govern international economic relations systematically and recognized that it was not feasible to establish a just order and a stable world as long as a charter to protect the rights of all countries, and in particular the developing States, was not formulated; having noted that, in its resolution 3082 (XXVIII) of 6 December 1973, it had reaffirmed its conviction of the urgent need to establish or improve norms of universal application for the development of international economic relations on a just and equitable basis and urged the Working Group on the

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[26] For the list of those States, see *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions* (ST/LEG/SER.D/8, United Nations publication, Sales No. E.75.V.9).

[27] For relevant documents, see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 56.

[28] Reproduced in the *Juridical Yearbook*, 1966, p. 170.

[29] The International Covenant on Economic, Social and Cultural Rights came into force on 3 January 1976; the International Covenant on Civil and Political Rights and the Optional Protocol thereto came into force on 23 March 1976. For the list of States parties to the Covenants and the Optional Protocol as at 31 December 1974, see *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions* (ST/LEG/SER.D/8, United Nations publication, Sales No. E.75.V.9).

[30] See *Proceedings of the United Nations Conference on Trade and Development, Third Session*, vol. I, *Report and Annexes* (United Nations publication, Sales No. E.73.II.D.4), annex I.A. For other relevant documents, see TD/B/AC.12/4 and Corr.1 and *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 48.

Charter of Economic Rights and Duties of States to complete, as the first step in the codification and development of the matter, the elaboration of a final draft Charter of Economic Rights and Duties of States, to be considered and approved by the General Assembly at its twenty-ninth session; and bearing in mind the spirit and terms of its resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, containing, respectively, the Declaration and the Programme of Action on the Establishment of a New International Economic Order, which underlined the vital importance of the Charter to be adopted by the General Assembly at its twenty-ninth session and stressed the fact that the Charter should constitute an effective instrument towards the establishment of a new system of international economic relations based on equity, sovereign equality and interdependence of the interests of developed and developing countries; adopted and solemnly proclaimed the following Charter:

CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES

PREAMBLE

The General Assembly,

Reaffirming the fundamental purposes of the United Nations, in particular the maintenance of international peace and security, the development of friendly relations among nations and the achievement of international co-operation in solving international problems in the economic and social fields.

Affirming the need for strengthening international co-operation in these fields,

Reaffirming further the need for strengthening international co-operation for development,

Declaring that it is a fundamental purpose of the present Charter to promote the establishment of the new international economic order, based on equity, sovereign equality, interdependence, common interest and co-operation among all States, irrespective of their economic and social systems,

Desirous of contributing to the creation of conditions for:

(*a*) The attainment of wider prosperity among all countries and of higher standards of living for all peoples,

(*b*) The promotion by the entire international community of the economic and social progress of all countries, especially developing countries,

(*c*) The encouragement of co-operation, on the basis of mutual advantage and equitable benefits for all peace-loving States which are willing to carry out the provisions of the present Charter, in the economic, trade, scientific and technical fields, regardless of political, economic or social systems,

(*d*) The overcoming of main obstacles in the way of the economic development of the developing countries,

(*e*) The acceleration of the economic growth of developing countries with a view to bridging the economic gap between developing and developed countries,

(*f*) The protection, preservation and enhancement of the environment,

Mindful of the need to establish and maintain a just and equitable economic and social order through:

(*a*) The achievement of more rational and equitable international economic relations and the encouragement of structural changes in the world economy,

(*b*) The creation of conditions which permit the further expansion of trade and intensification of economic co-operation among all nations,

(*c*) The strengthening of the economic independence of developing countries,

(*d*) The establishment and promotion of international economic relations, taking into account the agreed differences in development of the developing countries and their specific needs,

Determined to promote collective economic security for development, in particular of the developing countries, with strict respect fot the sovereign equality of each State and through the co-operation of the entire international community,

Considering that genuine co-operation among States, based on joint consideration of and concerted action regarding international economic problems, is essential for fulfilling the international community's common desire to achieve a just and rational development of all parts of the world,

Stressing the importance of ensuring appropriate conditions for the conduct of normal economic relations among all States, irrespective of differences in social and economic systems, and for the full respect of the rights of all peoples, as well as strengthening instruments of international economic co-operation as a means for the consolidation of peace for the benefit of all,

Convinced of the need to develop a system of international economic relations on the basis of sovereign equality, mutual and equitable benefit and the close interrelationship of the interests of all States,

Reiterating that the responsibility for the development of every country rests primarily upon itself but that concomitant and effective international co-operation is an essential factor for the full achievement of its own development goals,

Firmly convinced of the urgent need to evolve a substantially improved system of international economic relations,

Solemnly adopts the present Charter of Economic Rights and Duties of States.

CHAPTER I

FUNDAMENTALS OF INTERNATIONAL ECONOMIC RELATIONS

Economic as well as political and other relations among States shall be governed, *inter alia*, by the following principles:

(*a*) Sovereignty, territorial integrity and political independence of States;

(*b*) Sovereign equality of all States;

(*c*) Non-aggression;

(*d*) Non-intervention;

(*e*) Mutual and equitable benefit;

(*f*) Peaceful coexistence;

(*g*) Equal rights and self-determination of peoples;

(*h*) Peaceful settlement of disputes;

(*i*) Remedying of injustices which have been brought about by force and which deprive a nation of the natural means necessary for its normal development;

(*j*) Fulfilment in good faith of international obligations;

(*k*) Respect for human rights and fundamental freedoms;

(*l*) No attempt to seek hegemony and spheres of influence;

(*m*) Promotion of international social justice;

(*n*) International co-operation for development;

(*o*) Free access to and from the sea by land-locked countries within the framework of the above principles.

CHAPTER II

ECONOMIC RIGHTS AND DUTIES OF STATES

Article 1

Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever.

Article 2

1. Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.

2. Each State has the right:

(*a*) To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment;

(*b*) To regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, co-operate with other States in the exercise of the right set forth in this subparagraph;

(*c*) To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means.

Article 3

In the exploitation of natural resources shared by two or more countries, each State must co-operate on the basis of a system of information and prior consultations in order to achieve optimum use of such resources without causing damage to the legitimate interest of others.

Article 4

Every State has the right to engage in international trade and other forms of economic co-operation irrespective of any differences in political, economic and social systems. No State shall be subjected to discrimination of any kind based solely on such differences. In the pursuit of international trade and other forms of economic co-operation, every State is free to choose the forms of organization of its foreign economic relations and to enter into bilateral and multilateral arrangements consistent with its international obligations and with the needs of international economic co-operation.

Article 5

All States have the right to associate in organizations of primary commodity producers in order to develop their national economies, to achieve stable financing for their development and, in pursuance of their aims, to assist in the promotion of sustained growth of the world economy, in particular accelerating the development of developing countries. Correspondingly, all States have the duty to respect that right by refraining from applying economic and political measures that would limit it.

Article 6

It is the duty of States to contribute to the development of international trade of goods, particularly by means of arrangements and by the conclusion of long-term multilateral commodity agreements, where appropriate, and taking into account the interests of producers and consumers. All States share the responsibility to promote the regular flow and access of all commercial goods traded at stable, remunerative and equitable prices, thus contributing to the equitable development of the world economy, taking into account, in particular, the interests of developing countries.

Article 7

Every State has the primary responsibility to promote the economic, social and cultural development of its people. To this end, each State has the right and the responsibility to choose its means and goals of development, fully to mobilize and use its resources, to implement progressive economic and social reforms and to ensure the full participation of its people in the process and benefits of development. All States have the duty, individually and collectively, to co-operate in eliminating obstacles that hinder such mobilization and use.

Article 8

States should co-operate in facilitating more rational and equitable international economic relations and in encouraging structural changes in the context of a balanced world economy in harmony with the needs and interests of all countries, especially developing countries, and should take appropriate measures to this end.

Article 9

All States have the responsibility to co-operate in the economic, social, cultural, scientific and technological fields for the promotion of economic and social progress throughout the world, especially that of the developing countries.

Article 10

All States are juridically equal and, as equal members of the international community, have the right to participate fully and effectively in the international decision-making process in the solution of world economic, financial and monetary problems, *inter alia*, through the appropriate international organizations in accordance with their existing and evolving rules, and to share equitably in the benefits resulting therefrom.

Article 11

All States should co-operate to strengthen and continuously improve the efficiency of international organizations in implementing measures to stimulate the general economic progress of all countries, particularly of developing countries, and therefore should co-operate to adapt them, when appropriate, to the changing needs of international economic co-operation.

Article 12

1. States have the right, in agreement with the parties concerned, to participate in subregional, regional and interregional co-operation in the pursuit of their economic and social development. All States engaged in such co-operation have the duty to ensure that the policies of those groupings to which they belong correspond to the provisions of the present Charter and are outward-looking, consistent with their international obligations and with the needs of international economic co-operation, and have full regard for the legitimate interests of third countries, especially developing countries.

2. In the case of groupings to which the States concerned have transferred or may transfer certain competences as regards matters that come within the scope of the present

Charter, its provisions shall also apply to those groupings in regard to such matters, consistent with the responsibilities of such States as members of such groupings. Those States shall co-operate in the observance by the groupings of the provisions of this Charter.

Article 13

1. Every State has the right to benefit from the advances and developments in science and technology for the acceleration of its economic and social development.

2. All States should promote international scientific and technological co-operation and the transfer of technology, with proper regard for all legitimate interests including, *inter alia*, the rights and duties of holders, suppliers and recipients of technology. In particular, all States should facilitate the access of developing countries to the achievements of modern science and technology, the transfer of technology and the creation of indigenous technology for the benefit of the developing countries in forms and in accordance with procedures which are suited to their economies and their needs.

3. Accordingly, developed countries should co-operate with the developing countries in the establishment, strengthening and development of their scientific and technological infrastructures and their scientific research and technological activities so as to help to expand and transform the economies of developing countries.

4. All States should co-operate in research with a view to evolving further internationally accepted guidelines or regulations for the transfer of technology, taking fully into account the interests of developing countries.

Article 14

Every State has the duty to co-operate in promoting a steady and increasing expansion and liberalization of world trade and an improvement in the welfare and living standards of all peoples, in particular those of developing countries. Accordingly, all States should co-operate, *inter alia*, towards the progressive dismantling of obstacles to trade and the improvement of the international framework for the conduct of world trade and, to these ends, co-ordinated efforts shall be made to solve in an equitable way the trade problems of all countries, taking into account the specific trade problems of the developing countries. In this connexion, States shall take measures aimed at securing additional benefits for the international trade of developing countries so as to achieve a substantial increase in their foreign exchange earnings, the diversification of their exports, the acceleration of the rate of growth of their trade, taking into account their development needs, an improvement in the possibilities for these countries to participate in the expansion of world trade and a balance more favourable to developing countries in the sharing of the advantages resulting from this expansion, through, in the largest possible measure, a substantial improvement in the conditions of access for the products of interest to the developing countries and, wherever appropriate, measures designed to attain stable, equitable and remunerative prices for primary products.

Article 15

All States have the duty to promote the achievement of general and complete disarmament under effective international control and to utilize the resources released by effective disarmament measures for the economic and social development of countries, allocating a substantial portion of such resources as additional means for the development needs of developing countries.

Article 16

1. It is the right and duty of all States, individually and collectively, to eliminate colonialism, *apartheid*, racial discrimination, neo-colonialism and all forms of foreign aggression, occupation and domination, and the economic and social consequences thereof, as a prerequisite for development. States which practise such coercive policies are economically responsible to the countries, territories and peoples affected for the restitution and full

compensation for the exploitation and depletion of, and damages to, the natural and all other resources of those countries, territories and peoples. It is the duty of all States to extend assistance to them.

2. No State has the right to promote or encourage investments that may constitute an obstacle to the liberation of a territory occupied by force.

Article 17

International co-operation for development is the shared goal and common duty of all States. Every State should co-operate with the efforts of developing countries to accelerate their economic and social development by providing favourable external conditions and by extending active assistance to them, consistent with their development needs and objectives, with strict respect for the sovereign equality of States and free of any conditions derogating from their sovereignty.

Article 18

Developed countries should extend, improve and enlarge the system of generalized non-reciprocal and non-discriminatory tariff preferences to the developing countries consistent with the relevant agreed conclusions and relevant decisions as adopted on this subject, in the framework of the competent international organizations. Developed countries should also give serious consideration to the adoption of other differential measures, in areas where this is feasible and appropriate and in ways which will provide special and more favourable treatment, in order to meet the trade and development needs of the developing countries. In the conduct of international economic relations the developed countries should endeavour to avoid measures having a negative effect on the development of the national economies of the developing countries, as promoted by generalized tariff preferences and other generally agreed differential measures in their favour.

Article 19

With a view to accelerating the economic growth of developing countries and bridging the economic gap between developed and developing countries, developed countries should grant generalized preferential, non-reciprocal and non-discriminatory treatment to developing countries in those fields of international economic co-operation where it may be feasible.

Article 20

Developing countries should, in their efforts to increase their over-all trade, give due attention to the possibility of expanding their trade with socialist countries, by granting to these countries conditions for trade not inferior to those granted normally to the developed market economy countries.

Article 21

Developing countries should endeavour to promote the expansion of their mutual trade and to this end may, in accordance with the existing and evolving provisions and procedures of international agreements where applicable, grant trade preferences to other developing countries without being obliged to extend such preferences to developed countries, provided these arrangements do not constitute an impediment to general trade liberalization and expansion.

Article 22

1. All States should respond to the generally recognized or mutually agreed development needs and objectives of developing countries by promoting increased net flows of real resources to the developing countries from all sources, taking into account any obligations and commitments undertaken by the States concerned, in order to reinforce the efforts of developing countries to accelerate their economic and social development.

2. In this context, consistent with the aims and objectives mentioned above and taking into account any obligations and commitments undertaken in this regard, it should be their endeavour to increase the net amount of financial flows from official sources to developing countries and to improve the terms and conditions thereof.

3. The flow of development assistance resources should include economic and technical assistance.

Article 23

To enhance the effective mobilization of their own resources, the developing countries should strengthen their economic co-operation and expand their mutual trade so as to accelerate their economic and social development. All countries, especially developed countries, individually as well as through the competent international organizations of which they are members, should provide appropriate and effective support and co-operation.

Article 24

All States have the duty to conduct their mutual economic relations in a manner which takes into account the interests of other countries. In particular, all States should avoid prejudicing the interests of developing countries.

Article 25

In furtherance of world economic development, the international community, especially its developed members, shall pay special attention to the particular needs and problems of the least developed among the developing countries, of land-locked developing countries and also island developing countries, with a view to helping them to overcome their particular difficulties and thus contribute to their economic and social development.

Article 26

All States have the duty to coexist in tolerance and live together in peace, irrespective of differences in political, economic, social and cultural systems, and to facilitate trade between States having different economic and social systems. International trade should be conducted without prejudice to generalized non-discriminatory and non-reciprocal preferences in favour of developing countries, on the basis of mutual advantage, equitable benefits and the exchange of most-favoured-nation treatment.

Article 27

1. Every State has the right to enjoy fully the benefits of world invisible trade and to engage in the expansion of such trade.

2. World invisible trade, based on efficiency and mutual and equitable benefit, furthering the expansion of the world economy, is the common goal of all States. The role of developing countries in world invisible trade should be enhanced and strengthened consistent with the above objectives, particular attention being paid to the special needs of developing countries.

3. All States should co-operate with developing countries in their endeavours to increase their capacity to earn foreign exchange from invisible transactions, in accordance with the potential and needs of each developing country and consistent with the objectives mentioned above.

Article 28

All States have the duty to co-operate in achieving adjustments in the prices of exports of developing countries in relation to prices of their imports so as to promote just and equitable terms of trade for them, in a manner which is remunerative for producers and equitable for producers and consumers.

CHAPTER III

COMMON RESPONSIBILITIES TOWARDS THE INTERNATIONAL COMMUNITY

Article 29

The sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, are the common heritage of mankind. On the basis of the principles adopted by the General Assembly in resolution 2749 (XXV) of 17 December 1970, all States shall ensure that the exploration of the area and exploitation of its resources are carried out exclusively for peaceful purposes and that the benefits derived therefrom are shared equitably by all States, taking into account the particular interests and needs of developing countries; an international régime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally agreed upon.

Article 30

The protection, preservation and enhancement of the environment for the present and future generations is the responsibility of all States. All States shall endeavour to establish their own environmental and developmental policies in conformity with such responsibility. The environmental policies of all States should enhance and not adversely affect the present and future development potential of developing countries. All States have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. All States should co-operate in evolving international norms and regulations in the field of the environment.

CHAPTER IV

FINAL PROVISIONS

Article 31

All States have the duty to contribute to the balanced expansion of the world economy, taking duly into account the close interrelationship between the well-being of the developed countries and the growth and development of the developing countries, and the fact that the prosperity of the international community as a whole depends upon the prosperity of its constituent parts.

Article 32

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights.

Article 33

1. Nothing in the present Charter shall be construed as impairing or derogating from the provisions of the Charter of the United Nations or actions taken in pursuance thereof.

2. In their interpretation and application, the provisions of the present Charter are interrelated and each provision should be construed in the context of the other provisions.

Article 34

An item on the Charter of Economic Rights and Duties of States shall be included in the agenda of the General Assembly at its thirtieth session, and thereafter on the agenda of every fifth session. In this way a systematic and comprehensive consideration of the implementation of the Charter, covering both progress achieved and any improvements and additions which might become necessary, would be carried out and appropriate measures recommended. Such

consideration should take into account the evolution of all the economic, social, legal and other factors related to the principles upon which the present Charter is based and on its purpose.

(b) *Declaration on the Establishment of a New International Economic Order*[31]

By resolution 3201 (S-VI) of 1 May 1974, the General Assembly adopted the Declaration on the Establishment of a New International Economic Order, paragraph 4 of which reads as follows:

"4. The new international economic order should be founded on full respect for the following principles:

"(*a*) Sovereign equality of States, self-determination of all peoples, inadmissibility of the acquisition of territories by force, territorial integrity and non-interference in the internal affairs of other States;

"(*b*) The broadest co-operation of all the States members of the international community, based on equity, whereby the prevailing disparities in the world may be banished and prosperity secured for all;

"(*c*) Full and effective participation on the basis of equality of all countries in the solving of world economic problems in the common interest of all countries, bearing in mind the necessity to ensure the accelerated development of all the developing countries, while devoting particular attention to the adoption of special measures in favour of the least developed, land-locked and island developing countries as well as those developing countries most seriously affected by economic crises and natural calamities, without losing sight of the interests of other developing countries;

"(*d*) The right of every country to adopt the economic and social system that it deems the most appropriate for its own development and not to be subjected to discrimination of any kind as a result;

"(*e*) Full permanent sovereignty of every State over its natural resources and all economic activities. In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State. No State may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right;

"(*f*) The right of all States, territories and peoples under foreign occupation, alien and colonial domination or *apartheid* to restitution and full compensation for the exploitation and depletion of, and damages to, the natural resources and all other resources of those States, territories and peoples;

"(*g*) Regulation and supervision of the activities of transnational corporations by taking measures in the interest of the national economies of the countries where such transnational corporations operate on the basis of the full sovereignty of those countries;

"(*h*) The right of the developing countries and the peoples of territories under colonial and racial domination and foreign occupation to achieve their liberation and to regain effective control over their natural resources and economic activities;

"(*i*) The extending of assistance to developing countries, peoples and territories which are under colonial and alien domination, foreign occupation, racial discrimination or *apartheid* or are subjected to economic, political or any other type of coercive measures to obtain from them the subordination of the exercise of their sovereign rights and to secure from them advantages of any kind, and to neo-colonialism in all its forms, and

[31] For relevant documents, see *Official Records of the General Assembly, Sixth Special Session, Annexes*, agenda item 7.

which have established or are endeavouring to establish effective control over their natural resources and economic activities that have been or are still under foreign control;

"(*j*) Just and equitable relationship between the prices of raw materials, primary commodities, manufactured and semi-manufactured goods exported by developing countries and the prices of raw materials, primary commodities, manufactures, capital goods and equipment imported by them with the aim of bringing about sustained improvement in their unsatisfactory terms of trade and the expansion of the world economy;

"(*k*) Extension of active assistance to developing countries by the whole international community, free of any political or military conditions;

"(*l*) Ensuring that one of the main aims of the reformed international monetary system shall be the promotion of the development of the developing countries and the adequate flow of real resources to them;

"(*m*) Improving the competitiveness of natural materials facing competition from synthetic substitutes;

"(*n*) Preferential and non-reciprocal treatment for developing countries, wherever feasible, in all fields of international economic co-operation whenever possible;

"(*o*) Securing favourable conditions for the transfer of financial resources to developing countries;

"(*p*) Giving to the developing countries access to the achievements of modern science and technology, and promoting the transfer of technology and the creation of indigenous technology for the benefit of the developing countries in forms and in accordance with procedures which are suited to their economies;

"(*q*) The need for all States to put an end to the waste of natural resources, including food products;

"(*r*) The need for developing countries to concentrate all their resources for the cause of development;

"(*s*) The strengthening, through individual and collective actions, of mutual economic, trade, financial and technical co-operation among the developing countries, mainly on a preferential basis;

"(*t*) Facilitating the role which producers' associations may play within the framework of international co-operation and, in pursuance of their aims, *inter alia* assisting in the promotion of sustained growth of the world economy and accelerating the development of developing countries."

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3. HUMANITARIAN ACTIVITIES

Office of the United Nations High Commissioner for Refugees[32]

By resolution 3272 (XXIX) of 10 December 1974, the General Assembly, noting the view of the Executive Committee of the High Commissioner's Programme that a conference of plenipotentiaries on territorial asylum should be called as soon as possible, decided to establish a Group of Experts to review the text of the draft convention on territorial asylum drawn up at two successive meetings of experts held in 1971 and 1972.[33]

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[32] For detailed information, see *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 12* (A/9612 and Corr.1), *Supplement No. 12A* (A/9612/Add.1), *Supplement No. 12B* (A/9612/Add.2) and *Supplement No. 12C* (A/9612/Add.3). See also *ibid.*, *Annexes*, agenda item 59.

[33] For the text of the draft convention, see *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 12* (A/8712), Appendix.

In the field of international protection, the UNHCR encountered considerable difficulties in safeguarding the basic human rights of refugees recognized in international legal instruments. The High Commissioner considers it essential that more States, especially in the areas concerned, become parties to such instruments as the 1951 Convention relating to the Status of Refugees[34] and the 1967 Protocol thereto[35] and the OAU Convention of 1969 governing the Specific Aspects of Refugee Problems in Africa.[36] In considering the impact of nationality on the problems of refugees, it should be noted that as of 31 December 1974, 29 States were parties to the 1954 Convention relating to the Status of Stateless Persons[37] and that the 1961 Convention on the Reduction of Statelessness[38] is to come into effect in December 1975. In this regard, the General Assembly, by resolution 3274 (XXIX) of 10 December 1974, requested the Office of the United Nations High Commissioner for Refugees provisionally to undertake the functions foreseen under the Convention in accordance with its article 11,[39] after the entry into force of the Convention.

IV. THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

At its first, organizational, session, held in New York in December 1973, the Conference decided that it would adopt its rules of procedure at its second session not later than 27 June 1974. During the period between the first and second sessions, various informal consultations were held with regard to the adoption of the rules of procedure, in the course of which several new amendments and documents were submitted.

The second session of the Conference was held in Caracas, Venezuela, from 20 June to 29 August 1974. At its opening meeting, the Conference heard addresses by the President of Venezuela, the President of the Conference and by the Secretary-General of the United Nations. Representatives of 138 States participated in the session.

The first week of the session was devoted to consideration of the rules of procedure of the Conference[40] which were subsequently revised[41] to cover, among other things, participation by observers of national liberation movements which the Conference had decided to invite on 11 July. The rules of procedure were adopted on 27 June.[42] On 21 June, the Conference decided to allocate to the plenary and to the Main Committees the subjects and issues prepared in accordance with General Assembly resolution 2750 C (XXV) of 17 December 1970. From 28 June to 7 August, the Conference heard general statements by 115 delegations and by various intergovernmental organizations, specialized agencies and others.

During the session in Caracas, the three Main Committees of the Conference discussed items referred to them and endeavoured to develop agreement on texts of draft treaty articles. After a general discussion, the First Committee considered the economic implications of

[34] United Nations, *Treaty Series*, vol. 189, p. 137.

[35] See *Juridical Yearbook*, 1967, p. 285.

[36] Organization of African Unity document CM/267/Rev.1.

[37] United Nations, *Treaty Series*, vol. 360, p. 117.

[38] A/CONF.9/15.

[39] Article 11 of the Convention reads as follows:

"The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority."

[40] A/CONF.62/30.

[41] A/CONF.62/30/Rev.1.

[42] United Nations publication, Sales No. E.74.I.18.

mining in the deep sea-bed. The Committee established a working group to pursue negotiations on 21 draft articles relating to the principles of a sea-bed régime.

The Second Committee decided to consider the items allocated to it through debates on each and then to identify the main trends. This stage produced various working papers which, in a second stage, were to be given a second reading in which connected items were to be considered in groups. Finally, the Committee decided to consolidate the various informal working papers into a single working document, which would form a basis for its future work.

The Third Committee, after holding a general discussion, proceeded in its work mainly through informal meetings devoted to the drafting of articles.

Since none of the Committees had completed its work at the close of the session, the Conference decided to request the General Assembly to schedule a further session at Geneva from 17 March to 10 May 1975. It also agreed to recommend that the formal final session of the Conference should be held at Caracas for the purpose of signature of the Final Act and other instruments of the Conference.

Discussion of the work of the Conference at the twenty-ninth session of the General Assembly was limited essentially to arrangements related to the continuation of the work of the Conference. By resolution 3334 (XXIX) of 17 December 1974, the General Assembly, *inter alia*, approved the convening of the third session of the Third United Nations Conference on the Law of the Sea from 17 March to 10 May 1975 at Geneva; decided to authorize the Conference to include Arabic as an official and working language; and requested the Secretary-General to invite: (*a*) Papua New Guinea to attend any future session of the Conference, if independent, as a participating State and, while not independent, to attend as an observer; (*b*) the Cook Islands, Netherlands Antilles, Niue, Surinam and the West Indies Associated States to attend any future session of the Conference as observers or, if any of them became independent, as a participating State; and (*c*) the Trust Territory of the Pacific Islands to attend any future session of the Conference as an observer.

V. INTERNATIONAL COURT OF JUSTICE[43,44]

1. Cases submitted to the Court[45]

(a) *Fisheries Jurisdiction*

(*United Kingdom* v. *Iceland*)
(*Federal Republic of Germany* v. *Iceland*)

These two cases concerned Iceland's decision to extend its exclusive fisheries jurisdiction from a limit of 12 miles to one of 50 miles as from 1 September 1972, which the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany contended to be contrary to international law.

By two Judgements delivered on 25 July 1974, the Court, by 10 votes to 4: (*a*) found that the Icelandic Regulations of 1972 constituting a unilateral extension of the exclusive fishing rights of Iceland to 50 nautical miles from the baselines was not opposable either to the United Kingdom or to the Federal Republic of Germany; (*b*) found that Iceland was not entitled unilaterally to exclude fishing vessels of the United Kingdom or of the Federal Republic from

[43] For the composition of the Court, see *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 5* (A/9605), sect. I.

[44] As of 31 December 1974, the number of States accepting the compulsory jurisdiction of the Court under Article 36, paragraph 2, stood at 45.

[45] For detailed information, see *I.C.J. Reports 1974*; *I.C.J. Reports 1975*; *I.C.J. Yearbook 1973-1974*, No. 28; and *I.C.J. Yearbook 1974-1975*, No. 29.

areas between the 12-mile and 50-mile limits or unilaterally to impose restrictions on their activities in such areas; (*c*) held that Iceland and the United Kingdom and Iceland and the Federal Republic were under mutual obligations to undertake negotiations in good faith for an equitable solution of their differences; and (*d*) indicated certain factors which were to be taken into account in those negotiations (preferential rights of Iceland, established rights of the United Kingdom and of the Federal Republic, interests of other States, conservation of fishery resources, joint examination of measures required). The Court further found, by 10 votes to 4, that it was unable to accede to the submission of the Federal Republic of Germany concerning a claim to be entitled to compensation.

(b) *Nuclear Tests*

(*Australia* v. *France*)

(*New Zealand* v. *France*)

These two cases concerned the atmospheric nuclear tests carried out by France in the South Pacific region, which Australia and New Zealand contended to be contrary to international law.

From 4 to 11 July 1974 the Court held public sittings at which the representatives of Australia and of New Zealand put forward argument on the questions of the jurisdiction of the Court in these cases and the admissibility of the Applications. France was not represented.

On 20 December 1974, the Court delivered two Judgements by which, noting that France had announced its intention to hold no further series of atmospheric tests after 1974, it found by 9 votes to 6 that the claims of Australia and New Zealand no longer had any object and that there was consequently nothing on which to give judgement.

By two Orders made the same day, the Court found unanimously that, in the circumstances, the Applications of Fiji for permission to intervene lapsed and that no further action thereon was called for on the part of the Court.

(c) *Western Sahara*

(*Request for an advisory opinion*)

By resolution 3292 (XXIX) of 13 December 1974, received in the Registry of the Court on 21 December, the General Assembly requested the Court to give an advisory opinion on the following questions:

"I. Was Western Sahara (Río de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (*terra nullius*)?"

If the answer to the first question is in the negative,

"II. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?"[46]

2. OTHER ACTIVITIES

Review of the role of the Court

An item entitled "Review of the Role of the International Court of Justice" was included in the agenda of the General Assembly at its twenty-fifth session in 1970, at the request of 12 delegations including the United States, Japan and Canada. The co-sponsors aimed essentially at the establishment of an *ad hoc* committee which would undertake a study of the obstacles to the satisfactory functioning of the Court and ways and means of removing them. This idea received only partial support in the Sixth Committee, and the General Assembly deferred its decision on the matter at four successive sessions, in 1970, 1971, 1972 and 1973. At the twenty-

[46] The Court delivered its advisory opinion on 16 October 1975.

ninth session in 1974, the majority of delegations favoured putting an end to the consideration of the item by adopting a consensus draft resolution on the role of the Court in general.

This approach was reflected in a draft resolution (A/C.6/L.987/Rev.2)[47] under which the General Assembly, after recognizing that the development of international law might be reflected, *inter alia*, by declarations and resolutions of the General Assembly which might to that extent be taken into consideration by the International Court of Justice, would recognize the desirability that States study the possibility of accepting, with as few reservations as possible, the compulsory jurisdiction of the Court in accordance with Article 36 of its Statute; draw the attention of States to the advantage of inserting in treaties, in cases considered possible and appropriate, clauses providing for the submission to the International Court of Justice of disputes which might arise from the interpretation or application of such treaties; call upon States to keep under review the possibility of identifying cases in which use could be made of the International Court of Justice; draw the attention of States to the possibility of making use of chambers as provided in Articles 26 and 29 of the Statute of the International Court of Justice and in the Rules of Court, including those which would deal with particular categories of cases; recommend that United Nations organs and the specialized agencies should, from time to time, review legal questions within the competence of the International Court of Justice that had arisen or would arise during their activities and should study the advisability of referring them to the Court for an advisory opinion, provided that they were duly authorized to do so; and reaffirm that recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered an unfriendly act between States.

This draft resolution was adopted by consensus by the Sixth Committee. Various delegations did, however, express reservations on a number of provisions and said that, had the draft been put to the vote, they could not have supported it.

On 12 November 1974, the draft resolution was adopted by the General Assembly as resolution 3232 (XXIX).[48]

VI. INTERNATIONAL LAW COMMISSION[49]

TWENTY-SIXTH SESSION OF THE COMMISSION[50]

The International Law Commission held its twenty-sixth session at Geneva from 6 May to 26 July 1974. The session was mainly devoted to the preparation of a final set of draft articles on "Succession of States in respect of treaties" and of draft articles provisionally adopted on the topics "State responsibility" and "Question of treaties concluded between States and international organizations or between two or more international organizations", and to the commencement of work on "The law of the non-navigational uses of international watercourses".

[47] For other relevant documents, see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 93.

[48] It should be noted that the General Assembly adopted at its twenty-ninth session a resolution on the peaceful settlement of international disputes (resolution 3283 (XXIX)), which deals in part with the role of the International Court of Justice (see section II.2 above).

[49] For the membership of the Commission, see *Official Records of the General Assembly, Thirtieth Session, Supplement No. 10* (A/10010/Rev.1), Chap. I.

[50] For detailed information see *Yearbook of the International Law Commission, 1974*, vols. I and II, Parts One and Two (United Nations publications, Sales Nos. E.75.V.6, E.75.V.7 (Part I) and E.75.V.7 (Part II).

Consideration by the General Assembly

On 14 December 1974, the General Assembly adopted resolution 3315 (XXIX) concerning the report of the Commission on the work of its twenty-sixth session.[51] In section I of the resolution, the Assembly, *inter alia*, recommended that the Commission should continue on a high priority basis at its twenty-seventh session its work on State responsibility with a view to the preparation of a first set of draft articles on responsibility of States for internationally wrongful acts at the earliest possible time and take up, as soon as appropriate, the separate topic of international liability for injurious consequences arising out of acts not prohibited by international law; proceed with the preparation, on a priority basis, of draft articles on succession of States in respect of matters other than treaties; proceed with the preparation of draft articles on the most-favoured-nation clause and on treaties concluded between States and international organizations or between international organizations; and continue its study of the law of non-navigational uses of international watercourses. In addition, the Assembly approved, in the light of the importance of its existing work programme, a 12-week period for the Commission's annual sessions, subject to review by the Assembly whenever necessary. In section II of the resolution, the General Assembly, *inter alia*, invited Member States to submit to the Secretary-General their written comments and observations on the draft articles on succession of States in respect of treaties contained in the Commission's report on the work of its twenty-sixth session, including comments and observations on certain proposals referred to in the report, which the Commission was prevented from discussing by lack of time, and on the procedure by which and the form in which work on the draft articles should be completed; requested the Secretary-General to circulate, before the thirtieth session of the Assembly, the comments and observations referred to above; and decided to include in the provisional agenda of its thirtieth session an item entitled "Succession of States in respect of treaties".

VII. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[52]

The United Nations Commission on International Trade Law continued to make substantial progress in the unification and harmonization of the law of international trade.[53]

The report of the Commission on the work of its seventh session, held in New York from 13 to 17 May 1974, was considered by the General Assembly at its twenty-ninth session.[54] In resolution 3316 (XXIX) of 14 December 1974, the Assembly commended the Commission for its progress; noted with satisfaction that work on uniform rules on the liability of ocean carriers for loss, damage or delay with respect to cargo was nearing completion and that a draft convention setting forth such rules would be transmitted to Governments and interested international organizations in 1975 for their comments; and recommended that the Commission should continue in its work to pay special attention to the topics to which it had decided to give priority, namely, the international sale of goods, international payments, international commercial arbitration and international legislation on shipping, and also continue to consider the legal problems presented by multinational enterprises and the advisability of preparing

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[51] For relevant documents, see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 87.

[52] For the membership of the Commission, see *Official Records of the General Assembly, Thirtieth Session, Supplement No. 17* (A/10017), chap. I, sect. 13.

[53] For detailed information, see *Yearbook of the United Nations Commission on International Trade Law, vol. V: 1974* (United Nations publication, Sales No. E.75.V.2).

[54] For relevant documents, see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 89.

uniform rules governing the liability for damage caused by products intended for or involved in international trade.

VIII. OTHER LEGAL QUESTIONS

1. Definition of aggression

The report of the Special Committee on the Question of Defining Aggression[55] on the work of its seventh session, held at United Nations Headquarters from 11 March to 12 April 1974, was before the General Assembly at its twenty-ninth session.[56] On 14 December 1974, the Assembly adopted resolution 3314 (XXIX), by which it, *inter alia*, approved the Definition of Aggression annexed thereto; called upon all States to refrain from all acts of aggression and other uses of force contrary to the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations; called the attention of the Security Council to the Definition of Aggression adopted, and recommended that it should, as appropriate, take account of that Definition as guidance in determining, in accordance with the Charter, the existence of an act of aggression. The text of the Definition is reproduced below.

DEFINITION OF AGGRESSION

The General Assembly,

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

Recalling that the Security Council, in accordance with Article 39 of the Charter of the United Nations, shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security,

Recalling also the duty of States under the Charter to settle their international disputes by peaceful means in order not to endanger international peace, security and justice,

Bearing in mind that nothing in this Definition shall be interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations,

Considering also that, since aggression is the most serious and dangerous form of the illegal use of force, being fraught, in the conditions created by the existence of all types of weapons of mass destruction, with the possible threat of a world conflict and all its catastrophic consequences, aggression should be defined at the present stage,

Reaffirming the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial integrity,

Reaffirming also that the territory of a State shall not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State in contravention of the Charter, and that it shall not be the object of acquisition by another State resulting from such measures or the threat thereof,

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[55] For the membership of the Special Committee, see *Official Records of the General Assembly, Twenty-second Session, Supplement No. 16A* (A/6716/Add.1), p. 9.

[56] *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 19* (A/9619 and Corr.1). For other relevant documents, see *ibid.*, *Annexes*, agenda item 86.

Reaffirming also the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Convinced that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim,

Believing that, although the question whether an act of aggression has been committed must be considered in the light of all the circumstances of each particular case, it is nevertheless desirable to formulate basic principles as guidance for such determination,

Adopts the following Definition of Aggression:[57]

Article 1

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

Explanatory note: In this Definition the term "State":

(*a*) Is used without prejudice to questions of recognition or to whether a State is a Member of the United Nations;

(*b*) Includes the concept of a "group of States" where appropriate.

Article 2

The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

Article 3

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

(*a*) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(*b*) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(*c*) The blockade of the ports or coasts of a State by the armed forces of another State;

(*d*) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(*e*) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(*f*) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

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[57] Explanatory notes on articles 3 and 5 are to be found in paragraph 20 of the report of the Special Committee on the Question of Defining Aggression (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 19* (A/9619 and Corr.1)). Statements on the Definition are contained in paragraphs 9 and 10 of the report of the Sixth Committee (A/9890).

(*g*) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Article 4

The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.

Article 5

1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.

2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.

3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

Article 6

Nothing in this Definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

Article 7

Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist régimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

Article 8

In their interpretation and application the above provisions are interrelated and each provision should be construed in the context of the other provisions.

2. United Nations Conference on Prescription (Limitation) in the International Sale of Goods

Pursuant to General Assembly resolution 3104 (XXVIII) of 12 December 1973, the United Nations Conference on Prescription (Limitation) in the International Sale of Goods was held at United Nations Headquarters from 20 May to 14 June 1974.[58] The Conference adopted the Convention on the Limitation Period in the International Sale of Goods,[59] which was opened for signature and ratification.

By its resolution 3317 (XXIX) of 14 December 1974, the General Assembly, *inter alia*, took note of the adoption of the above-mentioned Convention, reaffirmed its conviction that the harmonization and unification of national rules governing prescription (limitation) in the international sale of goods would contribute to the removal of obstacles to the development of world trade and invited all States which had not yet done so to consider the possibility of signing, ratifying or acceding to the Convention.

[58] For the proceedings of the Conference, see A/CONF.63/16 (United Nations publication, Sales No. E.74.V.8).

[59] Reproduced on p. 92 of this *Yearbook*.

3. Respect for human rights in armed conflicts

The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, convoked by the Swiss Federal Council, held its first session at Geneva from 20 February to 29 March 1974. About 136 States participated, including Guinea-Bissau which was invited by the Conference. National liberation movements recognized by the regional intergovernmental organizations concerned were also invited by the Conference to participate therein without the right to vote. The Secretary-General was represented at the Conference by an observer delegation. The Conference held a general debate and its established three Main Committees began consideration of articles in draft Additional Protocol I (International armed conflicts) and draft Additional Protocol II (Non-international armed conflicts), and amendments thereto, as follows: Committee I (General Provisions), Committee II (Wounded, Sick and Shipwrecked Persons, Civil Defence, Relief) and Committee III (Civilian Population, Methods and Means of Combat, New Category of Prisoners of War). An *Ad Hoc* Committee of the Whole was established to examine the question of prohibition or restriction of use of specific categories of conventional weapons and report thereon to the Conference.[60] The Conference decided to include the examination of the question of protection of journalists engaged in dangerous missions—referred to it by General Assembly resolution 3058 (XXVIII) of 2 November 1973—as a matter of priority in the agenda of its second session.

In accordance with General Assembly resolution 3102 (XXVIII) of 12 December 1973, the Secretary-General submitted to the Assembly at its twenty-ninth session a report on the first session of the Conference.[61]

An addendum to the report (A/9669/Add.1) contained a summary of information concerning activities of non-governmental bodies, which had manifested their specific interest in various problems, relating to respect for human rights in armed conflicts, received by the Secretary-General subsequent to the adoption of resolution 3102 (XXVIII), namely, information communicated by the International Committee of the Red Cross (ICRC), the League of Red Cross Societies, the International Confederation of Former Prisoners of War, the World Veterans Federation and the International Institute of Humanitarian Law. The information communicated by the ICRC concerned the Conference of Government Experts on the Use of Certain Conventional Weapons, convened under the auspices of the Committee at Lucerne, Switzerland, from 24 September to 18 October 1974.[62]

On 14 December 1974, the General Assembly adopted resolution 3319 (XXIX), in which it expressed its appreciation to the Swiss Federal Council for convoking in 1975 the second session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts and to the International Committee of the Red Cross for its readiness to convoke in 1975 another Conference of Government Experts on Weapons That May Cause Unnecessary Suffering or Have Indiscriminate Effects. The Assembly urged all participants in the Diplomatic Conference to do their utmost to reach agreement on additional rules which might help to alleviate the suffering brought about by armed conflicts and to respect and protect non-combatants and civilian objects in such conflicts. Further, the Assembly called upon all parties to armed conflicts to acknowledge and comply with their obligations under the humanitarian instruments and to observe the

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[60] The report of the *Ad Hoc* Committee was transmitted to the International Committee of the Red Cross with a view to assisting it in identifying questions and possibilities which need to be explored in depth by the conference of government experts on weapons that may cause unnecessary suffering or have indiscriminate effects convened by the International Committee of the Red Cross at Lucerne, Switzerland, from 4 to 28 June 1974.

[61] A/9669. For other relevant documents, see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda items 92 and 12.

[62] International Committee of the Red Cross, "Report on the work of the Conference of Government Experts on the Use of Certain Conventional Weapons", 1974.

international humanitarian rules which are applicable, in particular the Hague Conventions of 1899 and 1907,[63] the Geneva Protocol of 1925[64] and the Geneva Conventions of 1949.[65] It requested the Secretary-General to report to the General Assembly at its thirtieth session on relevant developments, concerning the topic, in particular on the proceedings and results of the 1975 session of the Diplomatic Conference.

Under resolution 3318 (XXIX) of 14 December 1974, the General Assembly solemnly proclaimed a Declaration on the Protection of Women and Children in Emergency and Armed Conflict in the struggle for peace, self-determination, national liberation and independence, and called for the strict observance of the Declaration by all Member States.[66] The Assembly proclaimed, *inter alia*, that attacks and bombings on the civilian population, inflicting incalculable suffering, especially on women and children, who are the most vulnerable members of the population, shall be prohibited, and such acts shall be condemned; that the use of chemical and bacteriological weapons in the course of military operations constitutes one of the most flagrant violations of the Geneva Protocol of 1925, the Geneva Conventions of 1949 and the principles of international humanitarian law and inflicts heavy losses on civilian populations, including defenceless women and children, and shall be severely condemned; that all States should abide fully by their obligations under instruments of international law relative to respect for human rights in armed conflicts, which offer important guarantees for the protection of women and children; that all efforts should be made by States involved in armed conflicts, military operations in foreign territories and in territories still under colonial domination to spare women and children from the ravages of war; that all forms of repression and cruel and inhuman treatment of women and children, including imprisonment, torture, shooting, mass arrests, collective punishment, destruction of dwellings and forcible eviction, committed by belligerents in the course of military operations or in occupied territories should be considered criminal; and that women and children belonging to the civilian population and finding themselves in circumstances of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence, or who live in occupied territories, should not be deprived of shelter, food, medical aid or other inalienable rights.

4. Question of diplomatic asylum

By a letter dated 16 August 1974,[67] Australia requested the inclusion in the agenda of the twenty-ninth session of the General Assembly of an item entitled "Diplomatic asylum". In the explanatory memorandum attached to its request, Australia indicated that the absence of general agreement on the principles which should govern diplomatic asylum could lead to misunderstanding and confusion about the rights and obligations of States. It pointed out that only some of the States granting such protection had been parties to conventions on asylum and that only some of them belonged to the Latin American region, which had developed so notably the practice of diplomatic asylum. In the opinion of the Australian Government, any uncertainty about the universally accepted principles governing diplomatic asylum could have detrimental consequences for friendly relations between States and for their co-operation in solving international problems of a humanitarian character. Australia therefore held the view

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[63] Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1915).

[64] League of Nations, *Treaty Series*, vol. XCIV, p. 65.

[65] United Nations, *Treaty Series*, vol. 75.

[66] This resolution was adopted after consideration of paragraph 493 of the report of the Economic and Social Council on the work of its fifty-sixth and fifty-seventh sessions related to Council resolution 1861 (LVI) of 16 May 1974 (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 3* (A/9603). By resolution 1861 (LVI), the Council recommended to the General Assembly the adoption of a draft resolution on the subject. The draft resolution was submitted to the Economic and Social Council by the Commission on the Status of Women.

[67] A/9704. For the request and other documents, see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 105.

that it was opportune for the General Assembly to consider further the question of the desirability of formulating principles on diplomatic asylum.

The General Assembly adopted resolution 3321 (XXIX) of 14 December 1974 under which it, *inter alia*, invited Member States wishing to express their views on the question of diplomatic asylum to communicate those views to the Secretary-General; and requested the Secretary-General to prepare and circulate to Member States, before the thirtieth session of the Assembly, a report containing an analysis of the question of diplomatic asylum.[68]

5. Need to consider suggestions regarding the review of the Charter of the United Nations

At its twenty-ninth session, the General Assembly had before it a report of the Secretary-General, submitted pursuant to Assembly resolution 2968 (XXVII) of 14 December 1972, setting out the views and suggestions of seven Member States on a review of the Charter.[69]

In resolution 3349 (XXIX) of 17 December 1974, the General Assembly, while reaffirming its support for the purposes and principles of the Charter, decided to establish an *Ad Hoc* Committee on the Charter of the United Nations, consisting of 42 members, to discuss the observations received from Governments and to consider any additional specific proposals that Governments might make with a view to enhancing the ability of the United Nations to achieve its purposes and other suggestions for the more effective functioning of the United Nations that might not require amendments to the Charter. The Assembly also invited Governments to submit or to bring up to date their observations on the Charter review. It invited the Secretary-General to submit to the *Ad Hoc* Committee his views, as appropriate, on the experience acquired in the application of the provisions of the Charter with regard to the Secretariat, and requested him to prepare an analytical paper containing the observations received from Governments and the views expressed at the twenty-seventh and twenty-ninth sessions of the General Assembly. The Assembly also requested the *Ad Hoc* Committee to submit a report on its work to the General Assembly at its thirtieth session.

6. Participation in the Convention on Special Missions,[70] its Optional Protocol concerning the Compulsory Settlement of Disputes[71] and the Vienna Convention on the Law of Treaties[72]

On 12 November 1974, the Assembly adopted resolution 3233 (XXIX), by which it decided to invite all States to become parties to the Convention on Special Missions, its Optional Protocol concerning the Compulsory Settlement of Disputes and the Vienna Convention on the Law of Treaties.[73]

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[68] The report was circulated for the thirtieth session of the General Assembly as document A/10139 (Part I) and Add.1 and A/10139 (Part II).

[69] A/9739. For other relevant documents, see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 95.

[70] Reproduced in the *Juridical Yearbook*, 1969, p. 125.

[71] *Ibid.*, p. 139.

[72] *Ibid.*, p. 140.

[73] For relevant documents, see *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda items 96 and 97.

IX. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH[74]

In 1974 the Institute organized a number of courses in the form of seminars such as those on "Negotiating Procedures in the United Nations System". It also, as in previous years, assumed responsibility for the major part of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, established under General Assembly resolution 2099 (XX) of 20 December 1965.

The Institute has continued its research work on such topics as dispute settlement procedures in ocean resources and environmental fields, the peaceful settlement and conflict resolution and measures in regard to arms control. Among the publications which were issued in 1974, mention may be made of *The OAS and the UN: Relations in the Peace and Security Field* (UNITAR/PS/7—UNITAR/RS/4), *International Navigable Waterways: Financial and Legal Aspects of their Improvement and Maintenance* (UNITAR/ST/6) and *Tendencias del Derecho del Mar Contemporáneo* (UNITAR/LS/5).

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

I. INTERNATIONAL LABOUR ORGANISATION[75]

1. The International Labour Conference (ILC), which held its 59th session in Geneva in June 1974, adopted a Convention and a Recommendation concerning the Control and Prevention of Occupational Hazards Caused by Carcinogenic Substances and Agents, 1974[76] and a Convention and a Recommendation concerning Paid Educational Leave, 1974.[77]

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[74] For detailed information, see *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 14* (A/9614) and *ibid., Thirtieth Session, Supplement No. 14* (A/10014).

[75] In regard to the adoption of instruments, the preparatory work, which, by virtue of the double-discussion procedure, normally covers a period of two years, is indicated, in order to facilitate reference work, according to the year during which the instrument was adopted.

[76] *Official Bulletin*, Vol. LVII, 1974, No. 1, pp. 15-18 and 22-26; English, French, Spanish. Regarding preparatory work, see: *First Discussion*—Control and Prevention of Occupational Cancer, ILC, 58th Session (1973), Report VII(1) (this report contains, *inter alia*, a description of the action which led to the placing of the question on the agenda of the Conference), and Report VII(2), 36 and 74 pages respectively; English, French, German, Russian and Spanish. See also: ILC, 58th Session (1973), *Record of Proceedings*, pp. 599-612, 697-700; English, French, Spanish. *Second Discussion*—Control and Prevention of Occupational Hazards Caused by Carcinogenic Substances and Agents, ILC, 59th Session (1974), Report V(1) and Report V(2), 39 and 45 pages respectively; English, French, German, Russian and Spanish. See also: ILC, 59th Session (1974), *Record of Proceedings*, pp. 329-346, 429-433, 676-680; English, French, Spanish.

[77] *Official Bulletin*, Vol. LVII, 1974, No. 1, pp. 18-22 and 27-30; English, French, Spanish. Regarding preparatory work, see: *First Discussion*—Paid Educational Leave, ILC, 58th Session (1973). Report VI(1) (this report contains, *inter alia*, a description of the action which led to the placing of the question on the agenda of the Conference) and Report VI(2), 58 and 65 pages respectively; English, French, German, Russian and Spanish. See also: ILC, 58th Session (1973), *Record of Proceedings*, pp. 451-462, 684-686, 691-697; English, French, Spanish. *Second Discussion*—Paid Educational Leave, ILC, 59th Session (1974), Report IV(1) and Report IV(2), 42 and 75 pages respectively; English, French, German, Russian and Spanish. See also: ILC, 59th Session (1974), *Record of Proceedings*, pp. 355-369, 470-476, 609-613, 681-684.

2. The Committee of Experts on the Application of Conventions and Recommendations met in Geneva from 14 to 27 March 1974 and presented its Report.[78]

3. The Governing Body Committee on Freedom of Association met in Geneva and adopted Reports 139, 140 and 141 at its 191st Session (November 1973); Reports 142 and 143 at its 192nd Session (February–March 1974); Reports 144 and 145 at its 193rd Session (May–June 1974); and Reports 146, 147 and 148 at its 194th Session (November 1974).[79]

II. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

1. Office of the Legal Counsel[80]

(a) *General constitutional and legal matters*

In addition to current legal advice and services provided to the Director-General and various units of the Secretariat, activities in 1974 related mainly to the legal matters considered by the Committee on Constitutional and Legal Matters (CCLM) at its Twenty-Ninth Session, held in October 1974, and by the FAO Council at its Sixty-Third and Sixty-Fourth Sessions, held in July and November 1974. These matters included in particular:

—an authorization by the Council and the Economic and Social Council for the granting of assistance by the World Food Programme to peoples in colonial territories in Africa and their national liberation movements, notwithstanding the provision of the General Regulations of the Programme limiting participation to Member States of the United Nations and Member Nations of FAO;[81]

—a reform of the system of staff representation whereby the single Staff Council elected by the staff as a whole was replaced by bodies formed by interested staff groups and recognized as representative by the Director-General, such groups being entitled to negotiate with the Director-General but not with Governing Bodies;[82]

—a new recruitment policy for general service staff who may in future be recruited from among nationals of all Member Nations and be considered as local staff regardless of nationality or place of recruitment.[83]

The Legal Office was also engaged in work connected with the preparation, conduct and follow-up of the World Food Conference of the United Nations held in Rome in November 1974; in particular, the Legal Counsel served as Legal Adviser to the Conference and members of his office served on the Credentials Committee and on the working party for the Declaration on the Eradication of Hunger and Malnutrition.[84]

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[78] This report has been published as Report III (Part 4) to the 59th Session (1974) of the International Labour Conference and constitutes two volumes: Vol. A: "General Report and Observations concerning Particular Countries", Report III (Part 4A), 266 pages; English, French, Spanish; and Vol. B: "General Survey of the Reports relating to the Termination of Employment Recommendation, 1963 (No. 119)", Report III (Part 4B), 118 pages; English, French, Spanish.

[79] These Reports have been published respectively in documents GB.191/13/22, 23 and 24; GB.192/11/24 and 25; GB.193/11/20 and 21; and GB.194/11/26, 27 and 28.

[80] For general information on the organization and functions of the Office of the Legal Counsel, see *Juridical Yearbook*, 1972, p. 60, note 47.

[81] CL 64/18, paras. 4-9; CL 64/INF/11; CL 64/REP, paras. 229-237.

[82] CL 64/18, paras. 18-27; CL 64/15, paras. 32-35 and 82-87; CL 64/LIM/9, CL 64/REP, paras. 295-301.

[83] CL 64/18, paras. 10-17; CL 64/5, paras. 36-39; CL 64/LIM/6 (reproduced on p. 199 of this *Yearbook*); CL 64/CW/PV/11; CL 64/PV/19; CL 64/REP, paras. 302-309.

[84] See Report of the Conference, document E/5587.

Legal Office staff also contributed substantially to the work of the Codex Alimentarius Commission which, at its Tenth Session in July 1974, considered a number of subjects of legal interest including a revision of the methods of acceptance of Codex Community and Codex General Standards.[85]

The following reference documents of legal interest were issued in revised versions in 1974:

(i) FAO Basic Texts Vols. I and II, 1974.[86]

(ii) Reference Table of Amendments to the FAO Constitution from 1945 to 1971 inclusive (LEG: MISC/74).

(iii) Directory of FAO Statutory Bodies and Panels of Experts 1974.

(b) *Environment law*

Legal Office staff provided secretariat services and documentation for the Consultation on the Protection of Living Resources and Fisheries from Pollution in the Mediterranean held in Rome in February and May 1974; contributed papers to the Conference on "Avoidance and Adjustment of Environmental Disputes", convened under the auspices of the United Nations Environment Programme at Bellagio in July 1974; to the Colloquium on "Legal Aspects of Environmental Law in Developing Countries", convened by the International Association of Legal Science at Mexico City in August 1974; and to the "Working Group on Environment" of the Vienna Conference on New Initiatives in East-West Cooperation, in November 1974; participated in the Task Force on "Protection of the Mediterranean" convened by the United Nations Environment Programme at Madrid in October 1974; and in the Expert Consultation on "Legal Aspects of Trans-Frontier Pollution", convened by OECD at Paris in December 1974.

FAO published translations and summaries of environmental legislation of various countries and references to other current national legislation in this field.[87] Legislative drafting assistance was provided, within the framework of UNDP, to the Government of Colombia for preparation of the "Code of Environment and Renewable Natural Resources" enacted on 18 December 1974.

(c) *Law of the Sea and international fisheries*

FAO participated in the Second Session of the United Nations Conference on the Law of the Sea at Caracas (June–August 1974) and was requested to submit to the Third Session an updated version of its publication on the limits and status of the territorial sea, exclusive fishing zones, fisheries conservation zones and the continental shelf. Documents on the views expressed, and the proposals submitted, on fisheries during the Fifth and Sixth Sessions of the Sea-Bed Committee and the Second Session of the Conference, were placed before the FAO Committee on Fisheries in October 1974.[88]

At its Twelfth Session in March 1974, the General Fisheries Council for the Mediterranean (GFCM) considered a paper on the effectiveness of existing fisheries management machinery.[89] It decided that it was necessary to undertake without delay a revision of the 1949 Agreement establishing the GFCM and, in the light of the experience acquired by other regulatory fishery bodies, to recommend such amendments to the Agreement as would make the GFCM more adapted to the new tasks it may be called upon to perform and more effective as regards the adoption, implementation and enforcement of conservation measures.

At its Ninth Session in October, the FAO Committee on Fisheries requested the secretariat to submit to its next session in 1975 a paper offering suggestions on ways and means

[85] See Report of the Session, ALINORM 74/44, paras. 36-47.

[86] Issued in English, French, Spanish and Arabic.

[87] Food and Agricultural Legislation, vol. XXIII, nos. 1 and 2.

[88] COFI/74 Inf. 4, Inf. 5 and Inf. 12.

[89] GFCM/XII/74/10.

to change the present status, powers and composition of the Fishery Committee for the Eastern Central Atlantic.

At its Sixteenth Session in November 1974, the Indo-Pacific Fisheries Council (IPFC) considered a document on the effectiveness of existing fisheries management machinery[90] and entrusted an *ad hoc* Committee with the task of reviewing the achievements and limitations of the IPFC during the last 25 years, with a view to determining the strengths and weaknesses of both the 1948 Agreement establishing the IPFC and its Rules of Procedure; redefining the functions and responsibilities of the IPFC in the light of the above review and to meet new challenges; and restating the provisions of the Agreement and Rules of Procedure as required.

2. Legislation branch[91]

In addition to the specific activities described below, legal officers participated in the Second and Third Meetings of the Group of Consultants and Advisers on Agrarian Law, held in Santiago de Chile, April and December 1974; in the FAO/UNESCO/ILO Inter-Secretariat Working Group on Agricultural Education, Science and Training (Twenty-Second Session) held in Rome in October 1974; in the Joint Session of the Working Party on Agrarian Structure (Fifth Session) and the Working Party on Rural Sociological Problems (Fifth Session) of the European Commission on Agriculture, held in Rome in December 1974; in the Session of the Committee on the Law of International Water Resources of the International Law Association, held in Geneva and New Delhi in April and December 1974; in the FAO Consultation on an International Convention for the Control of the Spread of Major Communicable Fish Diseases held in Aviemore (Scotland) in April 1974; in the Interparliamentary Conference of the Coastal States on the Pollution Control in the Mediterranean, held in Rome in March–April 1974.

(a) *Legislative assistance and expert advice in the field*

The following assistance has been given in 1974:

—marketing legislation in Iran;

—research and training in agrarian law in Venezuela;

—land registration and administration in Viet-Nam;

—rural legislation in Togo;

—international water law and administration in the Senegal River Basin;

—water legislation and administration in Indonesia, Libya, Philippines and Somalia;

—fisheries law and legislation in Malaysia, Mexico, Haiti and Fiji;

—forestry legislation in Haiti and Upper Volta;

—wildlife and national parks legislation in Sudan;

—natural resources legislation in Colombia.

(b) *Legal drafting*

Assistance has also been given, without field visits, by drafting or reviewing legislation and other legal documents, at the request of Member Nations or of FAO technical experts.

This form of assistance covered in 1974, *inter alia*, the following subjects:

—comments on draft water legislation in Afghanistan;

—comments on draft of joint Declaration of Principles for Utilization of the Waters for the Lower Mekong Basin.

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[90] IPFC/74/26.

[91] For general information on the organization and functions of the Legislation Branch, see *Juridical Yearbook*, 1972, p. 62, note 59.

(c) *Special or comparative legal studies and reports*

A number of studies and documents prepared by or in cooperation with the Legislation Branch of the FAO Legal Office have been issued in the course of the year, concerning, *inter alia*, agrarian law and agrarian justice, agricultural credit legislation, legislation on agrarian structures in Europe, water legislation, improvement in irrigation facilities, development and management of water resources, institutional and legal problems of water management, legislation for the conservation of marine resources and marine pollution in relation to protection of living resources.[92]

(d) *Collection, translation and dissemination of legislative information*

FAO publishes semi-annually, the *Food and Agriculture Legislation*. Annotated lists of relevant laws and regulations appear regularly in *Land Reform*, a semi-annual FAO publication. Similar lists are also published in the quarterly *Nutrition Newsletter* and in *Unasylva, An international journal of forestry and forest industries*.

III. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

1. Constitutional and procedural questions

(a) *Member States and Associate Members of the Organization*

(i) *New Member States*

Indicated below is information on the signature and acceptance of the Constitution of UNESCO by States which became members of the Organization within the period from 1 January to 31 December 1974:

State	*Date of signature of Constitution*	*Date of deposit of instrument of acceptance*
Portugal[93]	11 March 1965	11 September 1974
Democratic People's Republic of Korea	18 October 1974	18 October 1974
Guinea-Bissau	1 November 1974	1 November 1974
Republic of San Marino	12 November 1974	12 November 1974

Under the terms of the relevant provisions of the Constitution,[94] each of the aforementioned States became a member of the Organization on the respective date its acceptance took effect.

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[92] See the bibliography appearing at the end of this *Yearbook*.

[93] The following information is pertinent to Portugal's membership of the Organization: on 11 March 1965, the Constitution of UNESCO was signed on behalf of Portugal. Instrument of acceptance by Portugal of the Constitution was deposited on this same date with the Government of the United Kingdom. In accordance with the provisions of Article XV of the Constitution, the acceptance took effect on the same day. 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. In conformity with the terms of Article II.6 of the Constitution, the notice of withdrawal by Portugal from the Organization took effect on 31 December 1972. By cable received on 12 September 1974, the Director-General was informed by the Foreign Secretary of the United Kingdom that Portugal had deposited an instrument of acceptance of the Constitution of UNESCO with the Government of the United Kingdom on 11 September 1974 and that acceptance was therefore effective on the same date. Also, see 18 C/Res.15.1, 15 November 1974, English, French, Russian, Spanish.

[94] See Articles II and XV of the Constitution.

In the case of the membership of the Democratic People's Republic of Korea and the Republic of San Marino, as they were at the material time not Members of the United Nations Organization, Article II.2 of the UNESCO Constitution was applicable. Thus in each of these two cases, before the State concerned signed the Constitution of UNESCO and deposited its instrument of acceptance of same, the General Conference had, following application received from the appropriate Government and upon a recommendation of the Executive Board,[95] adopted by the required two-thirds majority a resolution admitting the State concerned to membership of UNESCO.[96]

(ii) *New Associate Members*

In accordance with Article II.3 of the Constitution of UNESCO and upon an application made on 7 February 1974 by the Government of Australia, the General Conference, at its eighteenth session, decided on 17 October 1974 to admit Papua New Guinea to associate membership of UNESCO.[97]

Upon application submitted by the United Nations Council for Namibia under the same Article II.3 of the Constitution of UNESCO, the General Conference, at its same session, decided on 21 October 1974 to admit Namibia to associate membership of the Organization.[98]

(b) *Liberation movements recognized by the Organization of African Unity, and the Palestine Liberation Organization recognized by the League of Arab States*

In order to associate the African liberation movements recognized by the Organization of African Unity, and the Palestine Liberation Organization recognized by the League of Arab States with the activities of UNESCO, the General Conference, at its eighteenth session, amended its Rules of Procedure to provide for the participation by such African liberation movements and the Palestine Liberation Organization as observers at sessions of the General Conference.[99]

At the same eighteenth session, the General Conference amended the "Regulations for the general classification of the various categories of meetings convened by UNESCO" to permit the General Conference, the Executive Board or the Director-General, according to the category of meeting concerned, to invite these African liberation movements and the Palestine Liberation Organization to send observers to meetings referred to in the said Regulations.[100]

2. International regulations

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

In accordance with the terms of its Article IX(1), the Universal Copyright Convention as revised at Paris on 24 July 1971,[101] adopted by the Conference for Revision of the Universal Copyright Convention, held at Paris from 5 to 24 July 1971, entered into force on 10 July 1974, that is, three months after the deposit of twelve instruments of ratification, acceptance or accession.

In conformity with their respective paragraph 2(b), the Protocols 1 and 2 annexed to the Convention entered into force on the same date as the Convention.

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[95] See 94 EX/Decisions 9.3 and 9.5, 20 May-28 June 1974, English, French, Russian, Spanish.

[96] See Article II.2 of the Constitution, Rule 81(1)(a) of the Rules of Procedure of the General Conference, and 18 C/Res.0.61 and 0.62, 17 October 1974, English, French, Russian, Spanish.

[97] See Document 18 C/99, 12 July 1974, 1 p., English, French, Russian, Spanish, and 18 C/Res.0.63, 17 October 1974, English, French, Russian, Spanish.

[98] See Document 18 C/114, 21 October 1974, 2 p., English, French, Russian, Spanish, and 18 C/Res. 0.64, 21 October 1974, English, French, Russian, Spanish.

[99] See 18 C/Res. 17.2 and 17.3, 25 October 1974, English, French, Russian, Spanish.

[100] See 18 C/Res. 18.1 and 18.2, 25 October 1974, English, French, Russian, Spanish.

[101] See *Juridical Yearbook*, 1971, p. 123.

(b) *Adoption of new instruments*

In the course of the year under review, five international standard-setting instruments which are listed below were adopted either by the General Conference or by an International Conference of States convened by UNESCO alone or jointly with another international organization:

—Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Done at Brussels on 21 May 1974 by the International Conference of States on the Distribution of Programme-Carrying Signals Transmitted by Satellites convened jointly by UNESCO and the World Intellectual Property Organization (WIPO).[102]

—Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Latin America and the Caribbean (Done at Mexico City on 19 July 1974 by the International Conference of States convened by UNESCO).[103]

—Recommendation concerning education for international understanding, co-operation and peace and education relating to human rights and fundamental freedoms (Adopted at Paris on 19 November 1974 by the General Conference).[104]

—Revised recommendation concerning technical and vocational education (Adopted at Paris on 19 November 1974 by the General Conference).[105]

—Recommendation on the status of scientific researchers (Adopted at Paris on 20 November 1974 by the General Conference).[106]

3. INITIAL SPECIAL REPORTS BY MEMBER STATES

(a) *Reports submitted to the General Conference at its eighteenth session*

At its eighteenth session, the General Conference considered the initial special reports[107] submitted by Member States on the action taken by them upon the Convention concerning the Protection of the World Cultural and Natural Heritage[108] and on the Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage which were adopted by the General Conference at its seventeenth session Upon consideration of these initial special reports, the General Conference adopted a general report embodying its comments on the action taken by Member States and decided[109] that the general report be transmitted to Member States, to the United Nations, and to National Commissions, 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.

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[102] See Report of Rapporteur, Document UNESCO/WIPO/CONFSAT/42, 27 p. and Annexes, English, French, Russian, Spanish.

[103] See Draft Final Report of the Conference, Document ED-74/COREDIAL/5 (prov.), 6 p. and Annexes, English, French, Spanish.

[104] See Documents 18 C/24, 12 July 1974, 1 p. and Annexes, English, French, Russian, Spanish, and 18 C/Res. 38, 19 November 1974, English, French, Russian, Spanish.

[105] See Document 18 C/25, 26 August 1974, 1 p. and Annexes, English, French, Russian, Spanish, and 18 C/Res. 39, 19 November 1974, English, French, Russian, Spanish.

[106] See Documents 18 C/26, 12 July 1974, 1 p. and Annexes, English, French, Russian, Spanish, 18 C/26 Add., 17 October 1974, 1 p., English, French, Russian, Spanish, and 18 C/Res. 40, 20 November 1974, English, French, Russian, Spanish.

[107] See Documents 18 C/22, 19 October 1974, 11 p., English, French, Russian, Spanish, 18 C/22 Add., 21 October 1974, 2 p., English, French, Russian, Spanish, 18 C/23, 18 October 1974, 10 p., English, French, Russian, Spanish, and 18 C/23 Add., 21 October 1974, 2 p., English, French, Russian, Spanish.

[108] See *Juridical Yearbook*, 1972, p. 89.

[109] See 18 C/Res.35.1, 20 November 1974, English, French, Russian, Spanish.

(b) *Reports to be submitted to the General Conference at its nineteenth session*

The General Conference, at its eighteenth session, reminded Member States of their obligation to forward to it, at least two months before the opening of its nineteenth session, initial special reports on the action taken by them on the Recommendation concerning education for international understanding, co-operation and peace and education relating to human rights and fundamental freedoms, on the Revised recommendation concerning technical and vocational education and on the Recommendation on the status of scientific researchers, adopted at its eighteenth session, and to include in these reports information on matters specified in paragraph 4 of resolution 50 adopted at its tenth session.[110]

4. COPYRIGHT AND NEIGHBOURING RIGHTS

(a) *Universal Copyright Convention as revised at Paris on 24 July 1971*

The Universal Copyright Convention as revised at Paris on 24 July 1971, the text of which contains provisions designed to meet the practical needs of developing countries for access to works protected by copyright, entered into force on 10 July 1974.

(b) *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*[111]*—Intergovernmental Committee*

The Intergovernmental Committee established by Article 32 of this Convention, for which the International Labour Office, UNESCO and the World Intellectual Property Organization (WIPO) jointly provide the Secretariat, adopted during its extraordinary session held from 6 to 10 May 1974, the text of a model law concerning the protection of performers, producers of phonograms and broadcasting organizations together with a commentary thereon.

(c) *Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite*

An International Conference of States on the distribution of programme-carrying signals transmitted by satellite was convened jointly by the Directors-General of UNESCO and WIPO at Brussels from 6 to 21 May 1974, for the purpose of concluding an international convention on the subject. At the close of its work, the Conference adopted the Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite. Under this Convention, which does not cover direct broadcasting by satellite, each contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal is not intended. Deposited with the Secretary-General of the United Nations, the Convention will enter into force three months after the deposit of the fifth instrument of ratification, acceptance or accession.

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

Having examined the report submitted to it by the Director-General (18 C/34), the eighteenth session of the UNESCO General Conference adopted resolution 6.13[112] in which it expressed the opinion that it is desirable to prepare an international instrument on the protection of translators without in any way diminishing the protection which may be derived from existing international conventions relative to copyright, and that the instrument should take the form of a recommendation to Member States. The General Conference authorized the Director/General to convene a special committee with instructions to prepare a draft

[110] See 18 C/Res. 36.1, 20 November 1974, English, French, Russian, Spanish.

[111] United Nations, *Treaty Series*, vol.496, p.43.

[112] 18 C/Res. 6.13, 21 November 1974, English, French, Russian, Spanish.

recommendation on this matter, suggesting measures of an essentially practical nature and not going beyond the protection accorded to authors by virtue of existing international conventions in the field of copyright, for submission to the General Conference at its nineteenth session.

(e) *Desirability of adopting an international instrument on the reprographic reproduction of works protected by copyright*

The eighteenth session of the General Conference, noting that the Intergovernmental Copyright Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union, each insofar as it was concerned, decided to establish a sub-committee consisting of representatives of the States members of the said committees which will be charged with examining the reprographic reproduction of works protected by copyright, and that the Committees decided to continue the examination of this question at their next sessions which will be held in 1975, authorized the Director-General to take account of the results of the work of these sub-committees and of the views expressed by the above-mentioned committees of the copyright conventions and to prepare, if feasible, a draft recommendation for submission to the General Conference at its nineteenth session.[113]

(f) *International Copyright Information Centre—Double Taxation of copyright royalties*

Recognizing the seriousness of the economic problems that access to protected works raises in regard to copyright, and considering that changes in tax regulations applying to copyright royalties would be conducive to improving international relations with regard to this matter at the economic level, the eighteenth session of the General Conference authorized the Director-General to convene a Committee of Governmental Experts in 1975 to prepare a draft international agreement designed to avoid the double taxation of copyright royalties remitted from one country to another and decided that, if the Committee of Governmental Experts so recommends, an international conference of States shall be convened in order to approve the said agreement.[114]

5. Human rights

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

The General Conference approved at its eighteenth session the draft questionnaire[115] for the third periodic consultation of Member States on their implementation of the Convention and Recommendation against Discrimination in Education, adopted by the General Conference at its eleventh session, and urged all Member States to discharge their constitutional obligations by completing this questionnaire and returning it by a date to be specified in the letter transmitting the questionnaire to them.[116]

The replies from Member States to the questionnaire will be considered by the Executive Board's Committee on Conventions and Recommendations in Education whose report on them will be transmitted to the General Conference at its nineteenth session.

(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*

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[113] 18 C/Res. 6.14, 21 November 1974, English, French, Russian, Spanish.

[114] 18 C/Res. 6.17, 21 November 1974, English, French, Russian, Spanish.

[115] See Document 18 C/21, 20 September 1974, 5 p. and Annexes, English, French, Russian, Spanish.

[116] See 18 C/Res. 37.1, 19 November 1974, E, F, R, S and 94 EX/Decision 4.2.1, 20 May-28 June 1974, English, French, Russian, Spanish.

(i) *Second Meeting*

The above-mentioned Commission held its second meeting at UNESCO Headquarters on 10 April 1974 on being convened by its Chairman. At that meeting, the Commission amended its Rules of Procedure, in accordance with Rule 60(1) of those Rules, so as to enable the election of the Chairman and the Vice-Chairman of the Commission and, in certain cases, the consultation of members of the Commission by the Chairman to take place by correspondence.[117]

(ii) *Members*

On the report of the Nominations Committee, the General Conference, at its eighteenth session re-elected on 21 November 1974 as members of the Commission for a term of six years each the following persons: Professor Alberto Méndez Pereira (Panama), Mrs. Emilie Radaody-Ralarosy (Madagascar) and Mr. Jean Thomas (France).[118]

On the report of the Nominations Committee and on the same date, the General Conference elected Dr. Ismael Antonio Vargas Bonilla (Costa Rica) as a member of the Commission to replace a deceased member of the Commission for the unexpired portion of the latter's term of office.[119] The deceased had been elected for a six-year term on 6 November 1970 by the General Conference at its sixteenth session.

(iii) *Report*

In accordance with Article 19 of the Protocol instituting it, the Commission submitted, through the Executive Board to the General Conference at its eighteenth session, a report on its work since the seventeenth session of the General Conference.[120]

(c) *Implementation of Executive Board's decision 93 EX/8.2 concerning the situation in Chile*

In accordance with paragraphs 11 and 12 of the above-mentioned decision adopted at the ninety-third session of the Executive Board, complaints[121] received by UNESCO regarding violations of human rights in Chile were, after having been communicated to the Government of Chile, brought to the notice of the Board's Committee on Conventions and Recommendations in Education at the Committee's meeting held from 3 to 8 April 1974 specifically to consider these complaints.

In pursuance of paragraph 14 of the said decision 93 EX/8.2, the complaints concerned were also transmitted to the Secretary-General of the United Nations.

After having considered at its ninety-fourth and ninety-fifth sessions the report[122] of the above-mentioned Committee and the report[123] by the Director-General on the action taken on decision 93 EX/8.2, the Board invited the Director-General to continue, *inter alia*, the action formulated in paragraphs 12 and 14 of that decision.[124]

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[117] See Annex of Document 18 C/93, 16 August 1974, 2 p., English, French, Russian, Spanish.

[118] See Document 18 C/NOM/9, 23 August 1974, 2 p. and Annexes, English, French, Russian, Spanish, and 18 C/Res. 6.112, 21 November 1974, English, French, Russian, Spanish.

[119] See Document 18 C/NOM/30, 10 October 1974, 2 p., English, French, Russian, Spanish, and 18 C/Res. 6.113, 21 November 1974, English, French, Russian, Spanish.

[120] See Document 18 C/93, *op. cit.*

[121] See Documents 94 EX/CR/PRIV.1, 1 March 1974, 4 p. and Annexes, English, French, Russian, Spanish, 94 EX/CR/PRIV.1, Add.1, 28 March 1974, 1 p. and Annexes, English, French, Russian, Spanish, and 94 EX/CR/PRIV.1, Add.2, 2 April 1974, 7 p., English, French, Russian, Spanish.

[122] See Document 94 EX/50, 19 April 1974, 5 p., English, French, Russian, Spanish.

[123] See Document 94 EX/49, 30 April 1974, 5 p., English, French, Russian, Spanish.

[124] See 95 EX/Decision 10.1, 18 September-23 November 1974, English, French, Russian, Spanish.

(d) *Examination of communications addressed to UNESCO in connexion with individual cases alleging a violation of human rights in education, science and culture*

In the year under review, three communications[125] of the nature indicated in the above title were, in accordance with the procedure provided for under decision 77 EX/8.3 adopted by the Executive Board at its seventy-seventh session, brought to the notice of the Board's Committee on Conventions and Recommendations in Education at its meeting of 17 May 1974, after they had been transmitted to the Government concerned. The reply[126] of the Government was also laid before the Committee whose report[127] was noted[128] by the Executive Board at its ninety-fourth session.

IV. INTERNATIONAL CIVIL AVIATION ORGANIZATION

1. Revision of the Warsaw Convention (1929) as Amended by The Hague Protocol (1955)

The 21st Session of the Legal Committee approved draft Articles on documentation and draft Articles relating to liability in respect of air mail and cargo in international carriage by air. The Committee decided unanimously that the draft Articles were ready for presentation to States as a final draft. Acting on this recommendation the Council decided on 4 December 1974, to convene in Montreal in September 1975 a diplomatic conference to consider, with a view to adoption, the draft Articles prepared by the Legal Committee.

2. Study of the Rome Convention of 1952

The Legal Committee considered this matter during its 21st Session and agreed that the revision of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, as well as the study of a new separate instrument relating to liability for damage caused by noise and sonic boom should be referred to a Subcommittee of the Legal Committee which would meet early in 1975. Acting on this recommendation the Council decided, on 4 December 1974, to convene the session of the Subcommittee in Montreal from 8 to 23 April 1975.

3. Amendment to the Convention on International Civil Aviation (Chicago, 1944)

Amendment of Article 50(a) of the Chicago Convention increasing the membership of the Council from 30 to 33 was adopted at the 21st Session of the Assembly held in Montreal from 24 September to 15 October 1974.[129] The amendment shall enter into force when ratified by 86 Contracting States.

4. Unlawful Interference with International Civil Aviation and its Facilities

The Committee on Unlawful Interference with International Civil Aviation and its Facilities held seven meetings during the year. The Committee recommended for adoption by the Council the draft text developed by it and entitled "International Standards and Recom-

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[125] See Document 94 EX/CR/PRIV.3, 9 May 1974, 3 p. and Annex, English, French, Russian, Spanish.

[126] See paragraph 8 of Document 94 EX/CR/PRIV.3, op.cit.

[127] See paragraphs 22 and 23 of Document 94 EX/11, 20 June 1974, English, French, Russian, Spanish.

[128] See paragraph 4 of 94 EX/Decision 4.2.1, 20 May-28 June 1974, English, French, Russian, Spanish.

[129] See p. 100 of this *Yearbook*.

mended Practices—Security—Safeguarding International Civil Aviation Against Acts of Unlawful Interference".

The Council, on 22 March 1974, adopted the said text with certain amendments and designated it as Annex 17 to the Convention on International Civil Aviation, to become applicable on 27 February 1975.

5. 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*.

V. WORLD BANK

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES (ICSID)

Signatures and Ratifications of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States

During 1974 and 1975, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States[130] (hereinafter referred to as the Convention) was signed by Australia, Gambia and Romania, and ratified by Gambia. As of April 1, 1975, 71 States had signed the Convention and 66 States had deposited their instruments of ratification.[131]

Advance acceptance of the jurisdiction of the Centre

There has been a further growth in the number of compromissory clauses evidencing the consent of parties to investment agreements to submit future disputes to the Centre. Some of these agreements come to the attention of the Centre through their inclusion in official publications of the host States; others are sent to the Centre by one of the parties to the investment agreement. The Convention does not require notification to the Centre of the conclusion of agreements providing for recourse to the jurisdiction of the Centre in case of disputes arising in the future. As a result, the Centre has no way of arriving at an accurate judgement of the frequency with which ICSID clauses are used. A continuing upward trend is however indicated by the increasing number of inquiries regarding the use of ICSID clauses in new types of investment arrangements and new fields of investment including joint ventures and loan and credit agreements in the so-called Euro credit market and elsewhere. It may be useful to recall that the Centre has prepared a set of model clauses for use in international investment agreements[132] and that the Secretariat stands ready to assist parties in the formulation of clauses for situations which are not covered by the model clauses.

Progress in the acceptance of the jurisdiction of the Centre was also made in bilateral treaties[133] for the protection and promotion of foreign investments and in the investment legislation of host countries. The parties to those instruments have thereby accepted resort to the settlement machinery of the Convention at the initiative of a private investor and sometimes at the initiative of the host State.[134]

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[130] Reproduced in the *Juridical Yearbook*, 1966, p. 196.

[131] The list of Contracting States and Other Signatories of the Convention is reproduced in Document ICSID/3.

[132] Document ICSID/5.

[133] It may be recalled that the Centre has prepared a set of model clauses (Document ICSID/6) for use in such treaties.

[134] Document ICSID/9 lists the provisions relating to ICSID in international agreements and national laws.

Submission of disputes to the Centre

On January 13, 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 United States corporation). The Arbitral Tribunal was constituted on March 29, 1972, and held its opening session on April 20, 1972. The President of the Tribunal is Judge Sture Petrén (from Sweden) and the other two members are Sir John Foster (from the United Kingdom) and Professor Paul Reuter (from France). The proceedings are still pending.[135]

On March 6, 1974, the Secretary-General registered a request for arbitration by Adriano Gardella SpA (an Italian company) against the Government of Ivory Coast. The dispute was submitted on the basis of an ICSID arbitration clause in an agreement between the parties. The Arbitral Tribunal was constituted on October 7, 1974, and held its first session on November 25, 1974. The President of the Tribunal is Mr. André Panchaud (from Switzerland) and the two members are Me. Dominique Poncet (from Switzerland) and Me. Edouard Zellweger (from Switzerland).

On June 21, 1974, the Secretary-General registered three requests for arbitration against the Government of Jamaica. These disputes were submitted by Alcoa Minerals of Jamaica, Inc., Kaiser Bauxite Company, and Reynolds Jamaica Mines/Reynolds Metals Company, nationals of the United States, on the basis of ICSID dispute settlement clauses in agreements between the respective companies and the Government of Jamaica. The three Arbitral Tribunals (whose composition is identical) were constituted on December 16, 1974, and held their opening session on April 1, 1975. The President of the Tribunals is Mr. Jorgen Trolle (from Denmark) and the other two members are Sir Michael Kerr (from the United Kingdom) and Mr. Fuad Rouhani (from Iran).

Investment laws of the world

The Centre's investment legislation project is now being presented in the form of a loose-leaf service prepared by the Centre and published by Oceana Publications, Inc. of Dobbs Ferry, New York. It deals on a country-by-country basis with internal law and international agreements affecting foreign investment and consists of a compilation of constitutional, legislative, regulatory and treaty materials. These materials have been computer-prepared and coded in such a way as to provide for uniformity of treatment of the countries covered in the publication. The material is arranged by titles and has concordance tables with cross-references. It will be periodically updated and supplemented as necessary with the assistance of a network of national correspondents. The publication is initially limited to 50 developing nations that are parties to the Convention. Six volumes are projected of which the first five are already available from the publisher.

Action by contracting States pursuant to the Convention

Pursuant to Article 13 of the Convention, each Contracting State may designate up to four persons to serve on each of the two Panels maintained by the Centre, and the Chairman of the Administrative Council may designate up to ten persons to each Panel. 40 States, as well as the Chairman, have made designations and the names of 134 persons now appear on the Panel of Conciliators and 138 on the Panel of Arbitrators.[136]

Three countries have notified the Centre, pursuant to Article 25(4) of the Convention, of the classes of disputes it would or would not consider submitting to the jurisdiction of the Centre.[137]

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[135] Relevant procedural data concerning the progress of this case is presented in the Seventh and Eighth Annual Reports of the Centre.

[136] A list of the members of both Panels is set forth in Document ICSID/10.

[137] The text of the notifications can be found in Document ICSID/8 which lists the Contracting States and the actions taken by them pursuant to the Convention.

There have also been further designations under Article 54(2) of the Convention (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). 46 States have so far notified the Centre of such designations.

VI. INTERNATIONAL MONETARY FUND

Reform of the International Monetary System and Organization

On 26 July 1972, the Board of Governors adopted Resolution No. 27-10, which established an ad hoc Committee of the Board of Governors on Reform of the International Monetary System and Related Issues (Committee of Twenty) and instructed it to advise and report to the Board of Governors with respect to all aspects of reform of the international monetary system. On 24 September 1973, the Chairman of the Committee submitted to the Board of Governors an interim report on the work of the Committee, together with a *First Outline of Reform* prepared by the Chairman and Vice-Chairmen of the Deputies of the Committee. The Committee of Twenty presented its final report together with an *Outline of Reform* on 14 June 1974.[138]

The Legal Department collaborated in the reports and in the subsequent decisions taken by the Executive Directors in connection with the immediate steps agreed for the interim period.[139] These steps included, *inter alia*, (1) the establishment of an Interim Committee of the Board of Governors on the International Monetary System; (2) the strengthening of Fund procedures for closer international consultation and surveillance of the adjustment process; (3) the adoption of appropriate guidelines for the management of floating exchange rates; (4) the establishment of a facility in the Fund to assist members in meeting the initial impact of increased oil import costs; (5) the adoption of an interim method of valuing the special drawing right against currencies in transactions; (6) an extended facility designed to give medium-term assistance to members in special circumstances of balance of payments difficulty; and (7) the preparation of a broad revision of the Articles of Agreement[140] for further examination by the Interim Committee and for possible recommendation at an appropriate time to the Board of Governors as an amendment of the Articles.

Amendment of the Articles of Agreement

The Legal Department prepared draft amendments of the Articles of Agreement on a broad range of issues for consideration by the Executive Directors. These drafts covered twenty or more main topics and included, *inter alia*, (*a*) gold; (*b*) a permanent Council with decision-making powers; (*c*) exchange arrangments; (*d*) a Substitution Account through which gold could be exchanged for special drawing rights; (*e*) improvements in the General Account and modernization of its operations and transactions; (*f*) improvements in the characteristics of and the extension of the use of the special drawing right; and (*g*) the link.

These draft amendments were considered by the Executive Directors toward the end of 1974 and a report on the progress made was submitted for the consideration of the Interim Committee at its meeting in January 1975.

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[138] *IMF Survey* (Washington) 3:193-208, June 17, 1974: *International Monetary Reform: Documents of the Committee of Twenty* (Washington, International Monetary Fund, 1974), pp. 3-48.

[139] See, for some of these decisions, *Annual Report of the Executive Directors for the Fiscal Year Ended April 30, 1974* (Washington, International Monetary Fund, 1974), pp. 108-128. (Hereinafter referred to as *Annual Report*, 1974.)

[140] United Nations, *Treaty Series*, vol.2, p. 39.

Exchange rates

On 13 June 1974 the Executive Directors decided to recommend, pursuant to Article IV, Section 4(*a*), of the Articles of Agreement, that members of the Fund should use their best endeavors to observe the "Guidelines for the Management of Floating Exchange Rates".[141] It was also decided that consultations with members with floating currencies would be based on the memorandum and that these guidelines would be reviewed from time to time in order to make any adjustments that might be appropriate.

General Account

The Executive Directors adopted a decision on 13 June1974 that the rate of remuneration payable by the Fund on super-gold tranche positions would be 5 per cent per annum for the first six-month period, 1 July–31 December 1974, and that the rate of remuneration for each subsequent period of six months would be 5 per cent per annum minus three-fifths of the amount by which 9 per cent exceeds, or plus three-fifths of the amount by which 11 per cent is exceeded by, the combined market interest rate as determined in accordance with this decision. However, in order to bring the Fund's income and expenses into balance without raising the Fund's charges to undesirably high levels, it was decided that, for the next two years, a lower rate of remuneration would be paid on the segment of the super-gold tranche corresponding to the Fund's holdings of currencies between 75 and 50 per cent of quotas during any periods when the basic rate of remuneration was above 3¼ per cent; the lower rate would be 2½ per cent or half the basic rate of remuneration, whichever was higher. Moreover, the lower rate would be increased to the extent that the Fund's net income permitted. Rule I-10 of the Rules and Regulations was amended on 13 June 1974 to reflect these decisions.[142]

The Executive Directors also decided to establish a revised schedule of charges on use of the Fund's resources through the General Account. The revised charges ranged from 4 per cent on amounts outstanding up to one year, to 6 per cent for amounts outstanding from four to five years, except those resulting from purchases under the oil facility. Rule I-4(*f*), (*g*), and (*h*) of the Rules and Regulations was amended on June 13, 1974 to give effect to these changes.[143]

Special Facilities

The Fund established by its decision of June 13, 1974 a temporary facility to assist members in balance of payments difficulty to meet the initial impact of the increase in the cost of importing petroleum and petroleum products. The resources made available under this decision were to be supplementary to any assistance that members might need under other policies on the use of the Fund's resources because of balance of payments problems.[144]

With a view to obtaining resources that were needed to finance purchases under this special facility, the Fund adopted a decision on June 13, 1974, setting out in its Annex the basis for the terms and conditions on which it would wish to borrow the currencies of members for this purpose under Article VII, Section 2(*i*) of the Articles of Agreement.[145]

The Fund also established on 13 September 1974 an extended facility to provide medium-term assistance for members in certain special circumstances of balance of payments difficulty, which was likely to benefit developing members in particular. The extended facility was a novel adaptation of Fund practice in that an extended arrangement would provide assurance of support by the Fund for a period up to three years, whereas the usual duration of a stand-by arrangement did not exceed 12 months. Moreover, amounts made available under the

[141] Attached to Executive Directors' Decision No. 4232-(74/67) (reproduced in *Annual Report*, 1974, pp. 112-116); *Selected Decisions of the International Monetary Fund and Selected Documents*, Seventh Issue (Washington, 1975), pp. 21-30. (Hereinafter referred to as *Selected Decisions*.)

[142] *Annual Report*, 1974, pp. 118-19.

[143] *Ibid.*, pp. 120-21.

[144] *Ibid.*, pp. 122-24; *Selected Decisions*, pp. 71-75.

[145] *Ibid.*, pp. 124-26; *Selected Decisions*, pp. 107-11.

extended facility could be repaid within an outside range of four to eight years after each purchase instead of three to five years.[146]

Special Drawing Account

On 1 February 1974, the Executive Directors of the Fund approved the submission of a draft resolution to the Board of Governors recommending the extension for an additional period of 240 days ending on 31 October 1974, of the suspension of the operation of Article XXV, Section 8(*a*) with respect to transactions under Article XXV, Section 2(b) (*i*), which was decided by the Executive Directors for a period of 120 days ending on 5 March 1974.[147] The draft resolution was adopted by the Board of Governors as Resolution No. 29-2, effective 4 March 1974.[148] The suspension facilitated the use of special drawing rights in settlements by members that had made arrangements for common margins for exchange transactions, although the suspension was not limited to these settlements.

On 13 June 1974 the Executive Directors adopted a decision on interim valuation of the special drawing right and on the method of determining and collecting exchange rates for this and related purposes. This decision, which amended Rule 0-3 of the Fund's Rules and Regulations, gave effect, as from July 1, 1974, to the "standard basket" system of valuation for an interim period.[149] The decision was to be reviewed two years from the date of its adoption. The Executive Directors also adopted a decision on the same day establishing the rate of interest on the special drawing right at 5 per cent per annum. The interest rate on the special drawing right would be the same as the basic rate of remuneration on super-gold tranche positions of members in the General Account, and unless the Executive Directors decided otherwise after an initial period of six months, both rates would be adjusted on the basis of the weighted average of short-term market interest rates in the United States, the Federal Republic of Germany, the United Kingdom, France, and Japan.[150]

Finally, the Fund, by a Resolution of the Board of Governors adopted on January 21, 1974, prescribed the Bank for International Settlements (BIS) as a holder of special drawing rights[151] and the terms and conditions on which it could accept, hold and use them.

Consultations on Member's Policies

The Community of Twenty on 18 January 1974 reviewed important recent developments and agreed that, "in the present difficult circumstances," all members should avoid the adoption of policies that would aggravate the problems of other members. Accordingly, the Committee stressed the importance of avoiding competitive depreciation and the escalation of restrictions on trade and payments. The Executive Directors adopted a decision on 23 January 1974 calling on all members to collaborate with the Fund in accordance with Article IV, Section 4(*a*) with a view to attaining these objectives. The decision further stated that the consultations of the Fund on member's policies would be conducted with a view to attaining these objectives.[152]

General Arrangements to Borrow

The Executive Directors of the Fund approved on 23 October 1974 an extension of the Fund's General Arrangements to Borrow (GAB), which enabled the Fund to supplement its resources by borrowing up to the equivalent of about 5.5 billion SDRs in the currencies of the

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[146] *IMF Press Release* No. 74/43, September 15, 1974; *Selected Decisions*, pp. 50-53.

[147] *Annual Report*, 1974, p. 109.

[148] *Summary Proceedings of the Twenty-Ninth Annual Meeting of the Board of Governors*, 30 September-4 October 1974 (Washington), p. 359.

[149] *Annual Report*, 1974, pp. 116-18.

[150] *Ibid.*, pp. 118-19.

[151] *Ibid.*, pp. 109-110.

[152] *Ibid.*, p. 108; *Selected Decisions*, p. 125.

ten participants in the Arrangements (the Group of Ten). These Arrangements entered into force on 24 October 1962 for an initial period of four years, and they were renewed for another period of four years in 1966 and a further period of five years in 1970, i.e., until 23 October 1975. The decision of 23 October 1974 extended the effectiveness of the GAB for a five-year period dating from 24 October 1975.[153]

Technical Assistance

Technical assistance was provided to the authorities of many members in the drafting of legislation and implementing regulations in the fields of foreign exchange, central banking, taxation, and related matters.

Negotiable Instruments

Members of the Fund's Legal Department were associated with and collaborated in the work of a Working Group on International Negotiable Instruments, especially in its consideration of a Draft Uniform Law on International Bills of Exchange and Promissory Notes, prepared by the Secretariat of the United Nations Commission on International Trade Law in consultation with interested international organizations.[154]

VII. UNIVERSAL POSTAL UNION

1. General Questions

(a) *Exclusion of the Republic of South Africa from the 17th Congress of the UPU and from all other Congresses and meetings of the Universal Postal Union (Resolution C 2)*

Having taken into consideration the many United Nations and UPU resolutions on the policy of the South African Government, the Congress condemned vigorously the policy of *apartheid* and the oppressive measures practised by the South African Government; it contested the minority representation of the South African Government and consequently decided to exclude the Government of the Republic of South Africa from the 17th Congress and from all other Congresses or meetings of the UPU.

(b) *Participation by national liberation movements in the meetings of the UPU (Resolution C 3)*

On the basis of United Nations General Assembly resolution 3118 (XXVIII) and resolutions adopted by certain United Nations specialized agencies (ITU, FAO, WHO), the Congress decided that national liberation movements recognized by the Organization of African Unity or by the League of Arab States might attend UPU Congresses as observers.

(c) *Assistance to national liberation movements (Resolution C 4)*

Having again recalled United Nations General Assembly resolution 3118 (XXVIII), the Congress decided to instruct the Executive Council of the UPU and the International Bureau to take all steps calculated to give concrete material help to those movements.

(d) *Representation of the Organization of African Unity (OAU) (Decision C 92)*

The Congress decided to admit the Organization of African Unity to take part, as an observer, in the work of the 17th Congress and in all future meetings of the bodies of the UPU.

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[153] *IMF Press Release* No. 74/47, October 24, 1974; *IMF Survey* (Washington) 3:347, 4 November 1974; *Selected Decisions*, pp. 105-06.

[154] See sub-section VII of section A above.

(e) *Recommendations by the United Nations concerning the implementation by the specialized agencies of the Declaration on decolonization (Decision C 93)*

The Congress approved the report by the Director-General on the implementation by the specialized agencies of the Declaration on the Granting of Independence to Colonial Countries and Peoples. It recommended that the practice followed thus far should be continued and the measures taken over the past few years should be intensified.

(f) *Admission of the Republic of Guinea-Bissau and the Democratic People's Republic of Korea as member countries of the UPU (Resolutions C 5 and C 6)*

The Congress decided to approve the requests for admission to the UPU submitted by the Republic of Guinea-Bissau and the Democratic People's Republic of Korea, requests which had been addressed to the Government of the Swiss Confederation in accordance with the procedure established in article 11 of the UPU Constitution.

(g) *Decade for Action to Combat Racism and Racial Discrimination (Resolution C 8)*

Wishing to make its contribution in this field also to the work undertaken within the framework of the United Nations, the Congress invited member countries to co-operate in the implementation of the Programme for the Decade for Action to Combat Racism and Racial Discrimination so far as their means and ability permitted. It also invited the Director-General of the International Bureau to follow the development of this question within the framework of the United Nations and to use the means of information at the UPU's disposal to participate in such action.

(h) *Distribution of Executive Council seats (Resolution C 11)*

Having approved an increase in the membership of the Executive Council to 40, the Congress decided to distribute the Council seats between the various geographical groups in the following way:

Western Hemisphere	8 seats
Eastern Europe and Northern Asia	4 seats
Western Europe	6 seats
Asia and Oceania	10 seats
Africa	11 seats

plus one seat for the chairmanship of the host country of the Congress (in this case Switzerland).

(i) *Procedure for the election of the Director-General and the Deputy Director-General (Resolution C 14)*

The Congress adopted the following procedure for the election of the Director-General and the Deputy Director-General which took place at the said Congress:

(i) The elections of the Director-General of the International Bureau and of the Deputy Director-General shall take place by secret ballot successively at one or more meetings held on the same day. The candidate who obtains a majority of the votes cast by the member countries present and voting shall be elected. As many ballots shall be held as are necessary for a candidate to obtain this majority.

(ii) "Member countries present and voting" shall mean member countries voting in favour of one of the candidates whose applications have been announced in due and proper form, abstentions and blank or null and void ballot papers being ignored in counting the votes required to constitute a majority.

(iii) If the number of abstentions and blank or null and void ballot papers exceeds half the number of votes cast in accordance with paragraph 2, the election shall be deferred to a later meeting, at which abstentions and blank or null and void ballot papers shall no longer be taken into account.

(iv) The candidate who obtains the least number of votes in any one ballot shall be eliminated.

(v) In the event of a tie, an additional ballot, and if necessary a second additional ballot shall be held in an attempt to decide between the tying candidates, the vote relating only to these candidates. If the result is inconclusive, the election shall be decided by drawing lots. The lots shall be drawn by the Chairman.

(j) *Non-autonomous territories (Resolution C 15)*

Since the UPU and the WMO are the only specialized agencies which grant full member-country status to certain groups of non-autonomous territories, the Congress decided to entrust the Executive Council with a study of the problem.

(k) *Admission of observers to and their participation in the meetings of the Executive Council and its Committees (Resolution C 16)*

Having taken into consideration the problems raised by the participation of observers at the plenary meetings and Committee meetings of the Executive Council, the Congress instructed the Council to study all the problems raised by the presence of observers as a whole at and their admission to such meetings.

(l) *Conversion rates applicable in the settlement of debts (Decision C 28)*

In view of current monetary problems, the Congress instructed the Executive Council to study the possibility of notifying member countries of the conversion rates applicable to the settlement of debts expressed in gold francs along the lines of the practice followed by the ITU.

(m) *Union practice on reservations and further study (Resolutions C 32 and C 35)*

Having endorsed the conclusions of the study carried out by the preceding Executive Council, the Congress confirmed the principle according to which reservations to the Acts of the Union must be made in the Final Protocols to those Acts, either on the basis of a proposal approved by the Congress, or in accordance with the procedure governing the amendment of the Acts between two Congresses. Upon admission or accession to the Union, new member countries may continue to benefit from reservations in the Final Protocols which were applicable to them previously in their capacity as part of a Union member country or because they were attached to the Union under article 3 *(b) and (c)* of the Constitution.

That confirmation was the subject of a resolution, but the Congress instructed the current Executive Council to consider the advisability of legislating in that field and to propose, as applicable, to the 18th Congress a provision for insertion in the Acts of the Union.

(n) *Study concerning the UPU language system (Resolution C 33)*

The Congress instructed the Executive Council:

—to consider the possibility of working at the International Bureau in other languages than the official one (French), and the consequence of such a measure;

—to consider the possibility of introducing Chinese, German and Russian for the supply of documents, and the consequences of such a measure and the order of introduction, taking account of the actual needs of each language group.

(o) *Choice of contribution class for the apportionment of the Union's expenditure (Decision C 34)*

The member countries of the UPU are free to choose the contribution class in which they wish to be placed for the purposes of their participation in the Union's expenditure. Having increased the number of contribution classes from seven to eight, the Congress invited the member countries of the Union as a whole to reconsider their participation in the UPU's expenditure in accordance with their economic possibilities and their financial undertakings within the framework of the United Nations and the specialized agencies. An open consultation on the subject failed to produce the desired result and the Congress therefore instructed the International Bureau to make a new appeal to all member countries of the Union to reconsider their choice of contribution class.

(p) *Legal and technical possibilities of maintaining postal relations in cases of disputes, conflict or war (Resolution C 37)*

Considering the peaceful and humanitarian role played by the UPU in helping to bring peoples and individuals together, and convinced of the need to maintain postal exchanges, as far as possible, with or between regions afflicted by disputes, disturbances, conflicts or wars, the Congress appealed urgently to the Governments of member countries, as far as possible and unless the United Nations General Assembly or Security Council had decided otherwise (in accordance with Article 41 of the United Nations Charter), not to interrupt or hinder postal traffic—especially the exchange of correspondence containing messages of a personal nature—in the event of dispute, conflict or war, the efforts made in that direction being applicable to the countries directly concerned.

It also authorized the Director-General of the International Bureau:

(i) To take what initiatives he considered advisable to facilitate, while respecting national sovereignties, the maintenance or re-establishment of postal exchanges with or between the parties to a dispute, conflict or war;

(ii) To offer his "good offices" to find a solution to postal problems which might arise in the event of a dispute, conflict or war.

2. POSTAL QUESTIONS

(a) *Safety of staff involved in handling items presumed to be dangerous (Decision C 56)*

The Congress instructed the Consultative Council for Postal Studies to undertake a study on the protective measures to be applied in order to ensure the safety of postal staff involved in handling items presumed to be dangerous (booby-trapped items).

(b) *Affirmation of the principles of freedom of transit with regard to so-called "hijacking" activities (Resolution C 60)*

Considering that so-called "hijacking" activities perpetrated throughout the world might directly or indirectly affect the principles of freedom of transit and the inviolability of postal items, the Congress declared that mails, regardless of what they might be or to which category they might belong, were inviolable even when affected by so-called "hijacking" activities and that the subsequent forwarding of the said mails must be assured on a priority basis by the country where the aircraft had landed or been freed, even if that aircraft was the subject of disputes of a non-postal nature.

3. TECHNICAL ASSISTANCE

(a) *Principles of UPU technical assistance activities (Resolution C 78)*

The Congress decided:

(1) To intensify, in so far as available means permitted, work relating to UPU participation in the Second United Nations Development Decade;

(2) To give priority to the needs of the administrations of countries whose postal systems were the least developed;

(3) To devote the bulk of the Union's efforts during the second part of the Decade to activities aimed at:

—Improving the conveyance and delivery of mail, especially in rural areas;

—Increasing the number of postal establishments;

—Maximizing the air conveyance of all categories of items;

—Instituting on a general basis the monetary articles service (money orders, giro, postal savings bank, etc.);

—Creating means of postal training up to senior managerial level in developing regions;

—Improving postal staff management and utilization.

It also instructed the Executive Council to draft, on the basis of the priorities so defined, the broad lines of a policy conducive to reinforcing UPU technical co-operation activities and taking account of UNDP procedures and bilateral assistance programmes.

Lastly, it invited the Director-General of the International Bureau to continue his efforts to integrate UPU activity with the country and intercountry programming activities of the UNDP and to stress the following principles:

(1) The co-ordination and if possible the integration of activities for the furthering of postal development;

(2) As high a degree as possible of decentralization of UPU technical assistance activities;

(3) Development of UPU collaboration with the Restricted Unions, taking account of UNDP procedures and the means at the disposal of those regional organizations;

(4) Increasing the effectiveness of activities, especially by organizing evaluation and follow-up studies and activities.

(b) *Increased participation by developing countries in the preparation and implementation of technical assistance programmes (Recommendation C 79)*

The Congress appealed to the Governments of the developing countries to give favourable consideration to postal projects as regards the order of priority to be given to them in the preparation of country programmes for submission to the UNDP or for implementation through other sources of financing, thus taking account of the "Memorandum on the role of the Post as a factor in economic, social and cultural development" published by the UPU within the framework of the Second United Nations Development Decade.

It recommended to the postal administrations of the developing countries:

(1) That they should draft plans or define priorities for the development of their services in such a way as to make it easier for the national authorities to take the needs of the Post into consideration;

(2) That they should supply the International Bureau systematically with all the data that it required in order to play an effective part in preparing the relevant UNDP programmes;

(3) That they should endeavour to derive maximum possible benefit from available aid and that in order to do so they should:

—Allow local officials to work more closely with the postal development experts and specialists;

—Designate qualified counterparts to be attached to the experts throughout their missions, so as to ensure that the counterparts were trained and that the experts' work was continued;

—Increase their participation in the training or specialization courses organized nationally or internationally;

—Make the best use of the knowledge and skills required by those officials who had followed the courses in question;

(4) That they should make every effort to give experts every possible assistance in the accomplishment of their work, thereby encouraging postal officials from developed countries to undertake missions in developing countries;

(5) That they should approach the competent authorities of their countries with a view to their paying special attention to the development of the transport infrastructure.

(c) *Financing UPU technical assistance activities (Resolution C 80)*

The Congress decided:

(1) To draw most particularly the attention of the UNDP to the possibilities of increasing the funds allocated to UPU country or intercountry activities for postal development;

(2) To maintain, for short-term missions, the six specialists' posts while not discarding the possibility of seeking the help of administrations for similar missions.

It recommended:

(1) Developing countries to try to devote to postal projects a sufficient proportion of the sums allocated by the UNDP and, if possible, to contribute some of their own resources to financing the activities concerning them;

(2) Developed countries to increase and plan their contributions in cash or kind to the Special Fund and increase their own aid either directly or through the International Bureau, especially by financing urgent projects rejected by the UNDP, yet highlighted by the International Bureau.

(d) *Faster implementation of UPU projects under the UNDP (Recommendation C 83)*

The Congress recommended:

The Executive Council and the International Bureau to support UNDP efforts in respect of the execution of technical assistance projects and to make every effort to cut out the delays observed, in particular between the approval of projects and the starting up of the corresponding activities, while leaving enough time to the administrations to which appeals had been made for experts;

The administrations of developing countries to take at a local level all the necessary steps for the competent national authorities to choose without delay from the applications of experts submitted to them;

The administrations providing experts to make appropriate arrangements for the quick release of the experts selected.

VIII. INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

1. International Conferences convened by IMCO in 1974

The International Legal Conference on the Carriage of Passengers and their Luggage on Board Ships, held in Athens, adopted the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974. This Convention harmonizes, in a single instrument, both the International Convention on the Unification of Certain Rules Relating to the Carriage of Passengers by Sea, 1961 and the International Convention for the Unification of Certain Rules Relating to the Carriage of Passengers Luggage by Sea, 1967, and establishes higher per capita limits for personal injuries.

The International Conference on Safety of Life at Sea, held in London, adopted the International Convention for the Safety of Life at Sea, 1974 which, *inter alia*, incorporates a

series of amendments to the International Convention for the Safety of Life at Sea, 1960; these include new regulations on fire protection for passenger ships and tankers and on the carriage of grain in bulk. It also incorporates a more speedy procedure for adopting future amendments and bringing them into force, which was one of the chief objectives of the Conference.

2. Decisions and other legal activities

Amendments to IMCO Convention

The Assembly at its eighth session adopted Resolution A. 314(VIII) by which it was decided to convene in October 1974 an extraordinary session of the Assembly to consider the recommendations of the *Ad Hoc* Working Group and possible further proposals related to the size and composition of Council and the Maritime Safety Committee and any consequential related amendments and to adopt amendments to the Convention on the Inter-Governmental Maritime Consultative Organization, as appropriate.

The fifth extraordinary session of the Assembly, held in London, having considered the report and recommendations of the *Ad Hoc* Working Group, adopted (Resolution A.315(ES.V)[155] amendments to Articles 10, 16, 17, 18, 20, 28, 31 and 32 of the Convention of IMCO, the effect of which is, *inter alia*, to enlarge the composition of the Council from 18 to 24 members (Article 17) and to open participation in the Maritime Safety Committee to all members of the Organization (Article 28). Besides, with Resolution A.317(ES.V) the Assembly decided to convene in February 1975 an Ad Hoc Working Group to study proposals of amendments to the IMCO Convention relating, *inter alia*, to the powers of the Council and the institutionalization of the Legal Committee and the Marine Environment Protection Committee.

Legal questions considered by the Legal Committee

The Legal Committee considered, inter alia:

(*a*) Questions relating to wreck removal and related issues (21st and 24th sessions);

(*b*) Draft Articles of a Convention Relating to the Carriage of Passengers and their Luggage on Board Ships with a view to preparing a draft convention for submission to a diplomatic conference in 1974 (22nd session);

(*c*) Questions relating to the Review of the 1957 Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships (23rd session).

IX. INTERNATIONAL ATOMIC ENERGY AGENCY

1. Statute and membership of the Agency: action taken by States in connexion with the Statute

(*a*) The Agency's membership at the end of 1974 stood at 106, the Democratic People's Republic of Korea having become a Member by depositing an Instrument of Acceptance of the Agency's Statute with the depositary Government (United States of America) on 18 September 1974 and Mauritius having become a member by depositing an Instrument of Acceptance of the Agency's Statute with the depositary Government on 31 December 1974.

(*b*) By the end of 1974, 84 Member States had deposited an Instrument of Acceptance of the Amendment to Article VI.A–D of the Statute of the Agency, which Amendment had entered into force on 1 June 1973.

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[155] Reproduced on p. 103 of this *Yearbook*.

2. Legal Activities

(*a*) In May 1974, a group of experts discussed the problem of the relationship between the Vienna Convention on Civil Liability for Nuclear Damage and the Paris Convention on Third Party Liability in the Field of Nuclear Energy and examined a draft protocol intended to establish reciprocity of treatment between the parties to both Conventions. This problem is expected to be considered by the Standing Committee of the Vienna Convention depending on progress of the work now under way within the Group of Governmental Experts of the OECD/Nuclear Energy Agency in which the IAEA is co-operating.

(*b*) At the XVIIIth regular session of the General Conference, amendments to its Rules of Procedure[156] were adopted.[157] These amended Rules were designed to streamline the work of the General Conference and to simplify the organizational aspect, without impairing the efficient discharge of the General Conference's functions.

(*c*) The Agency provided recommendations to the Marine Environment Committee of IMCO concerning radioactive materials to be included in the list annexed to the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil.[158]

(*d*) In September 1974, the Board of Governors authorized the Director General of the Agency to transmit the Provisional Definition and Recommendations Concerning Radioactive Wastes and Other Radioactive Matter,[159] referred to in Annexes I and II to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, to the Government of the United Kingdom of Great Britain and Northern Ireland for the purposes of the Convention, and to inform that Government that the said Provisional Definition and Recommendations, which should not be construed as encouraging in any way the dumping at sea of radioactive wastes and other radioactive matter, would be subject to periodic reviews and revision by the Agency.

(*e*) Advisory services in legislation and regulatory matters connected with the planning of nuclear power projects were provided to the Governments of Malaysia and Singapore in November 1974. Advice was also given to the authorities of Lebanon in October 1974 for the elaboration of a radiation protection act.

(*f*) In December 1974, a Study Group on Regulations and Procedures for Licensing Nuclear Installations was organized in Athens, in collaboration with the Greek Atomic Energy Commission. The meeting, attended by 35 participants from 13 countries and the OECD/NEA, covered safety, regulatory, licensing and liability aspects of nuclear power projects and installations.

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[156] GC(XVIII)/537.

[157] GC(XVIII)/RES/313.

[158] Reproduced in the *Juridical Yearbook*, 1973, p. 91.

[159] INFCIRC/205/Add.1.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

A. Treaties concerning international law concluded under the auspices of the United Nations

1. CONVENTION ON REGISTRATION OF OBJECTS LAUNCHED INTO OUTER SPACE. ADOPTED BY THE GENERAL ASSEMBLY ON 12 NOVEMBER 1974[1]

The States Parties to this Convention,

Recognizing the common interest of all mankind in furthering the exploration and use of outer space for peaceful purposes,

Recalling that the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of 27 January 1967[2] affirms that States shall bear international responsibility for their national activities in outer space and refers to the State on whose registry an object launched into outer space is carried,

Recalling also that the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space of 22 April 1968[3] provides that a launching authority shall, upon request, furnish identifying data prior to the return of an object it has launched into outer space found beyond the territorial limits of the launching authority,

Recalling further that the Convention on International Liability for Damage Caused by Space Objects of 29 March 1972[4] establishes international rules and procedures concerning the liability of launching States for damage caused by their space objects,

Desiring, in the light of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, to make provision for the national registration by launching States of space objects launched into outer space,

Desiring further that a central register of objects launched into outer space be established and maintained, on a mandatory basis, by the Secretary-General of the United Nations,

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[1] By resolution 3235 (XXIX) of 12 November 1974, the General Assembly, noting with satisfaction that the Committee on the Peaceful Uses of Outer Space and its Legal Sub-Committee had completed the text of the draft Convention on Registration of Objects Launched into Outer Space, commended the Convention on Registration of Objects Launched into Outer Space, requested the Secretary-General to open the Convention for signature and ratification at the earliest possible date and expressed its hope for the widest possible adherence to this Convention. The Convention was opened for signature on 14 January 1975.

[2] See *Juridical Yearbook*, 1966, p. 166.

[3] See *Juridical Yearbook*, 1967, p. 269.

[4] See *Juridical Yearbook*, 1971, p. 111.

Desiring also to provide for States Parties additional means and procedures to assist in the identification of space objects,

Believing that a mandatory system of registering objects launched into outer space would, in particular, assist in their identification and would contribute to the application and development of international law governing the exploration and use of outer space,

Have agreed on the following:

ARTICLE I

For the purposes of this Convention:

(*a*) The term "launching State" means:

(i) A State which launches or procures the launching of a space object;

(ii) A State from whose territory or facility a space object is launched;

(*b*) The term "space object" includes component parts of a space object as well as its launch vehicle and parts thereof;

(*c*) The term "State of registry" means a launching State on whose registry a space object is carried in accordance with article II.

ARTICLE II

1. When a space object is launched into earth orbit or beyond, the launching State shall register the space object by means of an entry in an appropriate registry which it shall maintain. Each launching State shall inform the Secretary-General of the United Nations of the establishment of such a registry.

2. Where there are two or more launching States in respect of any such space object, they shall jointly determine which one of them shall register the object in accordance with paragraph 1 of this article, bearing in mind the provisions of article VIII of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, and without prejudice to appropriate agreements concluded or to be concluded among the launching States on jurisdiction and control over the space object and over any personnel thereof.

3. The contents of each registry and the conditions under which it is maintained shall be determined by the State of registry concerned.

ARTICLE III

1. The Secretary-General of the United Nations shall maintain a Register in which the information furnished in accordance with article IV shall be recorded.

2. There shall be full and open access to the information in this Register.

ARTICLE IV

1. Each State of registry shall furnish to the Secretary-General of the United Nations, as soon as practicable, the following information concerning each space object carried on its registry:

(*a*) Name of launching State or States;

(*b*) An appropriate designator of the space object or its registration number;

(*c*) Date and territory or location of launch;

(*d*) Basic orbital parameters, including:

(i) Nodal period,

(ii) Inclination,

(iii) Apogee,

(iv) Perigee;

(*e*) General function of the space object.

2. Each State of registry may, from time to time, provide the Secretary-General of the United Nations with additional information concerning a space object carried on its registry.

3. Each State of registry shall notify the Secretary-General of the United Nations, to the greatest extent feasible and as soon as practicable, of space objects concerning which it has previously transmitted information, and which have been but no longer are in earth orbit.

ARTICLE V

Whenever a space object launched into earth orbit or beyond is marked with the designator or registration number referred to in article IV, paragraph 1 (*b*), or both, the State of registry shall notify the Secretary-General of this fact when submitting the information regarding the space object in accordance with article IV. In such case, the Secretary-General of the United Nations shall record this notification in the Register.

ARTICLE VI

Where the application of the provisions of this Convention has not enabled a State Party to identify a space object which has caused damage to it or to any of its natural or juridical persons, or which may be of a hazardous or deleterious nature, other States Parties, including in particular States possessing space monitoring and tracking facilities, shall respond to the greatest extent feasible to a request by that State Party, or transmitted through the Secretary-General on its behalf, for assistance under equitable and reasonable conditions in the identification of the object. A State Party making such a request shall, to the greatest extent feasible, submit information as to the time, nature and circumstances of the events giving rise to the request. Arrangements under which such assistance shall be rendered shall be the subject of agreement between the parties concerned.

ARTICLE VII

1. In this Convention, with the exception of articles VIII to XII inclusive, references to States shall be deemed to apply to any international intergovernmental organization which conducts space activities if the organization declares its acceptance of the rights and obligations provided for in this Convention and if a majority of the States members of the organization are States Parties to this Convention and to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

2. States members of any such organization which are States Parties to this Convention shall take all appropriate steps to ensure that the organization makes a declaration in accordance with paragraph 1 of this article.

ARTICLE VIII

1. This Convention shall be open for signature by all States at United Nations Headquarters in New York. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall enter into force among the States which have deposited instruments of ratification on the deposit of the fifth such instrument with the Secretary-General of the United Nations.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Secretary-General shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification of and accession to this Convention, the date of its entry into force and other notices.

ARTICLE IX

Any State Party to this Convention may propose amendments to the Convention. Amendments shall enter into force for each State Party to the Convention accepting the amendments upon their acceptance by a majority of the States Parties to the Convention and thereafter for each remaining State Party to the Convention on the date of acceptance by it.

ARTICLE X

Ten years after the entry into force of this Convention, the question of the review of the Convention shall be included in the provisional agenda of the United Nations General Assembly in order to consider, in the light of past application of the Convention, whether it requires revision. However, at any time after the Convention has been in force for five years, at the request of one third of the States Parties to the Convention and with the concurrence of the majority of the States Parties, a conference of the States Parties shall be convened to review this Convention. Such review shall take into account in particular any relevant technological developments, including those relating to the identification of space objects.

ARTICLE XI

Any State Party to this Convention may give notice of its withdrawal from the Convention one year after its entry into force by written notification to the Secretary-General of the United Nations. Such withdrawal shall take effect one year from the date of receipt of this notification.

ARTICLE XII

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all signatory and acceding States.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 14 January 1975.

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2. UNITED NATIONS CONFERENCE ON PRESCRIPTION (LIMITATION) IN THE INTERNATIONAL SALE OF GOODS

CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS. ADOPTED BY THE CONFERENCE ON 12 JUNE 1974 AND OPENED FOR SIGNATURE ON 14 JUNE 1974*

Preamble

The States Parties to the present Convention,

Considering that international trade is an important factor in the promotion of friendly relations amongst States,

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*A commentary on the Convention, to be prepared by the Secretariat in response to a request made by the Conference, will appear as document A/CONF.63/17.

Believing that the adoption of uniform rules governing the limitation period in the international sale of goods would facilitate the development of world trade,

Have agreed as follows:

PART I. SUBSTANTIVE PROVISIONS

Sphere of application

Article 1

1. This Convention shall determine when claims of a buyer and a seller against each other arising from a contract of international sale of goods or relating to its breach, termination or invalidity can no longer be exercised by reason of the expiration of a period of time. Such period of time is hereinafter referred to as "the limitation period".

2. This Convention shall not affect a particular time-limit within which one party is required, as a condition for the acquisition or exercise of his claim, to give notice to the other party or perform any act other than the institution of legal proceedings.

3. In this Convention:

(*a*) "buyer", "seller" and "party" mean persons who buy or sell, or agree to buy or sell, goods, and the successors to and assigns of their rights or obligations under the contract of sale;

(*b*) "creditor" means a party who asserts a claim, whether or not such a claim is for a sum of money;

(*c*) "debtor" means a party against whom a creditor asserts a claim;

(*d*) "breach of contract" means the failure of a party to perform the contract or any performance not in conformity with the contract;

(*e*) "legal proceedings" includes judicial, arbitral and administrative proceedings;

(*f*) "person" includes corporation, company, partnership, association or entity, whether private or public, which can sue or be sued;

(*g*) "writing" includes telegram and telex;

(*h*) "year" means a year according to the Gregorian calendar.

Article 2

For the purposes of this Convention:

(*a*) a contract of sale of goods shall be considered international if, at the time of the conclusion of the contract, the buyer and the seller have their places of business in different States;

(*b*) the fact that the parties have their places of business in different States shall be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract;

(*c*) where a party to a contract of sale of goods has places of business in more than one State, the place of business shall be that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at the time of the conclusion of the contract;

(*d*) where a party does not have a place of business, reference shall be made to his habitual residence;

(*e*) neither the nationality of the parties nor the civil or commercial character of the parties or of the contract shall be taken into consideration.

Article 3

1. This Convention shall apply only if, at the time of the conclusion of the contract, the places of business of the parties to a contract of international sale of goods are in Contracting States.

2. Unless this Convention provides otherwise, it shall apply irrespective of the law which would otherwise be applicable by virtue of the rules of private international law.

3. This Convention shall not apply when the parties have expressly excluded its application.

Article 4

This Convention shall not apply to sales:

(*a*) of goods bought for personal, family or household use;

(*b*) by auction;

(*c*) on execution or otherwise by authority of law;

(*d*) of stocks, shares, investment securities, negotiable instruments or money;

(*e*) of ships, vessels or aircraft;

(*f*) of electricity.

Article 5

This Convention shall not apply to claims based upon:

(*a*) death of, or personal injury to, any person;

(*b*) nuclear damage caused by the goods sold;

(*c*) a lien, mortgage or other security interest in property;

(*d*) a judgement or award made in legal proceedings;

(*e*) a document on which direct enforcement or execution can be obtained in accordance with the law of the place where such enforcement or execution is sought;

(*f*) a bill of exchange, cheque or promissory note.

Article 6

1. This Convention shall not apply to contracts in which the preponderant part of the obligations of the seller consists in the supply of labour or other services.

2. Contracts for the supply of goods to be manufactured or produced shall be considered to be sales, unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

Article 7

In the interpretation and application of the provisions of this Convention, regard shall be had to its international character and to the need to promote uniformity.

The duration and commencement of the limitation period

Article 8

The limitation period shall be four years.

Article 9

1. Subject to the provisions of articles 10, 11 and 12 the limitation period shall commence on the date on which the claim accrues.

2. The commencement of the limitation period shall not be postponed by:

(*a*) a requirement that the party be given a notice as described in paragraph 2 of article 1, or

(*b*) a provision in an arbitration agreement that no right shall arise until an arbitration award has been made.

Article 10

1. A claim arising from a breach of contract shall accrue on the date on which such breach occurs.

2. A claim arising from a defect or other lack of conformity shall accrue on the date on which the goods are actually handed over to, or their tender is refused by, the buyer.

3. A claim based on fraud committed before or at the time of the conclusion of the contract or during its performance shall accrue on the date on which the fraud was or reasonably could have been discovered.

Article 11

If the seller has given an express undertaking relating to the goods which is stated to have effect for a certain period of time, whether expressed in terms of a specific period of time or otherwise, the limitation period in respect of any claim arising from the undertaking shall commence on the date on which the buyer notifies the seller of the fact on which the claim is based, but not later than on the date of the expiration of the period of the undertaking.

Article 12

1. If, in circumstances provided for by the law applicable to the contract, one party is entitled to declare the contract terminated before the time for performance is due, and exercises this right, the limitation period in respect of a claim based on any such circumstances shall commence on the date on which the declaration is made to the other party. If the contract is not declared to be terminated before performance becomes due, the limitation period shall commence on the date on which performance is due.

2. The limitation period in respect of a claim arising out of a breach by one party of a contract for the delivery of or payment for goods by instalments shall, in relation to each separate instalment, commence on the date on which the particular breach occurs. If, under the law applicable to the contract, one party is entitled to declare the contract terminated by reason of such breach, and exercises this right, the limitation period in respect of all relevant instalments shall commence on the date on which the declaration is made to the other party.

Cessation and extension of the limitation period

Article 13

The limitation period shall cease to run when the creditor performs any act which, under the law of the court where the proceedings are instituted, is recognized as commencing judicial proceedings against the debtor or as asserting his claim in such proceedings already instituted against the debtor, for the purpose of obtaining satisfaction or recognition of his claim.

Article 14

1. Where the parties have agreed to submit to arbitration, the limitation period shall cease to run when either party commences arbitral proceedings in the manner provided for in the arbitration agreement or by the law applicable to such proceedings.

2. In the absence of any such provision, arbitral proceedings shall be deemed to commence on the date on which a request that the claim in dispute be referred to arbitration is delivered at the habitual residence or place of business of the other party or, if he has no such residence or place of business, then at his last known residence or place of business.

Article 15

In any legal proceedings other than those mentioned in articles 13 and 14, including legal proceedings commenced upon the occurrence of:

(*a*) the death or incapacity of the debtor,

(*b*) the bankruptcy or any state of insolvency affecting the whole of the property of the debtor, or

(*c*) the dissolution or liquidation of a corporation, company, partnership, association or entity when it is the debtor,

the limitation period shall cease to run when the creditor asserts his claim in such proceedings for the purpose of obtaining satisfaction or recognition of the claim, subject to the law governing the proceedings.

Article 16

For the purposes of articles 13, 14 and 15, any act performed by way of counterclaim shall be deemed to have been performed on the same date as the act performed in relation to the claim against which the counterclaim is raised, provided that both the claim and the counterclaim relate to the same contract or to several contracts concluded in the course of the same transaction.

Article 17

1. Where a claim has been asserted in legal proceedings within the limitation period in accordance with article 13, 14, 15 or 16, but such legal proceedings have ended without a decision binding on the merits of the claim, the limitation period shall be deemed to have continued to run.

2. If, at the time such legal proceedings ended, the limitation period has expired or has less than one year to run, the creditor shall be entitled to a period of one year from the date on which the legal proceedings ended.

Article 18

1. Where legal proceedings have been commenced against one debtor, the limitation period prescribed in this Convention shall cease to run against any other party jointly and severally liable with the debtor, provided that the creditor informs such party in writing within that period that the proceedings have been commenced.

2. Where legal proceedings have been commenced by a subpurchaser against the buyer, the limitation period prescribed in this Convention shall cease to run in relation to the buyer's claim over against the seller, if the buyer informs the seller in writing within that period that the proceedings have been commenced.

3. Where the legal proceedings referred to in paragraphs 1 and 2 of this article have ended, the limitation period in respect of the claim of the creditor or the buyer against the party jointly and severally liable or against the seller shall be deemed not to have ceased running by virtue of paragraphs 1 and 2 of this article, but the creditor or the buyer shall be entitled to an additional year from the date on which the legal proceedings ended, if at that time the limitation period had expired or had less than one year to run.

Article 19

Where the creditor performs, in the State in which the debtor has his place of business and before the expiration of the limitation period, any act, other than the acts described in articles 13, 14, 15 and 16, which under the law of that State has the effect of recommencing a limitation period, a new limitation period of four years shall commence on the date presented by that law.

Article 20

1. Where the debtor, before the expiration of the limitation period, acknowledges in writing his obligation to the creditor, a new limitation period of four years shall commence to run from the date of such acknowledgement.

2. Payment of interest or partial performance of an obligation by the debtor shall have the same effect as an acknowledgement under paragraph (1) of this article if it can reasonably be inferred from such payment or performance that the debtor acknowledges that obligation.

Article 21

Where, as a result of a circumstance which is beyond the control of the creditor and which he could neither avoid nor overcome, the creditor has been prevented from causing the limitation period to cease to run, the limitation period shall be extended so as not to expire before the expiration of one year from the date on which the relevant circumstance ceased to exist.

Modification of the limitation period by the parties

Article 22

1. The limitation period cannot be modified or affected by any declaration or agreement between the parties, except in the cases provided for in paragraph (2) of this article.

2. The debtor may at any time during the running of the limitation period extend the period by a declaration in writing to the creditor. This declaration may be renewed.

3. The provisions of this article shall not affect the validity of a clause in the contract of sale which stipulates that arbitral proceedings shall be commenced within a shorter period of limitation than that prescribed by this Convention, provided that such clause is valid under the law applicable to the contract of sale.

General limit of the limitation period

Article 23

Notwithstanding the provisions of this Convention, a limitation period shall in any event expire not later than 10 years from the date on which it commenced to run under articles 9, 10, 11 and 12 of this Convention.

Consequences of the expiration of the limitation period

Article 24

Expiration of the limitation period shall be taken into consideration in any legal proceedings only if invoked by a party to such proceedings.

Article 25

1. Subject to the provisions of paragraph (2) of this article and of article 24, no claim shall be recognized or enforced in any legal proceedings commenced after the expiration of the limitation period.

2. Notwithstanding the expiration of the limitation period, one party may rely on his claim as a defence or for the purpose of set-off against a claim asserted by the other party, provided that in the latter case this may only be done:

(*a*) if both claims relate to the same contract or to several contracts concluded in the course of the same transaction; or

(*b*) if the claims could have been set off at any time before the expiration of the limitation period.

Article 26

Where the debtor performs his obligation after the expiration of the limitation period, he shall not on that ground be entitled in any way to claim restitution even if he did not know at the time when he performed his obligation that the limitation period had expired.

Article 27

The expiration of the limitation period with respect to a principal debt shall have the same effect with respect to an obligation to pay interest on that debt.

Calculation of the period

Article 28

1. The limitation period shall be calculated in such a way that it shall expire at the end of the day which corresponds to the date on which the period commenced to run. If there is no such corresponding date, the period shall expire at the end of the last day of the last month of the limitation period.

2. The limitation period shall be calculated by reference to the date of the place where the legal proceedings are instituted.

Article 29

Where the last day of the limitation period falls on an official holiday or other *dies non juridicus* precluding the appropriate legal action in the jurisdiction where the creditor institutes legal proceedings or asserts a claim as envisaged in article 13, 14 or 15, the limitation period shall be extended so as not to expire until the end of the first day following that official holiday or *dies non juridicus* on which such proceedings could be instituted or on which such a claim could be asserted in that jurisdiction.

International effect

Article 30

The acts and circumstances referred to in articles 13 through 19 which have taken place in one Contracting State shall have effect for the purposes of this Convention in another Contracting State, provided that the creditor has taken all reasonable steps to ensure that the debtor is informed of the relevant act or circumstances as soon as possible.

PART II. IMPLEMENTATION

Article 31

1. If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations shall be notified to the Secretary-General of the United Nations and shall state expressly the territorial units to which the Convention applies.

3. If a Contracting State described in paragraph (1) of this article makes no declaration at the time of signature, ratification or accession, the Convention shall have effect within all territorial units of that State.

Article 32

Where in this Convention reference is made to the law of a State in which different systems of law apply, such reference shall be construed to mean the law of the particular legal system concerned.

Article 33

Each Contracting State shall apply the provisions of this Convention to contracts concluded on or after the date of the entry into force of this Convention.

Article 34

Two or more Contracting States may at any time declare that contracts of sale between a seller having a place of business in one of these States and a buyer having a place of business in another of these States shall not be governed by this Convention, because they apply to the matters governed by this Convention the same or closely related legal rules.

Article 35

A Contracting State may declare, at the time of the deposit of its instrument of ratification or accession, that it will not apply the provisions of this Convention to actions for annulment of the contract.

Article 36

Any State may declare, at the time of the deposit of its instrument of ratification or accession, that it shall not be compelled to apply the provisions of article 24 of this Convention.

Article 37

This Convention shall not prevail over conventions already entered into or which may be entered into, and which contain provisions concerning the matters covered by this Convention, provided that the seller and buyer have their places of business in States parties to such a convention.

Article 38

1. A Contracting State which is a party to an existing convention relating to the international sale of goods may declare, at the time of the deposit of its instrument of ratification or accession, that it will apply this Convention exclusively to contracts of international sale of goods as defined in such existing convention.

2. Such declaration shall cease to be effective on the first day of the month following the expiration of 12 months after a new convention on the international sale of goods, concluded under the auspices of the United Nations, shall have entered into force.

Article 39

No reservation other than those made in accordance with articles 34, 35, 36 and 38 shall be permitted.

Article 40

1. Declarations made under this Convention shall be addressed to the Secretary-General of the United Nations and shall take effect simultaneously with the entry of this Convention into force in respect of the State concerned, except declarations made thereafter. The latter declarations shall take effect on the first day of the month following the expiration of six months after the date of their receipt by the Secretary-General of the United Nations.

2. Any State which has made a declaration under this Convention may withdraw it at any time by a notification addressed to the Secretary-General of the United Nations. Such withdrawal shall take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the Secretary-General of the United Nations. In the case of a declaration made under article 34 of this Convention, such withdrawal shall also render inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

PART IV. FINAL CLAUSES

Article 41

This Convention shall be open until 31 December 1975 for signature by all States at the Headquarters of the United Nations.

Article 42

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 43

This Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 44

1. This Convention shall enter into force on the first day of the month following the expiration of six months after the date of the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the tenth instrument of ratification or accession, this Convention shall enter into force on the first day of the month following the expiration of six months after the date of the deposit of its instrument of ratification or accession.

Article 45

1. Any Contracting State may denounce this Convention by notifying the Secretary-General of the United Nations to that effect.

2. The denunciation shall take effect on the first day of the month following the expiration of 12 months after receipt of the notification by the Secretary-General of the United Nations.

Article 46

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

1. INTERNATIONAL CIVIL AVIATION ORGANIZATION

RESOLUTION A 21-2 ADOPTED BY THE ASSEMBLY AT ITS TWENTY-FIRST SESSION

Amendment to Article 50(a) of the Convention increasing the membership of the Council to thirty-three

The Assembly,

Having met in its twenty-first session, at Montreal on 14 October 1974,

Having noted that it is the general desire of Contracting States to enlarge the membership of the Council,

Having considered it proper to provide for three additional seats in the Council and accordingly to increase the membership from thirty to thirty-three, in order to permit an

increase in the representation of States elected in the second, and particularly the third, part of the election, and

Having considered it necessary to amend, for the purpose aforesaid, the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944,

1. *Approves*, in accordance with the provisions of Article 94(*a*) of the Convention aforesaid, the following proposed amendment to the said Convention:

In Article 50(*a*) of the Convention the second sentence shall be amended by replacing "thirty" by "thirty-three".

2. *Specifies*, pursuant to the provisions of the said Article 94(*a*) of the said Convention, eighty-six as the number of Contracting States upon whose ratification the proposed amendment aforesaid shall come into force, and

3. *Resolves* that the Secretary General of the International Civil Aviation Organization draw up a Protocol, in the English, French and Spanish languages, each of which shall be of equal authenticity, embodying the proposed amendment above-mentioned and the matter hereinafter appearing:

(*a*) The Protocol shall be signed by the President of the Assembly and its Secretary General.

(*b*) The Protocol shall be open to ratification by any State which has ratified or adhered to the said Convention on International Civil Aviation.

(*c*) The instruments of ratification shall be deposited with the International Civil Aviation Organization.

(*d*) The Protocol shall come into force in respect of the States which have ratified it on the date on which the 86th instrument of ratification is so deposited.

(*e*) The Secretary General shall immediately notify all Contracting States of the date of deposit of each ratification of the Protocol.

(*f*) The Secretary General shall immediately notify all States parties to the said Convention of the date on which the Protocol comes into force.

(*g*) With respect to any Contracting State ratifying the Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with the International Civil Aviation Organization.

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2. UNIVERSAL POSTAL UNION

SECOND ADDITIONAL PROTOCOL TO THE CONSTITUTION OF THE UNIVERSAL POSTAL UNION. DONE AT LAUSANNE ON 5 JULY 1974[5]

The plenipotentiaries of the Governments of the member countries of the Universal Postal Union, met in Congress at Lausanne, in view of article 30, §2, of the Constitution of the Universal Postal Union concluded at Vienna on 10 July 1964 have adopted, subject to ratification, the following amendments to that Constitution.

Article I

(Article 21 amended)

Expenditure of the Union. Contributions of member countries

1. Each Congress shall fix the maximum amount which:

(a) the expenditure of the Union may reach annually;

(b) the expenditure relating to the organization of the next Congress may reach.

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[5]The Constitution of the Universal Postal Union was concluded by the 1964 Vienna Congress (see *Juridical Yearbook*, 1964, p. 195). The first Additional Protocol was adopted at the 1969 Tokyo Congress.

2. The maximum amount for expenditure referred to in §1 may be exceeded if circumstances so require, provided that the relevant provisions of the General Regulations are observed.

3. The expenses of the Union, including where applicable the expenditure envisaged in §2, shall be jointly borne by the member countries of the Union. For this purpose, each member country shall choose the contribution class in which it intends to be included. The contribution classes shall be laid down in the General Regulations.

4. In the case of accession or admission to the Union under article 11, the Government of the Swiss Confederation shall fix, by agreement with the Government of the country concerned, the contribution class into which the latter country is to be placed for the purpose of apportioning the expenses of the Union.

Article II

Choice of contribution class

Article I, §3, shall be applicable before the entry into force of this Additional Protocol.

Article III

Accession to the Additional Protocol and to the other Acts of the Union

1. Member countries which have not signed the present Protocol may accede to it at any time.

2. Member countries which are party to the Acts renewed by Congress but which have not signed them, shall accede thereto as soon as possible.

3. Instruments of accession relative to the cases set forth in §§1 and 2 shall be sent through diplomatic channels to the Government of the country in which the seat of the Union is situated, which shall notify the member countries of these deposits.

Article IV

Entry into force and duration of the Additional Protocol to the Constitution of the Universal Postal Union.

This Additional Protocol shall come into force on 1 January 1976 and shall remain in force for an indefinite period.

In witness whereof the plenipotentiaries of the Governments of the member countries have drawn up this Additional Protocol, which shall have the same force and the same validity as if its provisions were inserted in the text of the Constitution itself and they have signed it in a single original which shall be deposited in the archives of the Government of the country in which the seat of the Union is situated. A copy thereof shall be delivered to each party by the Government of the country in which Congress is held.

Done at Lausanne, 5 July 1974.[6]

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[6]The Lausanne Congress has also revised and renewed the other Acts of the Union which are the following:

—the General Regulations of the Universal Postal Union with Final Protocol;

—the Universal Postal Convention, with Final Protocol and Detailed Regulations;

—the Insured Letters Agreement, with Final Protocol and Detailed Regulations;

—the Postal Parcels Agreement, with Final Protocol and Detailed Regulations;

3. INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION AMENDMENTS TO THE IMCO CONVENTION

RESOLUTION A.315 (ES.V) ADOPTED ON 17 OCTOBER 1974 AT THE FIFTH EXTRAORDINARY SESSION OF THE ASSEMBLY

The Assembly,

Recalling Resolution A.69(ES.II) by which it adopted amendments to the IMCO Convention[7] increasing the membership of the Council[8] and Resolution A.70(IV) by which amendments were adopted to the IMCO Convention to increase the number of members in the Maritime Safety Committee and to modify the method of their election,[9]

Noting and welcoming the increase in the membership of the Organization since these amendments were adopted,

Recognizing the need to ensure at all times that the principal organs of the Organization are representative of the total membership of the Organization and ensure equitable geographic representation of Member States on the Council,

Recalling its Resolution A.314(VIII) by which it decided to convene an Ad Hoc Working Group to study proposed amendments to the IMCO Convention concerning the size and composition of the Council and the Maritime Safety Committee and any consequential related amendments,

Having considered the Report of the Ad Hoc Working Group, including the Working Group's recommendations on proposed amendments to the IMCO Convention,

Having adopted at the fifth extraordinary session of the Assembly held in London from 16 to 18 October 1974, amendments, the texts of which are contained in the Annex to this Resolution, to Articles 10, 16, 17, 18, 20, 28, 31 and 32 of the Convention on the Inter-Governmental Maritime Consultative Organization,

Having determined, in accordance with the provisions of Article 52 of the Convention, that these amendments are of such a nature that any Member which hereafter declares that it does not accept the amendments and which does not accept the amendments within a period of twelve months after the amendments come into force shall, upon the expiration of this period, cease to be a Party to the Convention,

Requests the Secretary-General of the Organization to deposit the adopted amendments with the Secretary-General of the United Nations in accordance with Article 53 of the IMCO Convention and to receive declarations and instruments of acceptance as provided for in Article 54,

Invites the Member Governments to accept each amendment at the earliest possible date after receiving a copy thereof from the Secretary-General of the United Nations by communicating the appropriate instrument of acceptance to the Secretary-General.

—the Postal Money Orders and Postal Travellers' Cheques Agreement with Detailed Regulations;

—the Cash-on-Delivery Agreement with Detailed Regulations (replaces the *Arrangement concernant les virements*)

—the Collection of Bills Agreement with Detailed Regulations;

—the International Savings Agreement with Detailed Regulations;

—the Subscriptions to Newspapers and Periodicals Agreement with Detailed Instructions.

All these Acts have been signed on 5 July 1974 at Lausanne and will come into force on 1 January 1976.

[7] See United Nations, *Treaty Series*, vol. 289, p. 3.

[8] See *Juridical Yearbook*, 1964, p. 202.

[9] See *Juridical Yearbook*, 1965, p. 204.

ANNEX

AMENDMENTS TO THE CONVENTION ON THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

Article 10

The existing text is replaced by the following:

An Associate Member shall have the rights and obligations of a Member under the Convention except that it shall not have the right to vote or be eligible for membership on the Council and subject to this the word "Member" in the Convention shall be deemed to include Associate Member unless the context otherwise requires.

Article 16

The existing text of paragraph (d) *is replaced by the following:*

(*d*) To elect the Members to be represented on the Council as provided in Article 17.

Article 17

The existing text is replaced by the following:

The Council shall be composed of twenty-four Members elected by the Assembly.

Article 18

The existing text is replaced by the following:

In electing the Members of the Council, the Assembly shall observe the following criteria:

(*a*) Six shall be States with the largest interest in providing international shipping services;

(*b*) Six shall be other States with the largest interest in international seaborne trade;

(*c*) Twelve shall be States not elected under (*a*) or (*b*) above, which have special interests in maritime transport or navigation, and whose election to the Council will ensure the representation of all major geographic areas of the world.

Article 20

The existing text is replaced by the following:

(*a*) The Council shall elect its Chairman and adopt its own Rules of Procedure except as otherwise provided in the Convention.

(*b*) Sixteen Members of the Council shall constitute a quorum.

(*c*) The Council shall meet upon one month's notice as often as may be necessary for the efficient discharge of its duties upon the summons of its Chairman or upon request by not less than four of its Members. It shall meet at such places as may be convenient.

Article 28

The existing text is replaced by the following:

The Maritime Safety Committee shall consist of all the Members.

Article 31

The existing text is replaced by the following:

The Maritime Safety Committee shall meet at least once a year. It shall elect its officers once a year and shall adopt its own Rules of Procedure.

Article 32

This Article is deleted.

Articles 33 through 63 are renumbered accordingly.

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. 181 (19 APRIL 1974):[2] NATH v. SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting a decision not to renew a fixed-term appointment

The applicant, an official seconded from the Indian Government, had completed an initial two-year period of service with UNICEF from 20 September 1966 to 20 September 1968. On 7 November 1968, an extension of his deputation until 11 September 1970 having been approved by the Indian Government, he signed a letter of appointment for a fixed term of one year from 20 September 1968 to 19 September 1969. On 3 June 1969, UNICEF offered him the following option: either to sign a contract for an additional and final year or to return to Government of India service when his current contract expired. The applicant chose the first alternative and signed a letter of appointment for a fixed term of one year, from 20 September 1969 to 19 September 1970. When that appointment expired, the applicant protested against the non-extension of his appointment and filed with the Tribunal an application in which he contended that he had accepted assignment to UNICEF, in conditions disadvantageous to him both financially and from the point of view of his career as an Indian civil servant, only on the explicit commitment on the part of UNICEF that he would be retained in the Organization at least until the normal retirement age for UNICEF staff members.

The Tribunal found that the documents on record did not support the applicant's assertion that he had a verbal commitment of continued employment. As a senior civil servant of the Government of India, he could not negotiate with UNICEF for periods of employment beyond that which had been agreed to by the Government in its secondment. Moreover, the

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[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 1974, 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 and 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. F. T. P. Plimpton, Vice-President; Sir Roger Stevens, Member.

applicant had not protested when he had been offered the option referred to in the first paragraph above and, on the contrary, had opted for an additional and final year of service.

The Tribunal therefore found that the employment relationship established between the applicant and UNICEF in September 1966 had been for a fixed term of two years and no more, and that the employment commitments thereafter given the applicant were also for fixed terms, with no expectancy of renewal as provided in Staff Rule 104.12 (*b*).

2. JUDGEMENT NO. 182 (19 APRIL 1974):[3] HARPIGNIES v. SECRETARY-GENERAL OF THE UNITED NATIONS[4]

Application alleging the existence on the part of the respondent of an obligation to maintain unchanged the purchasing power of a retirement pension adversely affected by the devaluation of the dollar

The applicant, a United Nations pensioner resident in Belgium, complained that as a result of the devaluation of the dollar, used as the monetary unit in the Pension Fund Regulations, the real value of his retirement pension had diminished considerably. He had requested the Secretary-General to pay him allowances over and above his pension, basing his request on what he deemed to be the Organization's obligation to maintain the effective purchasing power of his retirement pension. Not having received satisfaction, he filed this application with the Tribunal.

The Tribunal first asserted that while the increase in the cost of living was a general phenomenon affecting to a greater or lesser extent all retired staff members, whatever their country of residence, the devaluation of the dollar had materially altered the situation in some countries. It also recalled that since 1965, the General Assembly had adopted various measures to remedy the situation of retired staff members: it referred in that regard to the work undertaken by the Joint Staff Pension Board and by the Advisory Committee on Administrative and Budgetary Questions, as well as to General Assembly resolution 2944 (XXVII) providing for the granting of additional adjustments over three years applying to the first $3,000 of pensions, and to resolution 3100 (XXVIII) providing for (1) the payment of a transitional adjustment calculated as a percentage of the basic benefit and (2) the application of a revised pension adjustment index capable of responding more rapidly to changes in the cost of living.

The Tribunal noted that the applicant was not questioning the line of conduct of the Pension Fund or its interpretation of General Assembly resolution 3100 (XXVIII); he was seeking in effect recognition that there was an obligation, on the part of the Secretary-General, to ensure the stability of the purchasing power of his pension by granting him additional compensation.

The Tribunal first determined the legal basis of the applicant's right to a pension. In that regard, it noted that the legal status of the applicant as a United Nations staff member was based on a contract which, *inter alia*, provided for his participation in the Pension Fund. Since that was a contractual provision, the respondent could not legally have abolished unilaterally the applicant's participation in the Pension Fund. But the contract itself said nothing further

[3] Mr. R. Venkataraman, President; Mme P. Bastid, Vice-President; Mr. F. T. P. Plimpton, Vice-President. Mr. F. T. P. Plimpton annexed to the judgement a statement in which he recorded while agreeing with the substance and conclusions of the judgement, his inability to concur with some of the reasoning or with some of the wording.

[4] A number of retired staff members of international organizations submitted applications for intervention. The Tribunal ruled that the applications for intervention submitted by former United Nations staff members were admissible; however, it ruled that the application for intervention submitted by a former staff member of ICAO was not admissible for the reason that the effects of a judgement against the Secretary-General of the United Nations could not extend to another intergovernmental organization as a result of an application for intervention.

with regard to such participation. It did, however, refer to the Staff Regulations and Rules as the law governing the contract, so that the practical effects of the applicant's participation in the Pension Fund derived from regulations established by the General Assembly under Article 101, paragraph 1, of the Charter.

After studying the relevant texts, the Tribunal concluded that, under the law applicable by virtue of the applicant's contract, the respondent had no financial obligations toward the applicant other than those incumbent upon him under the Pension Fund Regulations and the resolutions of the General Assembly.

The Tribunal noted further that the applicant was bound by article 48 of the Pension Fund Regulations, which read as follows:

"(*a*) Contributions under these Regulations shall be calculated and remitted to the Fund in dollars.

"(*b*) Benefits shall be calculated in dollars and shall be payable in any currency selected by the recipient, at the rate of exchange for dollars obtained by the Fund on the date of payment."

The applicant in effect was complaining against the application of that text and more particularly of the provision relating to the rate of exchange "on the date of payment". There was no doubt, however, that since the respondent had specifically recognized in the contract the applicant's right to a pension, he would be contractually liable if, through his action or omission, the applicant's participation in the Pension Fund were to lose any practical significance or if the effects of such action or omission were so contrary to general principles of law applicable to pensions as to render the very notion of pension meaningless.

Considering subsequently whether the right to a pension gave a right to the maintenance of the purchasing power of the pension which the United Nations would be required to guarantee, the Tribunal rejected the applicant's view which tended to assimilate the pension system and the salary system. The adjustment of pensions to the cost of living doubtless appeared to be a social requirement as well as a means of maintaining for the international civil service a prestige likely to encourage recruitment of high-quality staff, but it could not be regarded as a rule of law so precise as to affect the contractual responsibility of an organization. Furthermore, since 1965 the General Assembly had taken steps to increase pensions in relation to the cost of living, and it could not be claimed that the alleged inadequacy of those measures threw any liability on the respondent.

In selecting, under article 48 of the Pension Fund Regulations, the Belgian franc as the currency in which the pension would be paid, the applicant had been involved in an exchange rate which operated to his disadvantage after 1971. It is true that he found himself, because of this, in an unfavourable position in comparison with his colleagues residing in the United States, but there was no infringement upon his right to a pension for which the respondent could be held liable.

The Tribunal recognized that in the absence of a provision similar to that contained in article IV (1) of the Articles of Agreement of the International Monetary Fund (which refers to the United States dollar of the weight and fineness in effect on 1 July 1944), the devaluation of the dollar—the monetary unit which had been regarded for more than 25 years as the best suited to the needs of the general international organizations—had deeply affected international organizations and altered many existing situations, including those of retired staff members of the United Nations. It did not seem, however, that the resulting inequality of treatment, which was not attributable to the Organization, imposed any specific duty on its part towards a retired staff member.

As the applicant, while criticizing the effectiveness of the measures taken by the General Assembly and which the Tribunal was not qualified to judge, had not proved any breech of a contractual obligation incumbent on the respondent, the Tribunal rejected his application. However, it trusted that the respondent and the General Assembly would give continuing attention to pensioners' financial difficulties. Considering, finally, that the applicant had raised very important questions and that the Tribunal had received from him valuable information

for the consideration of the case, the Tribunal decided to award him the sum of $500 in lieu of costs.

3. JUDGEMENT NO. 183 (23 APRIL 1974):[5] LINDBLAD V. SECRETARY-GENERAL OF THE UNITED NATIONS

Application seeking rescission of a decision of dismissal for serious misconduct—Right of every staff member involved in disciplinary proceedings to be accorded fair procedure

The applicant, who had been working with UNTSO for two and a half years under fixed-term appointments, was dismissed for misconduct under Staff Regulation 10.2 and Staff Rule 110.3 (*b*). He was charged with purchasing at the UNTSO Service Institute of Jerusalem tax-free goods in quantities in excess of his personal requirements, in contravention of the directives regarding privileges and immunities given in the Field Administration Handbook.

The Joint Appeals Board, considering the case, was concerned to find that in spite of the decision of the Tribunal in the Zang-Atangana case,[6] no procedure equivalent to referral to the Joint Disciplinary Committee had been established for staff members serving at duty stations other than Headquarters or Geneva. In view of the absence of an examination of the case by a body such as the Joint Disciplinary Committee, the Board felt obliged to look itself into the substance of the case. While emphasizing the importance for all staff members to maintain high moral standards and while recognizing that the applicant's behaviour justified his leaving the service of the United Nations, the Board considered that in the light of the facts of the case, a less severe disciplinary measure might have been more appropriate. Consequently, it recommended that the Secretary-General should withdraw his decision of dismissal for misconduct, that a written reprimand should be placed in the applicant's file and that he should be allowed to resign from the date on which he actually left the service of the United Nations.

That recommendation was not accepted by the Secretary-General, who maintained his initial decision.

The applicant claimed before the Tribunal that the contested decision was based on an erroneous assumption that he had been guilty of disposing of tax-free goods on a number of occasions and over a prolonged period, for which, contrary to the norms of due process, he had never been called upon to answer or offer an explanation.

The Tribunal noted that the respondent had adopted the following procedure: all the various documents in the case had been sent by the Chief Administrative Officer to the Chief of the Field Operations Service under cover of a letter which stated: "These documents are self-explanatory and constitute as a whole the report on the case. I assume that nothing further will be needed". In turn, the Chief of the Field Operations Service had sent the same documents to the Office of Personnel, observing that in his opinion they constituted incontrovertible evidence of the applicant's "blatant act of wrong-doing". The Director of Personnel had recommended to the Secretary-General that the applicant should be dismissed for misconduct and that no indemnity should be paid "considering the gravity of the offence to the interests of the Organization".

The Tribunal considered first of all whether the Staff Regulations and Rules had been complied with. It concluded that the respondent had acted within the terms of the Staff Regulations and Rules, but that whenever he had discretion to opt between two courses of action he had selected that which was less favourable to the applicant, who accordingly had received the least favourable treatment, short of summary dismissal, which could be meted out to him within the Staff Regulations and Rules.

The Tribunal then sought to determine whether the applicant had been accorded fair procedure and whether he had had a proper opportunity to give his version of the facts and to give his explanation of his conduct, including extenuating circumstances. In that regard, the

[5] Mr. R. Venkataraman, President; Mme P. Bastid, Vice-President; Sir Roger Stevens, Member.

[6] See *Juridical Yearbook, 1969*, p. 187.

Tribunal first noted that the opportunity given to the applicant to give his version of the facts and to explain his conduct in pursuance of the above procedure had been confined to a statement taken from him at the time that he was apprehended and a further statement made later on the same day; there was no evidence that any written charges had been made against the applicant or that he had had any opportunity to reply in any considered way to such charges. Moreover, the evidence seemed to indicate that account had been taken, in recommending his dismissal, not only of the incident which led to the statements mentioned, but also of allegations that the applicant had repeatedly purchased excessive quantities of tax-free goods; the applicant did not appear to have been given any adequate opportunity to explain those earlier purchases, which in his application he maintained were not excessive. The Tribunal concluded that, having regard to the summary manner in which the applicant's statements had been taken and the absence of any provision for the rebuttal by him of any specific formal charges, the applicant had not been accorded a fair opportunity to give his version of all the relevant facts or to explain his conduct in its entirety.

The Tribunal added that any staff member against whom disciplinary proceedings were taken should be furnished with a specific charge and should be accorded the right to be heard before a sanction was imposed on him; that right included, *inter alia*, the opportunity to participate in the examination of the evidence. In that regard, the Tribunal considered that Personnel Directive PD/1/69, which was applicable to the case in point, did not provide adequate protection for staff members involved in disciplinary proceedings and did not establish an "equivalent procedure" to the Joint Disciplinary Committee procedure as envisaged in Judgement No. 130 (*Zang-Atangana*).

The applicant, then, had not been accorded fair procedure, and consequently the Tribunal decided to assimilate the situation to one of termination of the applicant's contract on the date of his dismissal, and to grant him the termination indemnity as provided in the Staff Regulations.

4. JUDGEMENT NO. 184 (24 APRIL 1974):[7] MILA v. SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting a decision terminating a permanent contract—Such a decision may not be taken until a complete, fair and reasonable procedure has been carried out

The applicant worked for the United Nations Office at Geneva under a permanent contract as a cleaner-mover. After having received three satisfactory periodic reports in succession, he was given a fourth report covering the period 1 April 1970–15 January 1972 rating him as a staff member who maintained only a minimum standard, and he contested the ratings in that report. On 4 May 1972 he was informed that in connexion with the five-year review of his permanent contract, a recommendation to terminate his contract would be submitted to the Appointment and Promotion Panel. That recommendation having been endorsed, the applicant was informed that it had been decided to terminate his appointment and that he would receive compensation in lieu of the notice period, as well as the termination indemnity provided for in the Staff Regulations.

The Joint Appeals Board, to which the case was appealed, found that the way in which the case had been handled revealed administrative short-comings which justified the granting of an appropriate indemnity, i.e., the equivalent of four months' salary at the grade and step of the applicant at the moment of separation.

That recommendation was not accepted by the Secretary-General, who decided to maintain the initial decision.

The Tribunal noted that there were two main issues on which the applicant and the respondent were in fundamental disagreement. The first concerned the applicant's performance of his duties up to the time of his separation from service and the nature of the personal

[7] Mme P. Bastid, Vice-President, presiding; Mr. F. A. Forteza, Member; Sir Roger Stevens, Member.

relationships existing within the group of cleaners-movers at the United Nations Office at Geneva. The second related to the procedures followed in connexion with the termination of the applicant's appointment, as well as the nature and the extent of the inquiry undertaken by the Appointment and Promotion Panel.

The Tribunal recalled that it had stated in several cases (Judgements No. 98, *Gillman*,[8] No. 131, *Restrepo*[9] and No. 157, *Nelson*[10]) that in view of the "rights given by the General Assembly to those individuals who hold permanent appointments in the United Nations Secretariat . . . such permanent appointments can be terminated only upon a decision which has been reached by means of a complete, fair and reasonable procedure which must be carried out prior to such decision". The Tribunal acknowledged that the review carried out by the Appointment and Promotion Board in connexion with a permanent appointment represented, in principle, the "complete, fair and reasonable procedure" required. However, the Tribunal considered that the termination decision might be invalid if taken on the basis of recommendations by the Panel reached in the light of inadequate or erroneous information (Judgement No. 98, *Gillman*) and that the examination of the case by the Panel must be "reasonably detailed". In order to determine whether the termination decision had been taken on the basis of a recommendation formulated by the Panel in accordance with the aforementioned requirements, the Tribunal deemed it necessary to carry out a prior over-all examination of the situation.

As regards the applicant's performance of his duties, the Tribunal came to the conclusion that there had been a progressive deterioration in relations between the team of cleaners to which the applicant belonged and their immediate supervisors during at least two years prior to January 1972 and that the attitude of the supervisors had appeared to become one of confrontation with regard to certain members of the team who were suspected of being ringleaders or troublemakers. Although it was not easy to determine whether the provocation weighed more heavily on the applicant's side or on that of his supervisors, the Tribunal considered that the Chief of the section in which the applicant was employed was either unaware of the atmosphere prevailing in relations between the cleaners and their immediate supervisors or, if he was aware of it, had chosen to regard it as solely attributable to insubordination and lack of co-operation on the part of some members of the team, which was in turn reflected in the alleged deterioration of the applicant's performance. Nevertheless, the Tribunal recognized, as it had done in the *Peynado* case (Judgement No. 138)[11] that it could not substitute its judgement for that of the Secretary-General concerning the standard of performance or efficiency of the staff member involved.

The Tribunal also drew attention to another passage from Judgement No. 138 to the effect that "where the [Appointment and Promotion] Board reached its conclusions in the light of inadequate or erroneous information and the Secretary-General relied on these conclusions for the termination of the appointment, the fact that there was a review by the Board does not secure that that Secretary-General's decision is valid".[12]

The Tribunal considered that there were three serious irregularities in the procedures followed in connexion with the termination of the applicant's appointment. The first related to the nature of the warnings given to the applicant, as to his performance and conduct. In that connexion the Tribunal noted with regret that the applicant had not received any written warning and that there had been no record in his personal file of any verbal warning. The second procedural irregularity related to the failure to observe the administrative instructions which require that where a staff member makes a written statement in explanation or rebuttal of a periodic report the Head of the Department or Service should investigate the case and

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[8] See *Juridical Yearbook*, 1966, p. 213.

[9] See *Juridical Yearbook*, 1969, p. 188.

[10] See *Juridical Yearbook*, 1972, p. 126.

[11] See *Juridical Yearbook*, 1970, p. 141.

[12] *Ibid.*, p. 142.

record his appraisal of it, this report to be filed together with the periodic report and the staff member's statement; that failure to comply with the terms of the administrative instruction was the more serious in that the Appointment and Promotion Panel had had to consider the proposal to terminate the applicant's service without the benefit of a proper investigation or appraisal of the situation by the Head of the Department; the periodic report sent to the Panel was thus an incomplete document, as in the *Peynado* case. The third irregularity was that the Appointment and Promotion Panel seemed to have given inordinate weight in its hearings to the testimony of the applicant's supervisors and to have failed generally to probe in sufficient depth the deterioration in relations between the team of cleaners and their supervisors. Given the circumstances of the case, the decision to terminate the applicant's appointment reached on the recommendation of the Panel had not been preceded by a complete, fair and reasonable procedure.

In view of the foregoing considerations, the Tribunal remanded the case for correction of the procedure and granted the applicant compensation equivalent to three months' net base salary for the loss caused by the procedural delay.

5. JUDGEMENT NO. 185 (25 APRIL 1974): [13] LAWRENCE v. SECRETARY-GENERAL OF THE UNITED NATIONS

Application seeking rescission of a decision to terminate a fixed-term appointment prior to its normal expiry, and payment of an education grant for the period of service not completed

The applicant entered the service of ONUC on 11 May 1961 and held several fixed-term appointments with UNDP, the most recent covering the period 1 May 1971–30 April 1973. Following a series of administrative difficulties, and since no suitable assignment could be found for him, the applicant was placed on special leave from 26 January to 29 February 1972. On 24 February 1972 he was notified that since it had not been possible to reassign him to a suitable post, the Administration had decided to terminate his fixed-term appointment under the provisions of Staff Regulation 9.1 (*b*). The formal notice of termination in accordance with Staff Rule 109.3 (*b*) was to take effect on 29 February 1972 and the applicant would receive compensation in lieu of notice in accordance with Staff Rule 109.3 (*c*).

The Joint Appeals Board, to which the matter was submitted, felt that the decision to terminate the applicant's fixed-term appointment prior to the expiration date was not authorized under Staff Regulation 9.1 (*b*) and was therefore improper and should be rescinded. It therefore recommended that the Secretary-General rescind the decision in question and pay the applicant his full salary and emoluments up to the date of expiration of his fixed-term appointment. The Board also recommended that the Secretary-General grant the applicant an *ex-gratia* payment of nine months of base salary, which represented the amount of termination indemnity that he would have received had he held a permanent appointment for 12 years.

The Secretary-General accepted the first of these recommendations but not the second.

The applicant then filed with the Tribunal an application seeking (1) rescission of the decision terminating his fixed-term appointment; (2) reinstatement with retroactive effect to 1 March 1972; (3) payment of an education grant for his children for the period 26 January 1972–1 May 1973; (4) payment of damages in an amount equal to four years of his last salary.

With regard to the first point, the Tribunal noted that acceptance by the respondent of the first of the two recommendations of the Joint Appeals Board was equivalent to a rescission effected by the competent authority who, having expressed no reservations concerning the

[13] Mme P. Bastid, Vice-President, presiding; Mr. F. A. Forteza, Member; Mr. Mutuale Tshikankie, Member.

reasons given by the Joint Appeals Board, must be assumed to have accepted the reasons derived from the irregularity of the decision of 29 February 1972. In these conditions the application with regard to this point no longer had any substance.

With regard to the second point, the Tribunal noted that the applicant's contract expired on 30 April 1973 and that retroactive reinstatement was impossible except in the form of payment and emoluments up to the date of expiry of the contract. This payment having been made, the application on that point also no longer had any substance.

With regard to the third point, the Tribunal noted that according to Staff Rule 103.20 (*b*) the payment of an education grant depended on the fact that the "duty station" of the staff member was "outside his home country". The personnel action form concerning the granting of special leave with pay (26 January–29 February 1972) contained under the heading "Official duty station" the words "New York-Awaiting reassignment". It therefore appeared that the condition laid down in Staff Rule 103.20 (*b*) had been fulfilled until 29 February 1972. The Tribunal, however, noted that the respondent had in a decision of 3 August 1972 retroactively eliminated that reference and stated that the applicant was in fact in Paris. The Tribunal felt that New York incontestably remained the applicant's duty station until the decision of 3 August 1972, which could not affect the applicant's acquired rights nor therefore have legal effect for the period of the special leave (26 January–29 February 1972). On the other hand, when the special leave was extended pursuant to the decision of 18 October 1973, following the recommendation of the Joint Appeals Board, the decision of 3 August 1972 could have effect, so that the applicant, residing in his country of origin, had no duty station and no longer fulfilled the conditions required to be entitled to receive the education grant for the period 29 February 1972–30 April 1973.

With regard to the fourth point, the Tribunal considered the question of whether by rescinding the decision terminating the applicant's fixed-term appointment, the respondent had drawn all the necessary legal inferences. In the Tribunal's opinion, although the applicant held a fixed-term contract, he could reasonably expect to remain in the service of the United Nations in view of his already lengthy service and the acknowledged quality of his services. Moreover, his age and the orientation of his career had undoubtedly made it difficult for him to find a comparable position. Considering that the applicant had sustained material injury and moral damage, the Tribunal decided to grant him compensation in the amount of $26,000.

6. Judgement No. 186 (26 April 1974): [14] Smith v. United Nations Joint Staff Pension Board

Application seeking rescission of a decision ordering the payment of a child's benefit to the child itself—Interpretation of article 37 (a) of the Pension Fund Regulations and Administrative Rule J.2 (e) of the Fund

The applicant had been awarded a disability benefit effective 31 March 1970 and had been informed that the benefit carried with it an entitlement in favour of his son to a child's benefit until he reached the age of twenty-one. The applicant subsequently claimed a child's benefit in respect of his daughter for the period from 31 March 1970 to 21 May 1972, the date on which she had reached the age of twenty-one. The Deputy Secretary of the Joint Staff Pension Board replied that the benefits were in fact payable but that, in view of the apparent existence of exceptional circumstances in the case under Administrative Rule J.2 (*e*) of the Fund, he proposed to pay the benefit directly to the daughter. A dispute ensued between the applicant and the Deputy Secretary of the Board, at the conclusion of which the matter was referred to the Standing Committee of the Board, which decided that the benefit should be paid to the

[14] Mr. Venkataraman, President; Mme P. Bastid, Vice-President; Mr. F. A. Forteza, Member; Mr. Mutuale Tshikankie, Member.

daughter in accordance with the terms of article 37 (*a*) of the Regulations of the Fund[15] and Administrative Rule J.2 (*e*) of the Fund.[16]

The Tribunal, which had before it an application for the rescission of the aforementioned decision, observed that the applicant considered himself entitled to the child's benefit in question because proof of exceptional circumstances—which he believed the Board had the onus of providing—had not been supplied. The applicant also argued that, as his daughter had been over twenty-one on the date of the decision of the Standing Committee, a strict reading of article 37 (*a*) of the Pension Fund Regulations would make the payment of the child's benefits to his daughter illegal and improper.

The Tribunal rejected that interpretation, which would have led to an absurdity, namely that regardless of age a child under twenty-one would become the recipient of the child's benefit, and to a contradiction with Administrative Rule J.2 (*e*), which prescribed payment of the benefit to the participant (and not to the child) "unless there are exceptional circumstances".

The Tribunal noted further that the Standing Committee had not given any reasons for its decision. The Pension Board's plea that the consideration by the Standing Committee of an issue submitted to it did not involve adversary proceedings did not, in the opinion of the Tribunal, absolve the Standing Committee of its duty to spell out the grounds for its decisions. However, the Tribunal observed that a letter to the applicant from the Pension Board indicated that the latter considered that it was the daughter who was entitled to the child's benefit in terms of article 37 (*a*) of the Pension Fund Regulations and that as the child in question, having attained majority and the competence to issue a valid receipt, had claimed the benefit, the benefit was legally payable to her. The Tribunal did not accept that argument. It observed that a parent might be left without reimbursement of the amounts he had spent on behalf of the child if the child, on attaining the age of twenty-one, claimed the benefit which had accrued but had not been paid to the parent. The test therefore, according to the Tribunal, was not whether the child had attained the age of twenty-one and was in a position to give a valid receipt, but whether the circumstances were normal—in which case the parent was entitled to receive the child's benefit—or whether the circumstances were exceptional, in which case the parent was not entitled to receive the benefit on behalf of the child.

Nevertheless, the Tribunal observed (1) that the Standing Committee had received full information from the two parties claiming the child's benefit—namely, the applicant and his daughter—before reaching its conclusion; (2) that the Standing Committee's reference to Administrative Rule J.2 (*e*) recognized implicitly that there were exceptional circumstances; and (3) that the material submitted to the Committee and the Tribunal demonstrated that there were exceptional circumstances. It therefore rejected the application.

7. Judgement No. 187 (26 April 1974):[17] Quemerais v. Secretary-General of the United Nations

Application for revision of a judgement of the Tribunal, under article 12 of its Statute

The applicant, a former staff member of the European Office of UNICEF, who had been terminated when his post was abolished, sought to obtain, under article 12 of the Statute of the

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[15] The article reads as follows:

"A child's benefit shall, subject to (*b*) and (*c*) below, be payable to each child of a participant who is entitled to a retirement, early retirement or disability benefit or who has died in service, while the child remains unmarried and under the age of twenty-one."

[16] This rule reads as follows:

"Benefits payable under the Regulations to the children of a participant shall, unless there are exceptional circumstances, be paid on their behalf to him and, upon his death, to the surviving parent or legal guardian of each child, in accordance, *mutatis mutandis*, with (*a*), (*b*), (*c*) and (*d*) above."

[17] Mme P. Bastid, Vice-President, presiding; Mr. R. Venkataraman, President; Mr. Mutuale Tshikankie, Member.

Tribunal, the revision of Judgement No. 172 pronounced by the Administrative Tribunal on 5 April 1973.[18] In that judgement the Tribunal had decided that the applicant had been improperly terminated, but that, as a locally recruited staff member, he was entitled to remain in service in the European Office of UNICEF only so long as the Office had its headquarters in Paris; since the Office had been transferred to Geneva on 1 October 1972, the applicant's reinstatement could not be ordered, and the Tribunal had accordingly awarded the applicant an indemnity in lieu of reinstatement.

The applicant claimed to have discovered that the Service in which he was employed had not in fact been transferred until 31 August 1973 and he added that part of the staff of the Office had been assigned to a new UNICEF Office in Paris. He concluded that, since Judgement No. 172 had been given on 5 April 1973, his reinstatement could have been ordered on that date, for the period extending up to 31 August 1973 at the very least, and that he could even still be currently employed in Paris. The application for revision therefore sought to obtain the reinstatement of the applicant or the payment of a supplementary indemnity as compensation.

The Tribunal observed, firstly, that during the discussions which preceded Judgement No. 172 the parties had noted that certain staff members of the Service in question had remained in Paris after 1 October 1972. Accordingly, no new fact had been discovered in that connexion which could serve as a basis for application for revision.

Furthermore, the Tribunal noted that the fact that certain UNICEF staff members had remained in Paris in new circumstances after the official transfer of the European Office of UNICEF to Geneva did not entitle the applicant to remain in service without his suitability for one of the posts retained in Paris being established. Accordingly, even supposing that it could be considered that the existence of a new UNICEF Office constituted a fact which was unknown to the Tribunal when it pronounced Judgement No. 172, that fact was not of such a nature as to be a decisive factor justifying a revision.

Lastly, the Tribunal observed that it could not consider that the applicant, by learning that the transfer of the Office had been carried out in stages and over a reasonable period of time in view of the practical problems involved in any transfer of that type, had discovered a new fact capable of casting doubt on the legal basis of Judgement No. 172.

Accordingly, the Tribunal rejected the application.

8. Judgement No. 188 (4 October 1974):[19] Sule v. Secretary-General of the United Nations

Application for revision of a judgement of the Tribunal under article 12 of its Statute

The applicant requested the revision of Judgement No. 170.[20] The Tribunal recalled that article 12 of its Statute permitted it to revise a prior judgement when the party claiming revision presented to the Tribunal some fact previously unknown to the Tribunal and to the party claiming revision. In the present case the applicant merely presented again his arguments as to the legal interpretation of relevant provisions of the Staff Rules and of the conditions of service for locally recruited staff members of the UNDP Office in Nigeria. Those arguments had been fully considered and passed upon by the Tribunal in its Judgement No. 170.

Accordingly, the Tribunal rejected the application.

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[18] See *Juridical Yearbook*, 1973, p. 100.

[19] Mr. R. Venkataraman, President; Mr. F. T. P. Plimpton, Vice-President; Sir Roger Stevens, Member.

[20] See *Juridical Yearbook*, 1973, p. 98.

9. JUDGEMENT NO. 189 (7 OCTOBER 1974):[21] HO V. SECRETARY-GENERAL OF THE UNITED NATIONS

Application requesting an investigation into alleged incidents of hostility towards the applicant

The applicant, a permanent staff member of Chinese nationality working in the Security Service, had submitted a rebuttal of one of his periodic reports in which he had drawn attention to a dispute which had occurred between himself and one of his colleagues. Following an investigation, the report in question had been found to be fair. The applicant had also contested two subsequent periodic reports.[22] In 1969, the applicant, following an incident at the residence of the Secretary-General, during which he was the supervisor on duty and which he had neglected to report, requested that the attitude of the above-mentioned colleague, who had since become his supervisor, should be investigated. Following that investigation, it had been concluded that the complaint of the applicant was not founded. Furthermore, the incident at the residence of the Secretary-General had led the Chief of the Security and Safety Section to criticize the behaviour of the applicant and, by a decision on 11 August 1969, to reassign him. On 1 February 1973, another incident occurred between the applicant and the colleague mentioned above. The applicant then requested that an impartial body be set up to hear the 1969 incident together with the subsequent cases of prejudice and harassment. The Assistant Secretary-General for General Services replied that (1) he had not found that there was any basis or that it would be in order for him to reopen the 1969 incident, on which a final decision had been made almost four years before by senior officials, and (2) that the applicant's complaints of prejudice against him had previously received due consideration from appropriate officials and that the most recent incident had been a minor one and should be considered closed.

The Joint Appeals Board, having considered the matter, decided that the appeal relating to the 1969 incident was not receivable because the time-limit had been exceeded and recommended an investigation of the charges of prejudice and harassment. That recommendation was not accepted by the Secretary-General.

The Tribunal first ruled on the applicant's request that the judgement be drawn up in Chinese. It rejected that request on the ground that under article 10, paragraph 4 of its Statute it was for the Tribunal and not for either of the parties to determine in which of the five official languages of the United Nations judgements should be drawn up.

On the question of the receivability of the appeal concerning the 1969 incident, the Tribunal found that the conclusions of the Joint Appeals Board were correct. It considered, however, that it would be useful to make certain observations on the substance of the administrative decision of 11 August 1969. It noted (1) that in oral evidence, the Chief of the Security and Safety Section had stated that any incident, regardless of how insignificant it might appear, which involved the Secretary-General, the members of the Secretary-General's family, or his property was certainly, as far as he was concerned, a major incident; (2) that the Secretary-General had been surprised at not being informed of the 1969 incident by the Security and Safety Section; (3) that the Chief of Security had the duty as well as the right to ensure that the principles of strict adherence to orders, consistency of interpretation and conformity in matters of discipline and judgement were followed. From the foregoing, the Tribunal drew the conclusion that the Chief of Security had been well within his rights in taking the decision contested. Furthermore, it noted that the respondent had acted with discretion and sensitivity and that moves had been made to find the applicant a permanent post which he could occupy honourably without losing salary or seniority rights. The Tribunal therefore held that the appeal would have had little chance of success even if it had been judged receivable.

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[21] Mme P. Bastid, Vice-President, presiding; Mr. F. A. Forteza, Member; Sir Roger Stevens, Member.

[22] See *Juridical Yearbook, 1968*, p. 171.

With respect to the investigation requested by the applicant, the Tribunal noted at the outset that there was some doubt as to what type of investigation was requested. It also noted that, in the words of the Assistant Secretary-General for Personnel Services, the Secretary-General was satisfied that "previous incidents [alleged by the applicant] had been fully investigated in the past and that the administration was under no obligation to investigate general allegations of prejudice unrelated to specific administrative decisions". With respect to the first part of that statement, the Tribunal concluded, on examining the dossier, that the incidents alleged, while no doubt reflecting temperamental conflicts, were in themselves minor in character and had been as fully investigated as circumstances justified.

As to the second part of the statement of the Assistant Secretary-General for Personnel Services, the Tribunal recognized that the Secretary-General had assumed a number of obligations to conduct inquiries into defined specific matters under the Staff Rules. Furthermore, in Staff Rule 111.1 (*b*) the question of prejudice or some other extraneous factor was referred to specifically as a matter within the competence of the Joint Appeals Board. Where an appeal involving a request for an inquiry reached the Tribunal, it was the responsibility of the Tribunal to determine (*a*) whether the subject-matter of the appeal fell into a category with respect to which the Secretary-General had assumed specific obligations and (*b*) whether in the case of an appeal under Staff Rule 111.1 (*b*) due process had been observed. It was not for the Tribunal to lay down under the latter head general rules as to the circumstances in which the Secretary-General should conduct investigations but it might, in cases where in the Tribunal's view due process had not been observed, award relief to the applicant.

In the present case, it was the Tribunal's view that due process had been observed and that the Secretary-General's exercise of discretion in rejecting the applicant's demand for a further investigation regarding general allegations of prejudice unrelated to specific administrative decisions was not open to challenge. The Tribunal noted that the real burden of the applicant's complaint resided not so much in the minutiae of those incidents themselves as in the belief that they were in some way the cause of his failure to obtain promotion; that was what the Joint Appeals Board had taken into consideration when it had stated that it would be unfortunate if the applicant were to retire with the impression that "his serious charges of prejudice and harassment had been evaded or lightly brushed aside".

The Tribunal stated that its view on that matter differed from that of the Joint Appeals Board. It found no evidence of discrimination systematically practised against the applicant nor of doubt being sown as to his personal integrity, for which regard had always been most marked. From his periodic reports, in the view of the Tribunal, it should be clear to the applicant that his qualities had been fully appreciated and that the respondent's assessment of his over-all performance had not been coloured by prejudice.

The Tribunal therefore rejected the applicant's demand for an investigation of any kind and did not consider that the circumstances justified financial compensation of any kind.

10. Judgement no. 190 (9 October 1974):[23] Smith v. United Nations Joint Staff Pension Board

Application for revision of a judgement of the Tribunal under article 1 of its Statute

The applicant stated that after Judgement No. 186[24] was rendered he had discovered that his daughter was a participant in the United Nations Joint Staff Pension Fund as a staff member of the World Meteorological Organization during the period when the child's benefit was payable; he claimed that as she was a *participant* she could not claim benefit as a child and that, consequently, Judgement No. 186 should be revised.

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[23] Mr. R. Venkataraman, President; Mme P. Bastid, Vice-President, presiding; Mr. F. A. Forteza, Member; Mr. Mutuale Tshikankie, Alternate Member.

[24] See p. 112 of this *Yearbook*.

In Judgement No. 186, the Tribunal had observed that the material placed before the Standing Committee of the United Nations Joint Staff Pension Board and before the Tribunal showed the existence of exceptional circumstances under Administrative Rule J.2 (*e*) of the Pension Fund. The questions raised by the applicant, namely whether a person can be both a *participant* and a *child*, or whether under the Pension Fund Regulations and Administrative Rules a participant can lay claim to a child's benefit claimed by another participant were not "decisive factors" which could affect Judgement No. 186, since in that Judgement the Tribunal had confined itself to the question of the entitlement of the applicant to the payment to him of the child's benefit.

As the issue whether the applicant's daughter, who was a participant in the Pension Fund in her own right, could lay claim to a child's benefit as beneficiary of another participant was not a "decisive factor" in determining the applicant's claim to the payment to him of the child's benefit, and as the point raised in the request was more a fresh argument than a new fact, the Tribunal held that the application did not meet the requirements of article 12 of the Statute.

11. Judgement No. 191 (11 October 1974):[25] De Olague v. Secretary-General of the Inter-governmental Maritime Consultative Organization

Application seeking, (1) payment by the respondent organization of various travel and removal expenses (2) reimbursement for overtime and (3) payment of compensation for moral and material damage said to be due to the non-renewal of a fixed-term contract

The applicant, a Spanish national, had been engaged by IMCO for a technical assistance project in Guatemala under a one-year appointment which was later renewed for a period of two months ending 1 December 1970. At the time of his repatriation, he informed the Secretary-General of IMCO that he was leaving by car for Panama, where he would stay for a few weeks before returning by air to Madrid. He added that as the Government of Panama had requested that his services be made available as an IMCO expert, he would wait in Panama until he received the Secretary-General's reply. The latter replied that there were no plans for him to work for the Government of Panama under the auspices of IMCO and that the Organization therefore had no responsibility concerning his stay in Panama. In March and again in April 1971, the applicant wrote to the Secretary-General that he was going to have a post with IMCO working for the Government of Panama. In August 1971, he asked that remedial action be taken by IMCO for damage to his prestige and reputation because of statements allegedly made by an ECLA staff member to the Government of Panama, and that a letter be sent to various Panamanian authorities to that effect. The Secretary-General replied (1) that IMCO had no plans to renew or prolong his fixed-term employment beyond the terms expressly foreseen and (2) that with regard to the issuance of a letter to various Panamanian authorities, according to practice IMCO should confine itself describing the nature of the applicant's duties and the length of his service.

In June 1972, the Ambassador of Panama to the United Kingdom wrote to the Secretary-General of IMCO requesting officially the appointment of the applicant as an IMCO expert in Panama. The Secretary-General replied that the technical co-operation projects in which IMCO participated were financed exclusively by UNDP and that the only UNDP-financed project in the maritime field in Panama of which he had knowledge was one being carried out by UNCTAD, to which the Government of Panama might wish to convey its views with respect to the applicant. Also in June 1972, the applicant submitted to IMCO a claim for reimbursement of travel and removal expenses from Guatemala to Panama and from Panama to Madrid. That claim was rejected because entitlement to return travel and removal expenses ceased if the travel had not been undertaken within six months after the date of separation from service. In October 1972 the applicant submitted to the Secretary-General of the United

[25] Mme P. Bastid, Vice-President, presiding; Mr. F. A. Forteza, Member; Sir Roger Stevens, Member.

Nations a complaint regarding his conditions of service with IMCO, as well as an appeal which the applicant had filed with the Joint Appeals Board of the United Nations. Having been informed that his appeal had been addressed to the wrong forum, he submitted his complaints against IMCO to the Secretary-General of IMCO, who informed the Executive Secretary of the Administrative Tribunal that he agreed to have the dispute submitted directly to the Tribunal in accordance with article 7 of its Statute.

The Tribunal first of all examined the applicant's claim concerning (i) his removal expenses from Panama to Madrid; (ii) the cost of air travel for his wife from Panama to Madrid; (iii) his travel expenses by road from Guatemala to Panama and (iv) his subsistence and other expenses for the duration of his journey from Guatemala to Panama and then from Panama to Madrid.

On point (i), the Tribunal observed that IMCO had duly paid to the applicant the cost of the transportation of his personal effects and household goods from Guatemala to Panama. In the light of Staff Rule 207.20 (*i*) (i), reading "Shipment shall be made in one consignment unless otherwise warranted, in the opinion of the Secretary-General, by exceptional circumstances" and inasmuch as the Secretary-General had not approved any exception to that rule, the Tribunal considered the claim unfounded.

With respect to point (ii), the Tribunal noted that as the applicant had remarried on 10 November 1970 and had left Guatemala on the 21st day of that same month, his wife did not have the six months residence in the mission area required of dependents under Staff Rule 207.9 (*a*) (ii) in order to benefit from that provision.

In connexion with point (iii), the Tribunal noted that the applicant had been authorized under Staff Rule 207.5 (*c*) to travel from Guatemala to Panama by automobile "provided no additional cost to IMCO was involved".

Lastly, with regard to point (iv), the Tribunal stated that the applicant would normally have been entitled within the limits prescribed in Staff Rule 207.5 (*c*) to the reimbursement he claimed for travel from Panama to Madrid. However, since the journey to Madrid had not been made until two and a half years after the applicant had relinquished his post, the applicable provision was Staff Rule 207.24 (*c*), which read: "Entitlement to return travel and removal expenses shall cease if travel has not commenced within six months after the date of separation from service".

The applicant also claimed payment for overtime which he alleged that he had worked. The Tribunal merely noted that staff members in the professional category were not covered by the IMCO Staff Rules relating to overtime.

The applicant also claimed (1) damages to cover the alleged gap of $14,000 between his income during his stay in Panama and the expenses incurred by him during that period and (2) compensation of $50,000 for moral and material damage which he claimed he had incurred due to defamation by IMCO, resulting *inter alia* from its failure to give him "a new post, as was its obligation".

The Tribunal noted that the applicant had been given two appointments by IMCO, for periods of one year and two months respectively, and that, in the text of each letter of appointment, it was expressly stated that "the nature of the appointment is fixed-term and does not carry any expectancy of renewal or of conversion to any other type of appointment". On seeing the file, the Tribunal determined that there was no legal basis for concluding that the applicant had acquired the right to remain in the service of IMCO or to be re-employed by that organization. Having thus established that IMCO had no legal obligation to appoint the applicant to a post either during his stay in Panama or thereafter, the Tribunal rejected the corresponding claims for compensation. With regard to the applicant's claim for compensation for defamation, the Tribunal shared the view expressed by the respondent that "there is no evidence to support the allegation that IMCO has . . . defamed the reputation and character of the applicant or in any way contributed to or assisted in such defamation by any other person". Accordingly, there was no ground for the claim.

12. JUDGEMENT NO. 192 (11 OCTOBER 1974): [26] LEVCIK V. SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting a decision refusing to renew a fixed-term appointment because of the refusal by the authorities of the applicant's country of origin to extend his secondment

The applicant, who served in the Institute of Economics of the Czechoslovak Academy of Sciences had, while in Geneva on leave of absence without pay, taken up employment on a short-term basis with the ILO. On 2 September 1968 he applied for a post with the Economic Commission for Europe (ECE). The Permanent Representative of Czechoslovakia, consulted regarding the applicant's availability, stated that the Czechoslovak Government agreed to recruitment on a temporary basis. The applicant then accepted an 11-month appointment with ECE. In March 1969 the Deputy Permanent Representative of Czechoslovakia in New York informed the Office of Personnel that his Government agreed to the extension of the applicant's secondment for two years. On 17 April 1969 the applicant accepted the offer of a fixed-term appointment for two years, in which no mention was made of secondment. Nor was there any question of secondment in the letter of appointment, or in the personnel action form relating to the appointment. On 14 August 1969 the Director of the Institute of Economics of the Czechoslovak Academy of Sciences informed the applicant that "his leave of absence would end at the originally approved term, i.e. on 31 December 1971". On 26 November 1970 the Chief of Staff Services addressed to the Chief of Staff Services in New York a memorandum on "Review of professional staff members serving under fixed-term appointments due to expire in March 1971". The memorandum stated that the Executive Secretary of ECE recommended that the applicant's appointment should be extended for a further period "of not less than three years"; the recommendation was approved by the Director of Personnel. However, the Government of Czechoslovakia did not approve the proposed extension, so that the staff member was to "return to his Government service after expiration of present contract on 31 March 1971". Representations were thereupon made to the Czechoslovak authorities to secure an extension of the applicant's secondment until the end of 1971. The representations were unsuccessful; nevertheless the applicant's contract was extended to 31 December 1971. On 20 October 1971 the applicant addressed to the Secretary-General a memorandum in which he stated that he had not been seconded from his national Civil Service and that the attempts of the Czechoslovak authorities to prevent his employment with the United Nations had nothing to do with the application of the rule of secondment but were simply an act of persecution to which the United Nations could not be a party. The Director of Personnel replied that the applicant's employment with the United Nations had taken effect, not through a "political clearance" but because the United Nations had requested and obtained secondment, and that the Secretary-General was not in a position to contest the claim of the Czechoslovak Government that the Institute of Economics was part of the government system. On 1 January 1972 the applicant's appointment was extended for a final period of three months.

The Joint Appeals Board, to which the case was submitted, concluded that the Secretary-General was within his rights in not accepting to renew the applicant's fixed-term appointment, but, considering that the conditions prevailing at the end of the applicant's fixed-term period of employment had created a legitimate expectancy of renewal of his contract, recommended the grant of an indemnity equivalent to three months' salary. The recommendation was accepted by the Secretary-General; however, the applicant rejected the compensation offered him as being "totally inadequate and proferred under unacceptable legal conditions" and filed with the Tribunal the present application.

The Tribunal noted that it was requested to rule on the compensation due to the applicant for injury sustained as a result of the decision of the respondent to separate him from the service on 31 March 1972 and to refuse, despite urgent requests from his superiors, to extend his appointment to 31 March 1974. The Tribunal also noted that the respondent considered

[26] Mr. R. Venkataraman, President; Mme P. Bastid, Vice-President; Sir Roger Stevens, Member.

himself bound to terminate the employment of a staff member seconded by the Government of a Member State when that Government refused to authorize the extension of secondment.

In order to decide on the legality of the respondent's decision, the Tribunal first of all recalled the legal principles applicable to the secondment of staff to the United Nations Secretariat. It observed that "temporary secondment" was formally recognized by Staff Rule 104.12 (*b*) and that the Training and Reference Manual of Procedure for Personnel Clerks and Secretaries instructed them, in the case of candidates seconded to the United Nations, to include in the document which must be prepared at the time of appointment a formal mention of the situation of secondment. The Tribunal recalled that in the Higgins case[27] it had declared that "secondment" occurred when the staff member was posted away from his establishment of origin but had the right to revert to employment in that establishment at the end of the period of secondment and retained his right to promotion and to retirement benefits. There were really three parties to the arrangement, namely the releasing organization, the receiving organization and the staff member concerned. Any secondment required that the situation of the official in question must be defined in writing by the competent authorities in documents specifying the conditions and particularly the duration of the secondment. Any subsequent change in the terms of the secondment initially agreed on obviously required the agreement of the three parties involved. Accordingly, if the Government which had seconded an official refused to extend the secondment, the Secretary-General was obliged to take that decision into account. Bearing in mind the provision in Article 100 of the Charter that "in the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any Government or from any other authority external to the Organization", the Tribunal considered that in the absence of a secondment agreed to by all parties concerned in conformity with the above-mentioned principles, the respondent could not legally invoke a decision of a Government to justify its own action with regard to the employment of a staff member.

The Tribunal then considered whether in fact the applicant's status had been one of secondment. It noted that *at the time of his recruitment* to ECE the applicant was working at the International Labour Organisation, and that neither the offer of employment for 11 months at ECE, nor the letter of appointment, nor the personnel action form made any mention of secondment from a national Government or institution. It noted, however, that the Executive Secretary of ECE had asked the Permanent Representative of Czechoslovakia at Geneva to state whether his Government agreed with that recruitment action. The Tribunal noted that in the Permanent Representative's positive reply, the term "secondment" did not appear, and that the Administration had used the term "clearance" to describe the procedure which had been followed. It concluded that the procedure followed in October 1968 had been designed merely to ensure that the prolonged absence of the applicant from his national territory was in order from the point of view of the Czechoslovak Government.

In relation to *the period of the appointment running from 1 April 1969 to 31 March 1971*, the Tribunal examined the circumstances to determine whether there had been a "secondment" and whether the respondent's position had any legal basis.

The Tribunal noted that although the word "secondment" had been used several times in internal administrative documents and in the correspondence exchanged between the Administration and the Deputy Permanent Representative of Czechoslovakia in New York, no mention had been made of the position taken by the Office of Personnel or by the Permanent Representative in the letter offering the applicant a two-year appointment, or in the letter of appointment itself, or in the personnel action form established on that occasion. Not until the end of 1970 had the applicant been notified for the first time of the situation which had been accepted at Headquarters according to which the applicant's retention in service was conditional on the consent of his Government.

In considering whether, on the basis of the legal principles applicable to secondment, the respondent's position was well founded, the Tribunal observed (1) that the agreement reached

[27] See *Juridical Yearbook*, 1964, p. 205.

in New York between the Government and the respondent did not specify the starting-point of the secondment, the applicant's post in his country, or the conditions relating to his return to that post; (2) that it was clear from previous correspondence between the Executive Secretary of ECE and the Permanent Representative of Czechoslovakia at Geneva that as far as the Government of Czechoslovakia was concerned, it was for the United Nations to settle the question of the contract which was to be concluded and the Government only wished to be kept informed; (3) that there were certain contradictions in the position of the Czechoslovak authorities, since while the Institute which had employed the applicant in Czechoslovakia spoke of leave of absence granted until 31 December 1971, the Deputy Permanent Representative of Czechoslovakia in New York had mentioned a secondment ending on 31 March 1971; (4) the agreement reached in New York on secondment had not been brought to the applicant's knowledge and his consent obtained.

From the foregoing the Tribunal held that there had been no valid secondment of the applicant during the period of his two-year fixed-term appointment.

With regard to the *period from 1 April 1971 to 31 March 1972*, the Tribunal noted that the applicant's appointment had been extended on three occasions despite the Government's opposition. It noted also that in connexion with the first of those extensions, the Director of Personnel had informed the Permanent Representative of Czechoslovakia in New York that that "action" was of an "exceptional nature" and had assured him that it "did not in any sense reflect a desire . . . to change the policy of close consultation with the Czechoslovak authorities, which, as in the past, continues to be our rule". In the opinion of the Tribunal, that communication referred to a system of consultation between the respondent and the Czechoslovak Government which differed both from the clearance procedure and the procedure of secondment. In view of the foregoing, the Tribunal concluded that the applicant's status during the above-mentioned period was not one of secondment.

The Tribunal therefore concluded that the applicant had at no time been on regular secondment. It then had to consider whether the applicant had a legal expectancy of continued employment until 31 March 1974. It was no doubt true that a fixed-term appointment of the kind held by the applicant did not carry any expectancy of renewal or of conversion to any other type of appointment. Having regard, however, to the exceptional commendations of his work and the efforts made by his superiors to retain his services, the applicant had a legal expectancy that his fixed-term appointment would be extended until 31 December 1974, and he was therefore entitled to compensation for the injury resulting from a decision based on an error of law. The Tribunal awarded compensation in the amount of one year's net base salary.

13. JUDGEMENT NO. 193 (16 OCTOBER 1974): [28] ADDO V. SECRETARY-GENERAL OF THE UNITED NATIONS

Application contesting a decision of the Joint Appeals Board declaring an appeal submitted after the expiry of the prescribed time-limit irreceivable

The applicant, who worked as a driver at the United Nations Information Centre in Accra (Ghana) on a regular appointment, had during a quarrel inflicted on two of his colleagues injuries which had required hospital treatment. On 18 September 1970, at the proposal of the Director of the Centre, he was suspended from his duties pending an investigation into the incident, and was informed on 19 October that he had been summarily dismissed for serious misconduct effective 15 September 1970. The local police court subsequently acquitted him of the charge of assault filed against him. The applicant contested the dismissal several times. On 26 February 1972, in his most recent approach to the administration, he reiterated his position, asserting that the respondent should have awaited the local court decision before determining to dismiss him.

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[28] Mr. R. Venkataraman, President; Mr. F. T. P. Plimpton, Vice-President; Mr. Z. Rossides, Member.

The appeal which the applicant lodged with the Joint Appeals Board on 11 July 1972 was declared not receivable by the Board. However, the Board noted that the respondent had mistakenly made the effective date of dismissal 15 September, instead of 18 September, and that the applicant should therefore receive the salary and allowances owing to him for the 3 days concerned. The Board also noted that in the case concerned there had been no "suspension without pay" before the decision to dismiss the applicant and that the respondent could not therefore invoke the practice in accordance with which summary dismissal following a suspension from duty without pay was effective on the date of suspension.

The Board finally noted that some 10 days had elapsed between the date on which the decision had been taken and the date on which the staff member had been notified of it and expressed the view that the applicant could have been forewarned. Taking into account the foregoing, the Board recommended that the applicant should be paid his salary and allowances from 16 September 1970 through 19 October 1970. Following that recommendation, the respondent ordered the effective date of the summary dismissal to be changed from 16 September 1970 to 19 October 1970.

The Tribunal, to which the case was submitted, recalled that in accordance with Staff Rule 111.3 (d) an appeal could not be receivable by the Joint Appeals Board unless the time-limits had been met, but that the Board could waive the time-limits in exceptional circumstances. It had therefore considered whether the Board had acted correctly in deciding that none of the reasons offered by the applicant for not meeting the required time-limit amounted to exceptional circumstances. The Tribunal took the view that the applicant, who had been made acquainted with the relevant provisions of the Staff Regulations and the Staff Rules on at least two occasions and had already used appellate procedures, could not plead ignorance of the relevant provisions. Secondly, the first approach to the Secretary-General after dismissal had been made in 10 March 1971, two months after the local court had made its judgement. Thirdly, in a letter dated 8 June 1971, the respondent had drawn the attention of the applicant to the administrative channels of appeal open to him; however, the applicant had allowed eight months to go by before making further contact with the respondent and after the latter, in a letter dated 4 April 1972, had advised the applicant to proceed with his appeal before the Joint Appeals Board and to submit to the Board, in the first instance, the question of the receivability of his appeal, the applicant had taken no action for three months. The Tribunal, taking into account the foregoing, considered that the decision of the Joint Appeals Board not to waive the time-limits was fully supported by the record and accordingly rejected the application.

14. Judgement No. 194 (16 October 1974):[29] Witmer v. Secretary-General of the United Nations

Application contesting a decision not to offer employment for medical reasons

The applicant had been employed under fixed-term appointments for several periods between 12 September 1958 and 31 December 1962. In May 1962 he had contracted a serious illness, but nevertheless on 7 January 1962 had been placed in class 1 by the Medical Director following the medical examination he had to take in order to obtain a one-year fixed-term appointment as an OPEX Officer. On 13 December 1963, the Medical Director advised the Office of Personnel that on the basis of the new medical examination which the applicant had undergone in November 1963, the extension of mission in tropical and subtropical climates was medically contraindicated. The administration then changed the applicant's medical classification to class 2.

In May 1970 the applicant received from the Technical Assistance Recruitment Service an offer of employment for 12 months, subject to medical clearance. After accepting the offer and undergoing the necessary medical examination, he was asked to visit for a few days the site of

[29] Mr. R. Venkataraman, President; Mr. F. T. P. Plimpton, Vice-President; Mr. Z. Rossides, Member.

the project which he was to direct. However, on 28 December 1970, since the Medical Director of the United Nations considered that the applicant did not meet the United Nations medical standards, the Technical Assistance Recruitment Service informed the applicant that it could not ask him to take up the post to which he had been assigned.

The Joint Appeals Board, to which the case was submitted, found that the respondent had been negligent in offering the applicant an appointment subject to medical clearance when he knew or should have known that the applicant would not be medically cleared because of his medical record during his previous service with the Organization.

Considering that the respondent must be deemed to have entered into a valid agreement with the applicant for a one-year fixed-term appointment, the Board recommended that the applicant should be accorded, as compensation for the Organization's breech of its obligations towards him, the sum of $8,400, representing damages of $700 per month for the term of the agreement.

The respondent did not accept that recommendation but decided to pay the applicant compensation in an amount equivalent to the termination indemnity to which he would have been entitled if the appointment had in fact been made and then terminated prior to its commencement, that is five days' pay for each month of uncompleted service. The Tribunal noted that the applicant claimed that by reason of his compliance with the terms of the offer of employment made by the respondent, a legal obligation to appoint him to the post for one year arose and that the withdrawal of the appointment constituted a breach for which compensation was payable by the respondent. The respondent argued, *inter alia*, that there had been no appointment within the meaning of the Staff Rules and that therefore he was under no obligation, contractual or otherwise, to the applicant.

The Tribunal observed that the absence of a letter of appointment did not conclude the applicant's claims and that, in accordance with its jurisprudence as decided in its Judgement No. 142 (Bhattacharyya),[30] it was entitled

> "to consider the contract as a whole, not only by reference to the letter of appointment but also in relation to the circumstances in which the contract was concluded".

In that respect the Tribunal noted that it was not on the basis of the report on the medical examination undergone in 1970, which in the view of the Medical Director established that the applicant was quite healthy—but on the basis of the medical record during the period 1958–1963 that the Medical Director had refused to approve the appointment of the applicant. The Tribunal recognized the Medical Director's authority to make appropriate recommendations regarding the employment of a candidate by the United Nations on the basis of the past or present medical history or other medical data obtained from any other source and the right of the Secretary-General to act on such recommendations. There had therefore been no violation of the pertinent Staff Regulations and Rules in the case under consideration. However, the Tribunal found that in offering the appointment to the applicant with full knowledge of his past medical history, in asking him to undergo a new medical examination and in permitting him to visit the site of the project concerned, the respondent had acted as though the applicant's past medical history was of no relevance to the appointment. Thus the respondent had acted negligently in making the offer of appointment when he knew or should have known that whatever the applicant's state of health at the time the offer of appointment was made the applicant could not have been granted an appointment on account of his past medical history.

The Tribunal added that the respondent could not, by reason of the principle of equitable estoppel, be allowed to raise objections based on the applicant's past medical history, disregarding the current favourable medical report. The respondent knew the past medical history of the applicant and had taken the initiative in the appointment of the applicant, and he was therefore estopped from raising objections to the applicant's appointment based on the applicant's past medical history.

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[30] See *Juridical Yearbook*, 1971, p. 152.

The Tribunal concluded that the applicant had become entitled to the one-year fixed-term appointment offered to him and that the respondent, by withdrawing the appointment, had failed to carry out his obligations and thus became liable for the consequences of his action. It accordingly ordered the respondent to pay as compensation to the applicant the sum of $8,400 less such amount as might have been paid by the respondent as indemnity.

B. Decisions of the Administrative Tribunal of the International Labour Organisation[31,32]

1. Judgement No. 225 (6 May 1974): Lachs v. United Nations Educational, Scientific and Cultural Organization

Complaint submitted directly to the Tribunal in violation of the rule concerning the exhaustion of internal means of redress

The complainant impugned a decision pursuant to which there had been deducted from her salary a sum which the defendant Organization considered that the complainant owed to it. The defendant Organization maintained that the complaint was irreceivable because of the complainant's failure to exhaust internal means of redress.

The Tribunal stated that article VII, paragraph 1, of its Statute provided that a complaint was not receivable unless the complainant had exhausted such other means of resisting it as were open to him under the applicable Staff Regulations. Chapter XI of the UNESCO Staff Regulations and Staff Rules provided that, before being able to lodge an appeal with the Tribunal, staff members must appeal to the Appeals Board, which the complainant had not done. Although any staff member could, with the consent of the Director-General, waive the jurisdiction of the Appeals Board, such a derogation from the normal procedure was justifiable only in exceptional cases which the Director-General himself could determine. The Tribunal was not competent to waive the requirement that the complainant should first appeal to the Appeals Board.

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[31] 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 1974, the World Health Organization (including the Pan American Health Organization (PAHO)), 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, the European Southern Observatory, the Intergovernmental Council of Copper Exporting Countries, the European Free Trade Association and the Inter-Parliamentary Union. 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.

[32] Mr. M. Letourneur, President; Mr. A. Grisel, Vice-President; Lord Devlin, Judge.

2. JUDGEMENT NO. 226 (6 MAY 1974): SCHAWALDER-VRANCHEVA v. WORLD HEALTH ORGANIZATION

Complaint impugning a decision designed, pursuant to a judgement of the Tribunal, to correct an earlier administrative decision—Limits of the Tribunal's authority to review a decision falling within the discretion of the Director-General

By Judgement No. 194 of 13 November 1972[33] the Tribunal quashed as being based on inadequate grounds the decision of the Director-General of WHO not to confirm the appointment of the complainant following her probationary period. In pursuance of that Judgement, the Director-General set up an *ad hoc* committee to examine her case and in the light of its report took a further negative decision.

The complainant contended before the Tribunal that the decision in question had not been based on any proper inquiry or adequate grounds and therefore claimed material and moral damages.

The Tribunal observed that the *ad hoc* committee had carried out a thorough inquiry and that on the basis of its report the Director-General had taken a considered decision in full knowledge of the facts. The procedural irregularity which had led to the quashing of the initial decision had thus been corrected and it was for the Tribunal to determine the merits of the complaint.

The Tribunal stated that a staff member on probation did not during the probation period enjoy the safeguards granted to permanent staff members and that the decision taken by the Director-General not to confirm the staff member's appointment was one which fell within his discretion. The Tribunal accordingly could interfere only if the decision 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, again, if conclusions which were clearly false had been drawn from the documents in the dossier, or, finally, if authority had been exercised for purposes foreign to the Organization's interests.

The Tribunal held that, although the dossier as supplemented by the report on the inquiry revealed obvious animosity towards the complainant on the part of her immediate supervisor and the criticisms of her appeared fairly mild, it did not appear from the dossier that the impugned decision with regard to a probationer had been tainted with any of the irregularities which entitled the Tribunal to interfere. Among other things it was proved that the Director-General had taken his decision on the basis of a full dossier which contained all the data required for forming a judgement and after consulting several senior officials, and in full awareness of his responsibility for the effective running of the Organization in his charge. Since the impugned decision was lawful, the complainant could not properly claim compensation on the grounds of that decision.

3. JUDGEMENT NO. 227 (6 MAY 1974): TUFTE v. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint requesting reinstatement lodged by an official who had previously resigned

The complainant, who had held a fixed-term appointment due to expire on 31 March 1972, had been assigned to a post in Algeria. On 30 September 1971, he informed the defendant Organization of his intention of resigning with effect from 1 November 1971 if by then he had not been offered a suitable position at headquarters. The Organization then invited him to apply for a headquarters post in the ordinary way and informed him that, unless he did so and unless he notified FAO to the contrary, his resignation would take effect on 1 November 1971 as he had asked. The complainant confirmed his resignation on 14 October 1971.

On 30 October 1971 he asked for reinstatement with FAO or, failing that, compensation. He was not given satisfaction and lodged his claim with the Tribunal.

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[33] See *Juridical Yearbook*, 1972, p. 147.

As to the claim for reinstatement, the Tribunal considered that by resigning the complainant had deprived himself of the right to reinstatement in the Organization in his former post or in any other. If he wished to return, his only course of action was to apply for a vacancy in accordance with the prescribed procedure. Any other course would be warranted only if he had acted otherwise than of his own free will, a hypothesis which was not supported by any evidence.

As to the claim for compensation, the Tribunal stated that, as it was free from illegality, the decision not to reinstate the complainant did not entitle him to any compensation.

4. JUDGEMENT NO. 228 (6 MAY 1974): REMONT v. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint impugning a decision refusing to upgrade a post held by an official under a fixed-term contract to the level of the post occupied by the same official under a previous contract

The complainant had held an appointment at the P.5 grade which was due to expire on 21 May 1971. On 20 April 1971 the Organization offered him a 14-month mission in Tunisia. The post there was at grade P.4. The complainant's appointment was initially extended until 30 June 1971 and it was decided that his grade should not be changed from P.5 to P.4 until 1 June 1971. It was only on the eve of his departure for Tunisia that the complainant learnt of the grade of his new post and he wrote a minute stating his reservations and agreeing to the P.4 grade pending the outcome of the procedure for upgrading the post in Tunisia to grade P.5. The steps taken to upgrade the post proved unsuccessful and the complainant left the Organization on 31 December 1971 following two successive extensions of his appointment, extensions which, the Organization explained, had been limited because his reservations about his grade still held good and doubts remained about his qualifications for his post.

The FAO Appeals Committee, having been seized with the case, (1) rejected the complainant's claim for reinstatement, (2) rejected his claim for compensation *ex aequo et bono* and (3) recommended that the Director-General consider granting him grade P.5 retroactively to cover the full period of his mission in Tunisia. By a decision of 9 February 1973, the Director-General accepted the first two conclusions and rejected the third.

The Tribunal observed that, when deciding whether to accept the offer, the complainant had been told that the appointment would be at grade P.4. He had been kept informed of the action taken to upgrade the post to P.5 and had been informed in plain terms in a letter of 7 September 1971 that his appointment would continue to be at grade P.4 and that any extension he received would be at that grade.

The Tribunal pointed out, firstly, that, as he had promised the complainant, his immediate supervisor had made earnest efforts to have the post upgraded to P.5 and that the opposition which those steps had encountered could not be criticized by the Tribunal unless it had been based on considerations foreign to the Organization's interest, which had not been proved.

The Tribunal further observed that the appointment to the post in Tunisia was a new one and quite distinct from those previously held by the complainant. His appointment at a lower grade could not be assimilated to downgrading in the absence of any special circumstances.

Thirdly, although the Organization had undertaken to take certain steps to upgrade the post, it had never promised any positive outcome. The complainant had been kept fully informed of the steps taken under the procedure and of developments, and had been treated with perfect correctness and even with helpfulness. The complainant could not therefore properly contend that the Organization had showed bad faith towards him.

Lastly, by requesting the upgrading of his post, the complainant had compelled the Organization to keep him waiting until the regrading procedure was completed and to release him following the negative outcome of the procedure.

The impugned decision therefore was not tainted with any irregularity.

5. JUDGEMENT NO. 229 (6 MAY 1974): HRDINA v. INTERNATIONAL LABOUR ORGANISATION

Complaint impugning a decision not to renew a fixed-term contract—Limits of the Tribunal's authority to review such a decision

The complainant had received a series of fixed-term contracts, the last of which covered the period from 31 December 1972 to 31 January 1973. On 12 February 1973 she submitted a written request to the Director-General to review the decision not to renew her contract. By letter of 19 March 1973 the Director-General informed her that it was not possible to reconsider the decision.

The Tribunal, in considering the case, noted that the impugned decision, having been taken by the Director-General in the exercise of his discretion, could be criticized only if it was taken without competent authority, violated a rule of form or procedure, was based on an error of fact or law, failed to take into consideration essential facts, was tainted with abuse of authority, or if conclusions which were clearly false had been drawn from the documents in the dossier. In that connexion the Tribunal noted that: (1) the Director-General's competence to confirm the termination of the complainant's appointment was beyond dispute; (2) the impugned decision, communicated in writing, was not open to any formal criticism; (3) there had been no infringement of the rules of procedure since the complainant, by writing to the Director-General, had been able to exercise her right to be heard, since she had been free to use the means of redress provided for under the Staff Regulations and since the speech of the Director-General to the staff saying that any decision to terminate the services of a staff member would be taken at least two months in advance plainly did not apply to staff members whose appointment was renewed from month to month; (4) nothing in the dossier supported the charge of the complainant that the impugned decision was based on incorrect facts; (5) taking into account article 4.6 (*d*) of the Staff Regulations, which provides for the automatic expiry of fixed-term appointments and expressly denies the right of those holding such contracts to expect renewal, the impugned decision was not based on any error of law since no provision of the Staff Regulations or of her contract required the Organization to take account of the duration of her appointments under previous contracts; (6) it had not been established that the Director-General had failed to take essential facts into consideration or that he had misused his authority; and (7) the Director-General had not drawn conclusions which were clearly false from the dossier, in view of the fact that the Organization's financial difficulties, not to speak of the reservations expressed here and there with regard to the complainant's relations with other staff members, justified the decision.

The Tribunal consequently dismissed the complaint.

6. JUDGEMENT NO. 230 (6 MAY 1974): STRACEY v. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint submitted by a former associate participant in the United Nations Joint Staff Pension Fund claiming that he had been deprived of a pension as a result of an administrative oversight—Extent of the Tribunal's authority with regard to the determination of the duration of the contract to be offered to a candidate for employment

The complainant, who had joined the staff of FAO in May 1964, shortly before his fifty-sixth birthday, had become an associate participant in the United Nations Joint Staff Pension Fund. His appointment had been successively extended to June 1966, June 1967 and finally to the end of December 1968. In May 1967 it had been decided to transfer him to the United Arab Republic on assignment to projects of which some were to end in 1970 and others in 1972. The transfer was not carried out as a result of the war between Israel and the United Arab Republic and the complainant was posted to Uganda until the end of February 1969 and then to various other posts until his resignation on 1 September 1972.

Upon reaching the age of 60 in May 1968, the complainant lost his status as associate participant in the Joint Staff Pension Fund, and, because on that date as a result of his reassignment due to the events in the Middle East he did not hold an appointment which would last long enough to extend his total period of employment in the United Nations to the

minimum of five continuous years, he no longer qualified to become a full participant in the Pension Fund. Through the combined effect of the Pension Fund Regulations and the circumstances of the case, the complainant found himself therefore deprived of a pension to which he believed himself to be entitled.

Having failed in his efforts to have the Organization correct the situation, he appealed to the FAO Appeals Committee, which, feeling that the complainant had been the victim of oversights on the part of the Organization, unanimously recommended that the Director-General consider as soon as possible ways of fulfilling the Organization's intention of providing a pension for the complainant.

The recommendation was not accepted by the Director-General.

The Tribunal, in considering the case, first examined the question of the receivability of the complaint. It found that the complainant had not impugned within the time-limits laid down in Staff Rule 303.131 the decision to grant him a new appointment from 1 July 1967 to 31 December 1968. In July 1968, however, immediately after he had discovered that he was no longer an associate participant in the Joint Staff Pension Fund, the complainant had pointed out this fact to the Organization. The Organization had then sought to give him the status of a full participant by replacing the above-mentioned contract with a new contract which would expire on 20 June 1970. Having replaced the contract, the Organization was implicitly estopped from arguing that the original contract had not been contested in time. Hence, in so far as that contract was relevant, the Organization could not properly rely on the non-observance of the rules on internal means of redress.

As to the merits, the Tribunal stated that the decision to grant the complainant a new contract covering the period from 1 July 1967 to 31 December 1968 had been taken in the exercise of discretion and could therefore be interfered with only if it had been taken without authority, was irregular in form or procedure, was based on errors of fact or law, failed to take into consideration essential facts, was tainted with misuse of authority, or if conclusions which were clearly false had been drawn from the documents in the dossier.

The Tribunal found that, when the complainant was reappointed, the officials in charge had not realized that they were depriving him of the chance of becoming a full participant in the Joint Staff Pension Fund. In all likelihood—and the subsequent attitude of the Organization was proof of that—they would have extended the period of the contract until at least 10 May 1969, had they realized the consequences of their decision, and so enabled the complainant to become a full participant. In the circumstances of the case under consideration, the omission to take account of the complainant's situation in respect of his membership constituted a fact which should be considered essential.

The Tribunal found, however, that the complainant had himself failed to show the diligence which could be expected from a man reaching the age of 59, an age at which a staff member who is careful of his own interests is concerned with his possible pension rights. The complainant had been free to obtain information on his position as a Fund participant on the conclusion of the new contract; by failing to clarify the matter in time, he had contributed to the loss of his rights.

The Tribunal consequently ordered the Organization to pay the complainant, from the date of his retirement, half the amount of the pension to which he would have been entitled as a full participant in the United Nations Joint Staff Pension Fund.

7. Judgement No. 231 (6 May 1974): Slethold v. General Agreement on Tariffs and Trade

Complaint submitted by a person who did not have a contractual relationship with an international organization which recognized the competence of the Tribunal

The complainant had been assigned for a period of two years to the International Trade Centre, a body jointly administered by the United Nations Conference on Trade and Development (UNCTAD) and GATT; he had been seconded to the Centre from the

Norwegian Agency for International Development (NORAD). Because his appointment to the Centre was extended for only three months instead of for 12 months, as he had expected, and because the Director of the Centre wrote a memorandum on the subject of his work which he considered to be false and libellous, he submitted the present complaint to the Tribunal.

The Tribunal recalled that according to article II, paragraph 5, of its Statute it heard complaints against organizations which had recognized its competence alleging non-observance of the terms of appointment or the provisions of Staff Regulations. The complainant had been seconded NORAD to GATT, which was one of the above-mentioned organizations and the defendant in the present case. The Tribunal was competent to hear the complaint only if the complainant had concluded a contract of appointment with GATT or was subject to the Staff Regulations of GATT.

GATT had suggested in 1966 that officials seconded to it by NORAD should have a contractual relationship with NORAD rather than be members of the staff of GATT. NORAD had accordingly itself appointed the complainant, was to pay his remuneration and had extended his secondment to GATT for three months. GATT had not directly concluded a contract with the complainant, who had not received the letter of appointment and other documents given to all GATT officials and who, unlike such officials, was not a member of the Joint Staff Pension Fund.

Finding that, notwithstanding his secondment to GATT, the complainant had not concluded a contract of appointment with it and was not subject to its Staff Regulations, the Tribunal declared that it was not competent to hear the complaint.

8. JUDGEMENT NO. 232 (6 MAY 1974): DIAZ v. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Complaint impugning a decision refusing to delete a performance report

The complainant contested the performance report made about him and, under Staff Rule 104.11 (*e*), an appeal was lodged with the Senior Personnel Advisory Board. The Advisory Board, at which the complainant was represented by an official, held that there was no call for revision of the contested performance report. The complainant then appealed to the Appeals Board claiming deletion of the report in question and the Board advised that the appeal should be dismissed but recommended that the report should be neither taken into account in deciding whether to reappoint the complainant nor communicated to any third party. The Director-General endorsed the opinion but not the accompanying recommendation and communicated his decision to the complainant.

The Tribunal, to which an appeal against that decision was submitted, considered that the contested report had been prepared in accordance with Staff Rule 104.11. With regard to the complaints made by the complainant concerning the proceedings in the Advisory Board, the Tribunal considered that (1) the Board had been set up in accordance with the Staff Rules; (2) in accordance with the relevant provisions, the Director-General was not bound to summon the Board to meet at or near the place of the complainant's residence; (3) the complainant had neither declared his intention of attending the meeting at which the Board was to examine his case nor taken steps to provide for his representation; (4) in those circumstances, the fact that he had not been told of the date of the meeting was immaterial to the propriety of the proceedings; (5) the Board was free to determine whether or not it should hear witnesses; and (6) the complainant had received all the documents in the dossier, had had every opportunity to comment, and could not properly maintain that his right to a hearing had been disregarded.

With regard to the proceedings in the Appeals Board, the Tribunal (1) rejected the allegation of the complainant that the Board was irregularly composed because its members included an official who as Chief of Personnel had previously appointed the complainant to his earlier posts; (2) dismissed the complaints of the complainant concerning the communication to the Appeals Board of documents which he had not seen beforehand, and held that those complaints lacked foundation since the documents in question had been communicated immediately to the representative of the complainant and the complainant had made no

comment; and (3) considered that the "recommendations" made by the Appeals Board had no binding force.

As to the formal propriety of the contested decision, the Tribunal declared that the allegation that the Director-General had taken the view that the complainant's performance report might be communicated to third parties had not a shred of evidence.

As to the inherent lawfulness of the impugned decision, the Tribunal recalled that, in writing or endorsing a performance report on a staff member, the Director-General exercised his discretion as the head of the Organization. It concluded from a study of the documents in the dossier and the facts of the case that the impugned decision was not tainted with any of the irregularities which entitled the Tribunal to interfere with it.

The Tribunal affirmed, lastly, that no general principle of law barred one organization from communicating to another information on its former employees, provided that such information was materially correct and related to the employees' professional qualifications and was not given with malicious intent. It appeared from the dossier that in the case in question UNESCO had done no more than exercise strictly the above-mentioned right of any international organization.

9. Judgement No. 233 (6 May 1974): Alonso v. Pan American Health Organization (World Health Organization)

Complaint impugning a decision placing a promoted official at a lower salary level than that of her former grade

Following her transfer from the General Service category (in which she had held a post at grade G-7, step X) to the Professional category (grade P-1, step X), the complainant found that her total remuneration had diminished by some $500 a year. After being informed, following her claims, that she could not be given a higher grade than P-1, step X, she appealed to the Board of Inquiry and Appeal of the Pan American Health Organization and the Board recommended that the salary scale should be extended as an exceptional measure in the complainant's case and that she should receive an *ex gratia* payment in compensation for the decrease in salary due to her promotion. That recommendation was not endorsed by the Director of the Pan American Health Organization.

The Tribunal, to which the matter was referred, recalled that Staff Rule 220.2 provides that:

> "On promotion to a higher grade, the salary of a staff member shall be fixed at the lowest step in the new grade which will provide an increase in salary no less than would have resulted from the next within grade increase in the old grade . . .".

In the opinion of the Tribunal, and contrary to what was held by the Organization, a transfer from the General Service category to the Professional category was a "promotion"; since such promotions were envisaged in the WHO Manual and were not governed by any special rule, Rule 220.2 must apply.

The language of the Rule assumed the existence of a step in the new grade which would carry with it a salary high enough for the difference between the old and new salary of the promoted staff member to be at least equal to the increase in salary he would have enjoyed if he had advanced one step in his old grade.

In the case in question, that assumption turned out to be incorrect. Did that mean that in the circumstances Rule 220.2 should be treated as ineffective or did it mean that a way must be sought of paying the increase?

In order to solve the question, the Tribunal considered the primary object of the Rule. In its view, the object was not so much to provide a way of determining the step at which the staff member was to enter the new grade but to provide a way of determining the salary increase which the staff member should enjoy following promotion. The Tribunal stressed in that respect that the Rule in question was in a section headed "Salary Determinations" and that it

dealt with movement of staff, which naturally carried with it an increase in salary; it was therefore only reasonable to see the increase in salary as the true object of the Rule.

The Tribunal added:

> "The fixing of the step must be construed as only the means by which the true object of the Rule is to be secured. The means are the servant of the end, not its master; the failure of the means prescribed cannot be allowed to defeat the object; the object must be achieved in some other appropriate way".

The Tribunal stated that Rule 220.2 itself was the authority for making the increased payment; it mattered not that there was no other Rule authorizing the payment. The fact that the payment could not be fitted into any particular niche in the framework of the regulations would doubtless cause administrative inconvenience, but administrative inconvenience did not prevent the operation of the Rule.

The Tribunal therefore ordered that the Organization pay to the complainant arrears of salary at the rate of $US 517 per annum from the date of her promotion.

10. Judgement No. 234 (6 May 1974): Chawla v. World Health Organization

Request for compensation for loss in exchange value attributable to the delay of the Organization in making a payment

By Judgement No. 195,[34] the Tribunal had ordered the Organization to pay the complainant $US 20,000 as compensation. The present complaint aimed at obtaining the payment of $US 2,000 in compensation for the loss suffered by the staff member concerned owing to the decline in the value of the dollar and to the Organization's delay complying with Judgement No. 195.

The Tribunal declared that upon well-established principles there could be no claim in respect of currency devaluation as such. But there could be a claim for compensation for the unexplained delay in making the payment of a sum due. In the circumstances of the case in question, that compensation should be assessed as the diminution in the amount of rupees eventually received by the complainant, the diminution being due to the change in the rupee/dollar rate during the period of delay. The Tribunal specified that the relevant period began on 14 December 1972, one month after Judgement No. 195 was notified, and ended on 14 March 1973, when the payment had been made, and that the amount of compensation should be ascertained by taking the difference between the rates as quoted on the international exchanges on those two dates.

11. Judgement No. 235 (6 May 1974): McCubbin v. Food and Agriculture Organization of the United Nations

Complaint seeking payment of the compensation prescribed in the statutory provisions in the event of death attributable to the performance of official duties

The complainant's husband, an FAO staff member, had been sent to Taiwan in October 1969 as a Programme Adviser. On 29 September 1970, he became ill at the office, suffering severe backache, and immediately went to a doctor. Several examinations made on 29 September, 30 September and 2 October proved inconclusive; he was unable to obtain an appointment between 2 and 6 October, and it was only on 6 October that an aortic aneurysm was diagnosed. On 7 October he suffered a severe attack; he could not be operated on because the necessary graft was unavailable and he died in the night of 7 October 1970.

The complainant, believing that a cause of her husband's death was the limited diagnostic and surgical facilities available in Taiwan and that her husband would have stood a fair chance of survival if he had been in England instead of being stationed in Taiwan, claimed, as the widow of a staff member whose death was attributable to the performance of his official duties,

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[34] See *Juridical Yearbook*, 1972, p. 148.

the compensation prescribed in the relevant provisions, in her own name and in that of her two children, who were minors at the time. Her claims were rejected despite a favourable recommendation by the FAO Appeals Committee.

The Tribunal, seized of the case, accepted the complainant's contention that what had to be proved was that the performance of official duties had been a cause of the death of her husband. It had, however, to be a cause in the legal sense, in other words, there must be a link or links of some strength between the cause and the event, sometimes expressed by saying that the cause must be "approximate", "direct" or "not too remote".

In the circumstances, the Tribunal noted that the medical evidence, put at its most favourable for the complainant, showed that her husband "would have stood a greatly increased chance of possible recovery if he had been in England", though it must remain a matter of doubt whether his life could have been saved. On that evidence, the complainant contended that a cause of the death was the absence of proper facilities and/or equipment at her husband's duty station. In the opinion of the Tribunal, there was not on those facts established a sufficiently close connexion between the death and the performance of the duties to constitute the performance as a cause of the death.

The Tribunal specified that its decision depended on the circumstances of the case, including in particular the peculiar nature of the husband's disease and the perils to life inherent in it. The decision was not to be taken as laying it down that the death of a staff member at a duty station lacking ordinary medical facilities could never be attributed to the performance of official duties.

12. Judgement No. 236 (6 May 1974): Harrod v. International Labour Organisation

Irreceivability of a complaint concerning a decision which can no longer be impugned owing to the expiry of the time-limit and conduct of the Organisation which does not constitute a decision impugnable before the Tribunal.

The complainant, holder of a fixed-term contract which had been extended on several occasions, had first worked at the International Institute for Labour Studies, and then had been notified of his transfer, by a minute of 17 November 1972, to a branch in the International Labour Office itself. His employment was terminated on 31 December 1972 by mutual consent. On 1 January 1973, an ILO staff list was published containing the names of all Institute officials, whereas previous lists had not included officials on fixed-term appointments.

The complainant requested the Tribunal, *inter alia*, to declare unlawful his transfer of 17 November 1972 and the change of status implicit in the staff list dated 1 January 1973. He also stated that the role of the Director of the Institute had been criticized in a widely read journal in his country of citizenship in a way which adversely affected the reputation of the Institute and its officials; he argued that the Organisation should have made a public statement thereon and alleged that the Organisation's silence in that respect was a "decision".

The Tribunal pointed out that the complaint had been filed on 30 March 1973. To be receivable, it must impugn a decision which ran counter to the terms of the complainant's appointment or to some provision of the Staff Regulations, and which had been notified to the complainant not before 30 December 1972.

The first decision had been a decision notified on 17 November 1972 "coupled with" a decision notified on 1 January 1973. The decision of 17 November 1972 had been the decision to transfer the complainant. If that decision were taken by itself, the complaint against it was clearly out of time. The publication on 1 January 1973 of a list of the officials of the ILO neither revived the decision of 17 November 1972 nor created any new decision. The complaint against the first decision was therefore irreceivable.

With respect to the alleged "decision" by the Organization concerning the reaction to criticisms which might have been made against the Director of the Institute, the Tribunal decided that the Organisation had not taken any decision on the matter and that in any event it would not have been a decision which affected its obligations to the complainant.

13. JUDGEMENT NO. 237 (21 OCTOBER 1974): GEORGE v. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Complaint seeking the quashing of a decision to terminate an appointment on grounds of unsatisfactory service

The complainant, a driver with a fixed-term contract, had been dismissed for unsatisfactory service. He had been charged (1) with taking an official motor-car, of which he was the driver, without permission from the parking space where it should have remained, for a purpose of his own and returning it in a damaged condition and (2) with reporting for duty in an intoxicated condition.

On the first charge, the Tribunal, in the light of the dossier, accepted the Administration's version of the facts and concluded that in the circumstances the complainant's misconduct justified his dismissal. On the second charge, the Tribunal decided that the evidence was corroborated that the complainant smelt strongly of alcohol; it felt, however, that there was no evidence that the complainant had been unfit for duty. To come on duty smelling of alcohol was reprehensible but it did not amount to misconduct serious enough to justify dismissal. Besides, that charge was immaterial because the first had been by itself sufficient to justify the measure taken. The Tribunal therefore rejected the complaint.

14. JUDGEMENT NO. 238 (21 OCTOBER 1974): ZOGANAS v. INTERNATIONAL LABOUR ORGANISATION

Complaint seeking the quashing of the decisions relating to the results of two competitions held by the Organisation to fill some of its posts

The complainant had entered successively an internal competition and an external competition held by the International Labour Office with a view to filling certain posts. He did not, however, secure a post in either case. He then appealed to the Tribunal by requesting it, *inter alia*, to quash the Director-General's decisions relating to the results of the competitions.

The Tribunal first of all rejected the argument by the defendant Organisation that, according to the Tribunal's case law,[35] the complainant was not entitled to refer to the courts in a single complaint two different decisions which did not concern the complainant's career but rather the lawfulness of two different competitions and were not therefore sufficiently related. The Tribunal found that each of the decisions impugned affected the complainant's career in a very similar way and that the complainant might therefore refer them to the Tribunal in one and the same complaint.

With respect to the internal competition, the Tribunal pointed out that the notice of vacancy, after describing the duties attaching to the posts, set forth the qualifications required of applicants (university degree and proficiency in languages) and stated that the candidates selected by the Board of Examiners might be required to take a written examination. The complainant objected that in selecting the candidates the Board of Examiners had taken account not only of their university education and proficiency in languages, the sole qualifications set forth in the notice of vacancy, but also of their professional experience, a criterion not mentioned in the notice. The Tribunal pointed out that an internal competition, of which the main purpose was to promote existing staff members, normally entailed taking into consideration all the information available to the Organisation concerning them, and in particular information which allowed of appraising the professional experience of the candidates. In taking previous performance as one of its criteria for the classification of candidates the Board of Examiners had not exceeded its proper authority to make a general assessment of them and make a choice.

The complainant had also wrongly alleged that candidates should have taken a written examination. According to the notice of vacancy itself, it was for the Board to decide on the need for such an examination.

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[35] See Judgement No. 111, summarized in the *Juridical Yearbook*, 1967, p. 306.

Finally, the complainant had not produced a shred of real proof in support of his allegation that the impugned decision had not been taken in the interests of the Organisation.

With respect to the external competition, the complainant had contended that the Organisation had tried to exclude him by summoning him to a room other than that in which the examination was to take place. The Tribunal, however, noted that the complainant had discovered in time the room where the examination was actually being held and that he had taken the examination in the same conditions as the other candidates. In those circumstances, regrettable as the mistake might have been, therefore, it had not affected the regularity of the proceedings.

The complainant further contended that the rules of impartiality had not been respected because, among other things, the names of the candidates had been known to the Selection Board when it had come to classify them. The Tribunal, however, concluded that, according to the notice, the vacancy was to have been filled, not by a competition in the strict sense of the term, but by selection. The process of selection of civil servants should by its very nature be based not just on the results of an examination but on any other useful criteria. Account should be taken, not only of the candidate's possession of the expressly stipulated qualifications, but of their degrees and of their professional experience, which in itself constituted a criterion for selection and one of particular relevance in recruiting civil servants. In the present case, the examination results being only one of the criteria to be applied, the Selection Board had been entitled, after marking the written papers, to ask the Organisation to reveal the names of the candidates so that it could fulfil its task by assessing the general suitability of each of them for employment in the international civil service.

Thirdly, the complainant had not produced a shred of proof in support of his allegations that he had been eliminated because of his political opinions or trade union activities and that the Organisation had failed to apply the principle of equality to his case. In the light of all the documents in the dossier such allegations appeared most unlikely to be true.

The Tribunal therefore rejected the complaint.

15. JUDGEMENT NO. 239 (21 OCTOBER 1974): FOX v. INTERNATIONAL LABOUR ORGANISATION

The Tribunal recorded the withdrawal of suit by the complainant.

16. JUDGEMENT NO. 240 (21 October 1974): HOPKIRK v. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

The Tribunal recorded the withdrawal of suit by the complainant.

17. JUDGEMENT NO. 241 (21 OCTOBER 1974): SANTONI v. WORLD HEALTH ORGANIZATION

Complaint seeking the quashing of a decision not to renew a fixed-term appointment

The complainant was appointed under a fixed-term contract which was renewed several times, on the last occasion until 30 September 1973. In May 1973 she was informed that her contract would not be renewed. Her internal appeals having failed, she filed a complaint with the Tribunal, maintaining that she had grounds for counting on a further extension of her appointment, that her functions had not matched her qualifications and that the decision taken on her case was based on erroneous grounds (unsatisfactory service).

The Tribunal stressed that a decision not to extend a staff member's appointment was a matter of discretion. The Tribunal could interfere with such a decision only if it was taken without authority, was irregular in form or tained by procedural irregularities, or was based on a mistake of fact or of law, or if essential facts had not been taken into consideration, or if it was tainted with abuse of authority, or if conclusions which were clearly false had been drawn from the documents in the dossier.

The complainant maintained that the impugned decision was taken on mistaken grounds. The Tribunal considered, however, that it did not appear from the dossier that the complainant was the victim of any prejudice or that her case had not received proper examination.

Moreover, the complainant had not only received a written reprimand in December 1971 and signed several annual reports criticizing her lack of interest in her work, but did not deny having received the warnings and held the conversation mentioned by the Administration.

The decision not to extend the complainant's appointment did not infringe any statutory or contractual provisions. It was indeed in accordance with the provision in Staff Rule 940 that fixed-term appointments terminate automatically on completion of the agreed period of service.

The complainant had been required to perform the duties specified in her contract of appointment. Lastly, there was no reason to suppose that the Director-General had failed to take essential facts into consideration, been guilty of abuse of authority or drawn clearly false conclusions from the documents in the dossier. Thus, the Tribunal could not interfere with the decision and the complaint was dismissed.

18. JUDGEMENT NO. 242 (21 OCTOBER 1974): STOM-GARNIER v. EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

The Tribunal recorded the withdrawal of suit by the complainant.

19. JUDGEMENT NO. 243 (21 OCTOBER 1974): RILEY v. INTERNATIONAL LABOUR ORGANISATION

Complaint seeking the quashing of a decision not to renew a fixed-term appointment

The complainant held a fixed-term contract which had been renewed on several occasions. In two successive periodic reports reservations concerning his work and output were expressed by his supervisor, who finally decided to assign him to other duties and to place him under his own direct supervision, giving him special assignments with stated deadlines. Some months later, the complainant was transferred to a new branch, where his work once again gave rise to unfavourable reports. His appointment was nevertheless extended for a further period of six months and then, for compassionate reasons, for two successive periods of two months.

The complainant requested the Tribunal, *inter alia*, to quash the Director-General's decision not to renew his appointment.

The Tribunal recalled that a staff member on a fixed-term appointment had no right to expect extension of that appointment, as was clear from Staff Regulation 4.6 (*d*). The question whether such an appointment might or might not be extended fell within the discretionary authority of the Director-General, whose decision on the matter could be interfered with only if it was 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 conclusions which were clearly false had been drawn from the documents in the dossier or, finally, if authority had been exercised for purposes foreign to the Organisation's interests.

The complainant's contention that his supervisor should have confined himself to exerting purely administrative control over his work, and not technical supervision, ran counter to the basic principles to be observed in the public service, where a supervisor should exercise supervision and control over all the activities of his subordinates. If a subordinate who had already served as an official for some time was having difficulties in adapting to his duties—and such was the case of the complainant, who although possessing unquestionable and unquestioned technical skills had revealed himself to be incapable of producing work regularly or of doing a particular job of work by a reasonable deadline—the head of branch had the duty to keep a close watch on him, guide him and carefully supervise his work, or even to take over himself. In the Tribunal's view, all the complainant's criticisms of his superior suggested that in fact the latter was perfectly aware of his duties as head of branch, and none of those criticisms was warranted. Besides, even under the supervision of another head of branch, the complainant proved to be no better able to adapt.

With regard to the contention that the complainant had been assigned to duties which did not match the description in his contract of appointment, the Tribunal declared that a head of branch should be free to employ his subordinates in the best interests of his branch, with due regard to their qualifications. It was not contested that, in view of the complainant's inability to perform his duties and the inadequacy of his output, his successive supervisors and the Director-General had tried to give him, in his own interests, different and varied assignments, first within the branch and later in a related branch, and that moreover those changes fell within the authority enjoyed at different levels by each of the persons concerned.

The Tribunal concluded that the impugned decision was not tainted with any of the flaws which entitled the Tribunal to interfere with it and stressed that the Organisation, instead of terminating the complainant's services as soon as it became aware of the difficulties he was having in adapting to his duties, had sought to use him in other posts, thus treating him with consideration. The Tribunal therefore dismissed the complaint.

20. JUDGEMENT NO. 244 (21 OCTOBER 1974): ELLOUZE v. INTERNATIONAL LABOUR ORGANISATION

Complaint submitted by a locally recruited staff member with a view to obtaining non-local status

The complainant, after completing several periods of employment under fixed-term contracts, first at Geneva with local status from 22 August 1967 to 27 February 1968, then in Algiers with non-local status from 1 March 1968 to 31 January 1970 and then again in Geneva with local status from 3 March 1970, was appointed on 5 December 1972 as a General Service category official under a contract of indeterminate duration which classified him as "locally recruited", thus indicating that his home was Geneva.

A few months later he requested that Sfax be regarded as his home, but his requests were dismissed.

The Tribunal, to which the case was submitted, noted that according to the Staff Regulations, the home of officials of the General Service category was deemed to be at the duty station if the official had been locally recruited. Likewise according to the Regulations, an official was classified as locally recruited in various circumstances, in particular if he had been continually living for one year within a radius of 25 kilometres from Geneva.

It had been established that at the date of his appointment of indeterminate duration the complainant had held, as a locally recruited official, successive short-term appointments covering more than one year. In accordance with the aforementioned provisions, he must be deemed a locally recruited official and his home was therefore his duty station.

The complainant contended that the contracts which he held after 3 March 1970 were tainted with illegality in that they treated him as a locally recruited official, whereas on 3 March 1970 he had been living in Geneva for less than one year. However, since the complainant had not objected to the terms of those contracts before they expired, it was no longer open to him to contest those provisions, which had become final.

The Tribunal therefore dismissed the complaint.

21. JUDGEMENT NO. 245 (21 OCTOBER 1974): MEYER v. INTERNATIONAL ATOMIC ENERGY AGENCY

Complaint seeking the quashing of a decision refusing to extend an appointment by the few days necessary to enable the person concerned to receive a pension

The complainant held a fixed-term appointment which had been extended several times. The last extension, for a period of 11 months, was accepted like the previous extensions, except that the complainant asked that its length should be reconsidered; for want of 13 days the appointment offered to him did not enable him to complete the five years' continuous service required to entitle him to a pension from the United Nations Joint Staff Pension Fund. His request having been rejected by a decision with statement of reasons of 31 August 1973, he

appealed to the Joint Appeals Committee, which held that he had no "right" to an extension of his final appointment, but nevertheless recommended that it should be extended by 13 days. By letter of 10 December 1973, the Director-General informed the complainant that he could not endorse the Committee's recommendation.

The Agency maintained that the complaint was irreceivable because the Director-General's refusal to endorse the Committee's recommendation was not an administrative decision within the meaning of Staff Regulation 12.01 and that the true decision in the case was that by which the administration had extended the complainant's appointment by 11 months. The Tribunal rejected that argument. It observed that the dismissal of the complainant's claim of 31 August 1973 indeed constituted a decision which had been correctly submitted to the internal appeals body and that in the light of that body's recommendations the Director-General had taken a further decision in the legal meaning of that term on 10 December 1973. The complaint had thus been lodged in accordance with the rules, within the time-limit and after the internal means of redress had been exhausted.

As to the merits, the Tribunal stressed that the impugned decision was a matter of discretion which could be interfered with only if it was taken without authority, was irregular in form, or tainted by procedural irregularity or by illegality, or was based on incorrect facts or if essential facts had not been taken into consideration, or if it was tainted with misuse of authority, or, again, if clearly mistaken conclusions had been drawn from the documents in the dossier.

The Tribunal first stated that the administration had not infringed its contractual obligations because all the complainant's contracts stated that fixed-term appointments carried no expectation of extension.

The complainant had undoubtedly been informed that fixed-term appointments "can be followed by fixed-term contracts depending upon the needs of the Agency's programme and work performance of the staff member concerned", but he could not infer from that statement any right to continue in the Agency's service until completion of the programme to which he had been assigned and for as long as his work performance was satisfactory. On the contrary, by using the word "can" the Agency reserved the right to terminate his appointment even if the stipulated conditions were fulfilled.

Moreover, the complainant could not properly take the Agency to task for appointing him without informing him of its general practice of not granting fixed-term appointments of more than five years' duration. It might, of course, be regrettable that he had not been informed of that restriction at the outset, as new staff members of the Agency apparently had been since. But since he should have expected his appointment to be terminated on grounds other than the completion of a programme or the inadequacy of his services, he could not found any claim on the omission which he attributed to the Agency.

The complainant also contended that the Director-General had misused his authority. The Tribunal observed that it was the Director-General's duty to safeguard the Agency's interests at all times. The question therefore arose whether the impugned decision was in accordance with those interests, on whose nature the Tribunal did not intend to substitute its own opinion for that of the highest authorities of the Agency. The latter had observed that in principle it was its practice—based on article VII.C of its Statute and approved by its General Conference and its Board of Governors—to limit the total period of appointments of staff members to four years, and to grant to only a few of them appointments of over five years. In offering to extend the complainant's total length of service to four years, 11 months and 17 days, the Director-General had no doubt intended to act in the Agency's interests viewed by its higher authorities. Hence misuse of authority could not be regarded as established.

It appeared, however, from the circumstances of the case that the Director-General had drawn unwarranted conclusions from the evidence before him. Although the complainant had not expressly put forward that argument, the Tribunal felt bound to consider it, since its jurisdiction required it to apply the law. The refusal of the complainant's request had substantial effects on the financial interests of a staff member whose services had consistently

been regarded as satisfactory. Moreover, the extension claimed covered so short a period that it was not such as to cause any prejudice whatever to the Agency. The Director-General had no doubt been prompted by the desire to avoid setting a precedent on which other staff members might later rely, but in order to avoid future claims like the complainant's, the Agency need only refrain from extending the appointment of fixed-term staff members beyond four years; furthermore, by limiting the period of the complainant's service to five years the Director-General would not have departed from the practice of regarding only appointments of more than five years as permanent.

The Tribunal therefore declared that by causing the complainant serious loss which was not justified by the need to safeguard any interest of the Agency the Director-General had drawn from the dossier conclusions which were clearly mistaken. His decision was therefore tainted by a flaw which warranted quashing it. The Agency should therefore extend the complainant's final appointment so as to bring his total period of service to five years and so entitle him to the benefits of participation in the Pension Fund. A longer extension of appointment was not warranted in the circumstances of the case, since it was not required to remedy the flaw in the decision.

22. JUDGEMENT NO. 246 (21 OCTOBER 1974): RONDUEN V. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Complaint alleging non-observance by the respondent Organization of its obligations under the Staff Regulations and Staff Rules with respect to the participation of its staff members in the United Nations Joint Staff Pension Fund

The complainant, who was born on 27 April 1907, had been appointed on 23 November 1963 under a fixed-term one-year contract which had been renewed on several occasions for periods of one year or less. He first left the service of the Organization on 31 May 1968, then was reappointed seven months later under a one-year contract, which was again extended on several occasions. On 22 December 1971, the complainant finally left the service of the Organization.

At the time of his first appointment, the complainant had been informed that he was an associate participant in the United Nations Joint Staff Pension Fund. He lost that status, and was duly informed of that fact, when he reached the age of 60. Finally, when he was reappointed, it was made clear to him that he was excluded from the Fund since he was over 60.

On applying for a pension entitlement a few months before his contract expired, he received a negative answer from the administration. The matter was then referred to the UNESCO Joint Staff Pension Committee, which upheld the administration's interpretation, then to the United Nations Joint Staff Pension Board, which arrived at the same decision.

By letter of 25 October 1972, which did not arrive at its destination until 11 April 1973, the complainant this time lodged an appeal with the Appeals Board against the "administrative decisions" on the basis of the Staff Regulations and Staff Rules. The Appeals Board declared the appeal receivable but advised dismissing it on the merits. By letter of 22 October 1973, the Director-General informed the complainant that he endorsed the Board's recommendation to dismiss the complaint but that he reserved his position on the irreceivability of the complaint.

The complainant then appealed to the Tribunal against that decision, asserting, on the basis of Staff Regulation 6.1[36] and Staff Rule 106.4,[37] that the Organization ought to have

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[36] The terms of this Regulation are as follows: "Provision shall be made for the participation of staff members in the United Nations Joint Staff Pension Fund in accordance with the Regulations of that Fund."

[37] The terms of this Rule are as follows: "A staff member who is under sixty years of age at the time of appointment shall participate in the United Nations Joint Staff Pension Fund according to his eligibility under the Regulations of the Fund, provided that his participation is not excluded by the terms of his appointment."

ensured that the nature and duration of his appointments entitled him to a retirement benefit. In his appeal, the complainant also impugned a decision of 21 December 1973 concerning the payment of a medical insurance indemnity.

The Tribunal first noted that the decision of the United Nations Joint Staff Pension Board, which might be impugned before the United Nations Administrative Tribunal, had not been referred to this Tribunal. It was not open to review by the ILO Administrative Tribunal, whose competence did not extend to disputes between an international official and the organs of the Fund.

Hence the sole question for the Tribunal to determine was whether by the alleged infringement of its obligations UNESCO had deprived the complainant of entitlements from the Pension Fund. The Tribunal pointed out first of all that the Organization was not bound to grant appointments in such terms as to confer on staff members maximum benefit from the Fund. Although it was of course required to take account of the legitimate interests of staff members on recruitment, in doing so it could not overlook its own interests. Moreover, the conclusion and extension of contracts of appointment fell within the discretionary authority of the Director-General, and the Tribunal exercised over such decisions only the restricted form of review to which discretionary decisions were subject.

The Tribunal noted that, until he reached the age of 60, the complainant had been an associate participant in the Fund and that UNESCO did not therefore ignore the question of his participation in the Fund. Once he had reached the age of 60, the complainant could not have remained a participant in the Fund—this time as a full participant—unless at the date of his sixtieth birthday he had held either a permanent appointment or an appointment which would normally lead to a permanent appointment, or an appointment bringing his total length of continuous service to at least five years. At that time, however, he had completed only a little over three years' service with UNESCO; consequently UNESCO was not even morally bound to offer him a contract which would put him in one of the three categories mentioned above. Finally, once he had passed the age of 60, the complainant could no longer become a participant in the Fund. Whatever their duration, his subsequent appointments could in no way change that fact. It was therefore pointless to consider whether or not their extension would have been warranted. The Tribunal consequently considered the conclusions of the claim to be unfounded.

Finally, the part of the claim concerning the payment of the medical insurance indemnity impugned an alleged administrative decision which might be referred to the Appeals Board. Since its submission had violated the rule stipulating that internal means of redress should first be exhausted, it was irreceivable.

23. Judgement No. 247 (21 October 1974): Nemeth v. Food and Agriculture Organization of the United Nations

Complaint against a decision to withhold annual salary increment—Concepts of "unsatisfactory service" and "unsatisfactory conduct"—Grounds of insubordination

The complainant, who held a permanent contract, had had his annual salary increment withheld as a result of his offensive attitude towards his immediate supervisor, whom he refused to acknowledge as such. In addition, his post had been abolished although he continued to be employed in the FAO secretariat.

Before the Tribunal, he contended that both the withholding of his increment and the abolition of his post as part of an experimental reorganization of his Division, which had the effect of leaving him only minor duties, were the result of intriguing by the Director of his Division to get rid of him and ruin the end of his career.

The Tribunal pointed out that a decision to withhold a within-grade increment was a discretionary decision and could therefore be impugned only if it had certain flaws and if it was based, among other things, on an error of law or a clearly mistaken conclusion on the facts. It considered that the decision in this case was based upon an error as to what constituted

unsatisfactory service within the meaning of the Staff Regulations and an erroneous appreciation of the facts which were supposed to constitute it.

The record revealed that the administration's complaint against the complainant was that he had refused to acknowledge a particular official as his superior. For his part, the complainant denied that the official in question was in fact his superior. He distinguished also between "unsatisfactory service" and "unsatisfactory conduct" and argued that "unsatisfactory conduct" was not a ground for curtailing salary. The Organization, for its part, contended that "a direct superior-subordinate relationship" had been established and that the term "unsatisfactory service" covered insubordination.

The Tribunal first considered to what extent insubordination was covered by the concept of unsatisfactory service. In that respect, it noted that the Staff Regulations distinguished between unsatisfactory conduct and unsatisfactory service. The latter was covered by Manual section 315.322 and could lead only to the withholding of increment; the Organization had therefore rightly insisted that such withholding was not a disciplinary measure. Unsatisfactory conduct, on the other hand, was a subject for disciplinary action which was covered by Manual sections 301 and 339. Eleven specific kinds of unsatisfactory conduct were set out in Manual section 330.152, of which the eighth was insubordination, such as impertinence to a superior officer or refusal to obey instructions. A formal procedure had to be followed in disciplinary cases so as to ensure that the charge was stated in writing and an opportunity given for reply.

Several of the 11 kinds of unsatisfactory conduct set out in the Manual were unlikely to affect in any way the service given. Occasional insubordination might not affect the service given; a constantly insubordinate officer, on the other hand, could not be giving satisfactory service. To bring insubordination within the concept of unsatisfactory service, it was necessary, in the opinion of the Tribunal, (1) to establish that the insubordination did in the particular case affect the quality of the officer's service (positive condition) and (2) to establish that insubordination in the particular case had not given rise to a dispute (negative condition). In the present case, neither of these conditions had been fulfilled.

As to the positive condition, the Tribunal noted that the complainant's refusal to acknowledge a certain official as his superior was the only fact specifically alleged, and it did not follow from it that the quality of his service was thereby impaired.

The negative condition was necessary to preserve the true relationship in the Staff Regulations between disciplinary and non-disciplinary measures. When an act of disobedience was alleged and disputed, the accused could not be deprived of the protection afforded by the disciplinary regulations by charging it only as an item of unsatisfactory service. In the present case the complainant was charged with an insubordinate attitude and was disputing that he owed a duty of subordination.

Accordingly, the offence, if any, of the complainant was an offence against discipline, and the Director-General had erred in dealing with it as a matter of unsatisfactory service. He had erred also in his implicit determination (the point was never dealt with expressly) that there was a duty of subordination. In the present case, if the Director of the Division to which the complainant belonged meant to delegate his authority in certain matters to one of the officers in that Division, he ought to have done what he had neglected to do, namely, use clear words which left the other officers in no doubt that one who was then considered hierarchically their equal would in future be invested with the right to command.

The Tribunal concluded that, if the Director-General had taken into account all the relevant factors, he would not have found the complainant guilty of insubordination.

The decision to withhold the annual salary increment had been taken, in the first instance, by the Director of the Division to which the complainant belonged. It had then been based on two instances of comments deemed inappropriate and offensive. The first instance could perhaps, in the opinion of the Tribunal, warrant a charge of impertinence, but one had to take into consideration, on the one hand, the fact that the two persons in question were near equals and, on the other hand, the stress being experienced by the complainant at the time of the

incident because of the threat to abolish his post. As to the second incident, the Tribunal could find no evidence at all of offensive or impertinent behaviour on the part of the complainant.

At the Director of Personnel level, the decision to withhold the annual salary increment had been based on the fact that the complainant had deliberately ignored the existence of a hierarchical relationship between himself and another officer of the Organization. In that respect the Tribunal noted that, on 7 April 1972, the officer in question had for the first time been expressly named as the complainant's supervisor. At no time after that date had the complainant questioned the existence of a hierarchical relationship. Prior to that date, the Tribunal recalled, as was stated above, that the actions of the administration had not been unambiguous.

Finally, at the Assistant Director-General level, the reason given to support the decision to withhold the annual salary increment was that the complainant had refused to recognize another officer of the Organization as his supervisor. The Organization contended that, when the officer in question had been promoted to P-5 with effect from 1 January 1972, his post had been re-allocated with a new title. It was further contended that by an oversight his title had not changed until April 1972 when it was done with retroactive effect. In the opinion of the Tribunal, these operations could hardly have been conducted without the issue of some documents. But none had been produced. According to the Administration, "the action did not call for any official announcement for general distribution". The Tribunal declared that it was at a loss to understand how the complainant could be expected to recognize the officer in question as the incumbent of an office to which his promotion had not been announced.

The Tribunal concluded:

(1) That the Director-General had erred in law in treating the complainant's attitude as if it fell within the concept of unsatisfactory service;

(2) That he had erred in law in concluding that at the material time a particular officer of the Organization was the complainant's superior or supervisor;

(3) That in concluding that the complainant was guilty of insubordination he had drawn a clearly mistaken conclusion from the facts.

The contested decision was consequently quashed.

Chapter VI

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

A. Legal opinions of the Secretariat of the United Nations
(Issued or prepared by the Office of Legal Affairs)

1. Comments on the question of the responsibility of States with regard to the reparation for injuries incurred by agents of international organizations, in particular the United Nations

Note prepared in reply to an enquiry by the Permanent Representative of a Member State

Some basic principles governing this subject have been set out by the International Court of Justice in its advisory opinion of 11 April 1949 (Reparation for Injuries Suffered in the Service of the United Nations, *ICJ Reports 1949*, p. 174). The Court held unanimously that, in the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State (including a State which is not a member), the United Nations as an Organization has the capacity to bring an international claim against the responsible *de jure* or *de facto* government with a view to obtaining the reparation due in respect of the damage caused to the United Nations. By eleven votes against four, the Court also held that in the above-mentioned circumstances the United Nations had the capacity to bring an international claim with a view to obtaining the reparation due in respect of the damage caused to the victim or to persons entitled through him.

The Court understood the word "agent" as "any person who, whether a paid official or not, and whether permanently employed or not, has been charged by an organ of the Organization with carrying out, or helping to carry out, one of its functions—in short, any person through whom it acts" (*ICJ Reports 1949*, p. 177).

The Court also considered the question of how action by the United Nations based on the Organization's right of functional protection is to be reconciled with such rights (as the right of diplomatic protection) as may be possessed by the State of which the victim is a national. It concluded by ten votes against five that when the United Nations as an Organization is bringing a claim for reparation of damage caused to its agent, it can only do so by basing its claim upon a breach of obligations due to itself, and that respect for this rule will usually prevent a conflict between the action of the United Nations and such rights as the agent's national State may possess, and thus bring about a reconciliation between their claims. This reconciliation must depend upon considerations applicable to each particular case, and upon agreements to be made between the Organization and individual States, either generally or in each case.

In a report on reparation for injuries incurred in the service of the United Nations, of 23 August 1949, presented at the fourth session of the General Assembly,[1] the Secretary-General

[1] *Official Records of the Fourth Session of the General Assembly, Sixth Committee*, Annex to the Summary Records of Meetings, agenda item 51, document A/955, para. 15.

proposed "that the General Assembly should accept the advisory opinion of the Court as an authoritative expression of international law on the questions considered". The Secretary-General also suggested that the United Nations should proceed to present claims for the deaths or injury of its agents in cases in which the responsibility of a State might appear to be involved, and at the same time he proposed a procedure to be followed for the settlement of these claims. As chief administrative officer of the Organization, the Secretary-General would:

(*a*) determine which of the cases appear likely to involve the responsibility of a State;

(*b*) consult with the Government of the State of which the victim was a national in order to determine whether that Government had any objection to the presentation of a claim or desired to join in the submission;

(*c*) present, in each such case, an appropriate request to the State involved for the initiation of negotiations to determine the facts, and the amount of reparations, if any, involved.

In the event of differences of opinion between the Secretary-General and the State concerned which could not be settled by negotiation, it would be proposed that the differences be submitted to arbitration. The arbitral tribunal would be composed of one arbitrator appointed by the Secretary-General, one appointed by the State involved, and a third to be appointed by mutual agreement of the two arbitrators, or, failing such agreement, by the President of the International Court of Justice.[2]

By "settlement" of a claim the Secretary-General understood reparations "reasonably adequate to compensate the Organization and the victim or the persons entitled through him" and he asked the General Assembly to allow him discretion with respect to the elements of damage which should be included in any claim and the amount of reparation to be requested, or eventually accepted. The Secretary-General would not advance any claim for exemplary damages.

In resolution 365 (IV) of 1 December 1949, the General Assembly authorized the Secretary-General to act in accordance with the procedure outlined in his proposals. In pursuance of this resolution the Secretary-General formally presented a number of international claims in respect of death or injury of United Nations personnel.

At its seventh session, the General Assembly recommended once more, by resolution 690 (VII) of 21 December 1952, that international claims for reparation presented to governments in connexion with the death of agents of the United Nations be settled by the procedures envisaged in resolution 365 (IV).[3]

With regard to the question of the determination of the responsibility of a State in a case involving the death of an agent of an international organization, it may be noted that such cases show a pattern quite similar to situations of classical State responsibility and traditional principles of State responsibility can be applied.

There are, however, provisions of international law which give the duties of a State a special quality when a particular organization such as the United Nations is concerned. Thus, under the Charter, Members have the obligation to render every assistance to the United Nations in the performance of its functions [Article 2(5) of the Charter]. This general principle may be implemented by special provisions applicable to a particular situation, such as resolutions of the Security Council or special agreements with the States on whose territory the activities take place.

With regard to the responsibility for injury to agents of international organizations, there is also the principle of special duty of protection on the part of a State towards officials with an international function (i.e. international officials in general and not only diplomatic agents).

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[2] *Ibid.*, paras. 17 and 21.

[3] For the report presented by the Secretary-General at the seventh session on the status of claims for injuries incurred in the service of the United Nations and for an account of the consideration of the matter by the Sixth Committee, see *Official Records of the General Assembly, Seventh session, Annexes*, agenda item 57, documents A/2180 and A/2353.

This principle is implemented, e.g. by the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, but was already a firmly established principle in traditional international law. In the famous Tellini case, concerning the responsibility for the assassination of an Italian officer and two of his aides while engaged as a member of a commission sent by the Conference of Ambassadors to survey the boundary between Greece and Albania in 1923, the Committee of Jurists, set up by the League of Nations, asserted that "The recognized public character of a foreigner and the circumstances in which he is present in its territory entail upon the State a corresponding duty of special vigilance on his behalf".[4]

14 August 1974

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2. COMMENTS ON A DRAFT AGREEMENT BETWEEN THE UNITED NATIONS AND A MEMBER STATE ON THE ARRANGEMENTS FOR A SYMPOSIUM TO BE HELD ON THE TERRITORY OF THAT STATE UNDER THE AUSPICES OF THE UNITED NATIONS

Memorandum to the Director, Departmental Administration and Finance Office, Department of Economic and Social Affairs

Having reviewed the comments by the Deputy Permanent Representative of [name of the Member State concerned] on the above-mentioned draft, we find that not all of his suggestions would be in accordance with the practice usually followed by the United Nations in concluding agreements with Member States hosting symposia or seminars of the Organization.

With respect to article VI [concerning facilities, privileges and immunities] of the draft agreement, the Office of Legal Affairs wishes to state as its general view that in addition to the general principles set out in Article 105 of the United Nations Charter, the provisions of the Convention on the Privileges and Immunities of the United Nations[5] constitute the authoritative expression of the minimum measure of privileges and immunities required by the Organization. It is further considered essential that no substantive difference should exist among the provisions on privileges and immunities contained in the agreements concluded with various host countries; the provisions of the draft agreement are therefore of a standard nature and they are, as a consequence, usually included unchanged in the final agreements.

The authorities of the Member State concerned have proposed that at the time of the signing of the agreement an exchange of letters take place under which they would state that "immunity of jurisdiction does not apply to road offences, committed by a privileged person, nor to cases of damage caused by a motor vehicle belonging to or being driven by that person" and that "no exemption of taxes or duties as to foodstuffs, drinks, tobacco and comparable supplies shall be claimed by the United Nations". The view held by the authorities with respect to the limitation in immunity of jurisdiction or in exemption from taxes and duties would not appear to be supported by the principles of Article 105 of the United Nations Charter, nor is it in accordance with the provisions of the Convention on the Privileges and Immunities of the United Nations to which the Member State concerned has acceded. With respect to the immunity enjoyed by United Nations officials and experts under the Convention, the manner in which this immunity may be waived is expressly determined in sections 20 (Officials) and 23 (Experts on missions) of the Convention, which *inter alia* provide that "the Secretary-General shall have the right and the duty to waive the immunity of any official [expert] in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests ot the United Nations". It goes without saying that in determining whether to waive the immunity of a United Nations official or expert the Secretary-General will act with diligence and conscientiousness.

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[4] League of Nations, *Official Journal*, 1924, p. 524.

[5] United Nations, *Treaty Series*, Vol. 1, p. 15.

Regarding the exemption of the United Nations from taxes and duties it may be recalled that the report of the Committee of the San Francisco Conference responsible for the drafting of Article 105 of the Charter stated that "if there is one certain principle it is that no member state may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens, financial or other".[6] In the light of this principle, the intent of sections 7 and 8 of the Convention on the Privileges and Immunities of the United Nations would clearly seem to be to relieve the Organization of the burden of all taxes and duties—section 7 providing exemption from all customs duties and direct taxes and section 8 providing for remission or return of excise duties or sales taxes forming part of the price to be paid where the amount involved is important enough to make it administratively feasible. In view of the clear intent of the relevant provisions of the Charter and of the Convention, which has been consistently observed by the United Nations in its dealings with other Member States, it would not seem justifiable to agree to an exceptional arrangement in respect of a particular Member State. The additional expense for the United Nations which would ensue, were it to be agreed that "no exemption of taxes or duties as to foodstuffs, drinks, tobacco and comparable supplies shall be claimed by the United Nations", is by no means negligible. The United Nations would therefore reserve its right to claim exemption as provided in the Convention.

As is the case with the provisions on privileges and immunities, article VII [on liability] of the draft agreement is a standard provision usually included in all conference agreements. The principle underlying the provisions of that draft article is that the Government, and not the United Nations, should bear such risks as may be involved in the provision of premises or transportation, and the employment of local personnel. In this connection it is pertinent to refer to operative paragraph 10 of General Assembly resolution 2609 (XXIV) whereby it was decided that "United Nations bodies may hold sessions away from their established headquarters when a Government issuing an invitation for a session to be held within its territory has agreed to defray, after consultation with the Secretary-General as to their nature and possible extent, the actual additional costs directly or indirectly involved". Should compensation not be recoverable from another party, claims of the nature described in draft article VII might be made on those responsible for the holding of the conference on the premises, namely the Government and the United Nations. In such a situation the effect of draft article VII would be to ensure that the Government, not the United Nations, would be liable for any such claim, which may be considered to constitute *indirect* additional costs to the United Nations within the meaning of General Assembly resolution 2609 (XXIV).

8 January 1974

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3. IMMUNITY OF UNITED NATIONS PROPERTY AND ASSETS FROM SEARCH AND FROM ANY OTHER FORM OF INTERFERENCE—SECTION 3 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Aide-Mémoire to the Permanent Representative of a Member State

The Secretary-General has been advised by the United Nations Development Programme that a UNDP project account has been blocked by judicial decision [in the Member State concerned] as a result of a claim against a project vehicle arising out of an accident which involved injury to a government employee assigned "in kind" to the project.

The Court action in ordering the blocking of the UNDP project account is in contravention of the Convention on the Privileges and Immunities of the United Nations to which [name of the Member State concerned] is a party. Section 3 of the Convention provides that:

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[6] *Documents of the United Nations Conference on International Organization*, San Francisco, 1945, vol. XIII, Commission IV (Judicial Organization), p. 683.

"The property and assets of the United Nations, wherever located and by whomever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action."

Furthermore, inasmuch as the court order may have issued from an action brought against the United Nations, its property or assets, it may also be pointed out that Section 2 of the Convention provides that:

"The United Nations, its property and assets wherever located and by whomever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity . . ."

There has been no waiver of immunity in the present case nor does there appear to be a cause of action against the United Nations since *inter alia* under the agreement between the UNDP and [name of the Member State concerned] compensation for injuries or illnesses for government employees assigned to a United Nations project is the sole responsibility of the government, including the local staff assigned "in kind" to the project.

The Secretary-General requests, as a first step, that the Government immediately take the necessary measures to unblock the UNDP project account, so that the project may be continued without interruption.

20 February 1974

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4. QUESTION OF THE EXEMPTION OF THE UNITED NATIONS FROM VALUE-ADDED TAX IN A MEMBER STATE

Letter to the Permanent Representative of a Member State

In the nine months since the introduction of Value-Added Tax (VAT) in your country, the Office of Legal Affairs, at the request of the United Nations and the specialized agencies has closely followed the application of VAT to these organizations. We are pleased to note that in a memorandum of 19 February 1973 the competent authorities in your country stated that the general rule to be followed would be that "the reliefs and concessions which are at present accorded to international organizations on a statutory or concessionary basis will continue to apply and there should be no change in existing entitlements". Our review of the practical implementation of this rule indicates that with respect to the purchase of goods for the official use of the organizations in your country, reimbursement of VAT may be obtained where the purchases involved are substantial and that in practice such reimbursement has been made according to the established administrative procedures.

With respect to services, however, the United Nations offices and specialized agencies have informed us that they have been notified by the competent authorities in your country that exemption from, or reimbursement of, VAT levied on services cannot be granted. Since many services which are now subject to VAT were previously untaxed, the VAT levied on such services constitutes a considerable increase in the financial burden of the organizations and represents a negative change in the organizations' entitlements. Particular concern has been expressed by those organizations carrying out training programmes in your country within the framework of the United Nations Development Programme. We understand that according to the 1972 Finance Act, the provision of services in your country to overseas authorities is zero-rated but that "overseas authorities" has been defined as meaning "overseas governments" thereby excluding international organizations. Having regard, among other considerations, to the fact that the training programmes and related services are carried out by the organizations concerned on behalf of and for the benefit of overseas governments such services should, in the opinion of this Office, be exempt from VAT or zero-rated.

In the case of services procured by the organizations for their own use, it is our opinion that any VAT which is levied, other than charges for public utility services, should be subject to exemption or, at the very least, reimbursement in the appropriate manner, since VAT is clearly a tax whose burden falls on the organizations. We trust therefore that the authorities in your country will accord exemption or make the appropriate administrative arrangements for the reimbursement of this tax.[7]

15 January 1974

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5. EXEMPTION OF THE UNITED NATIONS FROM EXCISE DUTIES AND TAXES ON THE SALE OF MOVABLE AND IMMOVABLE PROPERTY FORMING PART OF THE PRICE TO BE PAID—INTERPRETATION OF SECTION 8 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Memorandum to the Chief, Field Operations Service, Office of General Services

To the extent that the decision of the Ministry of Planning and Finance [of a Member State] is based on an interpretation of the international legal obligations of the Government, specifically the Convention on the Privileges and Immunities of the United Nations, it is in our view an erroneous interpretation and one with which we would take issue. Section 8 of the Convention is in fact broader than the narrow interpretation placed upon it by the Ministry. Section 8 refers specifically to exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid. It has been the consistent position of the Office of Legal Affairs that a petrol tax forming part of the price to be paid is to be considered as falling under the terms of Section 8 of the Convention[8] and that the question of whether or not a rebate should be granted should be determined by reference to the importance, quantitatively or financially, or the purchase. In the case of petrol, which is a recurring purchase, the amounts involved would normally qualify as important. The United Nations is furthermore normally exempted from excise duties on gasoline required for its operations in the territories of Member States.

In the light of the foregoing, we would advise that the matter be taken up once again with the competent authorities with a view to seeking a reconsideration of their position.

26 February 1974

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[7] It was subsequently agreed by an exchange of notes between the United Nations and the Member State concerned that Section 8 of the Convention on the Privileges and Immunities of the United Nations would be interpreted and applied in that Member State so as to accord the United Nations a refund of car tax and value-added tax on the purchase of new motor cars of local manufacture, and of value-added tax paid on the supply of goods or services necessary for its official activities and which are supplied on a recurring basis or involve considerable quantities of goods or considerable expenditure. Similar agreements have been concluded between most of the specialized agencies and the Member State concerned.

[8] See, for example, *Juridical Yearbook*, 1967, p. 315, and *Juridical Yearbook*, 1972, p. 158.

6. Question whether the United Nations enjoys copyright in the speeches, tape recordings and summaries related to public hearings of the Group of Eminent Persons convened under Economic and Social Council resolution 1721 (LIII) and in technical papers prepared for the Group

Memorandum to the Director, Departmental Administration and Finance Office, Department of Economic and Social Affairs

1. You have asked for my views on a proposal to copyright speeches, tape recordings and summaries related to public hearings of the Group of Eminent Persons, and in technical papers prepared for the Group.

2. Assuming that the material is original, the United Nations would enjoy copyright in the text of the speeches, the tape recordings, the summaries and the technical papers under American law *if:*

(*a*) the United Nations is the rightful owner of the material and,

(*b*) the material has not passed into the public domain through publication.

3. There does not appear to have been a formal agreement as to ownership of the copyright in speeches, tape recordings and summaries, so that the question of ownership must be answered according to the intention of the parties as best their intention can be determined.

4. Since the Group of Eminent Persons was assembled for the advancement of the United Nations interests and its members were presumably paid travel and subsistence allowances by the United Nations, it might be reasonable to conclude that they intended the United Nations to enjoy ownership of the rights to the proceedings at the public hearings.

5. In contrast to the members of the Group, it might be difficult to argue the other speakers subordinated themselves to the interests of the United Nations or that they were compensated in any way for their participation. If the other speakers have been assisting in the abridgement and revision of the summaries as you indicate in your memorandum, there might be a reasonable basis for the conclusion that the other persons intend the United Nations to have a non-exclusive licence, at least with respect to the summaries themselves, if not with respect to the text and tape recordings of their speeches.

6. The owner of copyright in the speeches has the exclusive right to reproduce the speeches, whether as written or as delivered, whether verbatim or abridged. In this case the speeches themselves form the basis for copyright in the texts, the tape recordings and the summaries, and publication *by the owner* of any one of them—text, tape recording or summaries—prior to filing for statutory copyright would cause all of them to pass into the public domain. Publication *by anyone other than the owner* would not cause the material to be dedicated to the public, but rather might constitute an infringement of the copyright.

7. It appears that none of the material has been published to date. As far as the text of the speeches is concerned, the oral presentation of a prepared speech does not constitute publication unless there has been sale or unrestricted distribution of the text, and there appears to have been no such sale or distribution here. Regarding tape recordings, the fact that anyone *could have* taped the proceedings, or that someone *did in fact* tape the proceedings does not by itself imply publication. If, on the other hand, the United Nations tape recordings were made available to others, that situation could result in publication *if* the tape recordings were offered for sale or received unrestricted distribution. As for summaries, the limited distribution of summaries to speakers for the purpose of abridgement and revision does not constitute publication.

8. With respect to the technical papers, there is no doubt that the United Nations is the owner, by virtue of its contractual relationship with the authors, of the papers in question. Distribution of the technical papers appears to have been limited to those who had a direct interest in their contents, so there was no publication which would have passed the material into the public domain. In our opinion, on the basis of facts available, the United Nations has

copyright in the technical papers and could file for statutory protection if it should choose to do so.

20 March 1974

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7. The representation of national liberation movements in United Nations organs

Legal opinion prepared for the Under-Secretary-General, Office for Inter-Agency Affairs and Co-ordination

1. A legal opinion has been requested concerning the procedures for the representation of national liberation movements in the intergovernmental organs of the United Nations, including those of its autonomous organs.

2. The authorizations and procedures adopted in this respect should be distinguished at the outset from those under which representatives of liberation movements, and other persons and organizations, have been permitted or invited to make statements before various United Nations organs as "petitioners", or as individuals or organizations considered capable of furnishing necessary information, or who have appeared before the Security Council under rule 39 of its provisional rules of procedure as persons considered competent to supply information or to give other assistance. Appearances in these latter capacities will not be included in this present survey, which is concerned more specifically with the representation of national liberation movements as such.

The principal authorizing decisions

3. The relevant passages from the principal authorizing decisions by the General Assembly and by the Economic and Social Council calling for the participation of national liberation movements in meetings of United Nations and inter-governmental organs are set out in the annex attached hereto [not reproduced].[9]

4. From these texts it will be seen that the General Assembly has expressly requested United Nations organs, Governments, specialized agencies and other organizations within the United Nations system, in consultation with the Organization of African Unity, to ensure the representation of the colonial Territories in Africa by the national liberation movements concerned, in an appropriate capacity, when dealing with matters pertaining to those territories.

The practice in United Nations organs

5. In the absence of any explicit provision in the Charter or in the pertinent rules of procedure, the procedures thus far adopted for the representation and participation of these liberation movements in the proceedings of United Nations organs are essentially based on practice, following upon the authorizing decisions referred to above. Such practice has arisen primarily in the following four United Nations organs or Committees:

(*a*) The Fourth Committee of the General Assembly;

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

(*c*) The United Nations Council for Namibia; and

(*d*) The Economic Commission for Africa.

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[9] Reference is made to the passages in question in paragraphs 2 and 3 of the legal opinion reproduced in sub-section 15 of this chapter.

The Fourth Committee of the General Assembly

6. At the twenty-seventh session of the General Assembly, the Fourth Committee decided to invite, in consultation with, and through the Organization of African Unity, the representatives of the liberation movements concerned to participate in an observer capacity in the examination of the questions of Southern Rhodesia, Territories under Portuguese administration and Namibia.[10] A corresponding decision was also taken by the General Assembly at its twenty-eighth session.[11]

7. In the case of Guinea (Bissau) and Cape Verde, the "Partido Africano da Independencia da Guiné e Cabo Verde" (PAIGC) participated, without the right to vote, in the debates of the Fourth Committee at the twenty-seventh session of the General Assembly. However, following the Proclamation of the State of Guinea-Bissau by the People's National Assembly on 24 September 1973 (see document S/11022, and General Assembly resolution 3061 (XXVIII) of 2 November 1973), Guinea-Bissau ceased to be a colonial territory; it has since been admitted to membership of FAO.

8. With regard to the other colonial territories in Africa included in the General Assembly's decision, the invited representatives of the following liberation movements participated without the right to vote in the discussions of the Fourth Committee of the General Assembly, at its twenty-seventh and/or twenty-eighth sessions, on those agenda items concerning their respective territories:

Zimbabwe African National Union (ZANU) [Southern Rhodesia], Zimbabwe African People's Union (ZAPU) [Southern Rhodesia], Frente Nacional para a Libertação de Angola (FNLA) [Angola], Frente de Libertação de Moçambique (FRELIMO) [Mozambique], South West Africa People's Organization (SWAPO) [Namibia].

9. In the proceedings of the Fourth Committee during the past two General Assembly sessions, the following practices, *inter alia*, seem to have been applied:

(*a*) The representatives of liberation movements were invited through the Organization of African Unity, the invitations being transmitted by the Secretariat after the decision to invite them had been taken by the Fourth Committee.

(*b*) The representatives of liberation movements were seated in the Committee room in seats designated as being for "Observers".

(*c*) They addressed the Committee or spoke when invited or permitted to do so by the Chairman, and, in practice, were recognized by the Chairman when they asked to speak during the course of the debate (subject to the applicable rules of procedure).

(*d*) They were accorded distribution of documents on a comparable basis to that accorded to members of the Committee.

(*e*) On certain occasions a communication from a liberation movement was circulated under cover of a note from the Chairman of the Fourth Committee stating that its circulation had been requested by the liberation movement.

(*f*) Financial provision for the participation of the invited liberation movements in the discussions of the Fourth Committee was authorized by the General Assembly at its twenty-eighth session (although not at its twenty-seventh session).

The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

10. In paragraph 14 of its resolution 2878 (XXVI) of 20 December 1971, the General Assembly had endorsed a proposal made by the Special Committee to take steps, in consultation with the Organization of African Unity, to enable representatives of national

[10] *Official Records of the General Assembly, Twenty-seventh Session, Annexes*, agenda item 64, document A/8957, para. 5; *ibid.*, agenda item 65, document A/8889, para. 6; and *ibid.*, agenda item 66, document A/8933, para. 5.

[11] *Ibid., Twenty-eighth Session, Annexes*, agenda item 23, document A/9174; and A/PV.2139, p. 136.

liberation movements in the colonial Territories in southern Africa to participate, in an appropriate capacity, in its deliberations relating to those Territories.

11. In its report to the twenty-seventh session of the General Assembly,[12] the Special Committee stated that it would consider inviting, in connexion with its consideration of the relevant items, and in consultation with and through the Organization of African Unity, the representatives of the liberation movements concerned to participate, whenever necessary and in an observer capacity, in its proceedings relating to their respective countries. At the same time, the Special Committee also recommended that the Assembly make the necessary financial provision to cover the costs of their participation in the Committee's work during 1973. These recommendations were approved by General Assembly resolution 2908 (XXVII) of 2 November 1972.

12. At its twenty-eighth session, the General Assembly approved in its resolution 3118 (XXVIII) a further recommendation by the Special Committee contained in its report[13] to continue the arrangements concerning the participation of the liberation movements in question in the work of the Committee during 1974.

13. On the basis of the foregoing, the Special Committee invited, in consultation with and through the Organization of African Unity, representatives of the national liberation movements concerned to participate, in an observer capacity, in its consideration of their respective territories. In response to these invitations, the following liberation movements took part as observers in the relevant proceedings of the Special Committee during 1973:[14]

Territory	*National liberation movements*
Southern Rhodesia	Zimbabwe African National Union (ZANU)
	Zimbabwe African People's Union (ZAPU)
Angola	Frente Nacional para a Libertação de Angola (FNLA)
	Movimento Popular de Libertação de Angola (MPLA)
Guinea (Bissau) and Cape Verde	Partido Africano da Independencia da Guiné e Cabo Verde (PAIGC)
Mozambique	Frente de Libertação de Moçambique (FRELIMO)
Namibia	South West Africa People's Organization (SWAPO)
Comoro Archipelago	Mouvement de libération nationale des Comores (MOLINACO)

14. An account of the Committee's consideration of these territories, including references to the meetings at which statements were made by the representatives of the national liberation movements concerned, was contained in the Special Committee's report to the twenty-eighth session of the General Assembly.[15] The Special Committee further reported that it had the benefit of receiving valuable information on the Territories concerned through the active participation in its work of representatives of the eight national liberation movements enumerated above, and had taken into account the views expressed by these representatives.[16] For the purposes of their participation at meetings of the Special Committee during 1973, the travel and per diem expenses of representatives of the liberation movements referred to were defrayed by the United Nations.

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[12] *Official Records of the General Assembly, Twenty-seventh Session, Supplement No 23* (A/8723/Rev.1), vol. I, Chap. I, para. 187.

[13] *Ibid., Twenty-eighth Session, Supplement No. 23* (A/9023/Rev.1), vol. II, Chap. VI, para. 14.

[14] *Ibid.*, vol. I, Chap. I, para. 88.

[15] *Ibid.*, vol. III, Chap. VII, VIII and IX, and vol. IV, Chap. XI.

[16] *Ibid.*, vol. I, Chap. I.

15. During the current year, and on the basis of the continuing authorization given by the General Assembly (see paragraph 12 above), the Special Committee has again invited, in consultation with and through the Organization of African Unity, the national liberation movements from the colonial territories referred to in paragraph 13 above to participate in an observer capacity in the Committee's consideration of their respective territories, the former colonial territory of Guinea (Bissau) being no longer included following the proclamation of the independent Republic of Guinea-Bissau. Current arrangements for the participation of these national liberation movements in the Committee's work during 1974 are proceeding on the same basis as in 1973.

The United Nations Council for Namibia

16. The United Nations Council for Namibia (established under the terms of General Assembly resolution 2248 (S-V)) has reported almost since its inception on the question of the participation of the people of Namibia in the work of the Council.

17. In the report of the Council for Namibia to the twenty-seventh session of the General Assembly, it was stated, *inter alia*, that

> "The Council was not able to resolve the question of participation of Namibians in its work. Nevertheless, it was gratified to note that the opportunity given to representatives of Namibian people to regularly attend the meetings of the Council as observers, was accepted by the representative of SWAPO."[17]

18. Following this report, the General Assembly, in paragraph 9 of its resolution 3031 (XXVII), requested the United Nations Council for Namibia, *inter alia*,

> "(b) To ensure the participation in an appropriate capacity of the representatives of the Namibian people in its activities;".

19. The Council for Namibia subsequently reported to the twenty-eighth session of the General Assembly that

> "It [the United Nations Council for Namibia] has granted observer status to SWAPO, the Namibian liberation movement recognized by OAU. The representative of SWAPO in New York participates fully in all the meetings of the Council. Whenever the situation demands, the delegation of SWAPO is led by its President, Mr. Sam Nujoma, who informs the Council of the significance of important developments affecting Namibia and takes an active part in the Council's discussions."[18]

20. In its resolution 3111 (XXVIII) which followed and approved this report, the General Assembly, *inter alia:*

> "2. *Recognizes* that the national liberation movement of Namibia, the South West Africa People's Organization, is the authentic representative of the Namibian people and supports the efforts of the movement to strengthen national unity;
>
> . . .
>
> "18. *Decides*, having regard to paragraph 2 above, to defray the expenses of a representative of the South West Africa People's Organization when accompanying such missions as the United Nations Council for Namibia may determine and whenever called for consultation by the Council, . . .".

21. In practice, representatives of the South West Africa People's Organization have participated fully, in an observer capacity, in the meetings of the United Nations Council for Namibia since 1972, and continue to do so.

The Economic Commission for Africa

22. In its resolution 974 D (XXXVI), the Economic and Social Council decided to expel Portugal from membership in the Economic Commission for Africa, to suspend South Africa

[17] *Ibid., Twenty-seventh Session, Supplement No. 24* (A/8724), vol. I, para. 187.

[18] *Ibid., Twenty-eighth Session, Supplement No. 24* (A/9024), para. 280.

from participating in the work of the Commission, and to amend the terms of reference of the Commission by providing that the non-self-governing territories situated in the geographical area defined as the whole continent of Africa, Madagascar and other African islands, shall be associate members of the Commission.

23. Thereafter the question arose as to how the non-self-governing territories of Angola, Mozambique, Guinea (Bissau) and Namibia—being associate members of the Economic Commission for Africa—should be represented in the Commission and who should designate such representatives. Following consideration by the Economic and Social Council, and by successive sessions of the Economic Commission for Africa, the Commission recommended, in its resolution 194 (IX) of 12 February 1969—which amended its previous resolution 151 (VIII)—concerning "Associate membership for Angola, Mozambique, Guinea called Portuguese Guinea and Namibia (South West Africa)"[19]

> ". . . that the Organization of African Unity should propose the names of representatives of the peoples of the countries in question and inform the Executive Secretary [of the Commission] accordingly to enable him to bring the matter before the General Assembly."

24. In accordance with this recommendation, the Organization of African Unity on 5 November 1970 proposed the names of persons to represent the four territories in question (see document E/CN.14/511), these persons being in each case the President or a senior office holder of the liberation movement recognized by the Organization of African Unity. The representatives proposed by the Organization of African Unity were the following:

Angola	Mr. Agostino Neto President of the Movimento Popular de Libertaçáo de Angola (MPLA) and Mr. Roberto Holden President of the Front National pour la Libération de l'Angola (FNLA)
Mozambique	Mr. Marcellino dos Santos Vice-President in Charge of External Relations for the Frente de Libertaçâo de Moçambique (FRELIMO)
Guinea (Bissau).....	Mr. Amilcar Cabral Secretary-General of the Partido Africano da Independência da Guiné e Cabo Verde (PAIGC)
Namibia	Mr. Sam Nujoma President of the South West Africa People's Organization (SWAPO)

25. In accordance with United Nations practice, this proposed representation required the approval of the General Assembly.

26. In the case of Angola, Mozambique and Guinea (Bissau), the names of the proposed representatives were duly submitted to the General Assembly, which, in operative paragraph 12 of its resolution 2795 (XXVI) expressly approved

> ". . . the arrangements relating to the representation of Angola, Mozambique and Guinea (Bissau) as associate members of the Economic Commission for Africa, as well as the list of the representatives of those Territories proposed by the Organization of African Unity".

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[19] *Official Records of the Economic and Social Council, Forty-seventh Session*, document E/4651, p. 145.

27. In the meantime, the representatives of these latter territories, approved by the General Assembly, had attended the tenth session of the Economic Commission for Africa (first meeting of the Conference of Ministers) at Tunis, in February 1971, as observers.[20]

28. Since, in the case of Namibia, the General Assembly had delegated authority to the United Nations Council for Namibia "to administer South West Africa until independence" and to exercise other governmental functions for Namibia (see General Assembly resolution 2248 (S-V)), it therefore followed that the United Nations Council for Namibia was the appropriate body to approve arrangements for the representation of the Territory in the Economic Commission for Africa. The name of the proposed representative was accordingly submitted to the United Nations Council for Namibia, which approved the nomination at its 98th meeting held on 22 January 1971.[21]

29. There was however no indication that the Namibian representative would be acting on behalf of the Council for Namibia, but rather it was understood that he would act as President of the South West African People's Organization, and in this capacity would be in a position to express the views of the people of Namibia at meetings of the Economic Commission for Africa.

30. In its annual report to the fifty-fifth session of the Economic and Social Council, the Economic Commission for Africa referred to the approval by the General Assembly of the representation of Angola, Mozambique and Guinea (Bissau), contained in General Assembly resolution 2795 (XXVI), and to the approval by the United Nations Council for Namibia, at its 98th meeting, of the representation of Namibia, and reported that, on this basis,

> ". . . the representatives of Angola, Guinea (Bissau), Mozambique and Namibia were invited to participate in the work of the Commission as associate members",[22]

and

> "The representatives of the peoples of Angola, Guinea (Bissau), Mozambique and Namibia had . . . been invited to the third meeting of the Technical Committee of Experts held at Addis Ababa in September 1972".[23]

31. It will be seen therefore that since 1971, Angola, Guinea (Bissau), Mozambique and Namibia have been represented in the Economic Commission for Africa through the President, Vice-President or Secretary-General of their respective national liberation movements, recognized by the Organization of African Unity. Except in the case of Guinea (Bissau), following its accession to independence as the Republic of Guinea-Bissau, this representation of the other three territories remains in effect.

The representation of Namibia

32. Attention has been drawn to the possibility of some inconsistency between concurrent provisions of different General Assembly resolutions relating to the representation of Namibia.

33. On the one hand, the General Assembly has requested United Nations organs and specialized agencies and other organizations within the United Nations system to ensure that Namibia, as a colonial territory in Africa, is represented by the Namibian national liberation movement in an appropriate capacity when dealing with matters pertaining to that territory (e.g. see General Assembly resolutions 2980 (XXVII), para. 7 and 3118 (XXVIII), para. 7).

34. At the same time, the General Assembly has also requested the United Nations Council for Namibia ". . . to represent Namibia whenever it is required" (see General As-

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[20] See *ibid., Supplement No. 5* (E/4997), vol. 1, para. 225.

[21] See *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 24* (A/8424), para. 63.

[22] *Official Records of the Economic and Social Council, Fifth-fifth Session, Supplement No. 3* (E/5253), para. 331.

[23] *Ibid.*, para. 5.

sembly resolution 2871 (XXVI), para. 13 (*a*)) and "To represent Namibia in international organizations, at conferences and on any other occasion as may be required" (see General Assembly resolution 3031 (XXVII), para. 9 (*a*)).

35. The General Assembly also requested ". . . all subsidiary organs of the United Nations, intergovernmental bodies and conferences to ensure that the rights and interests of Namibia are protected and, to that end, among other things, to invite the United Nations Council for Namibia to participate in an appropriate capacity whenever such rights and interests are involved;" (see General Assembly resolution 3111 (XXVIII), section I, para. 17) and ". . . all specialized agencies and other organizations within the United Nations system and the member States thereof to take such necessary steps as will enable the United Nations Council for Namibia, as the legal authority for Namibia, to participate fully on behalf of Namibia in the work of those agencies and organizations;" (see General Assembly resolution 3111 (XXVIII), section II, para. 1).

36. The General Assembly further requested the Secretary-General to invite the United Nations Council for Namibia to participate in the Third United Nations Conference on the Law of the Sea (see General Assembly resolution 3067 (XXVIII), para. 8 (*b*)), and to attend, as an observer, the United Nations Conference on Prescription (Limitation) in the International Sale of Goods (see General Assembly resolution 3104 (XXVIII), para. (*d*)).

37. In the performance of its functions and responsibilities, the United Nations Council for Namibia has attended meetings and conferences both inside and outside the United Nations system. Thus, the Council for Namibia was invited and was represented at the Fifth African Indian Ocean Regional Air Navigation Meeting of ICAO, held at Rome from 10 January to 2 February 1973,[24] at the International Conference of Experts for the Support of Victims of Colonialism and *Apartheid* in Southern Africa organized by the United Nations in April 1973, in co-operation with the Organization of African Unity, in pursuance of General Assembly resolution 2910 (XXVII),[25] at the Fourth ILO African Regional Conference held in Nairobi from 24 November to 7 December 1973, and at the first session of the Third United Nations Conference on the Law of the Sea held in December 1973.

38. The United Nations Council for Namibia has also attended or participated in various meetings of the Organization of African Unity and its subsidiary organs, including meetings of the Council of Ministers (in 1972 and 1973), of the Co-ordinating Committee for the Liberation of Africa (in 1973) and the Bureau for the Placement and Education of African Refugees (in 1970).[26]

39. In its report to the twenty-eighth session of the General Assembly, the United Nations Council for Namibia reported, *inter alia*, that it

> ". . . has continued to represent or to seek representation of Namibia and to protect the interests of the Namibian people at international conferences, in the specialized agencies and institutions of the United Nations system and in other bodies.".[27]

40. At the same time, the United Nations Council for Namibia has participated in meetings of the Security Council, the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Special Committee on *Apartheid*, and other United Nations organs during their consideration of the question of Namibia.

41. It would appear therefore that a number of meetings relating to Namibia held by United Nations organs or other intergovernmental organizations have been attended by either or both the United Nations Council for Namibia and the Namibian national liberation

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[24] See *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 24* (A/9024), para. 203.

[25] *Ibid.*, paras. 198-201.

[26] *Ibid.*, paras. 188 *et seq.* and *ibid., Twenty-fifth Session, Supplement No. 24* (A/8024), para. 89.

[27] *Ibid., Twenty-eighth Session, Supplement No. 24* (A/9024), para. 186.

movement, the South West Africa People's Organization. Since, however, these two bodies do not act in the same capacity or under the same authority, and since, in any event, SWAPO participates in the work of the Council for Namibia as an observer (see paras. 17 to 21 above), their separate or combined attendance at other meetings does not necessarily indicate any inconsistency or conflict.

42. It has been repeatedly established that Namibia has been and remains an international territory under the direct responsibility of the United Nations pending the achievement of Namibian independence (see, *inter alia*, General Assembly resolution 2145 (XXI), paras. 2 and 4; Security Council resolutions 246 (1968), seventh preambular paragraph; 264 (1969), para. 1; 276 (1970), second and fourth preambular paragraphs; 283 (1970), second preambular paragraph; and 301 (1971), para. 1). In the execution of this United Nations responsibility, the General Assembly established the United Nations Council for Namibia to assume administrative and other governmental functions in respect of Namibia (see General Assembly resolution 2248 (S-V)), and until Namibian independence is achieved, no legal governmental authority for Namibia exists other than the United Nations.

43. It follows that in the exercise of its responsibilities for Namibia, the United Nations Council for Namibia acts in the name and with the authority of the United Nations, being a subsidiary organ established under Articles 7 (2) and 22 of the Charter, and being responsible directly to the General Assembly (see General Assembly resolution 2248 (S-V), section II, para. 2). The Namibian national liberation movement (SWAPO), on the other hand, acts as such, and, while it enjoys support from, and close association with, the United Nations in the pursuit of Namibian self-determination and independence, it nevertheless does not possess an organic link with the United Nations, but acts on its own behalf and on behalf of the Namibian people whom it represents.

44. It would appear therefore that the requests by the General Assembly, in the context of the resolutions cited in the annex [not reproduced], that Namibia be represented by the Namibian national liberation movement relates more particularly to the representation of the Namibian people, and in no way prejudices or conflicts with the right and the obligation of the United Nations Council for Namibia to represent Namibia on behalf of the international authority which is legally responsible for the territory until it achieves independence.

45. In spite of the relevance of this distinction, however, which would seem to be implicit in the accumulated decisions and directives of the General Assembly concerning Namibia, the fact that, in different General Assembly resolutions, two separate entities have been called upon to "represent Namibia" may suggest a need for some further clarification in the future, especially having regard to the differing scope and meaning which can be attributed to the terms which have been used.

14 March 1974

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8. QUESTION WHETHER THE FIRST SENTENCE OF ARTICLE 19 OF THE CHARTER CONCERNING THE LOSS OF VOTE IN THE GENERAL ASSEMBLY OF MEMBER STATES TWO YEARS IN ARREARS IN THE PAYMENT OF THEIR CONTRIBUTIONS HAS AUTOMATIC APPLICATION OR IS SUBJECT TO A PRIOR DECISION OF THE ASSEMBLY

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

1. Article 19 of the Charter provides, in its first sentence, for a specific consequence if a Member of the United Nations is two years or more in arrears in the payment of its contributions. The text is drafted in such a way that the effect is mandatory and automatic. It provides that a Member "shall have no vote in the General Assembly" if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. By using mandatory language (*shall* have no vote) and describing the cause for which the

measure is imposed as the occurrence of an objectively determinable event, the Charter gives no discretion to, and thus calls for no decision by, the General Assembly.

2. Had the contrary been intended, Article 19 would have been drafted in a different way in order to provide for a decision by the General Assembly. This is shown e.g. by the second sentence of Article 19, which provides that nevertheless the General Assembly "may permit" such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond its control. *Shall* is used in the first sentence, while *may* is used in the second. Likewise, only in the second sentence is reference made to action to be taken by the General Assembly.

3. In addition, it should be noted that, since normally all Members of the United Nations have the right to vote (Article 18, paragraph 1 of the Charter), a provision that "the General Assembly may . . . permit such a Member to vote" would not make sense if the first sentence of Article 19 were not to be understood as mandatory and automatic in its effect.

4. Thus it is clear that the first sentence of Article 19 provides the rule of automatic loss of the vote as a mandatory consequence, while the second sentence permits the General Assembly to make an exception to this rule in a specifically defined circumstance. An interpretation to the contrary would not only render the second sentence of Article 19 superfluous, but would amount to amending a clear provision of the Charter which obviously can only be done by following the procedures of Articles 108 and 109. It may be added that the French, Spanish, Russian and Chinese text of the Charter use the same mandatory language, the French version seemingly being the strongest when expressing the effect as "ne peut participer au vote à l'Assemblée générale. . .".

5. The intention of the drafters of the Charter to give a mandatory and automatic character to the measure provided by Article 19 can be found in the records of the San Francisco Conference. The United Nations, in its practice, has consistently followed this interpretation of Article 19. Thus, previous Presidents of the General Assembly have conducted the proceedings of the Assembly in conformity with the mandatory meaning and automatic effect of the first sentence of Article 19. Member States have shown their acceptance of this interpretation, e.g. by not sending representatives to meetings when they were in arrears within the terms of Article 19. Also the Secretariat has always acted on the understanding that the express language of the first sentence of Article 19 does not call for a decision by the General Assembly to give it effect and the Legal Counsel has already given an opinion setting out the legal considerations on which this understanding is based.[28] It is also interesting to note that specialized agencies with analogous constitutional provisions have followed the same practice of automatic application.

4 April 1974

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9. REQUEST CONTAINED IN GENERAL ASSEMBLY RESOLUTION 3184 C (XXVIII) THAT THE SECRETARY-GENERAL BRING THAT RESOLUTION TO THE ATTENTION OF "ALL MEMBER STATES, AS WELL AS ALL OTHER STATES AND GOVERNMENTS"—QUESTION WHETHER THIS PHRASE SHOULD BE INTERPRETED IN THE SAME WAY AS AN "ALL STATES" CLAUSE

Memorandum to the Under-Secretary-General for Political and Security Council Affairs

1. We have received your memorandum of 5 February 1974, in which you ask for my opinion on the interpretation which should be given to the "all States" formula appearing in General Assembly resolution 3183 (XXVIII), on the World Disarmament Conference, and to the formula "all Member States, as well as all other Governments and States" which is to be found in Assembly resolution 3184 C (XXVIII), on general and complete disarmament.

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[28] See *Juridical Yearbook*, 1968, p. 186.

2. As regards General Assembly resolution 3183 (XXVIII), we wish to confirm your views concerning the current practice of the Secretariat in interpreting an "all States" formula. This practice is clearly set out in the understanding adopted by the General Assembly without objection at its 2202nd plenary meeting on 14 December 1973,[29] whereby "the Secretary-General, in discharging his functions as a depositary of a convention with an 'all States' clause, will follow the practice of the Assembly in implementing such a clause and, whenever advisable, will request the opinion of the Assembly before receiving a signature or an instrument of ratification or accession". While this understanding was adopted in the context of the depositary practice of the Secretary-General, it must also be taken as providing the necessary guidance in other instances where the Secretary-General has to interpret an "all States" formula.

3. The "practice of the General Assembly", referred to in the above understanding, is to be found in unequivocal indications from the Assembly that it considers a particular entity to be a State. Such indications, at the last session, are to be found in resolutions 3067 (XXVIII) and 3104 (XXVIII), in which the General Assembly invited to two United Nations Conferences, in addition to States at this present time coming within the long-established "Vienna formula", the "Democratic Republic of Viet-Nam", which is expressly designated in those resolutions as a "State".

4. In view of the foregoing, the reference in resolution 3183 (XXVIII) to "all States" is to be understood as referring to States Members of the United Nations or members of the specialized agencies or the International Atomic Energy Agency and States parties to the Statute of the International Court of Justice and also to the Democratic Republic of Viet-Nam.

5. It remains to be determined whether the reference in operative paragraph 4 of General Assembly resolution 3184 C (XXVIII) to "all Member States, as well as all other States and Governments" is intended to have a meaning different from an "all States" formula, and, if so, whether the Secretariat is in a position to give effect to a different meaning.

6. The practice of the General Assembly reveals that it has frequently used the term "all Governments" as being synonymous with "all States", and the two terms are often used interchangeably in the same resolution. Use of the word "Government" or "State" therefore does not have a particular significance, unless this is clear from the records and is endorsed by the General Assembly.

7. The draft which became resolution 3184 C (XXVIII) was introduced in the First Committee at its 1968th meeting, and was adopted at the next meeting of the Committee virtually with no discussion. There was certainly no clear indication that the formula used in operative paragraph 4 was meant to be interpreted in a manner different from an "all States" or "all Governments" formula. It will be noted, in this connexion, that operative paragraph 3 of the same resolution contains an "all States" formula. Introducing these two paragraphs, on behalf of the sponsors, the representative of Yugoslavia is recorded as saying the following (A/C.1/PV.1968, p. 23):

> "Operative paragraph 3 invites the governments of all countries to keep the General Assembly suitably informed of their disarmament negotiations, while operative paragraph 4 requests the Secretary-General to bring the present resolution to the attention of all Member States as well as all other governments and States . . ."

This statement does not highlight or indicate in any way a substantive difference between the formula used in operative paragraph 3 or in operative paragraph 4 of the draft resolution. No other representative spoke to the point in the First Committee. The report of that Committee to the General Assembly[30] on this item contains no indication of any difference, and similarly

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[29] See *Juridical Yearbook*, 1973, p. 79.

[30] *Official Records of the General Assembly, Twenty-eighth session, Annexes*, agenda items 29, 32, 33, 34 and 35, document A/9361.

no such difference was alluded to in the General Assembly itself, when the resolution concerned was adopted at the 2205th plenary meeting on 18 December 1973.

8. It is therefore to be concluded that operative paragraph 4 is to be interpreted in exactly the same manner as an "all States" formula, and does not provide a basis for extending that formula to other authorities. Even if some indication existed of a different intention, the Secretariat is not in a position to determine, on its own initiative, what constitutes a "Government" outside of the existing clear directives of the General Assembly.

8 February 1974

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10. QUESTION WHETHER THE EXPENSES OF THE UNITED NATIONS EMERGENCY FORCE (UNEF) SET UP UNDER SECURITY COUNCIL RESOLUTION 340 (1973) AND OF THE UNITED NATIONS DISENGAGEMENT OBSERVER FORCE (UNDOF) SET UP UNDER SECURITY COUNCIL RESOLUTION 350 (1974) ARE "EXPENSES OF THE ORGANIZATION" WITHIN THE MEANING OF ARTICLE 17, PARAGRAPH 2, OF THE CHARTER—DUE DATES OF CONTRIBUTIONS FROM MEMBER STATES TO UNEF AND UNDOF

Memorandum to the Controller

1. You have asked for legal advice on the following questions:

(*a*) Are the expenses of the United Nations Emergency Force (UNEF) and the United Nations Disengagement Observer Force (UNDOF) "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter and thus subject to the sanction contained in Article 19 of the Charter relating to arrears in the payment of financial contributions to the Organization?

(*b*) Within which years do assessed contributions for UNEF and UNDOF become due in terms of the Financial Regulations and Rules?

These questions are examined separately below.

The expenses of UNEF and UNDOF and Article 17, paragraph 2, of the Charter

UNEF

2. The present UNEF was set up pursuant to Security Council resolution 340 (1973) of 25 October 1973. This Force is an entirely new one, and is not a revival of the previous Emergency Force in the Middle East. Consequently, any decisions previously taken by the General Assembly regarding Article 19 of the Charter and the financing of the previous Force are not *per se* applicable to the new UNEF.

3. By its resolution 341 (1973) of 27 October 1973, the Council approved a report of the Secretary-General (S/11052/Rev.1)[31] on the implementation of resolution 340 (1973), and decided that UNEF "shall be established in accordance with the [Secretary-General's] report for an initial period of six months, and that it shall continue in operation thereafter, if required, provided the Security Council so decides".

4. In paragraph 7 of the Secretary-General's report (S/11052/Rev.1) referred to above, it is expressly stated that: "The costs of the Force shall be considered as expenses of the Organization to be borne by Members in accordance with Article 17, paragraph 2, of the Charter". As the Secretary-General's report was expressly approved by the Council in its resolution 341 (1973), it was the clear intent of the Council that the expenses of the new UNEF should be met under Article 17, paragraph 2, of the Charter.

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[31] See *Official Records of the Security Council, Twenty-eighth Year, Supplement for October, November and December.*

5. The power to consider and approve the budget of the Organization is vested in the General Assembly by paragraph 1 of Article 17 of the Charter. Provision for the financing of UNEF was made by the General Assembly in its resolution 3101 (XXVIII) of 11 December 1973. In the preamble to resolution 3101 (XXVIII) the Assembly, *inter alia*, reaffirmed "its previous decisions regarding the fact that, in order to meet the expenditures caused by such operations, a different procedure is required from that applied to meet expenditures of the regular budget of the United Nations". In the operative part of the resolution, the Assembly decided to appropriate an amount of $30 million for the Force, and to request the Secretary-General to establish a special account for the Force. The Assembly further decided to apportion the sum appropriated among all Member States according to a special scale of assessments "as an *ad hoc* arrangement, without prejudice to the positions of principle that may be taken by Member States in any consideration by the General Assembly of arrangements for the financing of peace-keeping operations". No mention is made in the resolution of Article 17, paragraph 2, of the Charter.

6. To the extent that the provisions just mentioned might give rise to doubts as to whether the Assembly regarded the expenses of UNEF as "expenses of the Organization" under Article 17, paragraph 2, of the Charter, those doubts are clearly dispelled by the *travaux préparatoires* leading up to the adoption of the resolution. Introducing the draft resolution which became resolution 3101 (XXVIII), on behalf of its 35 sponsors,* the representative of Brazil said in the Fifth Committee that:

> "The sponsors had taken into account the fact that, in deciding to set up the Force, the Security Council had also decided that the costs of the Force should be considered as expenses of the Organization to be borne by the Member in accordance with Article 17, paragraph 2, of the Charter. The draft resolution complied fully with that decision, since it apportioned the expenses of the Force among all the Members of the United Nations."[32]

The above remarks by the representative of Brazil were recalled expressly in paragraph 5 of the report of the Fifth Committee to the General Assembly on the financing of UNEF.[33] Paragraph 2 of the same report also recalled paragraph 7 of the Secretary-General's report (S/11052/Rev.1), referred to in paragraphs 3 and 4 of this memorandum, regarding the applicability of Article 17, paragraph 2, to the expenses of UNEF, and the Security Council's endorsement thereof. The report contains no indication of any contrary views.

7. It must therefore be concluded that, in line with the relevant decisions of the Security Council, the General Assembly has recognized that the expenses of UNEF are "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter, and in its resolution 3101 (XXVIII) the Assembly has acted accordingly by apportioning those expenses among the membership. It follows that under the decisions so far taken, Article 19 of the Charter is applicable to arrears incurred in respect of the UNEF account.

UNDOF

8. UNDOF was set up pursuant to Security Council resolution 350 (1974) of 31 May 1974. In the preamble to resolution 350 (1974) the Council recorded having heard the statement made by the Secretary-General at the 1773rd meeting of the Counil on 29 May 1974 and in the operative part of the resolution it also took note of the Secretary-General's statement. In his statement the Secretary-General *inter alia* declared that: "it would be my

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*Argentina, Australia, Austria, Brazil, Burundi, Canada, Chad, Chile, Colombia, Cyprus, Ecuador, Ethiopia, Greece, Guatemala, Guinea, Guyana, Japan, Indonesia, Iran, the Ivory Coast, Kenya, Liberia, Nicaragua, Nigeria, Norway, Panama, Peru, Rwanda, Sri Lanka, Togo, Turkey, the United Republic of Tanzania, Uruguay, Venezuela and Yugoslavia.

[32] A/C.5/SR.1603, pp. 4 and 5.

[33] *Official Records of the General Assembly, Twenty-eighth Session, Annexes*, agenda item 109, document A/9428.

intention to set up the Force on the basis of the same general principles as those defined in my report on the implementation of Security Council resolution 340 (1973), contained in document S/11052/Rev. 1, which was approved by the Security Council in its resolution 341 (1973) of 27 October 1973".[34] Among the general principles included in document S/11052/Rev.1, is the principle that the expenses of the Force are "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter.

9. As UNDOF was set up on 31 May of this year, at a time when the General Assembly was not in session, the Assembly has not yet had the opportunity to take the necessary action regarding its financing. In the interim, the Force has been financed out of funds authorized and appropriated for UNEF and UNTSO, from which the personnel of UNDOF have been drawn (see document A/C.5/1614, p. 4). Should the Assembly proceed to make provision for UNDOF in the same manner as it has for UNEF,[35] with due regard to the position of the Security Council on financing, then the conclusions set out in paragraph 7 of this memorandum, regarding the expenses of UNEF, will be equally applicable to UNDOF.

Due dates for assessed contributions to UNEF and UNDOF

10. The second question on which legal advice has been sought relates to the dates on which contributions from Member States to UNEF and UNDOF fall due. In this respect, Regulations 5.3 and 5.4 of the Financial Regulations and Rules provide as follows:

"*Regulation 5.3:* After the General Assembly has adopted the budget and determined the amount of the Working Capital Fund, the Secretary-General shall:

"(*a*) Transmit the relevant documents to Member States;

"(*b*) Inform Member States of their commitments in respect of annual contributions and advances to the Working Capital Fund;

"(*c*) Request them to remit their contributions and advances.

"*Regulation 5.4:* Contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Secretary-General referred to in Regulation 5.3 above, or as of the first day of the financial year to which they relate, whichever is the later. As of 1 January of the following financial year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears."

The application of these Regulations in respect of UNEF and UNDOF are examined separately below.

UNEF

11. By its resolution 3101 (XXVIII), the General Assembly appropriated and apportioned the sum of $30 million for the operation of UNEF for the period 25 October 1973 to 24 April 1974. It further authorized "the Secretary-General to enter into commitments for the United Nations Emergency Force at a rate not to exceed $5 million per month for the period from 25 April to 31 October 1974 inclusive, should the Security Council decide to continue the Force beyond the initial period of six months, the said amount to be apportioned among Member States in accordance with the scheme set out in the present resolution". These two periods have to be considered separately as regards the application of the relevant financial regulations.

25 October 1973 to 24 April 1974

12. General Assembly resolution 3101 (XXVIII) was adopted on 11 December 1973. This resolution, as required by Financial Regulation 5.3, was transmitted by the Secretary-

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[34] S/PV.1773, p. 3.

[35] Action along those lines was taken by the General Assembly in resolution 3211 (XXIX) of 29 November 1974.

General to Member States under cover of a *note verbale* dated 19 December 1973, in which it was stated that "the amount of US$30,000,000 appropriated by the General Assembly for the operation of the United Nations Emergency Force from 25 October 1973 to 24 April 1974 has been apportioned among Member States" and that "no provision has been made for financing the Force beyond 25 April 1974".

13. Applying the first sentence of Financial Regulation 5.4 to the amount actually appropriated and apportioned by resolution 3101 (XXVIII)—that is $30,000,000 for the period 25 October 1973 to 24 April 1974—it would appear that contributions became due and payable after the middle of January 1974, that is thirty days after the Secretary-General's communication of 19 December 1973. Applying the second sentence of Regulation 5.4, any unpaid balance of such contributions would be considered one year in arrears as of 1 January 1975.

25 April to 31 October 1974

14. As indicated above, the General Assembly did not appropriate and apportion any amounts for the period after 24 April 1974. Instead, by operative paragraph 4 of resolution 3101 (XXVIII), it authorized the Secretary-General to enter into commitments for UNEF not exceeding $5 million per month for the period 25 April to 31 October 1974, and indicated that this sum would be apportioned among Member States in the same manner as the sum appropriated and apportioned for the period up to 24 April 1974. As there has been no formal appropriation and apportionment of the expenses of UNEF after 24 April 1974, contributions for such expenses will only be due legally after the Assembly has appropriated and apportioned those expenses.[36] Sums received from Member States for the period in question must be considered in the nature of advances, made in anticipation of the Assembly's action.

15. In the light of the foregoing, it is not possible at this stage to indicate with any precision the due date for contributions to the UNEF account for the period 25 April 1974 onwards. This can only be determined after the Assembly has acted and the Secretary-General has sent out the communication referred to in Financial Regulation 5.3. In all probability these contributions will become due as of early 1975.

UNDOF

16. As no provision has yet been made by the General Assembly for the financing of UNDOF, the same considerations apply as in respect of UNEF expenses after 24 April 1974. Contributions to UNDOF will become due within 30 days of any communication sent out by the Secretary-General, under Financial Regulation 5.3, after the Assembly has made the necessary appropriation and determined the apportionment of the expenses of UNDOF to date. Again the due date for contributions will probably be in early 1975.

23 October 1974

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11. Extent to which funds from private sources may be used for disaster relief under General Assembly resolution 2816 (XXVI)

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

1. Our advice has been requested on the use of private funds for disaster relief. For the reasons stated in the following paragraphs, we have concluded that there is no legal obstacle to the use of funds from private sources for disaster relief and that such use would not legally

[36] The relevant amounts have been appropriated and apportioned by General Assembly resolution 3211 (XXIX) of 29 November 1974.

conflict with any arrangement between the United Nations and the League of Red Cross Societies or the International Red Cross.

2. With reference to funds for disaster relief, General Assembly resolution 2816 (XXVI) authorizes the Disaster Relief Co-ordinator "To receive, on behalf of the Secretary-General, contributions offered to him for disaster relief assistance to be carried out by the United Nations, its agencies and programmes for particular emergency situations" (paragraph 1 (*d*)). There appears to be no restriction on the source of the contributions which may be received, and, in the absence of such restriction, contributions from private sources are receivable for disaster relief. A limitation arises only with respect to the timing of contributions from whatever source. In this respect the legislative history[37] indicates that the inclusion of the words "for particular emergency situations" reflects the Assembly's intention that contributions be received for relief of disasters which have already occurred and not for relief of disasters which may occur in future.

3. There was no legal obstacle to the use of funds from private sources at the time of the enactment of Assembly resolution 2816 (XXVI) and no such obstacle appears to have arisen since that time.

4. With reference to the Red Cross, resolution 2816 (XXVI) provides a general role for both the International Red Cross and the League of Red Cross Societies in co-operating with the Disaster Relief Co-ordinator to provide the most effective assistance to States stricken by disaster (paragraph 1 (*a*)), a specific role for the International Red Cross in providing assistance directly to such States (paragraph 1 (*c*)) and a specific role for the League of Red Cross Societies in providing advice to governments in pre-disaster planning (paragraph 1 (*g*)). The general and specific roles of these organizations in paragraphs 1 (*a*), (*c*) and (*g*) appear to be entirely consistent with the Disaster Relief Co-ordinator's right to receive contributions on behalf of the Secretary-General under paragraph 1 (*d*).

5. The relationship with the League of Red Cross Societies and the International Red Cross at the time of the enactment of Assembly resolution 2816 (XXVI) did not constitute an arrangement which would legally conflict with the use of funds from private sources and no such arrangement appears to have been created since that time.

29 October 1974

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12. Use of the term "consensus" in United Nations practice

Summary[38] of a statement[39] made at the 311th meeting of the Population Commission, on 6 March 1974

The Director of the General Legal Division, Office of Legal Affairs, stated that no plenipotentiary conference under United Nations auspices had included in its rules of

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[37] See Economic and Social Council resolution 1533 (XLIX), as well as the report of the Secretary-General to the Council at its fifty-first session (E/4994, paras. 94 and 95), and the debate of the General Assembly at its twenty-sixth session (*Official Records of the General Assembly, Twenty-sixth session*, Third Committee, 1888th and 1890th meetings).

[38] Reproduced in *Official Records of the Economic and Social Council, Fifty-sixth Session, Supplement No. 3A* (A/5462), para. 64.

[39] The statement was made in connexion with a proposal (E/CN.9/L.110) that the rules of procedure of the World Population Conference, 1974, should specify that "the President of the Conference has the possibility to recommend that the decisions on the important matters of substance shall be taken, if possible, by consensus".

The Population Commission subsequently agreed to annex the following recommendation to the revised preliminary draft of the rules of procedure of the Conference, for consideration by the Council:

procedure a provision on consensus,[40] partly due to the fact that it was somewhat difficult to arrive at an exact definition of consensus, and partly because the objective which was usually sought, namely, that every effort should be made to achieve a consensus before a vote was taken, could better be achieved by simply an understanding at the beginning of the conference. In United Nations organs, the term "consensus" was used to describe a practice under which every effort is made to achieve unanimous agreement; but if that could not be done, those dissenting from the general trend were prepared simply to make their position or reservations known and placed on the record.

"The Population Commission considers that it is highly desirable for the World Population Conference, 1974, to reach decisions on the basis of consensus, which is understood to mean, according to United Nations practice, general agreement without vote, but not necessarily unanimity."

By resolution 1835 (LVI) of 14 May 1974, the Council approved as the provisional rules of procedure for the Conference the text of the revised preliminary draft of the rules of procedure, as well as the annex on consensus recommended by the Population Commission. The provisional rules of procedure were adopted by the World Population Conference subject to some amendments unrelated to the question under consideration (see document E/5585, p. 57).

[40] It should be noted, however, that the rules of procedure of the Third Conference on the Law of the Sea, adopted by the Conference on 27 June 1974 (A/CONF.62/30/Rev.1, United Nations publication, Sales No. E.74.I.18) contain a rule 37 on "Requirements for voting", which reads as follows:

"1. Before a matter of substance is put to the vote, a determination that all efforts at reaching general agreement have been exhausted shall be made by the majority specified in paragraph 1 of rule 39.

"2. Prior to making such a determination the following procedures may be invoked:

"(*a*) When a matter of substance comes up for voting for the first time, the President may, and shall if requested by at least 15 representatives, defer the question of taking a vote on such matter for a period not exceeding 10 calendar days. The provisions of this subparagraph may be applied only once on the matter.

"(*b*) At any time the Conference, upon a proposal by the President or upon motion by any representative, may decide, by a majority of the representatives present and voting, to defer the question of taking a vote on any matter of substance for a specified period of time.

"(*c*) During any period of deferment, the President shall make every effort, with the assistance as appropriate of the General Committee, to facilitate the achievement of general agreement, having regard to the over-all progress made on all matters of substance which are closely related, and a report shall be made to the Conference by the President prior to the end of the period.

"(*d*) If by the end of a specified period of deferment the Conference has not reached agreement and if the question of taking a vote is not further deferred in accordance with subparagraph (*b*) of this paragraph, the determination that all efforts at reaching general agreement have been exhausted shall be made in accordance with paragraph 1 of this rule.

"(*e*) If the Conference has not determined that all efforts at reaching agreement had been exhausted, the President may propose or any representative may move, notwithstanding rule 36, after the end of a period of no less than five calendar days from the last prior vote on such a determination, that such a determination be made in accordance with paragraph 1 of this rule; the requirement of five days' delay shall not apply during the last two weeks of a session.

"3. No vote shall be taken on any matter of substance less than two working days after an announcement that the Conference is to proceed to vote on the matter has been made, during which period the announcement shall be published in the Journal at the first opportunity."

13. QUESTION OF THE PARTICIPATION IN MEETINGS OF THE FUNCTIONAL COMMISSIONS OF THE ECONOMIC AND SOCIAL COUNCIL OF STATES NOT MEMBERS OF THE UNITED NATIONS BUT MEMBERS OF A SPECIALIZED AGENCY OR OF THE INTERNATIONAL ATOMIC ENERGY AGENCY OR PARTIES TO THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE[41]

Note to the Director, Division of Human Rights

You have referred to us the question whether the delegation of a non-Member State should have been listed in United Nations document E/CN.4/INF.21 (5 March 1974), "Attendance at the thirtieth session of the Commission on Human Rights (4 February to 8 March 1974)".

With respect to the general question of participation of representatives of non-Member States in meetings of the functional commissions of the Economic and Social Council, it is established practice that such participation requires prior authorization or consent of the Economic and Social Council (for an example of such authorization see Economic and Social Council resolution 557 F (XVIII), paragraph 3 (*b*), of 5 August 1954). This practice is based on the following reasoning:

(1) Rule 72 of the rules of procedure of the functional commissions provides only for the possibility of invitations to States which are Members of the United Nations but are not members of the commissions to participate in the deliberations on matters which are of particular concern to those States. There is no provision in that rule or in any other rule for participation of States that are not Members of the United Nations.

(2) The powers and composition of the functional commissions are defined by the Council (rule 71 of the rules of procedure of the Economic and Social Council[42] and Article 68 of the Charter); the rules of procedure of the functional commissions and their subsidiary bodies are drawn up by the Council (rule 74 of the rules of procedure of the Council[43]) and amendments to the rules can be made only by the Council (rule 77 of the rules of procedure of the functional commissions).[44] Consequently, the power of a functional commission to deal with the question of participation of non-Member States is limited in the context of those provisions.

The question of whether a non-Member State which had not been granted observer status by the Commission, but which had attended public meetings of the Commission, should be included in the attendance record of the session concerned, had been discussed in the Human Rights Commission on several occasions. In those instances the Commission decided not to include the States in question in its attendance record. For example, in 1967, a proposal to include in the report of the Commission a non-Member State which was present at the meetings of the Commission was withdrawn after discussion of the matter in the Commission (see E/CN.4/SR.941, pages 4-6) and a corrigendum was subsequently issued to delete the name of that State when it had been inadvertently listed in the Commission's report (see *Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 6* (A/4322), Corrigendum). In accordance with the same practice, a non-Member State was not listed or mentioned in the report of the Commission on Human Rights on its twenty-ninth session in 1973, although an official of that State had been present at the session and had made a statement to the Commission (see *Official Records of the Economic and Social Council, Fifty-fourth Session, Supplement No. 6* (E/5265), paragraphs 3 and 264 and Annex I).

For the reasons stated above, the non-Member State to which you refer has rightly been omitted from the attendance list of the thirtieth session of the Commission on Human Rights.

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[41] The States in question are hereafter referred to as "non-Member States".

[42] The corresponding rule in the current rules of procedure of the Economic and Social Council (E/5715) is rule 24.

[43] Rule 27.2 of the current rules.

[44] Rule 78 of the current rules.

As to the fact that a non-Member State was included in the attendance list of the third special session of the Population Commission, it should be noted that the Commission held its third special session in its capacity as the intergovernmental preparatory body of the World Population Conference, and that the State in question had been invited to participate in that Conference. In such a case, the requirement of prior authorization or consent of the Economic and Social Council for granting observer status to non-Member States in practice has not been applied, because it is understood that all States invited to an international conference have a role to play in the preparatory work of the conference. This link between participation in the Conference itself and in the preparatory body is indicated in an explanatory note under the relevant section of the attendance list annexed to the report of the Population Commission on its third special session.[45]

15 April 1974

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14. QUESTION WHETHER A CHANGE OF GOVERNMENTAL AFFILIATION OR NATIONALITY OF AN EXPERT WOULD AFFECT HIS MEMBERSHIP IN THE *Ad Hoc* WORKING GROUP OF EXPERTS OF THE COMMISSION ON HUMAN RIGHTS

Memorandum to the Director, Division of Human Rights

1. This is in reply to your memorandum on the above-mentioned subject.

2. The resolutions relating to the composition of the *Ad Hoc* Working Group of Experts are resolution 9 (II) of the Economic and Social Council and resolution 2 (XXIII)[46] of the Commission on Human Rights. In addition, a decision taken by the Commission on 3 April 1973,[47] as stated in your memorandum, is also relevant.

3. In paragraph 3 of its resolution 9 (II), the Economic and Social Council authorized the Commission on Human Rights "to call in *ad hoc* working groups of *non-governmental experts* in specialized fields or *individual experts* without further reference to the Council, but with the approval of the President of the Council and the Secretary-General" (italics added).

4. In paragraph 3 of its resolution 2 (XXIII), the Commission on Human Rights decided "to establish, in accordance with resolution 9 (II) of 21 June 1946 of the Economic and Social Council, an *Ad Hoc* Working Group of *Experts composed of eminent jurists and prison officials* to be appointed by the Chairman of the Commission" (italics added).

5. On 3 April 1973, in appointing the members of the Working Group, the Commission on Human Rights again stated that the Working Group should be composed of "experts in their personal capacity".

6. It is therefore clear that the experts composing the Working Group are chosen on their personal qualifications and in their personal capacity. Any change in governmental affiliation does not and should not affect their membership in the Working Group.

7. We note that when the present members of the Working Group were appointed on 3 April 1973, there was an indication of their nationality. As in the case of other United Nations organs of experts, such an indication is usually given as evidence of geographical distribution and should not be regarded as a criterion based on individual nationality. In other words, a change of nationality of an expert does not affect his membership in the Working Group unless the Commission considers that such a change would disturb the agreed pattern of geographical representation and decides to replace the expert in question. It may be noted in this connexion

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[45] *Official Records of the Economic and Social Council, Fifty-sixth Session, Supplement No. 3A* (E/5462), p. 67.

[46] *Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 6* (E/4322), p. 76.

[47] *Ibid., Fifty-fourth Session, Supplement No. 6* (E/5265), p. 92.

that although neither the resolutions referred to in paragraphs 3 and 4 above nor the decision mentioned in paragraph 5 made any reference to geographical distribution as a basis for the appointment of the experts, the proceedings leading to the adoption of Economic and Social Council resolution 9 (II) show that the provision for *ad hoc* working groups had originated in the idea of calling regional conferences of experts. Moreover, a very large majority of United Nations organs have been established with due regard to geographical representation of their membership. We have therefore assumed that geographical distribution may have been a consideration in the composition of the *Ad Hoc* Working Group of Experts. In the present case, however, the change of affiliation does not alter the geographical pattern. There is therefore no doubt that the two experts concerned may continue to serve as members of the *Ad Hoc* Working Group.

4 January 1974

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15. Representation of national liberation movements in the work of the Economic Commission for Africa

Legal opinion prepared for the Acting Secretary of the Economic Commission for Africa

1. Our advice has been requested concerning the representation of National Liberation Movements in the work of the Economic Commission for Africa, pursuant to relevant decisions of the General Assembly, including, *inter alia*, General Assembly resolution 3118 (XXVIII), paragraph 7.

2. In so far as particular reference has been made to paragraph 7 of General Assembly resolution 3118 (XXVIII), it should be pointed out that this provision was addressed primarily to specialized agencies rather than to organs of the United Nations itself, such as the Economic Commission for Africa. Similar requests to specialized agencies and other organizations were also contained in General Assembly resolutions 2704 (XXV), paragraph 10, 2874 (XXVI), paragraph 9, 2980 (XXVII), paragraph 7, and 3163 (XXVIII), paragraph 10.

3. In general, however, as will be shown below, the General Assembly has requested United Nations organs, in consultation with the Organization of African Unity (OAU), to ensure the participation or representation of the colonial territories in Africa by the national liberation movements concerned, in an appropriate capacity, when dealing with matters pertaining to those territories (see, *inter alia*, General Assembly resolutions 2621 (XXV), paragraph 6(*c*), 2795 (XXVI), paragraph 12, 2878 (XXVI), paragraph 14, 2908 (XXVII), eighth preambular paragraph, 2918 (XXVII), paragraph 2, and 3113 (XXVIII), paragraph 2, in addition to the resolutions cited in paragraph 2 above).

4. The question which is the subject of this opinion would appear to involve two main issues which need to be considered separately, namely:

(*a*) the participation of national liberation movements in meetings of the Economic Commission for Africa when it deals with matters pertaining to their respective territories, in accordance with the resolutions cited in paragraph 3 above; and

(*b*) the representation of associate members of the Economic Commission for Africa under the terms of articles 6, 7 and 8 of the terms of reference of ECA,[48] and rules 11, 12 and 13 of the rules of procedure of ECA.[49]

5. Although these two questions may to some extent overlap, they are essentially different, and will be treated separately below.

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[48] Reproduced in *Official Records of the Economic and Social Council, Fifty-first Session, Supplement No. 5* (E/4997), vol. 1, p. 152 *et seq.*

[49] *Ibid.*, p. 156 *et seq.*

Participation of liberation movements in meetings of the Economic Commission for Africa (otherwise than as representatives of associate members of ECA)

6. A summary of past practice of the United Nations with respect to the representation of national liberation movements from colonial territories in United Nations organs or committees is contained in a separate opinion, dated 14 March 1974.[50] It should be added that further practice in this regard continues to develop both under previous General Assembly decisions and also as a result of recent decisions relating to specific meetings or conferences.

7. It will be noted that General Assembly resolutions have in the past referred to "liberation movements" of colonial countries and peoples (General Assembly resolution 2621 (XXV)), to "liberation movements in the colonial Territories in Africa" (General Assembly resolutions 2704 (XXV), 2874 (XXVI), 2980 (XXVII), 3118 (XXVIII) and 3163 (XXVIII), decision taken by the General Assembly at its 2139th meeting on 3 October 1973, and Economic and Social Council resolution 1804 (LV)), to "liberation movements in the colonial Territories in southern Africa" (General Assembly resolution 2878 (XXVI)) and to the "liberation movements ... of Angola, Mozambique, Guinea (Bissau) and Cape Verde, Namibia and Southern Rhodesia" (General Assembly resolution 2908 (XXVII) etc.). At the same time, the General Assembly has required that the liberation movements in question be those recognized by the OAU, and that their participation be arranged in consultation with the Organization of African Unity, (e.g. see General Assembly resolutions 2704 (XXV), 2874 (XXVI), 2878 (XXVI), 2980 (XXVII), 3113 (XXVIII), 3118 (XXVIII) and 3163 (XXVIII)).

8. For the purposes of the Economic Commission for Africa, (being a commission established by the Economic and Social Council under Article 68 of the Charter), the resolutions referred to above would appear to require that those liberation movements of the colonial Territories in Africa, recognized by the OAU, should be invited, in consultation with the OAU, to participate in an appropriate capacity in the deliberations of the Economic Commission for Africa relating to their respective territories.

9. Such participation would not necessarily mean that the liberation movements in question would formally represent their respective territories, this question being linked with the existence or otherwise of one or more authorities claiming to be the government entitled to represent a State, or recognized as the government having responsibility for the international relations of a non-self-governing territory.

10. However, even where a Member State as administering Power continues to be responsible for the international relations of a non-self-governing territory, and on this basis to represent the territory in intergovernmental organs, it would nevertheless be possible for both the administering Power and one or more recognized liberation movements to participate simultaneously although in different capacities (as occurred, for example, in the Fourth Committee of the General Assembly at its twenty-seventh and twenty-eighth sessions when considering the question of Southern Rhodesia).

11. Specific provision for such participation by liberation movements in meetings of the Economic Commission for Africa (otherwise than as representatives of associate members of the Commission) could be made by means of an appropriate amendment to the rules of procedure of ECA. Such an amendment, if made by the Commission in accordance with rules 79 and 80, might, for example, provide for the participation of liberation movements recognized by the Organization of African Unity on a basis comparable to that now applied to Member States not members of the Commission under the terms of rules 70 and 71.

The representation of associate members of the Economic Commission for Africa

12. Paragraph 6 of the terms of reference of the Economic Commission for Africa (as amended by Economic and Social Council resolutions 974 D (XXXVI) of 5 July 1963 and 1343 (XLV) of 18 July 1968) provides as follows:

[50] See p. 149 of this *Yearbook*.

"6. The following shall be associate members of the Commission:

"(*a*) The Non-Self-Governing Territories situated within the geographical area defined in paragraph 4 above [i.e. the whole continent of Africa, Madagascar and other African islands];

"(*b*) Powers other than Portugal responsible for international relations of those Territories".

13. According to this text, the non-self-governing territories within the defined area are associate members, and also those powers recognized as being responsible for their international relations. It has not followed from this, however, that there has been, or could properly have been separate representation of the territories, in addition to representation through an administering power recognized as having continuing responsibility for the territory's international relations.

14. Moreover, under rule 11 of the rules of procedure of ECA, an associate member is represented by "an accredited representative", in the singular, and although the latter may be accompanied by alternate representatives and advisers (under rule 12), there is no provision for dual or multiple representation of a single associate member by two or more different authorities or entities. While it is always possible for the Commission to amend its rules of procedure, it would doubtless take into account the impracticability of an arrangement permitting separate or rival delegations to be seated concurrently as representatives of a single member or associate member.

15. In a situation where more than one authority claims to be the government entitled to represent a Member State, and the question becomes the subject of controversy, United Nations practice requires that the matter be considered by the General Assembly (see General Assembly resolution 396 (V)). However, in the case of a non-self-governing territory so classified by the General Assembly, or a liberation movement not claiming to be the government of an independent State, it would seem unlikely that conflict would arise concerning the legal aspects of international representation by the recognized administering Power, pending the granting of independence in accordance with the Declaration contained in General Assembly resolution 1514 (XV).

16. It would appear that the question of the formal representation of an associate member otherwise than by an administering Power recognized as being responsible for its international relations has thus far only arisen in the case of Angola, Mozambique, Guinea (Bissau) and Namibia. It will be recalled that the representatives of these four territories were proposed by the Organization of African Unity under the terms of ECA resolution 194 (IX) of 12 February 1969,[51] and was approved, in the case of Angola, Mozambique and Guinea (Bissau) by the General Assembly in paragraph 12 of its resolution 2795 (XXVI), and in the case of Namibia, by the United Nations Council for Namibia at the latter's 98th meeting on 22 January 1971.[52]

17. It should be noted, however, that in these instances there did not exist an administering Power competent and able to represent these territories in the Economic Commission for Africa (other than the United Nations itself, through the United Nations Council for Namibia, in the exercise of its direct responsibility for the international territory of Namibia).

18. In the case of the remaining six associate members (namely Comoro Archipelago, French Territory of the Afars and the Issas, Seychelles, Southern Rhodesia, Spanish Sahara and Saint Helena), formal representation has been provided through an administering Power recognized as having continuing responsibility for their international relations, as well as for the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (see, by analogy, the references to these administering Powers contained in

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[51] *Official Records of the Economic and Social Council, Forty-seventh Session*, document E/4651, vol.I, p. 145.

[52] See *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 24* (A/8424), para. 63.

General Assembly resolutions 3161 (XXVIII), paragraphs 5, 6 and 7; 3156 (XXVIII), paragraphs 3 and 6 to 9; 3115 (XXVIII), paragraphs 3 to 6, 8 and 9; 3162 (XXVIII), paragraphs 4 and 7, and the relevant sections of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.[53] It is our understanding that until the recognized international responsibility of these administering Powers ceases, their formal representation of the six territories in question would continue, although without precluding the concurrent participation of liberation movements in the manner referred to in paragraphs 6 to 11 above.

19. Finally, mention should be made of the apparent need for some clarification concerning the current position of Guinea-Bissau in relation to the Economic Commission for Africa.

20. Following the Proclamation of the State of Guinea-Bissau by the People's National Assembly on 24 September 1973 (see document S/11022, and General Assembly resolution 3061 (XXVIII) of 2 November 1973), the former Guinea (Bissau) ceased to be a non-self-governing or colonial territory, and has since been admitted to membership of FAO and WHO. It follows that the former Guinea (Bissau) ceased to be an associate member of the Economic Commission for Africa under paragraph 6 (*a*) of the terms of reference (quoted in paragraph 12 above), and, at the same time, since it is not a "power" responsible for the international relations of a non-self-governing territory, it is not an associate member within the meaning of paragraph 6 (*b*) of the terms of reference.

21. Since, moreover, membership of the Commission is defined in paragraph 5 of the terms of reference of the Commission as being open to the States listed in that paragraph ". . . and to any other State in the area which may hereafter become a Member of the United Nations . . .", the fact that Guinea-Bissau has not at this time become a Member of the United Nations would also seem to exclude the new Republic from membership of ECA under the existing terms of reference. The latter, however, could be amended by the Economic and Social Council to include Guinea-Bissau under paragraph 5, and if this is desired an appropriate proposal could no doubt be submitted to the Economic and Social Council at its next session.[54]

Conclusion

22. In conclusion it has been noted that the General Assembly has requested United Nations organs, in consultation with the Organization of African Unity, to ensure the participation or representation of the colonial territories in Africa by the national liberation movements concerned, in an appropriate capacity, when dealing with matters pertaining to those territories.

23. This requirement does not, however, exclude the representation of a non-self-governing territory by an administering Power recognized as having responsibility for the territory's international relations. On the other hand, neither does the formal representation of a non-self-governing territory by an administering Power exclude the simultaneous participation by the liberation movement concerned in meetings dealing with the territory in question.

24. In general, therefore, the Economic Commission for Africa is called upon to ensure, in consultation with the Organization of African Unity, the participation in an appropriate capacity of national liberation movements from the colonial territories in Africa recognized by the Organization of African Unity.

25. At the same time, with regard to the formal representation of these territories as associate members of the Economic Commission for Africa, it would appear that they may conveniently be divided under the following three categories:

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[53] *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 23* (A/9023/Rev.1).

[54] The Republic of Guinea-Bissau having become a Member of the United Nations on 17 September 1974 has since that date been a member of the Economic Commission for Africa.

(*a*) Non-self-governing territories formerly under Portuguese administration, the representation of which by their respective liberation movements requires the approval of the General Assembly;

(*b*) The international territory of Namibia, for which the United Nations has direct responsibility, pending the achievement of Namibian independence, and the representation of which is assured by or with the approval of the United Nations Council for Namibia:

(*c*) The remaining six non-self-governing territories qualifying as associate members of the Economic Commission for Africa (under paragraph 6(*a*) of the Commission's terms of reference), namely Comoro Archipelago, French territories of the Afars and the Issas, Seychelles, Southern Rhodesia, Spanish Sahara and Saint Helena, the formal representation of which is currently provided by the administering Powers recognized as having responsibility for the international relations of the territories in question, pending the granting of independence, but without prejudice to the simultaneous participation in meetings of the national liberation movements concerned on the basis previously described.

26. Finally, the need for clarification concerning the position of Guinea-Bissau in relation to the Economic Commission for Africa has been summarized in paragraphs 19 to 21 above.

18 June 1974

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16. Question whether the establishment of a committee jointly by the United Nations Economic Commission for Asia and the Far East[55] and the Food and Agriculture Organization of the United Nations would require formal approval by the Economic and Social Council

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

There exists no provision in the United Nations Charter or in the rules of procedure of the Economic and Social Council and other principal organs referring specifically to the establishment of joint bodies by the United Nations and specialized agencies. The establishment of such bodies should however be considered permissible under specific circumstances. Of the three existing precedents, two concern bodies established on the basis of approval by the General Assembly. These are the Liaison Committee established by article II of the Agreement between the United Nations and the International Development Association,[56] and the United Nations/FAO Intergovernmental Committee on the World Food Programme established under General Assembly resolution 1714 (XVI). The third precedent, which is the only instance of a joint body established under a resolution of the Economic and Social Council, is the Working Group convened by the Secretary-General in joint sponsorship with ILO under Economic and Social Council resolution 585 F (XX) of 23 July 1955. To our knowledge no precedent exists of a body set up by a regional economic commission jointly with a specialized agency. Given the exceptional character of such joint bodies and the lack of any mention thereof in ECAFE's terms of reference, we believe that the establishment of a committee jointly by ECAFE and FAO requires formal approval by the Economic and Social Council. This is in line with paragraph 13 of ECAFE's terms of reference[57] and rule 57 of ECAFE's rules of

[55] Now Economic and Social Commission for Asia and the Pacific (ESCAP).

[56] United Nations, *Treaty Series*, vol. 394, p. 221.

[57] Reading as follows:

"The Commission may after discussion with any specialized agency functioning in the same general field, and with the approval of the Council, establish such subsidiary bodies as it deems

procedure.[58] No formal approval by the Council is, however, required for the establishment exclusively by ECAFE of a committee to be serviced jointly by ECAFE and FAO. A precedent for such a committee is the ECE Timber Committee. Should a joint ECAFE/FAO body be envisaged the question of the authority which should receive its report or approve its recommendations would be governed by its terms of reference as the Economic and Social Council sees fit to prescribe (on the recommendation of ECAFE if the proposal is first submitted to ECAFE).

27 March 1974

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17. USE IN RESOLUTIONS, DECISIONS OR CONCLUSIONS ADOPTED BY THE TRADE AND DEVELOPMENT BOARD OR ITS SUBSIDIARY BODIES OF THE WORDS "AS ADOPTED" IMMEDIATELY FOLLOWING REFERENCES TO AN EXISTING RESOLUTION

Note submitted to the Trade and Development Board during the first part of its fourteenth session[59]

Background

1. Prior to the thirteenth session of the Trade and Development Board there had been several instances in which the representatives of countries in Group B[60] proposed, as amendments to certain draft resolutions being considered by a deliberative body of UNCTAD, the insertion of the words "as adopted" immediately following the references to another resolution—whether of UNCTAD or another United Nations body—which had been previously adopted. Examples are to be found in resolution 6 (VI) of the Committee on Manufactures[61] and resolution 5 (VI) of the Committee on Invisibles and Financing Related to Trade.[62] It was explained by the sponsors of this insertion that, because their countries had not

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appropriate, for facilitating the carrying out of its responsibilities." (*Official Records of the Economic and Social Council, Fifty-seventh Session, Supplement No. 5* (E/5469), p. 192.)

[58] Reading as follows:

"After discussion with any specialized agency functioning in the same field, and with the approval of the Economic and Social Council, the Commission may establish such continually acting subcommissions or other subsidiary bodies as it deems necessary for the performance of its functions and shall define the powers and composition of each of them. Such autonomy as may be necessary for the effective discharge of the technical responsibilities laid upon them may be delegated to them." (*Ibid.*, p. 196.)

[59] Circulated by the UNCTAD Secretariat, with the approval of the Legal Counsel of the United Nations, under the symbol TD/B/L.351.

[60] For the list of the countries in Group B, see General Assembly resolution 2904 (XXVIII) of 26 December 1972.

[61] "*Considering* that the particular responsibilities of UNCTAD in respect of non-tariff barriers have been recognized in its decisions 2 (III), 1 (IV) and 1 (V), as adopted, and reaffirmed in Conference resolution 76 (III), as adopted . . ." (first preambular paragraph).

. . .

"*Recalling* General Assembly resolution 3040 (XXVII) of 19 December 1972, as adopted, . . ." (fourth preambular paragraph).

[62] "*Taking note* of resolution 59 (III) adopted by the United Nations Conference on Trade and Development on 19 May 1972, and particularly paragraph 6 thereof, as adopted," (first preambular paragraph).

"*Taking note* of paragraph 1 of General Assembly resolution 3039(XXVII) of 19 December 1972, as adopted, . . ." (second preambular paragraph).

subscribed to the resolution or resolutions previously adopted, and because these countries had not changed their position since, the term "as adopted" was needed to record that position.

2. The same proposal for the insertion of these words had also been made in other UNCTAD *fora*, prior to the thirteenth session of the Trade and Development Board; on those occasions when the opinion of the UNCTAD secretariat was sought, the secretariat expressed the view, for reasons set out below, that it would be unnecessary and undesirable to insert these words. In these instances the representatives in question did not insist on the inclusion of the words "as adopted" in the draft resolution under consideration.

Thirteenth session of the Trade and Development Board

3. At the thirteenth session of the Board, during discussion of the draft decision on Special Measures in Favour of the Least Developed among the Developing Countries (TD/B/L.340/Rev.1) submitted by the Group of 77, the spokesman for the countries members of Group B proposed that the words "as adopted" should be inserted after the reference to Conference resolution 62(III) in paragraph 1 of the draft decision. The spokesman for the Asian countries members of the Group of 77 accepted that proposal, on the understanding that the following footnote should be added: "The inclusion of these words in the text was objected to by the developing countries. It was agreed that this matter, dealing with the use of these words, should be the subject of a discussion in depth at the fourteenth session of the Board."[63]

4. The following additional resolution and decision, subsequently adopted at the thirteenth session, include the words "as adopted" as well as the footnote: resolution 101(XIII) and decision 102(XIII).

Analysis

5. The inclusion of the words "as adopted" to modify or qualify the reference in resolutions, decisions or agreed conclusions to previously adopted resolutions is undesirable; since the term is nowhere defined and since its meaning is unclear, it could be understood to refer either to the method of voting on the resolution (by show of hands or by roll-call) or to the fact that it was adopted without vote, by consensus, by acclamation or otherwise, or to the fact that explanations of vote or explanations of position where there was no vote were given. Furthermore, the inclusion of these words in respect of a selection of previously adopted resolutions and the absence of these words in respect of other previously adopted resolutions leads to an apparent and ambiguous distinction between the status of the two groups of resolutions. Finally, in the more than twenty-five years of United Nations practice in adopting resolutions, no need had been felt to include this qualification in resolutions. In this connection, it should be pointed out that in United Nations editorial practice, the term "as adopted" in reference to a resolution has always been used—in reports and not in the text of a resolution—to denote the final text of the resolution, as distinct from the text of the draft resolution.

6. As stated above, the inclusion of these words is unnecessary. The fact that a State or a number of States have expressed reservations at the time of the adoption of a given resolution or have otherwise explained the reasons why they could not then support or accept that resolution, remains part of the legislative history of that resolution. While it is common practice for States to restate, during discussions of draft resolutions containing references to previously adopted resolutions, their previous opposition to such resolutions, it could not be maintained that failure to do so would imply *post hoc* acceptance by those States. Hence there is no need to include the words "as adopted" in a draft resolution when reference is made to a previously adopted resolution.

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[63] *United Nations Conference on Trade and Development, Trade and Development Board, Official Records, Thirteenth Session*, 380th meeting, paras. 5 and 6.

Should the Board agree with the above analysis, it may wish to record such agreement in the report on its present session; this could then serve, also, as guidance to the main Committees of the Board and to other UNCTAD bodies.[64]

2 August 1974

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18. Question whether the United Nations Industrial Development Organization may finance its operational activities by means of voluntary contributions from sources other than Governments

Letter to the Legal Liaison Officer, United Nations Industrial Development Organization

This is in reply to your letter of 25 January 1974 concerning the UNIDO Scheme for the Exchange of Information on Industrial Projects among Industrial Development Financing Institutions.

Paragraph 22 of General Assembly resolution 2152 (XXI) establishes the ways in which UNIDO's expenses for operational activities shall be met. On the basis of the said provision, UNIDO is precluded not only from raising fees from the participants to some of its operational activities as a compensation for services rendered by it in the framework of such activities, but also from accepting voluntary contributions from sources other than governments.

It is true that in a memorandum of 10 November 1970 prepared by the Office of Legal Affairs on voluntary contributions for UNIDO's Pesticide Programme, it was said that the Secretary-General could in his discretion accept voluntary contributions from private as well as governmental sources, and that this authority of the Secretary-General might be exercised to accept voluntary contributions to finance operational activities of UNIDO. It must be pointed out, however, that the situation envisaged in the memorandum of 10 November 1970 was quite different from the situation now under examination. In the former case the issue was only whether the Secretary-General could accept two specific contributions (of $10,000 and $18,000) offered by two private sources, for the stated purpose of "assisting UNIDO in continuing its pesticide training programme". In the latter case instead, a permanent arrangement is envisaged, with the purpose of making the Scheme for the Exchange of Information self-financing through contributions which, in the future, would regularly come from private sources. In this case, therefore, the Secretary-General would not simply accept specific private contributions, but would also in a way commit himself to accept such contributions in the future, as the Scheme's permanent source of financing.

The result just described, however, would not be consistent with the rule that each donation must be examined by the Secretary-General on its own merits so that he may exercise his discretion to accept it, nor with the requirement that the acceptance of each donation be made in accordance with the relevant financial rules. It should be recalled that, under Financial Rule 107.7, approval by the General Assembly is necessary whenever the acceptance of a voluntary contribution may involve, directly or indirectly, an immediate or ultimate financial liability for the Organization, and that in all other cases, approval by the Secretary-General or the Controller is required under Financial Rule 107.5.

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[64] At its 410th meeting held on 12 September 1974, the Trade and Development Board decided to defer consideration of the question until the fifteenth session. At its 441st meeting held on 16 August 1975, in the course of its fifteenth session, the Board agreed with the secretariat analysis contained in document TD/B/L.351 and recommended that this agreement should serve as guidelines for the main Committees of the Board and its subsidiary bodies. The Board noted in particular that, as stated in paragraph 6 of the above-mentioned note by the secretariat, the fact that Governments may not judge it necessary to reiterate reservations previously stated did not mean that such reservations had been withdrawn (see the report of the Board on the first part of its fifteenth session, document TD/B/584, paras. 298 and 299).

Allowing some operational activities of UNIDO to be permanently financed through voluntary contributions from private sources would in any case appear to be in direct conflict with the provision of paragraph 22 of General Assembly resolution 2152 (XXI), which indicates quite clearly the sources from which the expenses for operational activities of UNIDO shall be met.

6 February 1974

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19. Question of the participation in the Preparatory Committee of the 1974 World Food Conference of States not members of the United Nations but members of a specialized agency or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice[65]

Note to the Secretary of the Economic and Social Council

I. *Establishment of the Preparatory Committee*

1. In operative paragraph 1 of resolution 1831 (LV) adopted by the Economic and Social Council on 11 December 1973 and entitled "World Food Conference", the Council decided, subject to the adoption by the General Assembly of the draft resolution which recommended the convening of a World Food Conference under the auspices of the United Nations, "to establish an intergovernmental preparatory committee [for the World Food Conference] open to all States Members of the United Nations, which shall report to the Economic and Social Council on the progress of its work."

2. On 17 December 1973, the General Assembly adopted without change, as resolution 3180 (XXVIII), the draft resolution recommended by the Council.

3. The Preparatory Committee for the 1974 World Food Conference is thus a subsidiary body of the Council established under Article 68 of the Charter.

II. *The question of the participation of non-Member States in the meetings of United Nations organs (other than organs of which such States are members)*[66]

A. *The Economic and Social Council and its subsidiary organs*

(a) *The Council and its sessional committees*

4. The Council has, on some occasions, invited observers for non-Member States to make statements in the Council on matters of particular concern to those States. For example, at its 746th meeting on 3 August 1953, the Council invited the observer for Libya to speak in connexion with the question of assistance to Libya;[67] at its 1785th meeting on 20 July 1971, the Council invited the observer for Switzerland to make a statement in connexion with Switzerland's admission to membership in ECE;[68] at its 1846th meeting on 13 December 1972, the Council invited the observer for the German Democratic Republic to make a statement in connexion with that State's admission in ECE;[69] at its 1852nd meeting on 17 April 1973, the Council invited the observer for Bangladesh to make a statement in connexion with that State's admission to ECAFE;[70] on other occasions, the Council had included observers for non-

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[65] The States in question are hereafter referred to as "non-Member States".

[66] Certain subsidiary organs of the Council such as ECAFE (now ESCAP) and ECE and of the General Assembly such as UNCTAD and UNIDO, include non-Member States among their members.

[67] *Official Records of the Economic and Social Council, Sixteenth Session*, 746th meeting, paras. 24 *et seq.*

[68] *Ibid., Fifty-first Session*, 785th meeting, paras. 7 *et seq.*

[69] *Ibid., Resumed Fifty-third Session*, 1846th meeting, paras. 31 and 32.

[70] *Ibid., Fifth-fourth Session*, 1852nd meeting, paras. 34 and 35.

Member States in its list of participants although the records did not show that those States had made statements.

5. In a legal opinion given on 9 July 1954, it was pointed out that "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 of or the making of statements by representatives of States not Members of the United Nations". Referring to such invitations extended by the Council and its committees of the whole, the opinion concluded that the organ concerned acted on the basis of its own interest and as a matter of its own discretion and that "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".

6. At the Council's sixteenth session in 1953, the Social Committee, a sessional committee of the Council, decided by 14 votes in favour to none against, with 3 abstentions, to hear the observer for Italy (a non-Member State at the time), who had asked to be allowed to reply to a statement by the representative of Yugoslavia concerning alleged discrimination against Yugoslav subjects in Italy and in Zone A of the Free Territory of Trieste.[71]

7. At the 723rd meeting of the Social Committee held on 14 May 1973, a statement was made by the "First Secretary of the Permanent Observer Mission of Bangladesh" in connexion with an item on human rights.[72]

(b) *The functional commissions and the regional economic commissions*

8. In a legal opinion dated 16 October 1968,[73] the Office of Legal Affairs held that the Economic and Social Council's practice of inviting non-Member States, on occasion, to participate in its proceedings, "does not automatically apply to the [Council's] functional commissions". The opinion drew attention to the fact that "the powers and composition of the commissions are defined by the Council (rule 71 of the Council rules of procedure)[74] and observed that "the rules of procedure of the functional commissions and their subsidiary bodies are drawn up by the Council (rule 74 of the Council rules of procedure);[75] and amendments thereto can be made only by the Council (rule 77 of the rules of procedure of the functional commissions[76])." The legal opinion then went on to state that there was "no practice indicating the competence of a functional commission or its sub-commissions, in the absence of prior authorization from the Economic and Social Council, to invite non-Member States to participate in their deliberations" noting that "when a non-Member State has been invited, it has been only with such prior authorization by the Council." The precedents cited in the opinion concerned the Commission on Narcotic Drugs and the Commission on International Commodity Trade.

9. In a legal opinion dated 11 February 1972,[77] the Office of Legal Affairs dealt with the question of the participation of non-Member States in regional economic commissions in connexion with the possible attendance of an observer for the Holy See at the twenty-eighth session of ECAFE. In this opinion the Office of Legal Affairs, referring to the practice established by the Economic and Social Council in its resolutions 515 B (XVII), 581 (XX), 616 (XXII), 617 (XXII), 763 D (XXX), 860 (XXXII), 861 (XXXII) and 925 (XXXIV), concluded that "the grant of observer status at meetings of a regional economic commission to a State

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[71] See *Repertory of United Nations Practice*, vol. III, Article 69, para. 42.

[72] E/AC.7/SR. 723. An opinion on the question was orally given at the same meeting by the Office of Legal Affairs.

[73] See *Juridical Yearbook*, 1968, p. 204.

[74] The corresponding rule in the current rules of the Economic and Social Council is rule 24.

[75] Rule 27 of the current rules.

[76] Rule 78 of the current rules.

[77] See *Juridical Yearbook*, 1972, p. 173-174.

which is not a Member of the United Nations requires a decision of the Economic and Social Council."

(c) *Standing committees*

10. A most recent case is that of the Committee on Natural Resources.[78] There were requests from two non-Member States for participation in the third session of the Committee held in February 1973. The report of the Committee on that session included a note by the Secretariat reading as follows:

> "*Note by the Secretariat*: Requests to participate as observers in the session of the Committee on Natural Resources were received from Bangladesh and the German Democratic Republic. However, the granting of observer status to States not Members of the United Nations requires prior authorization of the Economic and Social Council, which was not then in session. The Secretariat extended facilities in accordance with established practice to enable representatives of these States to follow the proceedings at the public meetings of the Committee."[79]

(d) *Committees established by the Council for the preparation of international conferences*

11. As early as 9 April 1947, in reply to an inquiry concerning the attendance of observers from non-Member States at the meetings of the Preparatory Committee of the United Nations Conference on Trade and Development, the Office of Legal Affairs held that it was within the competence of the Preparatory Committee to invite such observers if it deems such action advisable.

12. The Federal Republic of Germany was represented by an observer at the first session of the Preparatory Committee of the United Nations Conference on Trade and Development, convened under Economic and Social Council resolution 917 (XXXIV)[80] and statements were made by the observer for the Federal Republic of Germany at the Committee's third session (at the 61st meeting on 12 February 1964[81] and at the 63rd meeting on 13 February 1964).[82]

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[78] There has been one case where a standing committee of the Economic and Social Council, acting on its own authority, has invited a non-Member State to make a statement in the committee. The case occurred in 1953 in the course of the Council's sixteenth session. During this session, the Chairman of the Technical Assistance Committee, one of the Council's standing committees existing at the time, informed the Committee that the observer for Libya, which was then a non-Member State, had expressed a desire to make a statement in the Committee in connexion with the points on the agenda of the latter, adding that there was no rule of procedure governing the hearing of representatives of States that were not Members of the United Nations, and that it therefore rested with the Committee to take its own decision on the matter. A member of the Committee proposed that "the observer be granted a hearing", and the Committee so agreed (*Repertory of United Nations Practice*, vol. III, Article 69, para. 41). It should be noted that, as indicated above, the Libyan Government had been represented by an observer during the Council's sixteenth session in connexion with agenda item 21 of the Council's agenda at that session, entitled "Question of assistance to Libya (General Assembly resolution 515 (VI))" and that in the Committee the observer for Libya spoke on that subject.

[79] *Official Records of the Economic and Social Council, Fifty-fourth Session, Supplement No. 4* (E/5247), p. 1.

[80] At the opening meeting of the Preparatory Committee's first session, on 22 January 1963, following upon the election of the Committee's officers, the representative of the USSR "noted that the Committee was conducting its business in the presence of an observer from the Federal Republic of Germany, while the German Democratic Republic was not admitted," adding that he "considered it quite arbitrary to refuse the German Democratic Republic an opportunity to be present at the activities of the specialized agencies, as well as the business of the United Nations". He concluded his statement by observing that "his delegation was confident that that injustice would disappear". None of the other representatives commented on this statement by the USSR. (See E/CONF.46/PC/SR.1.)

[81] E/CONF.46/PC/SR.61.

[82] E/CONF.46PC/SR.63.

B. *The General Assembly and its subsidiary organs*

(a) *The General Assembly and its Main Committees*

13. With the exception of the ceremonial occasion when Pope Paul VI addressed the Assembly at its twentieth session[83] no State that is not a Member of the United Nations has spoken in the plenary meetings of the General Assembly.

14. On two occasions the proposals to grant the floor to a representative of a non-Member State or to invite non-Member States to participate in the discussion in plenary meetings were rejected by vote.[84] On both occasions, however, the President referred to the practice of the Assembly that the views of non-Member States were heard by the Main Committee dealing with the item concerned and not by the Assembly in plenary.[85] On the second occasion, the President added that a proposal to invite non-Member States to participate in the discussion was not a departure from the rules of procedure and that there was nothing in the rules of procedure to prevent the General Assembly from taking a decision thereon.

15. There are many cases where Main Committees of the General Assembly heard representatives of non-Member States on the basis of decisions taken by the Committees concerned on their own authority. This has occurred when the Committee in question has considered that those States had a direct and immediate interest in the matter under discussion.[86]

16. A number of the most recent cases of invitations extended by Main Committees to non-Member States concerned Switzerland, which, at the twenty-third, twenty-fourth, twenty-sixth and twenty-eighth sessions of the General Assembly was invited by the Sixth Committee to participate in its deliberations on specific agenda items allocated to that Committee.

17. In requesting permission to participate in the work of the Sixth Committee on the "Draft Convention on Special Missions" (twenty-third and twenty-fourth sessions) and on the "Draft Convention on the Prevention and Punishment of Crimes against Diplomatic Agents and other Internationally Protected Persons" (twenty-eighth session), Switzerland drew attention to and set forth the grounds for its particular concern in those matters.[87] It should be noted, however, that in both cases valid reasons other than Switzerland's particular concern were set forth in Switzerland's request. As regards the third item on which Switzerland requested permission to participate in the work of the Sixth Committee, namely on the review of the role of the International Court of Justice (twenty-sixth session), it should be observed that the only ground adduced by Switzerland in support of its request was its entitlement as a

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[83] *Official Records of the General Assembly, Twentieth Session, Plenary Meetings*, 1347th meeting, held on 4 October 1965.

[84] *Official Records of the Fourth Session of the General Assembly, Plenary Meetings*, 245th meeting, held on 18 November 1949 and *Official Records of the General Assembly, Fifth Session, Plenary Meetings*, 292nd meeting, held on 6 October 1950.

[85] After observing, in paragraph 23 of its report to the General Assembly, that a means of lightening the task "of any given Main Committee would be to consider directly in plenary meeting, without preliminary reference to committee, certain questions which fall within the terms of reference of the Main Committee", the Special Committee on Methods and Procedures of the General Assembly established under General Assembly resolution 271 (III) of 29 April 1949 stated, in the same paragraph, its opinion:

> "that this procedure would be especially appropriate for certain questions the essential aspects of which are already familiar to Members, such as items which have been considered by the General Assembly at previous sessions and which do not require either the presence of representatives of non-member States or the hearing of testimony".

(For text, see Annex I to the rules of procedure of the General Assembly, document A/520/Rev.12, p. 39.)

[86] For examples of such invitations, see *Repertory of United Nations Practice*, vol. 1, Article 21, paras. 91-93.

[87] Documents A/C.6/389 (reproduced in *Official Records of the General Assembly, Twenty-third session, Annexes*, agenda item 85) and A/C.6/421.

party to the Statute of the International Court of Justice to participate in the amendment of the Statute of the Court.[88]

18. It should be noted that in connexion with the Sixth Committee's consideration at the twenty-fourth session of the draft Convention on Special Missions, Switzerland submitted an amendment to the draft Convention that was put to a vote[89] although the Sixth Committee's decision allowing Switzerland to participate in its work relating to this item did not expressly confer upon Switzerland the right to submit formal proposals.[90] However, when it decided at the General Assembly's twenty-eighth session to invite Switzerland to take part, without the right to vote, in the work of the Sixth Committee on the draft Convention on the Prevention and Punishment of Crimes against Diplomatic Agents and other Internationally Protected Persons, the Sixth Committee did so on the understanding that Switzerland could not submit formal proposals or amendments during consideration of the item.[91]

(b) *Subsidiary organs*

19. It does not appear from a preliminary examination, that the question has arisen of participation by non-Member States in a subsidiary organ of the Assembly whose membership is limited to Member States.

(c) *Committees established by the General Assembly for the preparation of international conferences*

20. In its resolution 2581 (XXIV) adopted on 15 December 1969, the General Assembly established a Preparatory Committee for the United Nations Conference on the Human Environment which the General Assembly, by resolution 2398 (XXIII) of 3 December 1968, had decided to convene in 1972. The Preparatory Committee was to consist "of highly qualified experts nominated by the Governments" of twenty-seven Members of the United Nations designated therein. At the same session, the Assembly decided that "any interested Member State not appointed to the Preparatory Committee . . . might designate highly qualified representatives to act as accredited observers at sessions of the Committee, with the right to participate in its discussions". In its resolution 2850 (XXVI) of 20 December 1971, the General Assembly requested the Secretary-General to invite to participate in the Conference "States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency".

21. Participation in the first of the four sessions held by the Preparatory Committee was limited to the members of the Committee and certain other Members of the United Nations that were represented by observers. At the Committee's second session, held in February 1971, four non-Member States, namely, the Federal Republic of Germany, the Holy See, the Republic of Viet-Nam and Switzerland, were represented by observers.[92] Some of these observers made statements in the Committee at that session. No observers for non-Member States participated at the Committee's third and fourth sessions, held in September 1971 and March 1972, respectively.

III. *Analysis of the issues involved in the request by a non-Member State to participate in the work of the Preparatory Committee of the 1974 World Food Conference*

A. *Question whether a preparatory committee established by the Economic and Social Council for the preparation of an international conference can itself take a decision to invite a non-Member State to participate in its meetings*

22. The above review of past practice shows that, as a general principle, participation by a non-Member State in the work of a subsidiary body of the Economic and Social Council of

[88] Document A/C.6/407.

[89] *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, agenda item 87, document A/7799, para. 179.

[90] *Ibid., Twenty-third Session, Annexes*, agenda item 85, document A/7375, para. 5.

[91] *Ibid., Twenty-eighth Session, Annexes*, agenda item 90, document A/9407, para. 4.

[92] A/CONF.48/PC.9.

which it is not a member[93] requires a prior authorization of the Council. This rule does not apply to a committee established by the Council for the preparation of an international conference in which non-Member States are invited to participate, it being understood that all States invited to the conference have a role to play in the preparation for the conference.

B. *The requirement of particular or special interest*

23. Under Article 69 of the Charter, the Economic and Social Council is required to invite any Member of the United Nations not represented on the Council to participate without vote in its deliberations" on any matter of particular concern to that Member." *A fortiori* the same criterion applies to the participation by a non-Member State in the work of a subsidiary organ of the Council. The Council's practice is in keeping with this view. With respect to the Main Committees of the General Assembly, there is no provision in the Charter or in the rules of procedure of the Assembly concerning the participation of non-Member States, but the practice shows that the Main Committees have consistently applied the "special concern" criterion in authorizing representatives of non-Member States to make statements at their meetings.

24. It is for the organ concerned to determine whether a matter under discussion is of particular concern to a non-Member State. This determination is normally implied in the decision of the organ granting hearing or participation in its deliberations to the representative of a non-Member State at the latter's request.

25. In the case of international conferences, non-Member States invited to participate in such conferences are considered as having a role to play in their preparation and the "special concern" criterion is therefore more literally applied within the relevant preparatory committees.

C. *Scope of participation*

26. The precedents show that when a non-Member State has been granted participation in connexion with an agenda item or a subject of particular concern to that State, it is usually referred to as "observer" State and its participation is limited to making occasional statements.

27. In a few cases, the representative of a non-Member State was granted full participation in the discussion of the items concerned except the right to vote or to submit proposals in its own name. (For one exception in regard to the submission of proposals, see paragraph 18 above.) In two of these cases, the body concerned (i.e., the Sixth Committee) was considering draft articles prepared by the International Law Commission with a view to the adoption of a convention; had those draft articles been referred to international plenipotentiary conferences, the non-Member State concerned would have been invited as full participant. The third case was based on the special qualification of the Non-Member State (see paragraph 17 above).

28. Although precedents show that participation of non-Member States in the preparatory committees of international conferences convened by the Economic and Social Council or the General Assembly has been limited to attending the meetings or making one or a few statements, it appears that those non-Member States which are invited by the convening organ to participate in the conference may be accorded full participation except the right to vote or to submit proposals in their own name.

IV. *Concluding observations*

29. The foregoing survey shows that the preparatory committee of an international conference convened by the United Nations may accede to the request of a non-Member State invited to the conference to participate in the committee's discussions without the right to vote or to submit proposals, if the committee is satisfied that such participation would be useful to its preparatory work.

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[93] See foot-note 66 above.

30. In the case of the Preparatory Committee of the Human Environment Conference, however, four non-Member States participated at the second session of that Committee, at a time when the General Assembly had not yet decided on the question of participation (see paragraphs 20 and 21 above). The Preparatory Committee on the World Food Conference is now in the same situation with regard to the requests for participation by certain non-Member States, for neither the General Assembly nor the Economic and Social Council which has been entrusted with over-all responsibility for the Conference has taken a decision on the question of participation in the Conference.

31. It may be noted that the Economic and Social Council, at its 1885th meeting on 18 October 1973, decided to invite "the governing bodies of the organizations of the United Nations system, as appropriate, to consider" the question of the convening of the World Food Conference "as a matter of priority and to submit their reports to the Economic and Social Council". In response to this invitation, the FAO Conference considered the question in detail at its seventeenth session. In its report to the Economic and Social Council, the FAO Conference expressed the belief that the Conference should be held at the ministerial level and "should enjoy the full participation of all States Members of the United Nations and members of the specialized agencies and of the International Atomic Energy Agency including those not members of FAO" (E/5441, paragraph 2). Moreover, the Secretary-General of the United Nations, in his report to the Economic and Social Council on the convening of the Conference, after referring to the need for a co-operative effort, under the auspices of the United Nations, on the part of all the organizations concerned within the United Nations system and on the part of Governments, stated that it would be desirable that the Conference be held at the ministerial level and that "it enjoy the widest possible participation" (E/5443, paragraph 15). The report of the FAO Conference was noted with satisfaction and the report of the Secretary-General was noted with appreciation by the Economic and Social Council in its resolution 1831 (LV).

32. While participation in the Preparatory Committee of the World Food Conference by non-Member States, under the existing circumstances and in view of a previous similar instance, is not legally objectionable, it would be preferable if in the future the question of the participation in an international conference were to be decided upon by the convening organ before non-Member States are admitted to take part in the preparatory body of that conference.

12 February 1974

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20. Question of the termination of the Trusteeship Agreement for the Territory of New Guinea

Opinion of the Legal Counsel[94]

1. The Charter of the United Nations does not contain a specific provision on the termination of Trusteeship Agreements.

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[94] Prepared at the request of the Trusteeship Council and reproduced in *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 4* (A/9604), para. 219.

The background of this opinion can be summed up as follows:

At the forty-first session of the Trusteeship Council, held from 3 to 14 June 1974, the Special Representative of the Administering Authority (Australia) for Papua New Guinea explained that a resolution of the General Assembly was required for the termination of the Trusteeship Agreement on New Guinea. The date of independence would be decided upon close to or soon after the closure of the twenty-ninth session of the United Nations General Assembly and the date of independence would occur before the opening of the thirtieth session of the General Assembly. If Papua New Guinea was required to wait until the last quarter of 1975 for the resolution [which would terminate the Trusteeship Agreement], there

2. In the absence of such provision, the United Nations has developed a practice in conformity with the principles of the Trusteeship System as set out in the Charter, and with the general principles of international law governing the termination of international agreements. Some basic guiding principles in this respect have been the provision of Article 76 *b* of the Charter and the principle that for the termination of an agreement the consent of all the contracting parties must be obtained, unless some other method is specified in the agreement itself.

3. The procedure which has thus been established since the first termination of a Trusteeship Agreement, in 1956-1957, is characterized by due consideration for the respective roles and responsibilities of all parties concerned.

4. According to this procedure, a Trusteeship Agreement for a non-strategic area is terminated pursuant to a resolution of the General Assembly.

5. It has been a consistent practice of the General Assembly to adopt such a resolution in anticipation of the actual accession to independence of the Territory to which it refers.

6. In the resolution, the General Assembly, with the agreement of the Administering Authority, resolves to terminate the Trusteeship Agreement, but suspends the effect of this provision until the date on which the Territory will accede to independence. The formula used to this effect either refers to a specific date, if this is already determined at the time the General Assembly adopts the resolution, or merely states that the Trusteeship Agreement shall cease to be in force on the date on which the Territory shall become independent, without any more specific reference. In the latter case, the Administering Authority is requested to notify the Secretary-General of the United Nations as soon as the date of independence has been determined, and the Secretary-General is requested to communicate this notification to all Member States and to the Trusteeship Council.

7. When authorizing the termination of the Trusteeship Agreement, the General Assembly, in the same resolution, notes the full attainment of the objectives of the trusteeship which justifies the termination, by taking note and expressing the approval of the work done by all parties concerned and by determining the actions still to be taken, in particular by the Administering Authority.

8. In the light of what has been set out above, it should be concluded that the procedure which has been proposed by the representative of Papua New Guinea and by the representative of Australia in the Trusteeship Council with regard to the termination of the trusteeship of the Territory of New Guinea, is in conformity with the practice of the United Nations, the principles of the Charter and international law in general.[95]

18 October 1974

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would indeed be an unfortunate and unacceptable delay. The difficulty could be avoided if the Council would agree to recommend to the General Assembly that action be taken at the twenty-ninth session in anticipation of Papua New Guinea's independence. Such an action would require the Council's recommendation and the Assembly's agreement that, on the date on which Papua New Guinea became independent, the Trusteeship Agreement for the Territory of New Guinea, approved by the General Assembly on 13 December 1946, would cease to be in force. Under that arrangement, the General Assembly would request the Government of Australia to notify the Secretary-General of the United Nations of the date on which Papua New Guinea would accede to independence and on which the Trusteeship Agreement would cease to be in force. The Agreement would then automatically be terminated with effect from the date of independence. (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 4* (A/9604), paras. 213 and 216-218.)

[95] The Trusteeship Council noted that in response to its request for an official and formal opinion from the Legal Counsel, the latter stated that the procedure proposed by the Special Representative was in conformity with the practice of the United Nations, the principles of the Charter and international law in general. Accordingly, the Council recommended that the General Assembly, at its twenty-ninth session,

21. Extent to which obligations of specialized agencies as regards relations with South Africa vary under the terms of paragraph 6 of General Assembly resolution 3118 (XXVIII) and of paragraph 13 of General Assembly resolution 3151 G (XXVIII)

Memorandum to the Under-Secretary-General for Inter-Agency Affairs and Co-ordination

1. I refer to your memorandum of 6 March 1974, in which you drew attention to paragraph 6 of General Assembly resolution 3118 (XXVIII) [entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations"], and to paragraph 13 of General Assembly resolution 3151 G (XXVIII) [entitled "Policies of *apartheid* of the Government of South Africa"] and requested advice as to the extent to which the obligations of specialized agencies vary under the terms of these two paragraphs.

2. It should be noted at the outset that, while both of these resolutions referred to relations with South Africa, there is a significant distinction between the two contexts in which each was adopted. In the observations which follow, therefore, we shall first examine briefly the paragraphs to which you referred in the separate contexts of the two resolutions in which they were contained. (The texts of the two paragraphs in question are set out in paragraphs 10 and 21 below.)

General Assembly resolution 3118 (XXVIII) and the granting of independence to colonial countries and peoples

3. General Assembly resolution 3118 (XXVIII) is concerned with the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations.

4. In this connexion, it may be recalled that among the factors impeding the granting of independence to the colonial territories in southern Africa (in particular, to Angola, Mozambique, Southern Rhodesia and Namibia, the latter being at present illegally occupied by South Africa), the General Assembly has attached particular importance to the actions and policies of the Governments of South Africa and Portugal in supporting or maintaining colonial or illegal régimes currently exercising authority in these territories.

5. Thus, the General Assembly has expressly referred to the "collaboration between the régimes of South Africa and Portugal and the illegal racist régime of Southern Rhodesia for the preservation of colonialism in southern Africa" (e.g. see General Assembly resolution 2621 (XXV) para. 3 (*c*)), and has repeatedly deplored "the continued refusal of the colonial Powers, especially Portugal and South Africa, to implement the Declaration and other relevant resolutions on the question of decolonization, particularly those relating to the Territories under Portuguese domination, Namibia and Southern Rhodesia", (see General Assembly resolutions 2708 (XXV), fourth preambular paragraph; 2878 (XXVI), fourth preambular paragraph; and 2908 (XXVII), fourth preambular paragraph).

6. At its twenty-eighth session, the General Assembly condemned "the continued colonialist and racialist repression of millions of Africans by the Governments of Portugal and South Africa" (see General Assembly resolution 3163 (XXVIII), fourth preambular para-

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agree that on the date on which Papua New Guinea should become independent, the Trusteeship Agreement for the Territory of New Guinea, approved by the General Assembly on 16 December 1946, should cease to be in force. The Council also recommended that the General Assembly should request the Government of Australia to notify the Secretary-General of the date on which Papua New Guinea acceded to independence and on which the Trusteeship Agreement ceased to be in force. (*Ibid.*, para. 222.) These recommendations were endorsed by the General Assembly in resolution 3284 (XIX) of 13 December 1974.

Papua New Guinea became independent on 16 September 1975 and was admitted to the United Nations on 10 October 1975.

graph), and repeated its previous condemnations of "South Africa for its persistent refusal to withdraw from the international Territory of Namibia. . ." (see General Assembly resolution 3111 (XXVIII), I, para. 3). The General Assembly further condemned "the continued illegal presence and intensified military intervention of South African forces in the Territory [of Southern Rhodesia (Zimbabwe)], which assist the racist minority régime and seriously threaten the sovereignty and territorial integrity of neighbouring African States" (see General Assembly resolution 3115 (XXVIII), tenth preambular paragraph).

7. In addition, the Security Council, for its part, has repeatedly condemned the Government of South Africa for its refusal to withdraw from the international Territory of Namibia (e.g. see Security Council resolutions 264 (1969), para. 6; 269 (1969), para. 21, 276 (1970), para. 1 and 301 (1971), para. 4), and has also noted with grave concern that "the Governments of the Republic of South Africa and Portugal have continued to give assistance to the illegal régime of Southern Rhodesia, thus diminishing the effects of the measures decided upon by the Security Council" (see Security Council resolution 277 (1970), fourth preambular paragraph), and has demanded "the immediate withdrawal of South African police and armed personnel from the Territory of Southern Rhodesia" (*ibid.*, para. 7).

8. It is accordingly for the purpose of removing these impediments to the granting of independence to the colonial territories in southern Africa that the General Assembly has, on repeated occasions, requested specialized agencies to withhold assistance to, or collaboration with South Africa and Portugal until they renounce their policies of racial discrimination and colonial domination and oppression, (e.g. see General Assembly resolutions 2105 (XX), para. 11; 2311 (XXII), para. 4; 2426 (XXIII), paras. 8 and 9; 2708 (XXV), para. 7; 2874 (XXVI), para. 7 and 2980 (XXVII), para. 6).

9. In adopting its latest resolution on this subject (resolution 3118 (XXVIII) of 12 December 1973), the General Assembly had before it, *inter alia*, the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, in Chapter VI of which the Special Committee had forwarded to the General Assembly the text of a resolution adopted by the Special Committee at its 946th meeting on 28 August 1973,[96] paragraph 6 of which contained the text of what became paragraph 6 of General Assembly resolution 3118 (XXVIII).

10. The text of this paragraph reads as follows:

> "*The General Assembly*,
>
> ". . .
>
> "6. *Urges once again* the specialized agencies and other organizations within the United Nations system, in accordance with the relevant resolutions of the General Assembly and the Security Council, to take all necessary measures to withhold any financial, economic, technical or other assistance from the Governments of Portugal and South Africa and the illegal régime in Southern Rhodesia, to discontinue all kinds of support to them until they renounce their policies of racial discrimination and colonial oppression and to refrain from taking any action which might imply recognition of the legitimacy of these régimes' colonial and alien domination of the Territories concerned;"

11. In substance this operative paragraph re-affirmed the content of the corresponding paragraphs of previous General Assembly resolutions (see para. 8 above), subject to some limited modifications and the addition of a concluding phrase (comprising the last 25 words of the paragraph).

12. It would seem clear, therefore, that this operative paragraph related specifically to the granting of independence to colonial countries and peoples in Africa, and was designed to preclude any assistance to or collaboration with three régimes which had been found to be actively opposing United Nations objectives in this regard.

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[96] *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 23* (A/9023/Rev.1), vol. II, p. 226.

General Assembly resolution 3151 (XXVIII) and the policies of apartheid *of the Government of South Africa*

13. General Assembly resolution 3151 (XXVIII), on the other hand, concerns the policies of *apartheid* of the Government of South Africa within the Republic of South Africa, which is not a colonial territory, but which, by pursuing policies of *apartheid* and racial discrimination continues to violate the provisions of the United Nations Charter, and repeated resolutions of both the Security Council and the General Assembly, and is thereby acting in defiance of its international obligations and seriously disturbing international peace and security. (See, *inter alia*, Security Council resolutions 181 (1963), 182 (1963), 191 (1964), 282 (1970) and 311 (1972).)

14. Within this context, attention has been drawn to a number of different matters relating to the United Nations objective of promoting the total eradication of *apartheid*. Thus, in previous resolutions, the General Assembly has requested specialized agencies, *inter alia*, to deny technical and economic assistance to (see General Assembly resolution 2054 A (XX), para. 10), to withhold the benefits of international co-operation from (see General Assembly resolution 2506 B (XXIV), para. 10), and to discontinue collaboration with (see General Assembly resolution 2923 E (XXVII), para. 12) the Government of South Africa for so long as it pusues its policies of *apartheid* and racial discrimination. In its latest resolution on this subject (resolution 3151 (XXVIII)), the General Assembly again called upon States to withhold assistance.

15. At the same time, attention has also been drawn to the effect of the policies of *apartheid* of the Government of South Africa on the possibilities of representation for the people of South Africa. In 1964, the Security Council had endorsed and subscribed to the conclusion that "all the people of South Africa should be brought into consultation and should thus be enabled to decide the future of their country at the national level", (see Security Council resolution 191 (1964), para. 5). The Security Council has also recognized "the legitimacy of the struggle of the oppressed people of South Africa in pursuance of their human and political rights as set forth in the Charter of the United Nations and the Universal Declaration of Human Rights" (see Security Council resolutions 282 (1970), third preambular paragraph and 311 (1972), para. 3).

16. The General Assembly, for its part, has on repeated occasions affirmed the legitimacy of the struggle of the oppressed people of South Africa to eliminate, by all means at their disposal, *apartheid* and racial discrimination and to attain majority rule in the country as a whole, based on universal adult suffrage (see General Assembly resolutions 2671 F (XXV), para. 2, 2775 F (XXVI), para. 5 and 2923 E (XXVII), para. 10). In its latest resolution, the General Assembly likewise re-affirmed that "the struggle of the oppressed people of South Africa by all available means for the total eradication of *apartheid* is legitimate and deserves support by the international community" (see General Assembly resolution 3151 G (XXVIII), para. 2).

17. At the same time, and taking into account the disenfranchisement of the majority of the people of South Africa, the General Assembly, at its twenty-fifth, twenty-sixth and twenty-seventh sessions, declined to approve the credentials of the delegation of the Government of South Africa, having on each occasion adopted a resolution which:

> "*Approves* the report of the Credentials Committee, except with regard to the credentials of the representatives of South Africa."[97]

18. Moreover at its twenty-eighth session, the General Assembly, at its 2141st plenary meeting on 5 October 1973, and by a recorded vote of 72 in favour to 37 against, with 13 abstentions, adopted an amendment to the first report of the Credentials Committee reading as follows:

> "The General Assembly rejects the credentials of the representatives of South Africa."

[97] See General Assembly resolutions 2636 (XXV) of 14 December 1970, 2862 (XXVI) of 20 December 1971 and 2948 (XXVII) of 8 December 1972.

19. These decisions of the General Assembly disapproving or rejecting the credentials of the representatives of South Africa were construed by successive Presidents of the General Assembly not to have the effect of suspending South Africa from the exercise of the rights and privileges of membership. Thus, following the decision taken at the twenty-eighth session (at the 2141st meeting), rejecting the credentials of the representatives of South Africa, the President of the General Assembly stated, *inter alia*,:

> ". . . I have come to the same conclusion reached by my predecessors the Presidents of the twenty-fifth and twenty-sixth sessions of the General Assembly. Since it is not held that the credentials of South Africa are not in keeping with the terms of rule 27 of the rules of procedure, the vote that has just taken place is tantamount to a vehement condemnation of the policies followed by the Government of South Africa. It is a new solemn warning to that Government but, apart from that, it does not affect the rights and privileges of South Africa as a Member of the Organization, including the right of the delegation of South Africa to participate in this General Assembly."[98]

20. Before adopting its resolution 3151 (XXVIII), the General Assembly had considered the report of the Special Committee on *Apartheid* to the twenty-eighth session.[99] Paragraphs 229 and 230 of that report read as follows:

> "229. The Special Committee, therefore, recommends that the General Assembly continue to decline to accept the credentials of the representatives of the South African régime. That régime has no claim to represent the people of South Africa: it has, in fact, prevented the participation of the genuine representatives of the South African people in the Government and in international organizations. The Assembly should call on all specialized agencies and intergovernmental agencies to deny membership or privileges of membership to the South African régime, and to report to the next session of the General Assembly on the action taken by them.
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> "230. On the other hand, the General Assembly should authorize the Special Committee to invite, in consultation with OAU, the representatives of the liberation movement of the South African people to participate in its meetings. It should also request the specialized agencies of the United Nations to take similar action."

21. In the light of the findings and principles referred to in the foregoing, General Assembly resolution 3151 G (XXVIII) proceeded to state the following in its operative paragraphs 11 and 13:

> "*The General Assembly*,
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> ". . .
>
> "11. *Declares* that the South African régime has no right to represent the people of South Africa and that the liberation movements recognized by the Organization of African Unity are the authentic representatives of the overwhelming majority of the South African people;
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> ". . .
>
> "13. *Requests* all specialized agencies and other intergovernmental organizations to deny membership or privileges of membership to the South African régime and to invite, in consultation with the Organization of African Unity, representatives of the liberation movements of the South African people recognized by the Organization of African Unity to participate in their meetings;".

22. From the conclusion (stated in operative paragraph 11 quoted above) that the South African régime has no right to represent the people of South Africa, it seems logically to follow that this régime should not be recognized in intergovernmental organizations as having a right which it does not, in fact, have. Accordingly, in as much as it would be inconsistent with this conclusion for the South African régime to exercise the rights and privileges of membership of

[98] A/PV.2141, p. 37.

[99] *Ibid., Supplement No. 22* (A/9022).

a specialized agency, the General Assembly requested that such rights and privileges be denied to the South African régime.

23. The specific methods and possibilities for giving effect to this request would depend upon the constitutional instruments of each organization or agency, and in particular, no doubt, on those provisions governing membership, suspension or expulsion, and the conditions which govern more specifically the exercise of the rights, privileges and obligations of membership.

24. In the case of the United Nations, it may be recalled that membership in the Organization attaches to a State and not to a government régime, and, following the rejection of the credentials of the South African representatives in the manner described in paragraphs 17 to 19 above, United Nations action has not thus far been taken in respect of South Africa under the provisions of Articles 5 or 6 of the Charter, providing for suspension or expulsion. These factors, however, arise in the particular context of the United Nations and its constitutional instruments and structure, which differ in a number of respects from those of the specialized agencies.

25. There would appear to be no statements or documents recorded at the twenty-eighth session of the General Assembly, other than document A/9022 cited in paragraph 20 above, which could provide more specific clarification, or a basis for an analytical interpretation of paragraph 13 of General Assembly resolution 3151 G (XXVIII). However, in the light of the background summarized in the foregoing, it would be our understanding that, by adopting the request to specialized agencies contained in this paragraph, the General Assembly expressed the desire that the specialized agencies, acting under their separate and differing constitutional instruments and procedures, would be able to comply with this request.

Conclusion

26. In conclusion, therefore, it would appear that the two requests to specialized agencies referred to in your inquiry differ in several respects. In the first place, the action requested is not the same in the two cases, and neither are the procedural steps required to give them effect. At the same time, they differ in the contexts in which they were made and in the immediate and specific objectives which they were designed to serve. It would nevertheless appear that the effect of these two requests, to the extent that they are both complied with, would to at least some extent merge, in so far as a denial of the rights and privileges of membership to the South African régime could in itself preclude the granting of assistance or support to the Government of South Africa.

22 March 1974

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22. IMMUNITY OF UNITED NATIONS OFFICIALS FROM LEGAL PROCESS IN RESPECT OF WORDS SPOKEN OR WRITTEN AND ALL ACTS PERFORMED BY THEM IN THEIR OFFICIAL CAPACITY—SECTIONS 18 AND 20 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Memorandum to the Director, Greeting Card Operation, United Nations Children's Fund

1. You have asked what advice should be given to a UNICEF staff member who informed you that she might be asked to appear as a witness before a tribunal of a Member State. We note that it is in her capacity as a UNICEF officer concerned with greeting cards that the staff member knew the person about whom she would be called upon to testify.

2. Under Section 18 of the Convention on the Privileges and Immunities of the United Nations, United Nations officials are "immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity". This means that the staff

member concerned may not be compelled to appear and indeed should not appear as a witness without specific authorization.

3. On the other hand, Section 20 of the Convention provides that "The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and be waived without prejudice to the interests of the United Nations". If this evidence is important to the case, it is entirely possible that permission would be granted for her to appear. However, such appearance would require specific authorization.

4. The staff member concerned may give a written statement on the understanding that it does not result therefore that she would appear in any proceedings. Her statement should be restricted to plain facts as she herself recalls them or can check on the records.

17 May 1974

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23. EXTENT OF THE IMMUNITY FROM LOCAL PROSECUTION ENJOYED BY UNITED NATIONS OFFICIALS UNDER EXISTING INTERNATIONAL AGREEMENTS

Letter to the Assistant to the Secretary-General of an international organization

The question with which you are concerned is whether an internationally recruited staff member having committed a serious offence within the country of his duty station could be prosecuted and punished under the law of the country to whose territory he is returned.

As concerns United Nations staff below the Assistant Secretary-General level, whether internationally or locally recruited and whether or not "seconded" from government service, their immunity under the Convention on the Privileges and Immunities of the United Nations is limited to acts committed in the course of their official duties. A staff member would have no special immunity from local prosecution for a criminal offence by virtue of his United Nations employment. Whether or not he was prosecuted would not be a matter of direct concern to the United Nations although the Organization would intervene to ascertain whether in fact his official functions were involved and to offer such general assistance and good offices as the particular situation required, e.g. obtaining counsel, advising family and officials of his own government, etc. Appropriate disciplinary measures under the Staff Regulations and Rules of the United Nations would be considered independently of the action of either the local government or his home government. There have in fact been cases of arrest and prosecution of internationally recruited staff in the country of their duty station. In some instances their return to their home country after conviction or even prior to prosecution was arranged but without United Nations intervention.

Apart from those holding the rank of Assistant Secretary-General or above, United Nations officials do not have "diplomatic" status under the Convention on the Privileges and Immunities of the United Nations. However in some countries where United Nations offices are maintained, senior United Nations staff below that level are by special agreement accorded diplomatic privileges and immunities. In adddition, under the Headquarters Agreements between host governments and the United Nations for the economic commissions all officials are immune from "personal arrest or detention". Nonetheless, we have had, so far as I know, no occasion to consider the problem of jurisdiction over offences committed by such staff.

Of course, immunity granted to officials is justified in terms of the effective functioning of the Organization. Under section 20 of the Convention on the Privileges and Immunities of the United Nations, it would always be incumbent on the Secretary-General to waive the immunity from arrest or prosecution in any case "where in his opinion the immunity would impede the course of justice and can be waived without prejudice to the interest of the United Nations".

1 April 1974

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24. PUBLICATION OF AN ARTICLE PREPARED BY A FORMER STAFF MEMBER WHILE STILL IN THE SERVICE OF THE UNITED NATIONS—OBLIGATIONS DERIVING IN THIS REGARD FROM STAFF REGULATION 1.5

Letter to a former staff member

We have received your letter of 17 October 1974 requesting a legal opinion concerning the publication of an article prepared by you while you were still in the service of the United Nations and to which you made certain additions after you had left the service. You explain that some of these additions are objected to by your former Division.

The United Nations exercises strict control over publications by its staff members, who, under Staff Rule 101.6 (*e*), cannot submit for publication articles, books or other materials relating to the purpose, activities or interests of the United Nations without the prior approval of the Secretary-General. The criteria for such approval are stated in the Staff Regulations, in particular in Regulation 1.4, which refers to the need for international civil servants to avoid any action or public pronouncement which may adversely reflect on their status and to the reserve and tact incumbent upon them by reason of their international status (thus making clear that purely diplomatic considerations could be involved), and in Regulation 1.5, which refers to the need to protect information known to staff members by reason of their official position which has not been made public.

When a staff member leaves the service of the United Nations, however, Staff Regulation 1.4 ceases to apply to him, and the only obligation which continues to apply in regard to publication is Staff Regulation 1.5, which reads as follows:

> "Staff members shall exercise the utmost discretion in regard to all matters of official business. They shall not communicate to any person any information known to them by reason of their official position which has not been made public, except in the course of their duties or by authorization of the Secretary-General. Nor shall they at any time use such information to private advantage. These obligations do not cease upon separation from the Secretariat."

That is to say that, when a staff member ceases to have that status, he will still have to seek and obtain the authorization of the Secretary-General if he wishes to publish any information known to him by reason of his official duties, which has not already been made public, but the Secretary-General's permission to publish is not otherwise required, since Staff Rule 101.6 (*e*) no longer applies.

We are not fully informed about the nature of your latest additions to your article, and hence cannot judge whether any problem of confidential information is involved. There would seem to be no such problem, however, if the information was known to you otherwise than by reason of your official duties, or if you obtained it from statements in published documents or official records.

The statements you have added to your article may be matters of opinion with which your former Division does not agree, or matters of fact that your duty of reserve and tact would have prevented you from publishing while you were still an international civil servant. In either case, the Secretariat would be entitled to expect that a foot-note reference—in the form commonly used in publications by persons who have, or have had, an official status—be appended to your name, to the effect that the views expressed herein are those of the author and do not necessarily represent the views of the United Nations Secretariat or of the Division concerned. The Secretariat would also be entitled to use any right of reply which might be available to it.

While the Secretariat is entitled to ask that it be made explicit that the views expressed are yours and not necessarily those of your former Division, the fact of your former position is part of your bibliographical data, as much as your date of birth or university degrees, and can be published without any need for approval on behalf of the United Nations.

23 October 1974

25. POSITION OF THE SECRETARY-GENERAL WITH RESPECT TO THE DISCHARGE OF ADMINISTRATIVE AND DEPOSITARY FUNCTIONS IN RELATION TO TREATIES CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS

Cable to the Legal Liaison Officer, Geneva Office of the United Nations

All treaties concluded under United Nations auspices should be worded to confer depositary or administrative functions on the Secretary-General only and not on any subordinate official because the United Nations Charter centralizes the authority and responsibility for Secretariat actions in the Secretary-General. It is for him to decide which subordinate official will in fact perform functions on his behalf. He has assigned all depositary functions to the Office of Legal Affairs because of the extreme importance that those functions be performed in legally correct and absolutely consistent manner, and that all information on United Nations treaties be available in and published by one office. The custody of the originals of amendments to treaties is a characteristic depositary function, and so is the circulation of certified true copies of them since only the custodian of the original can certify copies on behalf of the Secretary-General.

29 August 1974

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26. FORMAL ASPECTS OF THE FORMULATION AND WITHDRAWAL OF RESERVATIONS TO MULTILATERAL TREATIES IN RESPECT OF WHICH THE SECRETARY-GENERAL PERFORMS DEPOSITARY FUNCTIONS

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

I refer to your letter of 4 June 1974 in which you mention that the Government of your country are about to withdraw some reservations made in respect of the Convention on the Political Rights of Women of 31 March 1953[100] and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 10 December 1962.[101] You have enquired about the form in which the notifications of withdrawal should be made.

In this connexion, reference is made to the following paragraph from the report of the Secretary-General entitled "Depositary practice in relation to reservations":

> "Reservations made at the time of ratification or accession are included in the text of the instrument transmitted by the State concerned or in a document accompanying the instrument and emanate either from the Head of State or Government, or from the Minister for Foreign Affairs. They are sometimes formulated by the duly accredited Permanent Representative to the United Nations of the State concerned, acting under instructions from his Government."[102]

In our view, the first sentence formulates the general rule, and the second sentence the exceptional cases. As a general principle, similar considerations would seem to apply to the withdrawal of reservations as apply to their formulation and the instruments of withdrawal should emanate from the State authorities competent to take treaty actions on the international plane.

It is true that, on several occasions, there has been a tendency in the Secretary-General's depositary practice, with a view to a broader application of treaties, to receive in deposit withdrawals of reservations made in the form of notes verbales or letters from the Permanent

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[100] United Nations, *Treaty Series*, vol. 193, p. 135.

[101] *Ibid.*, vol. 521, p. 231.

[102] Document A/5687, para. 19.

Representative to the United Nations. It was considered that the Permanent Representative duly accredited with the United Nations and acting upon instructions from his Government, by virtue of his functions and without having to produce full powers, had been authorized to do so.

In this regard, the Vienna Convention on the Law of Treaties does not contain any reference as to the form of notifications of withdrawals, nor, to our recollection, has that point been directly dealt with either by the Vienna Conference on the Law of Treaties or the International Law Commission when preparing the draft articles on the law of treaties. A general indication, however, may be derived from article 2, paragraph 1 (*c*) of the Vienna Convention which defines "full powers" as "a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty. . . or for accomplishing any other act with respect to a treaty." Clearly the withdrawal of a reservation constitutes an important treaty action and one of those for which the production of full powers should certainly be contemplated. It would appear only logical to apply to a notification of withdrawal of reservations the same standard as to the formulation of reservations since the withdrawal would entail as much change in the application of the treaty concerned as the original reservations.

Our views, therefore, are that the withdrawal of reservations should *in principle* be notified to the Secretary-General either by the Head of State or Government or the Minister for Foreign Affairs, or by an official authorized by one of those authorities. While such a high level of procedure may prove somewhat burdensome, the fundamental safeguard which it provides to all concerned in regard to the validity of the notification more than make up for the resulting inconvenience.

11 July 1974

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27. CONVENTION ON A CODE OF CONDUCT FOR LINER CONFERENCES—PRACTICE FOLLOWED BY THE SECRETARY-GENERAL WITH RESPECT TO RESERVATIONS TO A MULTILATERAL TREATY IN THE ABSENCE OF ANY PROVISION IN THE TREATY RELATING TO THE ACCEPTANCE OF RESERVATIONS

Letter to a private individual

You inquired whether governments can sign and ratify the Convention on a Code of Conduct for Liner Conferences[103] with reservations as to (*a*) particular trades and (*b*) particular code provisions. The only provision in the Convention relating to reservations is the following:

"*Article 53*

"(1) The depositary shall notify the signatory and acceding States of:

"...

"(*d*) reservations to the present Convention and the withdrawal of reservations;

"..."

The possibility of making reservations is thus explicitly (although indirectly) recognized by the Convention. Since the Convention does not go beyond this point, and in particular does not specify any procedure as to the acceptance of reservations, the Secretary-General, as the depositary of the Convention, would follow the established practice in that matter, and in particular the instructions of the General Assembly. This means that the Secretary-General

[103] Text in document TD/CODE/11/Rev.1.

would circulate among all States concerned, without attempting to pass judgement on its legal effects, any reservation that might be made upon signature, ratification, etc. It would then be incumbent upon the States concerned to decide to what extent the Convention should be considered as being in force between themselves and the State that made the reservation. Thus, they might decide that the Convention as a whole will not apply between themselves and the reserving State (a rare occurrence), or that it will not apply only to the extent that the provision affected by the reservation is concerned. They may, more typically, refrain from any comment. Finally, it should be noted that ratifications, acceptances, etc., accompanied by reservations are, under the established practice, taken into account for the purpose of computing the initial date of entry into force of the Convention.

5 September 1974

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28. QUESTION WHETHER A STATE WHICH IS A DEPOSITARY FOR A MULTILATERAL AGREEMENT TO WHICH IT IS NOT A PARTY CAN REGISTER SUCH AGREEMENT WITH THE SECRETARIAT—PRACTICE OF THE SECRETARY-GENERAL IN THIS RESPECT

Note verbale to the Permanent Observer of a non-member State

The Secretariat of the United Nations has the honour to refer to the recent request for information from the Office of the Permanent Observer concerning the procedure for registration of a multilateral agreement by a depositary State if it is not itself a party to that agreement.

Having considered the relevant provisions of the regulations of the General Assembly to give effect to Article 102 of the Charter (article 1, paragraph 3, and article 4),[104] as well as the practice concerning those provisions[105] and the recent evolution of international law, as shown, for example, in articles 76 and 80 of the Vienna Convention on the Law of Treaties of 1969,[106] the Secretariat has reached the conclusion that the designation of a depositary in a multilateral agreement can be considered to be equivalent to authorization for the said

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[104] These provisions read as follows:

"Article 1

. . .

"3. Such registration may be effected by any party or in accordance with article 4 of these regulations.

"Article 4

"1. Every treaty or international agreement subject to article 1 of these regulations shall be registered *ex officio* by the United Nations in the following cases:

"(*a*) Where the United Nations is a party to the treaty or agreement;

"(*b*) Where the United Nations has been authorized by the treaty or agreement to effect registration;

"(*c*) Where the United Nations is the depositary of a multilateral treaty or agreement.

"2. A treaty or international agreement subject to article 1 of these regulations may be registered with the Secretariat by a specialized agency in the following cases:

"(*a*) Where the constituent instrument of the specialized agency provides for such registration;

"(*b*) Where the treaty or agreement has been registered with the specialized agency pursuant to the terms of its constituent instrument;

"(*c*) Where the specialized agency has been authorized by the treaty or agreement to effect registration."

[105] See *Repertory of United Nations Practice*, vol. V, Article 102, paras. 69 and 70.

[106] Under the terms of article 76 of the Convention, the depositary may be one or more States, an international organization or the chief administrative officer of the organization.

depositary to register the agreement on behalf of the parties under article 1, paragraph 3, of the regulations.

Consequently, the Secretariat is prepared to register any multilateral agreements which the Government of [name of the non-member State] may wish to transmit to it in its capacity as depositary for the purposes of Article 102 of the Charter.

16 January 1974

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29. PRACTICE OF THE SECRETARIAT WITH RESPECT TO THE REGISTRATION (OR FILING AND RECORDING) OF A MULTILATERAL TREATY BY AN INTERGOVERNMENTAL ORGANIZATION IN ITS CAPACITY AS DEPOSITARY OF THE TREATY

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

1. I refer to your letter of 3 September 1974 concerning the procedure for registration of treaties, under Article 102 of the Charter, by international organizations.

2. Your letter raises two questions, namely:

(1) whether an intergovernmental organization which is the depositary of a multilateral treaty could, although not being a party thereto, submit the treaty for registration (or filing and recording) in the absence of an express provision requiring or authorizing it to do so, and

(2) whether, in the case of a bilateral agreement between an intergovernmental organization and a Member State of the United Nations that agreement, again in the absence of an express provision, could be submitted for registration (or filing or recording) by the organization.

3. The latter question calls for a straightforward affirmative answer. Under article 1, paragraph 3, of the General Assembly Regulations to give effect to Article 102 of the Charter of the United Nations, registration of an international agreement may be effected by any party thereto. Intergovernmental organizations such as the European Economic Community, which are not parties to the Charter, do not, of course, have an obligation to register but they have the option to do so by virtue of their status as a party to the agreement: in fact, hundreds of international agreements have been registered by intergovernmental organizations that were parties thereto—mainly by the International Bank for Reconstruction and Development and the International Development Association.

4. Regarding the first question, namely, whether an intergovernmental organization, such as the OECD, the EEC or the EURATOM, could on the sole basis of its capacity as a depositary register multilateral treaties, the answer is also affirmative. However, the situation, until recently, had not been clear, and some explanations may be useful.

As you know, the General Assembly Regulations to give effect to Article 102 of the Charter do not provide for registration by States or organizations that are not parties to the international agreement considered, except in those special cases contemplated by article 4 (registration *ex officio* by the United Nations and registration by the specialized agencies).

On the other hand, the Sixth Committee of the General Assembly had taken note, at the second and third sessions, of the Secretariat's suggestion that it would be desirable to have

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Article 80 reads as follows:

"*Registration and publication of treaties*

"1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

"2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph."

multilateral agreements registered by the depositary Government rather than by another party, and it had reported accordingly to the General Assembly.[107] The practice so advocated quickly generalized and, in following it, the Secretariat came to accept for registration multilateral agreements submitted by an intergovernmental organization which, in its capacity as depositary, was expressly authorized to effect registration—the reason being that submission by the intergovernmental organization concerned could be considered as being tantamount to registration by the parties themselves.[108] In such cases, the registration records would show that the registration had been effected on behalf of the parties.

Such was the state of affairs when, around December 1973, the Government of a non-Member State indicated that they desired to register a number of international agreements in respect of which the State in question, without being a party, had been entrusted with the functions of depositary.[109] Since this was the first such request from a Government (all previous instances having involved intergovernmental organizations), the Secretariat undertook at that time to review the relevant provisions of the General Assembly Regulations, its own related practice and the recent developments in the field of international law—mainly as they were reflected in articles 76 to 80 of the Vienna Convention on the Law of Treaties. Article 80 of the Convention was found particularly striking since it specifically provided that "the designation of depositary shall constitute authorization for it to perform the acts [relating to registration or filing and recording and publication of treaties]". Although the Convention on the Law of Treaties was not in force, the provision referred to above clearly pointed to the existence of a consensus among governments on considering that the depositary of multilateral agreements could act on behalf of the parties as far as registration was concerned. Accordingly, the Secretariat informed the Government of the non-Member State that it would process international agreements that the latter Government might submit for registration in its capacity as depositary. Submissions by intergovernmental organizations that perform depositary functions in respect of agreements would also be processed on the same basis, even in the absence of express authorization from the parties.

11 September 1974

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30. AGREEMENT ESTABLISHING THE ASIAN RICE TRADE FUND—METHODS OF ALTERING THE EXISTING PROVISIONS OF THE AGREEMENT[110]

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

1. It has been proposed by one of the signatories of the Agreement establishing the Asian Rice Trade Fund that the Fund should be enabled to purchase rice not only from countries members of the Asian Rice Fund but also from any other source. In view of the fact that this would confer a new dimension to the Agreement and that the existing provisions would have to be altered accordingly, the question of the procedure to be applied has been raised.

2. For the purpose of altering the existing provisions, it would be desirable to convene a Conference at Bangkok under the auspices of ECAFE. Such a conference would have the following alternative before it. It could either adopt a protocol amending the present Agreement, that is, an ancillary instrument changing portions of the text, or it could adopt a complete new Agreement. Either course could be followed whether or not the present

[107] *Official Records of the Second Session of the General Assembly, Sixth Committee*, 54th meeting and *ibid., Plenary Meetings*, Annex 19; see also *Official Records of the Third Session of the General Assembly, Part I, Sixth Committee*, 79th meeting and document A/613.

[108] See *Repertory of United Nations Practice*, vol. V, Article 102, paras. 69 and 70.

[109] See sub-section 28 of this chapter

[110] See also *Juridical Yearbook*, 1972, p. 180.

Agreement had entered into force. If the fundamental nature and purpose of the present Agreement are to be changed (as might possibly be the case if the above-mentioned proposal were to be accepted), it would be preferable to make a whole new Agreement.

3. If before the present Agreement enters into force a new conference adopts a whole new Agreement, intended to replace the existing one, and all the signatories of the existing text expressly agree, then the old Agreement could be regarded as a dead letter, and instruments of acceptance of it, should any be presented thereafter, would not be received in deposit by the depositary. If the present Agreement should have entered into force, then the new Agreement, when in force, would supersede the one as between States parties to both treaties.

4. The only precedent in the United Nations for the amendment of a treaty before it had entered into force is the International Agreement on Olive Oil, 1956, which was amended by a Protocol done at Geneva on 3 April 1958;[111] that Protocol was adopted by the Olive Oil Conference held in 1958. In that case, the amendments made in the text were of a quite minor and technical character, and no fundamental revision of the Agreement was undertaken.

5. If a new conference is held to revise or replace the Agreement establishing the Asian Rice Trade Fund, it would seem desirable to invite not only the signatories of that Agreement but also all the States entitled to become parties thereto on an equal footing. This was done in the case of the Olive Oil Conference of 1958, referred to in the preceding paragraph. In the normal course, all States entitled to become parties to the existing Agreement would also be entitled to become parties to the Agreement as amended (see article 40, paragraph 3 of the Vienna Convention on the Law of Treaties[112]), and in that case it would be useful to ask them to participate in the conference so that they can express their views about the text.

23 May 1974

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31. International Sugar Agreement, 1973—Authorities competent to sign the relevant instrument of ratification or effect approval of the Agreement

Note verbale to the Permanent Representative of a Member State

The Secretary-General of the United Nations has the honour to confirm the receipt on 26 December 1973 of the note of the same date notifying him that the Government of [name of the Member State concerned] has, in accordance with the relevant constitutional procedures, approved the International Sugar Agreement, 1973, subject to the declaration reproduced in the said note.

Article 33 of the International Sugar Agreement provides as follows:

"*Article 33*

"*Ratification*

"The Agreement shall be subject to ratification, acceptance or approval by the signatory Governments in accordance with their respective constitutional procedures. Except as provided in Article 34, instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations not later than 31 December 1973."

Under established international practice which the Secretary-General feels obliged to follow, instruments of ratification should be signed by the Head of State or Government or by

[111] United Nations, *Treaty Series*, vol. 302, p. 121. For the text of the International Agreement on Olive Oil, 1956, as amended by the Protocol of 3 April 1958, see *ibid.*, vol. 336, p. 177.

[112] This paragraph reads as follows:

"3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended."

the Minister for Foreign Affairs, or by a person to whom appropriate full powers have been issued by one of the aforementioned authorities.[113] This practice is reflected in article 7 of the Vienna Convention on the Law of Treaties,[114] a provision which, as it was adopted at the Vienna Conference without any negative votes, can be taken as being accepted as law.

It is therefore assumed that the Government of [name of the Member State concerned] will forward by 15 October 1974, in accordance with article 34, paragraph 1, of the Agreement,[115] its formal instrument of approval of the International Sugar Agreement, 1973. Alternatively, it might prefer to send full powers authorizing its Permanent Representative to the United Nations either to effect approval of the Agreement subject to the declarations contained in the note of 26 December 1973, or to approve treaties in general.

Upon receipt of a formal document, the deposit of the instrument will be effected, and all States concerned will be informed thereof. Meanwhile, the note referred to above is considered to be a notification of provisional application for the purpose of article 35 of the Agreement.[116]

All States concerned have already been informed accordingly.

21 February 1974

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[113] See *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements* (ST/LEG/7), paras. 37 *et seq.*

[114] This article reads as follows:

"*Full powers*

"1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

"(*a*) he produces appropriate full powers; or

"(*b*) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

"2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

"(*a*) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

"(*b*) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;

"(*c*) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ."

[115] Article 34, paragraph 1, of the Agreement reads as follows:

"*Notification by Governments*

"1. If a signatory Government is unable to comply with the requirements of Article 33 within the time-limit specified in that Article, it may notify the Secretary-General of the United Nations, not later than 31 December 1973, that it is undertaking to seek ratification, acceptance or approval in accordance with the constitutional procedures required, as rapidly as possible and in any case not later than 15 October 1974. Any Government for which conditions of accession have been established by the Council in agreement with that Government may also notify the Secretary-General of the United Nations that it is undertaking to satisfy the constitutional procedures required to accede to the Agreement as rapidly as possible and at least within a six-month period of such conditions being established.

". . ."

[116] Article 35 of the Agreement reads as follows:

"*Indication to apply the Agreement provisionally*

"1. Any Government which gives a notification pursuant to Article 34 may also indicate in its notification, or at any time thereafter, that it will apply the Agreement provisionally.

32. Procedure for extending the International Coffee Agreement, 1968, as extended

Letter to the Executive Director, International Coffee Organization

I am replying to your letter of 9 August 1974, inquiring about the procedure for a further extension of the International Coffee Agreement, 1968, as extended.

The first extension of the 1968 Agreement[117] was made pursuant to article 69 (2) of that Agreement.[118] That paragraph, however, was deleted from the Agreement as extended, and hence the procedure it provided for is no longer available. That procedure for extension, while it could quite properly be agreed to by the parties to the original Agreement, is not a part of the customary international law relating to treaties, and hence can be used only to extend a treaty which contains an express provision permitting it.

The extension of the duration of a treaty by means of a protocol is, however, a procedure which is well established in customary law and is not infrequently resorted to in practice. There would therefore be no legal difficulty if the Council chooses to approve an extending protocol rather than a complete new Agreement.

A protocol which extends the duration of a treaty beyond what was originally provided would seem to fall within the meaning of the expression "new Agreement" in article 69, paragraph 4, of the Agreement as extended.[119] The special majority provided in that paragraph would therefore be necessary for the adoption by the Council of an extending protocol.[120]

28 August 1974

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33. Status of Dominica, St. Lucia and St. Vincent, dependent territories of the United Kingdom, in respect of the International Cocoa Agreement, 1972

Letter to the Executive Director, International Cocoa Organization

I acknowledge receipt of your letter of 24 September 1974, concerning the status of Dominica, St. Lucia and St. Vincent in respect of the International Cocoa Agreement, 1972.[121]

You have noted that all three of the territories in question are listed in Annex C of the Agreement as exporting countries producing exclusively fine or flavour cocoa, while the United Kingdom is listed in Annex D as an importer. The United Kingdom, in extending the application of the Agreement to the three territories, has notified that St. Lucia will become a

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"2. During any period the Agreement is in force, either provisionally or definitively, a Government indicating that it will apply the Agreement provisionally shall be a provisional Member of the Organization until it deposits its instrument of ratification, acceptance, approval or accession, and thus becomes a Contracting Party to the Agreement, or the time limit for the deposit of its instrument in accordance with Article 34 has elapsed, whichever is earlier."

[117] See *Juridical Yearbook*, 1971, p. 174 *et seq.*

[118] The relevant provision reads as follows:

"(2) The Council after 30 September 1972 may, by a vote of the majority of the Members being not less than a distributed two-thirds majority of the total votes, either renegotiate the Agreement or extend it, with or without modification, for such a period as the Council shall determine . . ."

[119] The relevant provision reads as follows:

"(4) The Council may, by a vote of 58 percent of the Members having not less than a distributed majority of 70 percent of the total votes, negotiate a new Agreement for such period as the Council shall determine."

[120] During its twenty-fifth session held in London from 16 to 27 September 1974, the International Coffee Council approved by resolution No. 273 of 26 September 1974, a Protocol for the continuation in force, until 30 September 1976, of the International Coffee Agreement, 1968, as extended with modification.

[121] United Nations, *Treaty Series*, vol. 882.

separate member of the Organization, but Dominica and St. Vincent will not do so. These notifications are made by the United Kingdom, which ratified the Agreement on 2 August 1973, in the exercise of its rights under Article 70 and Article 3 of the Agreement.

The International Cocoa Agreement, 1972, follows in general the pattern of commodity agreements in regard to dependent territories which has existed in its present form since the International Coffee Agreement, 1962. That pattern involves dealing separately with several related, but quite distinct, problems. These problems are:

(i) *Participation in the Agreement.* The actions to become, provisionally or definitively, party to a commodity agreement must obviously be taken by the State, since dependent territories have no capacity to bind themselves by treaties on the international plane.

(ii) *Territorial application of the Agreement.* The tradition of commodity agreements has been to provide in effect that the agreements do not apply to any dependent territories until their extension to such territories is notified by the State having ultimate responsibility for their international relations. Unless such notifications are made, the agreements apply only to the metropolitan territory of the country in question. This tradition is followed in Article 70 of the Cocoa Agreement.

(iii) *Membership in the Organization.* Once a State is party to an agreement and has extended its application to one or more of its dependent territories, the question arises, in case the metropolitan territory and dependent territory are in opposite categories with respect to importation and exportation, of the manner in which the different territories will participate in the operation of the agreement. The 1948 Havana Charter of the International Trade Organization,[122] from which the efforts of the United Nations in the field of commodity agreements ultimately stem, already envisaged in article 69 that a State which wished to do so could arrange for separate representation of its dependent territories which stand in a different position from itself in regard to trade in the commodity in question; but any such arrangements were left entirely to the decision of the State concerned, which has thus the option of deciding whether to treat all its territories as a single unit for the purposes of the agreement, or to arrange for separate representation of some of them which are in a different trade category. This system is followed in Article 3 and Article 70, paragraph 2, of the Cocoa Agreement.

(iv) *Voting in the Council and representation in the Executive Committee.* Only the members of the Organization have votes, which under Article 11 of the Cocoa Agreement they may, if they so desire, arrange to have cast by another member in the same category regarding exportation or importation. Likewise only members of the Organization participate in the election of the Executive Committee under Article 16. If a dependent territory is not a separate member, it obviously has no votes and does not participate separately in the election of the Committee.

The fact that a dependent territory is actually an exporter and is even mentioned as such in an Annex of the Cocoa Agreement, may or may not have any legal effect with regard to the operation of the Organization, depending upon what actions are taken by the State ultimately responsible for the international relations of that territory. If the State, though it has become a party, does not extend the application of the Agreement to that territory, it likewise remains outside the scope of the Organization. Even if a State party has extended the Agreement to the territory, and the Agreement thus applies there, the territory has no separate status or voting rights in the Organization unless the State makes a notification that the territory is a separate member; if that is done, the territory acquires voting rights and all the other rights and duties of membership in the category in which it is listed in the Annex, but it cannot do so under any other circumstances.

Article 3 of the Cocoa Agreement allows wide latitude to the Contracting Parties (i.e. States) in regard to arrangements concerning their dependent territories. The rights of a Party under that article may be exercised "if any Contracting Party, including the territories for

[122] *United Nations Conference on Trade and Development*, Final Act and Related Documents (E/CONF.48/78 and Corr.1 and 2, United Nations publication, Sales No. 1948.II.D.4).

whose international relations it is for the time being ultimately responsible and to which this Agreement is extended in accordance with paragraph (1) of Article 70, consists of one or more units that would individually constitute an exporting member and one or more units that would individually constitute an importing member". The word "units" is not a precise one; while "territories" may in some contexts perhaps be given a definite legal meaning, it is much harder to do the same with "units". The United Kingdom has determined that the metropolitan country plus Dominica and St. Vincent constitute one "unit" which is an importing member (and, incidentally, also a "producing member" under article 2 (*p*)), and that St. Lucia, which is an exporting member, constitutes another "unit". Obviously the exports of flavour cocoa from Dominica and St. Vincent are not sufficient to outweigh the imports of the metropolitan United Kingdom and change the category of that "unit" with respect to the cocoa trade. In case of a dispute, the Council is competent to decide the issue, in accordance with Article 61 of the Agreement; but we are not aware of any legal basis upon which the division by the United Kingdom of its territories into "units" for the purposes of the Cocoa Agreement could successfully be challenged in such a proceeding.

18 October 1974

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

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

QUESTION WHETHER STAFF RULE 302.40643 IS CONSISTENT WITH ARTICLE VIII.3 OF THE FAO CONSTITUTION

Opinion prepared by the Legal Counsel at the request of the Committee of the Whole of the FAO Council[123]

. . .

3. In accordance with Staff Rule 302.40643, the principle of recruitment of staff on as wide a geographical basis as possible is not applicable to the General Service category.

4. The Representative of the Philippines is of the opinion that this Staff Rule is incompatible with Article VIII.3 of the Constitution, and also with Rule XXXVIII.1 of the General Rules of the Organization and Staff Regulation 301.042.[124]

5. At the outset it should be recalled that the Constitution, as a treaty to which all Members of FAO are parties, is the supreme law of the Organization, and therefore any subsidiary legislation enacted by FAO organs or authorities must be consistent with the Constitution. The various categories of relevant subsidiary legislation may be classified according to the following hierarchical order:

(i) The General Rules of the Organization, adopted by the FAO Conference in accordance with Article IV-2 of the Constitution;

(ii) The Staff Regulations, promulgated by the Director-General with the approval of the Council, as provided in Rule XXXVIII.3 of the General Rules of the Organization;

(iii) The Staff Rules, enacted by the Director-General in accordance with Staff Regulation 301.00.

6. It is clear, therefore, that any Staff Rule enacted by the Director-General must be consistent with the Staff Regulations, the General Rules and ultimately the Constitution.

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[123] Circulated as document CL 64/LIM/6.

[124] See Annex 1 to this opinion.

7. The principal provisions, directly relevant to the question under consideration, are:

Staff Rule 302.40643

"The provisions of Staff Regulation 301.042 concerning recruitment of staff on as wide a geographical basis as possible shall not apply to the recruitment of staff in the General Service category."

Staff Regulation 301.042

"The paramount consideration in the appointment, transfer, or promotion of the staff shall be the necessity for securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible."

Rule XXXVIII.1 of the General Rules of the Organization

"The staff of the Organization shall be appointed by the Director-General, having regard to paragraph 3 of Article VIII of the Constitution. . . ."

Article VIII.3 of the Constitution

"In appointing the staff, the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of selecting personnel recruited on as wide a geographical basis as is possible."

8. It should now be considered whether it was permissible for the Director-General to exclude, in Staff Rule 302.40643, the General Service category from the application of the principle of recruitment "on as wide a geographical basis as is possible".

9. As regards the literal meaning of Article VIII.3 of the Constitution (and the similar expression used in Staff Regulation 301.042), it should be observed that the Director-General was directed to "pay due regard" to the importance of selecting personnel on as wide a geographical basis as is possible. Thus the Constitution did not require that the Director-General should, in all cases and for all categories, apply the principle of geographical distribution, but instead directed him to pay due regard to that principle.

10. Thus, in the application of that principle to the FAO staff, the Director-General was given certain discretionary powers, which, according to a generally accepted rule of public law, must be exercised reasonably, and not in a capricious or arbitrary manner.

11. A brief survey of the circumstances relating to the adoption of the policy at present laid down in Staff Rule 302.40643 will show that such policy has met the standards indicated in the preceding paragraph.

12. The Sixth Session (November 1951) of the FAO Conference, by resolution No. 65/51, decided to adopt the United Nations Salary, Allowance and Leave System for FAO, "recognizing the desirability of uniformity with respect to such matters in the United Nations and the Specialized Agencies". The system came into effect from 1 January 1952.

13. As was explained in FAO Administrative Memorandum No. 313 of 30 July 1951, "One of the principal features of the new salaries and allowances plan of the United Nations is the separation of all posts into two general groups, one comprising posts to be filled by international recruitment (Professional and Principal Officer Categories), and the other comprising posts which can best be filled by recruiting from the immediate area in which the duty station is located (General Service Category)."

14. A corollary of the policy of recruiting locally the General Service staff is that the principle of geographical distribution cannot apply to this category.

15. The practice of excluding certain categories from the principle of geographical distribution has been applied in the United Nations since its early days. In addition to the General Service category, other categories excluded are the professional posts with language requirements and the manual workers.[125]

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[125] Repertory of United Nations Practice, vol. V, Article 101, para. 32.

16. Perhaps the most comprehensive explanation of the reasons for the adoption of this United Nations policy is to be found in the Report of the Committee of Experts on Salary, Allowance and Leave Systems (generally known as the Flemming Report), submitted to the Fourth Session of the General Assembly in 1949. Paragraph 75 of the Flemming Report reads:

> "The Committee realizes it might be argued that the local recruitment policy it is advocating is not fully consistent with the principle of wide geographic distribution as stated in the Charter. It does not believe, however, it was ever the intention of the General Assembly to insist upon this principle being applied to an unreasonable extent. Its application to the entire staff of an international organization would be enormously expensive and in the Committee's opinion would not result in any corresponding contribution to the essential purpose which the General Assembly had in mind of ensuring that the Secretariat is adequately representative of national cultures and experience, particularly at what might be very broadly regarded as the professional and policy-making levels. Accordingly, it considers that the desirability of broad geographic distribution of staff on the one hand, and the importance of prudent and economical administration on the other, can be properly reconciled by grouping staff for salary purposes on a basis of those recruited internationally and paid in accordance with an international salary scale subject to adjustment where appropriate by a salary differential, and those whose recruitment for practical and budgetary reasons should be restricted as far as possible to the local area where the United Nations activity is situated, and who should therefore be paid in accordance with local prevailing rates."[126]

17. The same considerations apply, of course, to the policy followed by FAO in this respect.

18. It is important to point out that the Charter of the United Nations contains a provision practically identical to that of Article VIII.3 of the FAO Constitution. Article 101.3 of the Charter reads:

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

19. The similar provisions of the United Nations Charter and the FAO Constitution have been consistently interpreted as permitting the exclusion of certain categories, in particular the General Service category, from the application of the principle of geographical distribution. The Governing Bodies of the United Nations and FAO have been aware of this practice and have repeatedly endorsed it, directly or indirectly. For example, the General Assembly has "Noted with appreciation"[127] the information submitted to it under the title "Staff in professional and higher level posts subject to geographical distribution as of 31 August 1968".[128] Similarly, the FAO practice has been repeatedly endorsed by the Conference and Council, as shown in Annexes II and III.

20. In summary:

(1) Article VIII.3 of the FAO Constitution does not prescribe that the principle of geographical distribution must be applied to all categories of FAO staff;

(2) In enacting Staff Rules 302.40643 by which the General Service category was excluded, the Director-General acted reasonably, and not in a capricious or arbitrary manner as shown by the fact that:

(i) the exclusion was in conformity with the common system of United Nations organizations;

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[126] *Official Records of the Fourth Session of the General Assembly, Fifth Committee*, Annex to the Summary Records of Meetings, vol. II, agenda item 39, document A/C.5/331 and Corr.1.

[127] General Assembly resolution 2480 (XXIII) of 21 December 1968.

[128] Document A/7334, p. 53.

(ii) there were sound and reasonable grounds for adopting the policy laid down in Staff Rule 302.40643.

(3) The FAO Conference and Council have long been aware of this policy and have repeatedly endorsed it, directly or indirectly.

21. It is concluded therefore that Staff Rule 302.40643 is compatible with Article VIII.3 of the Constitution, as well as with Rule XXXVIII.1 of the General Rules of the Organization and Staff Regulation 301.042.

ANNEX I

Statement by the Representative of the Philippines at the Second Meeting of the Committee-of-the-Whole

Mr. Chairman:

On the topic of "other matters" in item 27 (*d*) of the agenda, my delegation would like to submit for the consideration of the Council a proposal.

Our proposal is to abrogate Staff Rule 302.40643. This Rule reads thus, "The provisions of Staff Regulation 301.042 concerning recruitment of staff on as wide a geographical basis as possible shall not apply to the recruitment of staff in the General Service category."

Our reasons for making this proposal are: first, the Staff Rule referred to is unconstitutional and, second, it is discriminatory to most member States of FAO.

In FAO there are four categories of rules governing the appointment of its staff, namely: the Constitution, the General Rules, the Staff Regulations and the Staff Rules. As we all know, the Constitution is the highest authority among them. The General Rules rank second, the Staff Regulations rank third and the Staff Rules come last. Now, Art. VIII, par. 3 of the FAO Constitution expressly directs that in appointing the staff, the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of selecting personnel recruited on as wide a geographical basis as is possible." Rule XXXVIII of the FAO General Rules requires that the staff of FAO be appointed in accordance with the above constitutional provision. To implement these two legal provisions, Staff Regulation 301.042 provides that "due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible."

Mr. Chairman, Staff Rules are issued on the authority of the Director-General alone. They cannot validly contravene a constitutional provision. We do not think there can be two opinions on this proposition.

Art. VIII of the Constitution has set down a policy which the Director-General cannot override because he is not above the Constitution. Yet since 1951 the rule under reference has remained in the Staff Rules of the Organization and was being invoked by management as justification for limiting recruitment of FAO personnel in the General Service category to nationals of the host country and other neighboring States since 1951. No wonder, Mr. Chairman, if we look at Appendix D of the report of the 32nd Session of the Finance Committee, we find that out of 2036 positions in the General Service category, only 15 come from Latin America, 2 from Africa and from only one country of said region (Tunisia), 2 from the Socialist countries and only 1 from Asia.

Mr. Chairman, what is deplorable about the Staff Rule which I have referred to is that it is not only contrary to the FAO Constitution but above all it is patently discriminatory to most of the member States of FAO which all contribute to the regular budget of the Organization. This Staff Rule is offensive to the dignity and self-respect of the excluded member States of FAO and should not be permitted to remain in the Staff Rules of the Organization.

For the reasons just stated, we propose its abrogation. In case no consensus can be reached in favor of our proposal, we move that a vote on it be taken by roll call voting.

ANNEX II

Extract from Report of 8th Session of Conference—4-25 November 1955

Geographic Distribution of Staff

427. Some delegates, referring to Art. VIII of the Constitution concerning geographic distribution of staff emphasized the necessity for achieving a more suitable representation of certain countries on the

Professional staff, particularly in what were described as the policy making levels, whether in posts charged to the Regular Programme or to Technical Assistance funds. The Conference noted the assurances of the Director-General that the principle of equitable geographic distribution among the Professional staff had always been kept in view, as far as possible, and that it would continue to be taken into account in future recruitment for vacancies.

428. The Conference adopted the following resolution:

Resolution No. 50/55
Geographic Distribution of Staff

The Conference,

Considering that, in accordance with paragraph 3 of Article VIII of the Constitution, the Director-General shall pay "due respect to the importance of selecting personnel recruited on as wide a geographical basis as possible" as well as efficiency and technical competence; Considering that, while it accepts the assurances given by the Director-General as satisfactory, it feels that thus far the provision of the said Article with regard to the geographical basis of the staff has not been fulfilled;

Requests the Director-General to take proper measures to re-establish the necessary equilibrium, bearing the said principle constantly in mind when filling vacancies that may occur in the various categories of professional staff and any new posts that may be established.

ANNEX III

EXTRACT FROM REPORT OF 27TH SESSION OF COUNCIL—31 OCTOBER-1 NOVEMBER 1957

Geographical Distribution of Staff

13. The Council at its Twenty-sixth Session had asked the Director-General to report upon the system to be followed in future in measuring the geographical distribution of the Professional staff of the Organization. This report, as well as information on the present geographical distribution of the Professional staff, was submitted to the Twenty-seventh Session of the Council.

14. The Council again expressed its satisfaction with the progress reported in achieving still more equitable geographical distribution in the staff and commended the Director-General for his report and suggestions. It approved the following broad principles which should in future govern geographical distribution.

Adoption of the weighed or so-called UNESCO system modified to provide that (1) each Member Nation should in so far as practicable be represented by at least one Professional appointment; (2) in general, geographical considerations should not prejudice the promotion of existing Professional staff; (3) the post of the Director-General should not be included in establishing the points of representation.

15. The Council stressed the necessity of ensuring that paramount importance be placed on competence and efficiency in recruitment. Subject only to this paramount consideration due regard should be paid to geographical distribution.

16. The Council also agreed to the proposal of the Director-General to continue advertising Professional vacancies to Member Governments as presently practised, and to implement it by a procedure whereby early each year a list of available vacancies contemplated for that year would be distributed to all Member Governments.

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

[No decision or advisory opinion from international tribunals on questions relating to the United Nations and related intergovernmental organizations to be reported for 1974.]

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

Australia

HIGH COURT OF AUSTRALIA

BRADLEY v. THE COMMONWEALTH OF AUSTRALIA AND ANOTHER: DECISION OF 10 SEPTEMBER 1973[1]

United Nations Charter—Resolutions of the Security Council—Effect in Australia—Charter of the United Nations Act 1945, section 3

The plaintiff, a South African national, was the acting director of the "Rhodesian Information Centre", the purpose of which he described as "the dissemination of factual information about Rhodesia throughout Australia". On 19 April 1973, all mail and telephone services to the Centre were discontinued in pursuance of a direction issued on 18 April 1973 by the Postmaster-General.

In an action brought before the Court, the plaintiff claimed that the defendants had wrongfully and unlawfully discontinued the telephone service and stopped the mails. The Court held that the direction given by the Postmaster-General exceeded his authority and was invalid. It noted that as a means of justifying an exercise of the Court's discretion in the defendant's favour, reliance had been placed upon resolutions of the Security Council [by which the Council had condemned the Unilateral Declaration of Independence and the Proclamation of Republican Status, in Rhodesia, had described the régime in that territory as illegal and had called on all Member States to refrain from recognizing or assisting it], and upon the fact that those resolutions were in their terms addressed to Member States who, by Article 25 of the Charter, had agreed "to accept and carry out the decisions of the Security Council in accordance with the present Charter". However, the Court observed,

> ". . . resolutions of the Security Council neither form part of the law of the Commonwealth nor by their own force confer any power on the Executive Government of the Commonwealth which it would not otherwise possess. The Parliament has passed the *Charter of the United Nations Act* 1945, section 3 of which provides that 'The Charter of the United Nations (a copy of which is set out in the Schedule to this Act) is approved'. That provision does not make the Charter itself binding on individuals within Australia as part of the law of the Commonwealth. In *Chow Hung Ching v. The King* (1948), 77 C.L.R. 449, at p. 478, Dixon J. said: 'A treaty, at all events one which does not terminate a state of war, has no legal effect upon the rights and duties of the subjects of the Crown and speaking generally no power resides in the Crown to compel them to obey the provisions of a treaty: *Walker v. Baird* (1892) A.C. 491', and a similar view was expressed by Latham C.J. in *R. v. Burgess Ex parte Henry* (1936), 55 C.L.R. 608, at p. 644. Although, in those passages, mention is made of British subjects, it is clear since *Johnstone v. Pedlar* (1921) 2 A.C. 262, that an alien, other than an enemy alien, is, while resident in this country, entitled to the protection which the law affords to British subjects. (See also *Nissan v. Attorney-General* (1970) A.C. 179, especially at pp. 211-212, 232-233 and 235.) Section 3

[1] Reported in 47 A.L.J.R., p. 504-519.

of the *Charter of the United Nations Act* 1945 was no doubt an effective provision for the purposes of international law, but it does not reveal any intention to make the Charter binding upon persons within Australia as part of the municipal law of this country, and it does not have that effect. Since the Charter and the resolutions of the Security Council have not been carried into effect within Australia by appropriate legislation, they cannot be relied upon as a justification for executive acts that would otherwise be unjustified, or as grounds for resisting an injunction to restrain an excess of executive power, even if the acts were done with a view to complying with the resolutions of the Security Council. It is therefore unnecessary to consider whether the resolutions of the Security Council, properly construed, would require the Commonwealth as a member nation to take the action that has been taken against the Rhodesia Information Centre.".

Part Four

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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
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C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS
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A. INTERNATIONAL ORGANISATIONS IN GENERAL
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C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS
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Banque mondiale
Всемирный банк
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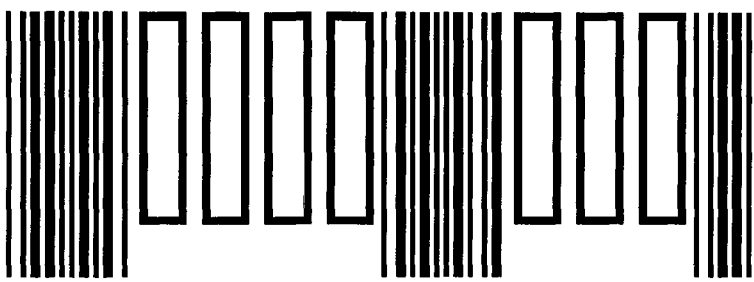

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