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UNITED NATIONS JURIDICAL YEARBOOK 1981

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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 nineteenth 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 1981. Decisions given in 1981 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, which is prepared, under the responsibility of the Office of Legal Affairs, by the Dag Hammarskjöld Library, lists works and articles of a legal character published in 1981 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

FAO	Food and Agriculture Organization of the United Nations
IBRD WORLD BANK	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICSID	International Centre for the Settlement of Investment Disputes
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IMCO	Inter-Governmental Maritime Consultative Organization
IMF	International Monetary Fund
JAB	Joint Appeals Board
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
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
UNITAR	United Nations Institute for Training and Research
UPU	Universal Postal Union
WHO	World Health Organization
WMO	World Meteorological Organization
WTO	World Tourism 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. Australia

INTERNATIONAL ORGANIZATIONS (DECLARATION) REGULATIONS[1]*

I, the Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *International Organizations (Privileges and Immunities) Act* 1963.[2]

Dated 4 November 1981.

ZELMAN COWEN
Governor-General

By his Excellency's Command,

A. A. STREET
Minister of State for Foreign Affairs

Citation

1. These Regulations may be cited as the International Organizations (Declaration) Regulations.

Interpretation

2. In these Regulations, "the Act" means the *International Organizations (Privileges and Immunities) Act* 1963.

International organizations to which the Act applies

3. Each of the organizations specified in the Schedule is declared to be an international organization to which the Act applies.

SCHEDULE

Regulation 3

Food and Agriculture Organization of the United Nations
Inter-Governmental Committee for European Migration
Inter-Governmental Maritime Consultative Organization
International Bank for Reconstruction and Development
International Civil Aviation Organization
International Development Association
International Finance Corporation
International Hydrographic Bureau
International Institute of Refrigeration
International Labour Organization
International Monetary Fund
International Telecommunication Union
International Tin Council

* The notes to each chapter are to be found at the end of that particular chapter.

International Union for the Protection of Industrial Property
International Union for the Protection of Literary and Artistic Works
United Nations
United Nations Educational, Scientific and Cultural Organization
Universal Postal Union
World Health Organization
World Meteorological Organization

2. New Zealand

THE CUSTOMS TARIFF (UNESCO AGREEMENT) AMENDMENT ORDER 1981[3]

David Beattie, Governor-General

Order in Council

At the Government Buildings at Wellington this 19th day of October 1981

Present:

The Right Hon. R. D. Muldoon presiding in Council

Pursuant to section 125 of the Customs Act 1966, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

ORDER

1. *Title and commencement* — (1) This order may be cited as the Customs Tariff (UNESCO Agreement) Amendment Order 1981.

(2) This order shall come into force on the 1st day of December 1981.

2. *Tariff amended* — Part II of the Customs Tariff is hereby amended by revoking reference number 30, and the description and rates of duty to which this number relates, and substituting the reference number, description, and rates of duty specified in the Schedule hereto.

SCHEDULE

PROVISIONS SUBSTITUTED IN PART II OF THE CUSTOMS TARIFF
(Concessions)

Reference Number	*Goods*	*Rates of Duty*	
		Normal Tariff	*Preferential Tariff*
30	Goods for educational, scientific or cultural purposes:		
	(*a*) Goods of classes included in Annex B and Annex C Item (v) of the UNESCO Agreement on the Importation of Educational, Scientific and Cultural Materials[4] when imported by or for educational, scientific, or cultural institutions for their own use	Free	. .
	(*b*) Goods of classes included in Annex A, and Annex B Items (i) and (ii) of the Protocol to the UNESCO Agreement on the Importation of Educational, Scientific and Cultural Materials[5]	Free	. .
	(*c*) Goods of classes included in Annex B Item (iii) and Annexes C.2, D, E, and G of the Protocol to the Unesco Agreement on the Importation of Educational, Scientific and Cultural Materials when imported by or for educational, scientific or cultural institutions	Free	. .

P. G. MILLEN
Clerk of the Executive Council

3. United Kingdom of Great Britain and Northern Ireland

INTERNATIONAL ORGANISATIONS ACT 1981

1981 CHAPTER 9

An Act to make further provision as to the privileges and immunities to be accorded in respect of certain international organisations and in respect of persons connected with such organisations and other persons; and for purposes connected therewith.

[15th April 1981]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: —

1. (1) In section 1 of the 1968 Act[6] (privileges and immunities for international organisations of which the United Kingdom and foreign sovereign Powers are members) —

(*a*) in subsection (1), the following paragraph is substituted for paragraph (*b*) —

"(*b*) any other sovereign Power or the Government of any other sovereign Power,"; and

(*b*) in subsection (6), for the words "one or more other foreign sovereign Powers or Governments" there are substituted the words "any other sovereign Power or Government".

(2) In section 4 of that Act (other organisations of which the United Kingdom is not a member) the word "foreign", in the first place where it occurs, shall cease to have effect.

(3) In section 6 of that Act (international conferences attended by representatives of the United Kingdom and foreign sovereign Powers) —

(*a*) in subsection (1), the following paragraph is substituted for paragraph (*b*) —

"(*b*) of any other sovereign Power or the Government of any other sovereign Power."; and

(*b*) in subsection (2) for the words "a foreign sovereign Power" there are substituted the words "a sovereign Power (other than the United Kingdom)".

2. The following section is hereby inserted in the 1968 Act after section 4 —

4A. (1) In this section, "international commodity organisation" means any such organisation as is mentioned in section 4 of this Act (international organisations of which the United Kingdom is not a member) which appears to Her Majesty to satisfy each of the following conditions —

(*a*) that the members of the organisation are States or the Governments of States in which a particular commodity is produced or consumed;

(*b*) that the exports or imports of that commodity from or to those States account (when taken together) for a significant volume of the total exports or imports of that commodity throughout the world; and

(*c*) that the purpose or principal purpose of the organisation is —

(i) to regulate trade in that commodity (whether as an import or an export or both) or to promote or study that trade; or

(ii) to promote research into that commodity or its uses or further development.

(2) Subject to the following provisions of this section, an Order made under section 4 of this Act with respect to an international commodity organisation may, for the purpose there mentioned and to such extent as may be specified in the Order —

(*a*) provide that the organisation shall have the privileges and immunities set out in paragraphs 2, 3, 4, 6 and 7 of Schedule 1 to this Act;

(*b*) confer on persons of any such class as is mentioned in subsection (3) of this section the privileges and immunities set out in paragraphs 11 and 14 of that Schedule;

(*c*) provide that the official papers of such persons shall be inviolable; and

(*d*) confer on officers and servants of the organisation of any such class as may be specified in the Order the privileges and immunities set out in paragraphs 13, 15 and 16 of that Schedule.

(3) The classes of persons referred to in subsection (2)(*b*) of this section are —

(*a*) persons who (whether they represent Governments or not) are representatives to the organisation or representatives on, or members of, any organ, committee or other subordinate body of the organisation (including any sub-committee or other subordinate body of a subordinate body of the organisation);

(*b*) persons who are members of the staff of any such representative and who are recognised by Her Majesty's Government in the United Kingdom as holding a rank equivalent to that of a diplomatic agent.

(4) An Order in Council made under section 4 of this Act shall not confer on any person of such class as is mentioned in subsection (3) of this section any immunity in respect of a civil action arising out of an accident caused by a motor vehicle or other means of transport belonging to or driven by such a person, or in respect of a traffic offence involving such a vehicle and committed by such a person.

(5) In this section "commodity" means any produce of agriculture, forestry or fisheries, or any mineral, either in its natural state or having undergone only such processes as are necessary or customary to prepare the produce or mineral for the international market.".

3. The following section is hereby inserted in the 1968 Act after section 5 —

5A. (1) An Order in Council made under section 1 of this Act in respect of any organisation, or under section 4 of this Act in respect of an international commodity organisation, may to such extent as may be specified in the Order, and subject to the following provisions of this section, —

(*a*) confer on persons of any such class as may be specified in the Order, being persons who are or are to be representatives (whether of Governments or not) at any conference which the organisation may convene in the United Kingdom —

(i) in the case of an Order under section 1, the privileges and immunities set out in Part II of Schedule 1 to this Act;

(ii) in the case of an Order under section 4, the privileges and immunities set out in paragraphs 11 and 14 of that Schedule; and

(*b*) in the case of an Order under section 4, provide that the official papers of such persons shall be inviolable.

(2) Where in the exercise of the power conferred by subsection (1)(*a*) of this section an Order confers privileges and immunities on persons of any such class as is mentioned in that paragraph, the provisions of paragraphs 19 to 22 of Schedule 1 to this Act shall have effect in relation to the members of the official staffs of such persons as if in paragraph 19 of that Schedule "representative" were defined as a person of such a class.

(3) The powers exercisable by virtue of this section may be exercised notwithstanding the provisions of any such agreement as is mentioned in section 1(6)(*a*) or 4 of this Act, but no privilege or immunity may thereby be conferred on any such representative, or member of his staff, as is mentioned in section 1(6)(*b*) of this Act.

(4) In this section "international commodity organisation" has the meaning given by section 4A(1) of this Act.

(5) This section is without prejudice to section 6 of this Act.".

4. Notwithstanding section 1(6)(*b*) of the 1968 Act (Orders under section 1 not to confer privileges or immunities on representatives of the United Kingdom, etc.), an Order in Council

made under section 1 of that Act may confer immunities on representatives of the United Kingdom to the Assembly of Western European Union or to the Consultative Assembly of the Council of Europe.

5. (1) After paragraph 9 of Schedule 1 to the 1968 Act there is inserted the following paragraph —

"9A. The like inviolability of official premises as is accorded in respect of the premises of a diplomatic mission.".

(2) In paragraph 10 of that Schedule (exemption from customs duties and taxes for representatives to organisations) after the words "for his establishment" there are inserted the words "and the like privilege as to the importation of such articles".

(3) In paragraph 16 of that Schedule (exemption from customs duties and taxes for officers, etc. of organisations) before the words "as in accordance with" there are inserted the words "and the like privilege as to the importation of such articles".

6. (1) This Act may be cited as the International Organisations Act 1980; and this Act and the 1968 Act may be cited together as the International Organisations Acts 1968 and 1980.

(2) In this Act "the 1968 Act" means the International Organisations Act 1968.

(3) It is hereby declared that this Act extends to Northern Ireland.

(4) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

SCHEDULE

REPEALS

[Not reproduced.]

NOTES

[1] S.R. 1981, No. 325. Notified in the *Commonwealth of Australia Gazette* on 13 November 1981.

[2] Reproduced in the *Juridical Yearbook*, 1963, p. 3.

[3] Issued under the authority of the Regulations Act 1936. Date of notification in the *Gazette*: 22 October 1981. This order makes provision for duty free entry of certain educational, scientific and cultural materials and goods to give effect to New Zealand's acceptance of the Protocol to the UNESCO Agreement on the Importation of Educational, Scientific and Cultural Materials.

[4] United Nations, *Treaty Series*, vol. 131, p. 25.

[5] See *Records of the General Conference, Nineteenth Session*, Nairobi, 26 October–30 November 1976, volume 1, resolutions.

[6] Reproduced in the *Juridical Yearbook*, 1968, p. 20.

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

No additional State acceded to the Convention in 1981.[2] The number of States parties to the Convention thus remains at 118.[3]

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2. AGREEMENTS RELATING TO INSTALLATIONS AND MEETINGS

(*a*) Agreement between the United Nations and the Dominican Republic regarding the establishment in Santo Domingo of the Headquarters of the United Nations International Research and Training Institute for the Advancement of Women.[4] Signed at New York on 31 March 1981

Article III

LIABILITY

The Government shall be responsible for dealing with any action or claim which may be brought in the Dominican Republic against the Institute or its personnel in consequence of the performance of the activities proper to the Institute and shall hold the United Nations and its personnel harmless in case of any liabilities or claims resulting from activities under this Agreement, except where it is agreed by the parties hereto that the liability or claim arises from the gross negligence or wilful misconduct by the Institute or its personnel.

Article IV

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, to which the Government acceded on 7 March 1947, shall be applicable to the Institute. Accordingly, United Nations officials having official functions in connexion with the Institute, including all members of the staff of the Institute except those who are recruited locally and assigned to hourly rates, shall enjoy the privileges and immunities provided under Articles V and VII of the Convention, and those members of the Board of Trustees of the Institute and observers invited by the Board to participate *ad hoc* who are not officials of the United Nations shall enjoy the privileges and immunities provided for experts on mission for the United Nations under Articles VI and VII of the Convention.

2. The fellowship holders at the Institute shall enjoy immunity from legal process in the Dominican Republic in respect of words spoken or written and all acts performed by them in connexion with their functions at the Institute.

3. Without prejudice to the Convention on the Privileges and Immunities of the United Nations, the Government undertakes to accord to all members of the Board, United Nations officials and fellowship holders such facilities and courtesies as may be required for the independent exercise of their functions in connexion with the Institute.

4. All persons referred to in this Article and all individuals travelling on official business at the invitation of the Institute shall have the right to enter and leave the Dominican Republic, and to remain in its territory, as necessary for the performance of their functions in connexion with the Institute; they shall be accorded facilities for speedy travel and visas, if needed, shall be issued to them promptly and free of charge.

5. The premises and space of the Institute referred to in Article I of this Agreement shall be deemed to be premises of the United Nations for the purposes of the Convention and shall, as such, be inviolable and subject to the authority and control of the United Nations.

6. The Institute may import and export scientific apparatus and equipment, educational materials or articles, supplies and other necessary equipment free of restrictions, prohibitions, customs duties and taxes. It is understood, however, that such articles and goods shall not be sold or traded in the Dominican Republic except in accordance with conditions provided by law or agreed to by the Government.

(*b*) Agreement between the United Nations and Bangladesh regarding the establishment of a United Nations Information Centre in Bangladesh.[5] Signed at New York on 25 August 1981

Article I

ESTABLISHMENT OF THE CENTRE

Section 1

A United Nations Information Centre shall be established in Dacca, Bangladesh, to carry out the functions assigned to it by the Secretary-General, within the framework of the Department of Public Information.

Article II

STATUS OF THE CENTRE

Section 2

The premises of the Centre and the residence of the Director shall be inviolable.

Section 3

The appropriate Bangladesh authorities shall exercise due diligence to ensure the security and protection of the premises of the Centre and its staff.

Section 4

The appropriate Bangladesh authorities shall exercise their respective powers to ensure that the Centre shall be supplied with the necessary public services on equitable terms. The Centre shall enjoy treatment for the use of telephone, radio-telegraph and mail communication facilities, not less favourable than that normally accorded and extended to diplomatic missions.

Article III

FACILITIES AND SERVICES

Section 5

The Government shall make an annual contribution toward the maintenance and operation of the Centre. The amount of the contribution shall be stipulated in an exchange of letters which shall form a part of this agreement.

Article IV

OFFICIALS OF THE CENTRE

Section 6

Officials of the Centre, except those who are locally recruited staff in the General Service or related categories shall enjoy, within and with respect to Bangladesh, the following privileges and immunities:

(*a*) Immunity from legal process of any kind in respect of words spoken or written, and of all acts performed by them in their official capacity; such immunity to continue notwithstanding that the persons concerned may have ceased to be officials of the United Nations;

(*b*) Immunity from seizure of their official baggage;

(*c*) Immunity from inspection of their official baggage;

(*d*) Exemption from any form of taxation in respect of the salaries, emoluments, indemnities and pensions paid to them by the United Nations for services past or present;

(*e*) Exemption from any form of taxation on income derived by them from sources outside Bangladesh;

(*f*) Exemption, with respect to themselves, their spouses, their relatives dependent on them and other members of their households from immigration restrictions and alien registration;

(*g*) Immunity from National service obligations;

(*h*) The same privileges in respect of exchange facilities as are accorded to officials of comparable ranks forming part of diplomatic missions. In particular, United Nations officials shall have the right, at the termination of their assignment to Bangladesh, to take out of Bangladesh through authorized channels, without prohibition or restriction, their funds in the same amounts as they had brought them into Bangladesh as well as any other funds for the lawful possession of which they can show good cause;

(*i*) The same protection and repatriation facilities with respect to themselves, their spouses, their relatives dependent on them, and other members of their households as are accorded in time of international crisis to diplomatic envoys; and

(*j*) The right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports;

(i) Their furniture and effects in one or more separate shipments, and thereafter to import necessary additions to the same, including motor vehicles, according to the Bangladesh legislation applicable to diplomatic representatives accredited in Bangladesh;

(ii) Reasonable quantities of certain articles for personal use or consumption and not for gift or sale.

Section 7

In addition to the privileges and immunities specified in Section 6, the Director of the Centre, subject to the exception indicated in sub-paragraph (*b*) below, shall enjoy, in respect of himself, his spouse, his relatives dependent on him, the privileges and immunities, exemptions and facilities normally accorded to diplomatic envoys of comparable rank. He shall for this purpose be included in the Diplomatic list by the Bangladesh Ministry of Foreign Affairs.

Section 8

Officials of the Centre who are locally recruited staff in the General Service or related categories shall enjoy only, within and with respect to Bangladesh the privileges and immunities referred to in sub-paragraphs (*a*), (*b*), (*c*), (*d*) and (*g*) of Section 6 of this Agreement. These officials also shall enjoy such other privileges and immunities as they may be entitled to under Article V, Section 18, and Article VII of the Convention.

Section 9

The privileges and immunities for which provision is made in this Agreement are granted solely for the purpose of carrying out effectively the aims and purposes of the United Nations. The Secretary-General may waive the immunity of any staff member whenever in his opinion such immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.

Article V

GENERAL PROVISIONS

Section 10

The provisions of the Convention on the Privileges and Immunities of the United Nations to which Bangladesh acceded on 13 January 1978, shall fully apply to the Centre, and the provisions of this Agreement shall be complementary to those of the Convention relate to the same subject matter, the two provisions shall, where possible, be treated as complementary, so that both provisions shall be applicable and neither shall restrict the effect of the other.

Section 11

This Agreement shall be construed in the light of its primary purpose of enabling the United Nations Information Centre in Bangladesh fully and efficiently to discharge its responsibilities and fulfill its purpose.

(*c*) Agreement between the United Nations and Austria to continue the European Centre for Social Welfare Training and Research.[6] Signed at New York on 23 July 1981

Article II

LEGAL STATUS OF THE CENTRE

The host Government shall take the necessary steps to ensure the Centre's status as an autonomous non-profit-making entity having legal personality under Austrian law. The statutes of the Charter shall be identical to the amended version of the statutes communicated to the United Nations in accordance with Article II of the Agreement between the Government and the United Nations to continue the European Centre for Social Welfare, Training and Research, signed on 7 December 1978, which statutes are in accordance with the present agreement. Any proposed changes in the statutes shall be communicated to the United Nations before they take effect.

. . .

Article VIII

ACCESS TO THE CENTRE

The host Government shall grant such visas and permits as may be necessary in order to ensure adequate conditions of work and stay and access to the Centre to all foreign members of the staff of the Centre and all persons officially invited to the Centre or the meetings held there.

(*d*) Agreement between the United Nations and Austria regarding the Headquarters Seat of the United Nations Industrial Development Organization and other United Nations offices at the Vienna International Centre.[7] Signed at Vienna on 19 January 1981

Article I

(1) The United Nations shall have the right to use the headquarters area for a period of ninety-nine years beginning on 1 September 1979 in a manner consistent with its objectives and

functions as defined in the Charter of the United Nations, and in accordance with the provisions of the Headquarters Agreement[8] and this Agreement. In particular, the United Nations may hold meetings in the headquarters area, including international conferences, seminars, workshops and meetings of all United Nations organs and subsidiary bodies. Any building, in or outside of Vienna, which is used temporarily with the concurrence of the Government for such meetings shall be deemed to be temporarily included in the headquarters area. For all such meetings the Headquarters Agreement shall apply *mutatis mutandis*.

(2) Without prejudice to the right of the United Nations referred to above, the Government retains the ownership over the headquarters area.

Article II

The United Nations shall pay to the Government with respect to the right to use the headquarters area a rental of one Austrian Schilling per annum payable yearly in advance during the period of such use commencing on 1 January 1980.

Article III

The United Nations may, after appropriate consultation with the Government, make available space in the headquarters area to international governmental and non-governmental organizations for purposes connected with the activities of the United Nations.

Article IV

(1) If acceptable to both Parties, the United Nations may let space in the headquarters area to any physical or juridical person providing services to the United Nations or its staff.

(2) The rent charged by the United Nations to such physical or juridical persons will be based on the commercially prevailing rates for such premises, and shall be transferred in its entirety to the Government.

(3) The rent referred to above shall not include maintenance and operating costs, which shall be payable to the United Nations.

Article V

(1) Alterations with respect to any of the buildings forming part of the headquarters area, which may result in a change of structural nature or architectural appearance, may be carried out by the United Nations at its own expense and without the right to reimbursement only after having obtained the prior consent of the Government.

(2) Other alterations to the buildings or facilities forming part of the headquarters area may be carried out by the United Nations at its expense and without the right to reimbursement.

Article VI

The United Nations shall, from 1 September 1979, be responsible at its own expense for the orderly operation and adequate maintenance of the buildings and facilities forming part of the headquarters area, and of installations located therein and for minor repairs and replacements for the purpose of keeping them in good working order, and for any repairs or replacements which may be made necessary by faulty operation and inadequate maintenance.

Article VII

The Government shall carry out at its own expense repairs and replacements of buildings, facilities and installations made necessary by force majeure or by faulty material, design or labour used within the responsibility of the Government in their construction.

Article VIII

The arrangements for financing the cost of major repairs and replacements of buildings, facilities and technical installations which are the property of the Government and form part of the headquarters area shall be the subject of a separate agreement between the Parties.

Article IX

Without prejudice to Section 12 (*c*) of the Headquarters Agreement, the United Nations shall, upon request, take the necessary measures to enable persons duly authorized by the Government to enter the headquarters area in order to inspect the buildings, facilities and installations within the headquarters area under conditions which shall not unreasonably disturb the carrying out of the functions of the United Nations.

Article X

(1) The United Nations and the competent Austrian authorities shall closely co-operate regarding the interrelation of effective security within and in the immediate vicinity outside the headquarters area.

(2) The United Nations, in the preparation of its security regulations and procedures, shall consult with the Government with a view to achieving the most effective and efficient exercise of security functions.

Article XI

Whenever the United Nations has concluded an insurance contract to cover its liability for damages arising from the use of the headquarters area and suffered by juridical or physical persons who are not officials of the United Nations, any claim concerning the United Nations' liability for such damages may be brought directly against the insurer before Austrian courts, and the insurance contract shall so provide.

Article XII

If the United Nations should vacate the headquarters area, it shall surrender the headquarters area to the Government in as good condition as reasonable wear and tear will permit, provided, however, that the United Nations shall not be required to restore the headquarters area to the shape and state existent prior to any alteration or change that may have been executed by the United Nations or the Government in accordance with this Agreement.

(*e*) Exchange of letters constituting an agreement between the United Nations and Austria revising the Supplemental Agreement to the Agreement between the United Nations and Austria regarding the Headquarters of the United Nations Industrial Development Organization (signed at New York on 13 April 1967) concluded at Vienna on 1 March 1972.[9, 10] Vienna, 23 November and 8 December 1981

I

LETTER FROM THE REPUBLIC OF AUSTRIA

23 November 1981

With reference to the Supplemental Agreement of 1 March 1972 concluded under the terms of Article XII, Section 27 (*j*) (iii), of the Agreement between the United Nations and the Republic of Austria regarding the Headquarters of the United Nations Industrial Development Organization and taking into consideration the new situation resulting from the transfer of various offices and units of the United Nations to the Vienna International Centre, I have the honour to propose that Article II of the said Supplemental Agreement should read as follows:

"*Article II*

"(1) The following categories of persons shall have access to the Commissary:

"(*a*) Officials of the UNIDO and of all other United Nations offices set up in Austria in accordance with Section 45 of the UNIDO Headquarters Agreement as well as other officials of the United Nations who are attached to the UNIDO or to such United Nations offices and

officials of the specialized agencies attached on a continuing basis to the UNIDO or to such United Nations offices;

"(*b*) Other officials of the United Nations who take part in an official capacity in meetings at the Vienna International Centre or who are specifically assigned to, and perform functions with, meetings of United Nations organs convened in Austria — excepting Austrian nationals and stateless persons resident in Austria;

"(*c*) Officials of the specialized agencies with professional rank attending meetings of United Nations organs convened in Austria — excepting Austrian nationals and stateless persons resident in Austria;

"(*d*) Members of permanent missions to the UNIDO and/or to the above-mentioned United Nations offices who have diplomatic status — excepting Austrian nationals and stateless persons resident in Austria;

"(*e*) Heads of delegations of States to meetings of the UNIDO and of other United Nations organs convened in Austria — excepting Austrian nationals and stateless persons resident in Austria;

"(*f*) Members of permanent observer missions accredited to the UNIDO and/or to the above-mentioned United Nations offices to whom the Government has granted the privilege to use Commissary facilities under specified conditions;

"(*g*) With the consent of the United Nations, officials of other international institutions with Headquarters in Vienna to whom the Government has granted the privilege to use Commissary facilities under specified conditions.

"(2) It is understood that persons referred to in this Article who may have access to any other commissary in Vienna shall have access to the Commissary covered by this Supplemental Agreement only if and as long as they waive their right of access to such other commissary.

"(3) The UNIDO and the United Nations shall jointly communicate to the Government a list of persons having access to the Commissary under this Article and shall revise such list from time to time as may be necessary."

If the foregoing is acceptable to the United Nations, I have the honour to propose that this Note and your Note of confirmation agreeing with the contents of this Note shall constitute an Agreement revising Art. II of the Supplemental Agreement of 1 March 1972, which shall become effective immediately.

(*Signed*) Willibald PAHR
Federal Minister for Foreign Affairs

II

LETTER FROM THE UNITED NATIONS

8 December 1981

I am directed by the Secretary-General to refer to your Note of 23 November 1981 . . .

[See letter I above.]

I have the honour to confirm that the above-mentioned proposal is acceptable to the United Nations and that your Note and this Note of confirmation shall constitute an Agreement revising Art. II of the Supplemental Agreement of 1 March 1972, which shall become effective immediately.

(*Signed*) Abd-El Rahman KHANE
Executive Director
United Nations Industrial Development Organization

(*f*) Agreement between the United Nations and the Government of the Philippines regarding arrangements for the fourth session of the Commission on Human Settlements of the United Nations.[11] Signed at Manila on 12 March 1981

Article X

LIABILITY

The Government shall be responsible for dealing with any actions, claims or other demands against the United Nations arising out of: (*a*) injury or damage to person or property in the premises referred to in Article III above; (*b*) injury or damage to person or property caused by, or incurred in using, the transport services referred to in Article VI above; (*c*) the employment for the Session of the personnel provided by the Government to perform functions in connexion with the Session. The Government shall indemnify and hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands, except if it is agreed by the parties that such injury or damage was caused by gross negligence or wilful misconduct by United Nations personnel.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946, to which the Government acceded on 28 October 1947, shall be applicable to the Session.

2. Representatives of States participating in the Session shall enjoy the privileges and immunities accorded to representatives of States by Article IV of the Convention.

3. Officials of the United Nations performing official duties at the Session shall enjoy the privileges and immunities provided by Articles V and VII of the Convention. Representatives of national liberation movements participating in the Session and the local personnel provided by the Government to perform functions in connexion with the Session shall enjoy 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 same privileges and immunities as are accorded to officials of the United Nations of a similar rank.

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.

2. The Government hereby waives import and export permits for the supplies needed for the Session and certified by the United Nations to be required for official use at the Session.

(*g*) Exchange of letters constituting an agreement between the United Nations and the People's Republic of China concerning a Study Tour on hydropower stations to be held in China from 22 May to 4 June 1981.[12] New York, 16 and 30 March 1981

I

LETTER FROM THE UNITED NATIONS

16 March 1981

I have the honour to refer to the preparations for the United Nations Study Tour on Small Hydropower Stations scheduled to be held in China from 22 May to 4 June 1981, and organised by the United Nations Department of Technical Co-operation for Development with the co-operation of the Government of the People's Republic of China.

With the present letter I wish to request your Government's confirmation of the following arrangements:

. . .

(11) (*a*) (i) The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Study Tour. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by Article VI of the Convention. Officials of the United Nations participating in or performing functions in connexion with the Study Tour shall enjoy the privileges and immunities provided under Articles V and VII of the Convention.

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

(iii) Personnel provided by the Government pursuant to 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 Study Tour.

(*b*) All participants and all persons performing functions in connexion with the Study Tour shall have the right of unimpeded entry into and exit from China. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Study Tour, visas shall be granted not later than two weeks before the opening of the Study Tour. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days from the receipt of the application.

(*c*) It is further understood that your Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of (i) injury or damage to person or property in conference or office premises provided for the Study Tour; (ii) the transportation provided by your Government; (iii) the employment for the Study Tour of personnel provided or arranged by your Government; and your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

. . .

I further propose that upon receipt of your confirmation in writing of the above this exchange of letters shall constitute an Agreement between the United Nations and the Government of China regarding the provision of host facilities by your Government for the Study Tour.

. . .

(*Signed*) Margaret J. ANSTEE
Assistant Secretary-General
Officer-in-Charge
Department of Technical Co-operation for Development

II

LETTER FROM THE PERMANENT MISSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE UNITED NATIONS

30 March 1981

I have the honour to refer to the letter . . . dated March 16, 1981 and to confirm, on behalf of the Government of the People's Republic of China, the arrangements concerning the Study Tour on Small Hydropower Stations to be held in China from May 22 to June 4, 1981, . . .

It is agreed that Miss Anstee's letter and this letter of reply constitute an Agreement between the Chinese Government and the United Nations concerning the arrangements for the Study Tour on Small Hydropower Stations.

. . .

(Signed) MI Guojun
Ambassador
Deputy Permanent Representative
of the People's Republic of China
to the United Nations

(*h*) Agreement between the United Nations and Yugoslavia regarding arrangements for the seventh session of the World Food Council of the United Nations.[13] Signed at Belgrade on 30 January 1981

Article X

LIABILITY

The Federal Executive Council shall be responsible for dealing with any actions, claims or other demands against the United Nations arising out of: (*a*) injury or damage to person or property in the premises referred to in Article III above; (*b*) injury or damage to person or property caused by, or incurred in using, the transport services referred to in Article VI, para. 1 above; (*c*) the employment for the Session of the personnel provided by the Federal Executive Council to perform functions in connexion with the Session. The Federal Executive Council shall indemnify and hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands. The United Nations shall co-operate with the Federal Executive Council to enable it to discharge its responsibilities under this Article.

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 Agencies of 21

November 1947, to which Conventions the Federal Executive Council is a party, shall be applicable in respect of the Session.

2. Representatives of States 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 United Nations performing official duties at the Session shall enjoy the privileges and immunities provided by Articles V and VII of the Convention on the Privileges and Immunities of the United Nations. The local personnel provided by the Federal Executive Council 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 International Atomic Energy Agency shall enjoy the privileges and immunities of officials of the Agency accorded under the Agreement on the Privileges and Immunities of the International Atomic Energy Agency. Officials of the specialized agencies 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 Federal Executive Council 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 Yugoslavia at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into Yugoslavia 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 Federal Executive Council shall allow the temporary importation tax exemption and duty-free imports of all equipment, including technical equipment accompanying representatives of information media, and shall waive import duties and taxes on supplies necessary for the Session.

2. The Federal Executive Council hereby waives import and export permits for the supplies needed for the Session and certified by the United Nations to be required for official use at the Session.

(*i*) Agreement between the United Nations and Kenya regarding the arrangements for the United Nations Conference on New and Renewable Sources of Energy.[14] Signed at New York on 7 April 1981

Article XIII

PRIVILEGES AND IMMUNITIES

1. The provisions relating to privileges and immunities in the Agreement between the United Nations and the Government of Kenya regarding the Headquarters of the United Nations Environ-

ment Programme (UNEP) shall be applicable, *mutatis mutandis*, with regard to the Conference. The Convention on the Privileges and Immunities of the United Nations is hereby not affected.

2. Representatives of States and of the United Nations Council for Namibia 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 same privileges and immunities as are accorded to the representatives to meetings of the UNEP, to officials of the UNEP and to experts on mission for UNEP, respectively, under the Agreement outlined in paragraph 1.

3. Representatives of the specialized agencies, the International Atomic Energy Agency and other inter-governmental organizations invited to attend the Conference shall enjoy, *mutatis mutandis* the privileges and immunities provided for officials of the specialized agencies under the Convention on the Privileges and Immunities of the Specialized Agencies.

4. Without prejudice to the provisions of paragraph 2 of this article, representatives, referred to in article II (*c*) and (*d*) and invited by the United Nations to attend the Conference, shall enjoy immunity from legal process in respect of words spoken or written or any acts performed by them in their official capacity in connexion with the Conference.

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

6. Without prejudice to the preceding paragraphs of this article, observers from non-governmental organizations invited by the United Nations to the Conference shall enjoy immunity from legal process in respects of words spoken or written or any act performed by them in the exercise of their functions in connexion with the Conference.

7. The Government shall ensure that no impediment is imposed on transit to and from the Conference of the persons referred to in article II, paragraph 1, and their immediate families, officials and experts of the United Nations and their immediate families, the persons referred to in article II, paragraph 2, and other persons officially invited to the Conference by the United Nations. All persons referred to in this paragraph shall have the right of entry into and exit from Kenya. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and;

(*a*) if application is made at least two and a half weeks before the opening of the Conference, the visa shall be granted not later than two weeks before that date;

(*b*) if the application 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.

8. During the Conference including the preparatory and final stages of the Conference, the buildings and areas to in article III shall be deemed to constitute United Nations premises, and access thereto shall be subject to the authority and control of the United Nations.

Article XIV

LIABILITY

1. The Government shall be responsible for dealing with any actions, claims or other demands against the United Nations or its personnel and arising out of:

(*a*) injury or damage to person or property in the premises referred to in articles III, IV and V above;

(*b*) injury or damage to person or property caused by, or incurred in using, the transport service referred to in article X paragraph 2 above;

(*c*) the employment for the Conference of the personnel referred to in article XI above.

2. The Government shall hold harmless the United Nations and its personnel in respect of any such actions, claims or other demands.

(*j*) Agreement between the United Nations and Argentina concerning a United Nations Regional Seminar on Remote Sensing Applications and Satellite Communications for Education and Development.[15] Signed at New York on 16 April 1981

Article V

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Seminar. Accordingly, officials of the United Nations performing functions in connexion with the Seminar shall enjoy the privileges and immunities provided under Articles V and VII of the said Convention.

2. Officials of the specialized agencies attending the Seminar in pursuance of paragraph (*d*) of Article II of this Agreement shall enjoy the privileges and immunities provided under Article VI and VII of the Convention on the Privileges and Immunities of the Specialized Agencies.

3. Participants attending the Seminar in pursuance of paragraphs (*a*) and (*c*) of Article II of this agreement shall enjoy the privileges and immunities of experts on mission under Article VI of the Convention on the Privileges and Immunities of the United Nations.

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.

5. All participants and all persons performing functions in connexion with the Seminar shall have the right of unimpeded entry into and exit from Argentina. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Seminar, visas shall be granted not later than two weeks before the opening of the Seminar. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening.

Article VI

LIABILITY

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

(*a*) Injury to person or damage to or loss of property (whether United Nations property or other) in the premises referred to in Article IV above, including damage to those premises;

(*b*) Injury to person, or damage to or loss of property caused by, or incurred in using the transportation referred to in Article IV above;

(*c*) The employment of locally recruited personnel referred to in Article IV above;

and the Government shall hold harmless the United Nations and its personnel in respect of any such action, claim or other demand, except where it is agreed by the parties hereto that such damage, loss or injury is caused by the willful misconduct or gross negligence of United Nations personnel.

2. The Government shall be subrogated to the right and remedies of the United Nations in respect of any action, causes of action, claims or other demands referred to in paragraph 1 of this Article, except that it is understood that the Government shall not be subrogated to the immunity from legal process enjoyed by the United Nations.

(*k*) Memorandum of understanding between the United Nations and Japan regarding the study tour under the Steel Committee, principal subsidiary body of the Economic Commission for Europe, to be organized in Japan from 18 to 27 May 1981, at the invitation of the Government of Japan.[16] Signed at New York on 18 May 1981

2. (*a*) The Convention of the 13th February 1946 on the Privileges and Immunities of the United Nations, to which Japan is a party, will apply.

(*b*) Accordingly, officials of the United Nations performing functions in connexion with the Study Tour will enjoy the privileges and immunities provided under articles V and VII of the said Convention. Other participants who are invited by the United Nations on behalf of the Government of Japan and certified by whatever means by the United Nations as experts on mission for the United Nations for the purpose of the Study Tour will enjoy the privileges and immunities granted to experts on mission for the United Nations under article VI of the Convention on the Privileges and Immunities of the United Nations. The Government will facilitate the entry into and exit from Japan of all participants to the Study Tour. Visas and entry permits, where required, will be granted as speedily as possible and free of charge.

3. The Government will, as necessary, take measures available under the laws and regulations in force in Japan, for dealing with any actions, claims or other demands by third parties which may be brought against the United Nations for damage to facilities used in the course of the Study Tour, for damage or injury to persons or property, or arising out of the employment of local personnel.

(*l*) Agreement between the United Nations and Panama concerning the arrangements for the Extraordinary Plenary Meeting of the United Nations Council for Namibia to be held at Panama City from 1 to 5 June 1981.[17] Signed and approved at Panama City on 3 June 1981

I. Free importation of equipment

18. 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 meetings. It shall issue without delay any necessary import and export permits for this purpose.

J. Privileges and immunities

19. The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Meetings. The representatives of Member States shall enjoy the privileges and immunities accorded to representatives by Article IV of the Convention. Officials of the United Nations participating in or performing functions in connexion with the Meetings shall enjoy the privileges and immunities provided under Articles V and VII of the Convention. Officials of specialized or related agencies participating in the Meetings shall be accorded the privileges and immunities provided under Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies.

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

21. Personnel provided by the Government pursuant to 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 meetings.

22. All participants and all persons performing functions in connexion with the meetings shall have the right of unimpeded entry into and exit from Panama. Visas and entry permits, where required, shall be granted free of charge and as speedily as possible.

23. It is further understood that the Government shall be responsible for dealing with any action, claim or other demand against the United Nations arising out of (i) injury or damage to persons or property in conference or office premises provided for the meetings; (ii) the transportation provided by the Government; and (iii) the employment for the meetings of personnel provided or

recruited by the Government; and the Government shall hold the United Nations and its officials harmless in respect of any such action, claim or other demand.

(*m*) Agreement between the United Nations and India concerning the arrangements for the Regional Workshop on Implementation of the Plan of Action to Combat Desertification of the United Nations Economic and Social Commission for Asia and the Pacific, to be held in Jodhpur, India, from 20 to 23 October 1981.[18] Signed at Bangkok and New Delhi on 19 June 1981

Article VIII

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, to which the Government became a party on 13 May 1948, shall be fully applicable with respect to the Workshop. Representatives of Members and Associate Members of the United Nations Economic and Social Commission for Asia and the Pacific and representatives or observers from other States invited to the Workshop shall enjoy the privileges and immunities provided in Article IV of the said Convention. Officials of the United Nations and experts on mission for the United Nations, performing functions for the United Nations at the Workshop, shall enjoy the privileges and immunities set forth in Article V and VI respectively, and VII of the said Convention.

2. Representatives of the Specialized Agencies of the United Nations, of the International Atomic Energy Agency and of other intergovernmental organizations invited to the Workshop shall enjoy the same privileges and immunities as are accorded to officials of comparable rank of the United Nations.

3. Representatives of interested non-governmental organizations invited to the Workshop and the personnel provided by the Government pursuant to Article VII, paragraph 2, 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 Workshop.

4. Without prejudice to the provisions of the preceding paragraphs, all participants and all persons performing functions in connexion with the Workshop shall enjoy such privileges and immunities, facilities and courtesies, as are necessary for the independent exercise of their functions in connexion with the Workshop.

5. All participants referred to in Article II, and all persons performing functions in connexion with the Workshop who are not residents of India shall have the right of entry into and exit from India for the purposes of the Workshop. 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 not later than two weeks before the date of the opening of the Workshop. If the application for the visa is not made at least two and a half weeks before the opening of the Workshop, the visa shall be granted not later than three days from the receipt of the application. Arrangements will also be made to ensure that visas for the duration of the Workshop are delivered at the airport to participants who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge and as speedily as possible, in any cases not later than three days before the closing of the Workshop.

Article IX

LIABILITY FOR CLAIMS

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

(*a*) injury to person or damage to or loss of property in the premises referred to in Article III above;

(*b*) injury to person, or damage to or loss of property caused by, or incurred in using the transportation referred to in Article V above;

(*c*) the employment of the personnel referred to in Article VII above; and the Government shall 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 that such damage or injury is caused by the gross negligence or wilful misconduct of the UN personnel, in which case steps shall be taken to establish the civil liability of the party which proves to be responsible. Acts of God shall exempt the Government and the United Nations from any obligation.

Article XI

IMPORT DUTIES AND TAX

The Government shall allow the temporary importation and waive import duties and taxes for all equipment and supplies necessary for the Workshop. It shall issue without delay to the United Nations any necessary import and export permits.

(*n*) Exchange of letters constituting an agreement between the United Nations and the Sudan concerning the Interregional Seminar on Decentralization for Development, to be held at Khartoum from 14 to 18 September 1981.[19] New York, 15 and 26 June 1981

I

LETTER FROM THE UNITED NATIONS

15 June 1981

I understand that the Government of the Democratic Republic of the Sudan has accepted to host the United Nations Interregional Seminar on Decentralization for Development, with dates 14–18 September, . . .

In accordance with existing practice, the following provisions shall apply:

(*a*) The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, shall be applicable to the Seminar;

(*b*) The country participants and the consultants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by Article VI of the above Convention. Officials of the United Nations participating in or performing functions in connexion with the Seminar shall enjoy the privileges and immunities provided under Articles V and VII of the Convention. Officials of the specialized agencies invited to participate as observers in the Seminar shall be accorded privileges and immunities comparable to those of United Nations officials of the same rank;

(*c*) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and 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;

(*d*) Personnel provided by the Government pursuant to 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 Seminar;

(*e*) All participants and all persons performing functions in connexion with the Seminar shall have the right of unimpeded entry into and exit from Sudan. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Seminar, visas shall be granted not later than two weeks before the opening of the Seminar. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening;

(*f*) The Government of the Democratic Republic of the Sudan shall deal with any action, claim or other demand against the United Nations or its personnel arising out of

(i) injury to person or damage to property in the premises provided for the Seminar,

(ii) injury to person or damage to property incurred in using any transportation provided by the Government for the Seminar, and

(iii) the employment of local personnel for the Seminar,

and the Government shall hold harmless the United Nations and its personnel in respect of any such action, claim or demand;

. . .

The arrangements mentioned above shall be valid for the duration of the Seminar including such time before and after the Seminar as may be required for the necessary preparatory and concluding work relating to the Seminar.

Finally, I propose that upon receipt of your confirmation to me in writing of the above, this exchange of letters shall constitute an Agreement between the United Nations and the Government of the Democratic Republic of the Sudan regarding the provision of host facilities by your Government for the Interregional Seminar on Decentralization for Development.

(*Signed*) Margaret J. ANSTEE
Assistant Secretary-General
Officer-in-charge
Department of Technical Co-operation
for Development

II

LETTER FROM THE PERMANENT MISSION OF THE SUDAN TO THE UNITED NATIONS

26 June 1981

Thank you for your letter of 15th June, 1981, regarding the final agreement for hosting the United Nations Interregional Seminar on Decentralization for Development, to be convened in Khartoum during the period of 14th-18th September, 1981.

This is to confirm to you the acceptance of the Sudan Government of the arrangements mentioned in your above quoted letter and this communication constitutes the needed final confirmation, accordingly.

(Signed) Abdel-Rahman ABDALLA
Permanent Representative

(*o*) Exchange of letters constituting an agreement between the United Nations and Sri Lanka on the convening of a seminar on the inalienable rights of the Palestinian people, to be held in Sri Lanka from 10 to 14 August 1981.[20] New York, 15 and 28 July 1981

I

LETTER FROM THE UNITED NATIONS

15 July 1981

I have the honour to refer to resolution 34/65 D on the "Question of Palestine", adopted by the General Assembly on 12 December 1979. In particular, I wish to refer to the resolution's paragraph 2 (*b*) (ii), by which the General Assembly requested that four seminars be organized during the biennium 1980-1981.

The General Assembly's Committee on the Exercise of the Inalienable Rights of the Palestinian People has decided that the theme for the Seminars will be "The inalienable rights of the Palestinian people". The Committee further has received with appreciation the acceptance of Your Excellency's Government that one of these Seminars be convened in Sri Lanka from 10-14 August, 1981, at the Bandaranaike Memorial International Hall in Colombo.

. . .

With the present letter I have the honour to propose to your Government that the following terms should apply to the Seminar:

(i) The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, shall be applicable in respect of the Seminar. The representatives of States invited by the United Nations to participate in the Seminar shall enjoy the privileges and immunities accorded by Article IV of the Convention and all other participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by Article VI of the Convention. Officials of the United Nations participating in or performing functions in connexion with the Seminar shall enjoy the privileges and immunities provided under Articles V and VII of the Convention. Officials of the specialized agencies participating in the Seminar shall be accorded the privileges and immunities provided under Articles VI and VII of the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly of the United Nations on 21 November 1947;

(ii) Without prejudice to the provision of the Convention on the Privileges and Immunities of the United Nations, all participants and 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) Personnel provided by the Government pursuant to 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 Seminar;

(iv) All participants and all United Nations officials performing functions in connexion with the Seminar shall have the right of unimpeded entry into and exit from Sri Lanka. Visas and entry permits, where required, shall be granted promptly upon application and free of charge;

. . .

I further propose that upon receipt of your Government's acceptance of this proposal the present letter and the letter in reply from your Government, shall constitute an agreement between the Government of the Democratic Socialist Republic of Sri Lanka and the United Nations concerning the arrangements for the Seminar.

. . .

(*Signed*) William B. BUFFUM
Under-Secretary-General
Political and General Assembly Affairs

II

LETTER FROM THE PERMANENT MISSION OF SRI LANKA TO THE UNITED NATIONS

28 July 1981

I have the honour to refer to your letter of 15 July 1981 regarding the United Nations Seminar on Palestine to be convened in Sri Lanka from 10-14 August 1981.

I have been instructed by my Government to inform you that my Government accepts the proposal contained in your letter concerning the arrangements and terms for the Seminar.

. . .

(*Signed*) I. B. FONSEKA
Permanent Representative of Sri Lanka to the United Nations

(*p*) Agreement between the United Nations and France concerning the United Nations Conference on the Least Developed Countries, to be held in Paris from 1 to 14 September 1981.[21] Signed at Geneva on 31 July 1981

Article XIII

1. The Convention on the Privileges and Immunities of the United Nations, of 13 February 1946, shall be applicable in respect of the Conference.

2. All persons referred to in article II, all officials of the United Nations assigned to the Conference and all experts on mission for the United Nations in connection with the Conference shall have the right of entry into and exit from France, and no impediment shall be imposed on their transit to and from the conference area referred to in article 1. Entry and exit visas, where required, shall be granted free of charge and as speedily as possible. Arrangements shall also be made to ensure that visas for the duration of the Conference shall be issued on arrival to participants who were unable to obtain them prior to their departure.

3. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the conference premises specified in article I shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention and access thereto, with the exception of that to premises forming part of the permanent headquarters of the United Nations Educational, Scientific and Cultural Organization, shall be subject to the authority and control of the United Nations. The conference premises specified in article I shall be inviolable for the duration of the Conference, including the preparatory stage and the winding-up, neither of which may exceed 10 days.

4. The Government shall allow the temporary importation, tax- and duty-free, of all equipment and supplies necessary for the Conference. It shall also allow, on the same terms, the importation during the Conference of the technical equipment necessary for the professional activities of the persons referred to in article II, paragraph 2.

The Government shall issue without delay any necessary import and export permits.

(*q*) Exchange of letters constituting an agreement between the United Nations and Pakistan regarding the Government of Pakistan-United Nations International Symposium on the Economic Performance of Public Enterprises, to be held in Pakistan from 24 to 28 November 1981.[22] New York, 29 July 1981 and Rawalpindi, 9 August 1981

I

LETTER FROM THE UNITED NATIONS

29 July 1981

. . .

In accordance with existing practice, the following provisions shall apply:

(*a*) The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations of 13 February 1946, shall be applicable to the Symposium;

(*b*) The country participants and the consultants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by Article VI

of the above Convention. Officials of the United Nations participating in or performing functions in connection with the Workshop shall enjoy the privileges and immunities provided under Articles V and VII of the Convention;

(*c*) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the Symposium shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the Symposium;

(*d*) Personnel provided by the Government of Pakistan pursuant to 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 Symposium;

(*e*) All participants and all persons performing functions in connexion with the Symposium shall have the right of unimpeded entry into and exit from Pakistan. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Symposium, visas shall be granted not later than two weeks before the opening of the Symposium. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening;

(*f*) The Government of Pakistan shall deal with any action, claim, or other demand against the United Nations or its personnel arising out of:

(i) injury to person or damage to property in the premises provided for the Symposium,

(ii) injury to person or damage to property incurred in using any transportation provided by the Government of Pakistan for the Symposium, and

(iii) the employment of local personnel for the Symposium and the Government of Pakistan shall hold harmless the United Nations and its personnel in respect of any such action, claim or demand.

(*g*) Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement, shall, unless the parties otherwise agree, be submitted to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government of Pakistan, and the third, who shall be the chairman by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of the either party to the dispute. Except as otherwise agreed by the parties, the tribunal shall adopt its own rules of procedure, provided for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

The arrangements mentioned above shall be valid for the duration of the Symposium including such time before and after the Symposium as may be required for the necessary preparatory and concluding work relating to the Symposium.

I should be grateful if you would arrange the necessary transmittal of the above request to the Government of Pakistan and advise us as early as practicable of the Government's decision concerning the dates scheduled for the meeting and indicating the location of the Symposium.

I look forward to receipt of the official reply from the Government of Pakistan. This exchange of letters will then constitute the Agreement between the Government of Pakistan and the United Nations concerning the conduct of the Symposium.

(*Signed*) Faqir MUHAMMAD
Director
Policies and Resources Planning Division
Department of Technical Cooperation for Development, United Nations (New York)
Camp Islamabad

II

LETTER FROM THE GOVERNMENT OF PAKISTAN

9 August 1981

I have received your letter of 29th July, 1981 which is reproduced below:

[See letter I above.]

I have the honour to confirm to you the acceptance of the conditions of your letter reproduced above.

(*Signed*) Zahur AZAR

(*r*) Agreement between the United Nations and Bulgaria on the United Nations/Food and Agriculture Organization Regional Training Seminar on Remote Sensing Applications for Land Resources.[23] Signed at New York on 14 September 1981

Article V

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Convention on Privileges and Immunities of the United Nations shall be applicable in respect of the Seminar. Accordingly, officials of the United Nations performing functions in connexion with the Seminar shall enjoy the privileges and immunities provided under Articles VI and VII of the said Convention and the participants attending the Seminar in pursuance of paragraphs (*a*) and (*c*) of Article II of this Agreement shall enjoy the privileges and immunities of experts on mission for the United Nations under Article VI of the Convention on the Privileges and Immunities of the United Nations.

2. Officials of the Specialized Agencies attending the Seminar in pursuance of paragraph (*d*) of Article II of this Agreement shall enjoy the privileges and immunities provided under Articles VI and VII of the Convention on the Privileges and Immunities of the Specialized Agencies.

3. 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 exercises of their functions in connexion with the Seminar.

4. All participants and all persons performing functions in connexion with the Seminar shall have the right of unimpeded entry into and exit from Bulgaria. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Seminar, visas shall be granted not later than two weeks before the opening of the Seminar. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening.

Article VI

LIABILITY

The Government shall be responsible for dealing with any actions, claims or other demands arising out of (*a*) injury or damage to persons or property in the premises referred to in paragraph 3 (*a*) and (*b*) of Article IV above; (*b*) injury or damage to persons or property occurring during use of the transportation referred to in paragraph 3 (*k*) of Article IV; (*c*) employment for the Seminar of the personnel referred to in paragraph 3 (*d*) and (*h*) of Article IV and the Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims and other demands.

(*s*) Exchange of letters constituting an agreement between the United Nations and Spain concerning host facilities for the United Nations *Ad Hoc* Group Meeting on Network in Public Administration and Finance, 9–15 December 1981.[24] New York, 21 August 1981 and Madrid, 18 September 1981

I

LETTER FROM THE UNITED NATIONS

21 August 1981

In accordance with existing practices, the following provisions shall be applicable:

(*a*) The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, shall be applicable in respect of the Meeting.

(*b*) Participants and advisors invited by the United Nations shall enjoy the privileges and immunities accorded under article VI of the Convention to experts on mission for the United Nations. Officials of specialized agencies participating in the Meeting shall enjoy privileges and immunities comparable to those of United Nations officials of the same grade.

(*c*) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all persons participating in or performing functions in connection with the Meeting shall enjoy the privileges, immunities, facilities and courtesies necessary for the independent exercise of their functions in connection with the Meeting.

(*d*) The personnel provided by the Government under 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 connection with the Meeting.

(*e*) All participants in the Meeting and all persons performing functions in connection with it shall have the right of entry into and exit from Spain without restriction. Visas and entry permits, where required, shall be granted free of charge. If the application is made four weeks before the date of the opening of the Meeting, the visa shall be granted not later than two weeks before the opening date of the Meeting. If the application is made less than four weeks before the opening date, the visa shall be granted as speedily as possible, and not later than three days before the opening date.

(*f*) It is further agreed that the Spanish Government shall be responsible for any action, claim or other demand against the United Nations or its officials and arising out of: (i) injury to persons or damage to property in the conference or office premises provided for the Meeting; (ii) injury to persons or damage to property incurred in using the transport services provided by the Government; and (iii) the employment for the Meeting of the personnel provided by or through the Government; in addition, the Government shall indemnify the United Nations and its officials in respect of any such action, claim or other demand; and

(*g*) All disputes concerning the interpretation or application of this Agreement, save those which are subject to the relevant provisions of the Convention on the Privileges and Immunities of the United Nations or another applicable agreement, shall be referred, unless the parties agree otherwise, to a tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one to be named by the Government and the third, who shall be the chairman, to be chosen by the first two. If either party fails to appoint an arbitrator within three months of the date on which the other party communicated the name of its arbitrator, or if these two arbitrators should fail to agree on the chairman within three months of the appointment of the second arbitrator, the third arbitrator shall be appointed by the President of the International Court of Justice at the request of either party to the dispute. Unless the parties agree otherwise, the tribunal shall adopt its own rules, shall take the necessary steps for the reimbursement of expenses incurred by its members and the apportioning of costs between the parties and shall adopt all its decisions by a two-thirds majority. Its decisions with regard to all procedural and substantive questions shall be final and, even when challenged by one party, shall be binding on both.

The above provisions shall be valid for the duration of the Meeting, including such time before and after as is necessary for the preparation and winding-up of the Meeting.

. . .

I would further propose that, upon the receipt of your written agreement to the foregoing, this exchange of letters shall constitute an agreement between the United Nations and the Government of Spain regarding the host-country facilities to be provided by the Government for the meeting of experts.

. . .

(*Signed*) XU Naijiong
Director
Development Administration Division

II

LETTER FROM THE GOVERNMENT OF SPAIN

18 September 1981

With reference to your letter of 21 August 1981, I am pleased to inform you that the Spanish Government accepts and assumes all the responsibilities to which you refer in connection with the Meeting of United Nations Experts on the Establishment of an Information Network for Public Administration and Finance, to be held from 9 to 15 December 1981.

. . .

(*Signed*) Luis Fernando CRESPO MONTES

(*t*) Agreement between the United Nations and Indonesia concerning arrangements for the United Nations Regional Seminar on Remote Sensing Applications and Satellite Communications for Education and Development.[25] Signed at New York on 5 October 1981

Article V

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Seminar. Accordingly, officials of the United Nations performing functions in connexion with the seminar shall enjoy the privileges and immunities provided under Articles V and VII of the Said Convention.

2. Officials of the specialized agencies attending the Seminar in pursuance of paragraph (*d*) of Article II of this Agreement shall enjoy the privileges and immunities provided under Article VI and VII of the Convention on the Privileges and Immunities of the Specialized Agencies.

3. Participants attending the Seminar in pursuance of paragraphs (*a*) and (*c*) of Article II of this agreement shall enjoy the privileges and immunities of experts on mission under Article VI of the Convention on the Privileges and Immunities of the United Nations.

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.

5. All participants and all persons performing functions in connexion with the Seminar shall have the right of unimpeded entry into and exit from Indonesia. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening

of the Seminar, visas shall be granted not later than two weeks before the opening of the Seminar. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening.

Article VI

LIABILITY

The Government shall be responsible for dealing with any actions, claims or other demands arising out of (*a*) injury or damage to persons or property in the premises referred to in paragraphs 3 (*a*) and (*b*) of Article IV above; (*b*) injury or damage to persons or property occurring during use of the transportation referred to in paragraphs 3 (*h*) and (*i*) of Article IV; (*c*) recruitment for the Seminar of the personnel referred to in paragraphs 2, and 3 (*b*), (*d*) and (*f*) of Article IV; and the Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands.

(*u*) Agreement between the United Nations and Ecuador concerning arrangements for the United Nations Regional Seminar on Space Applications in preparation for the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE 82).[26] Signed at New York on 13 October 1981

Article V

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Seminar. Accordingly, officials of the United Nations performing functions in connexion with the Seminar shall enjoy the privileges and immunities provided under Articles V and VII of the said Convention.

2. Officials of the specialized agencies attending the Seminar in pursuance of paragraph (*d*) of Article II of this Agreement shall enjoy the privileges and immunities provided under Article VI and VII of the Convention on the Privileges and Immunities of the specialized agencies.

3. Participants attending the Seminar in pursuance of paragraphs (*a*) and (*c*) of Article II of this Agreement shall enjoy the privileges and immunities of experts on mission under Article VI of the Convention on the Privileges and Immunities of the United Nations.

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.

5. All participants and all persons performing functions in connexion with the Seminar shall have the right of unimpeded entry into and exit from Ecuador. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Seminar, visas shall be granted not later than two weeks before the opening of the Seminar. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening.

Article VI

LIABILITY

The Government shall be responsible for dealing with any actions, claims or other demands arising out of (*a*) injury or damage to persons or property in the premises referred to in paragraphs 3 (*a*) and (*b*) of Article IV above; (*b*) injury or damage to persons or property occurring during use of the transportation referred to in paragraphs 3 (*h*) and (*i*) of Article IV; (*c*) the employment for the Seminar of the personnel referred to in paragraphs 2, and 3 (*b*), (*d*) and (*f*) of Article IV;

and the Government shall hold the United Nations and its personnel harmless in respect of any actions, claims or other demands.

(*v*) Agreement between the United Nations and Uruguay regarding the arrangements for the *Ad Hoc* meeting of Senior Government Officials Expert in Environmental Law.[27] Signed at New York on 22 October 1981

Article X

LIABILITY

1. The Government shall be responsible for dealing with any action, claim or other demand against the United Nations or its personnel (including UNEP personnel) and arising out of:

(*a*) injury to persons or damage to or loss of property in the premises referred to in Article III above;

(*b*) injury to persons or damage to or loss of property caused by, or incurred in using, the transport services referred to in Article VI above;

(*c*) the employment for the Meeting of the personnel provided by the Government under Article VIII above.

2. The Government shall indemnify and hold harmless the United Nations, UNEP and their personnel in respect of any such action, claim or other demand.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, shall be applicable in respect of the Meeting. In particular, the representatives of States referred to in Article II (*a*) shall enjoy the privileges and immunities provided under Article IV, the officials of the United Nations performing functions in connexion with the Meeting shall enjoy the privileges and immunities provided under Articles V and VII, and experts on mission for the United Nations in connexion with the Meeting shall enjoy the privileges and immunities provided under Article VI of the Convention.

2. The representatives and observers referred to in paragraph 1 of Article II shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connexion with their participation in their Meeting.

3. The personnel provided by the Government under Article VIII above 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 Meeting.

4. The representatives of the specialized agencies or of the International Atomic Energy Agency referred to in Article II (*b*) shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, respectively.

5. Without prejudice to the preceding paragraphs of this Article, all persons performing functions in connexion with the Meeting and all those invited to the Meeting shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connexion with the Meeting.

6. All persons referred to in Article II, all United Nations officials serving the Meeting and all experts on mission for the United Nations in connexion with the Meeting shall have the right of entry into and exit from Uruguay, and no impediment shall be imposed on their transit to and from the conference areas. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible.

7. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the Meeting premises shall be deemed to constitute premises of the United Nations in the sense of Section 3 of the Convention and access thereto shall be subject to the authority and control of UNEP. The premises shall be inviolable for the duration of the Meeting, including the preparatory stage and the winding-up.

8. The participants in the Meeting and the representatives of information media, referred to in Article II above, and officials of UNEP and the United Nations serving the Meeting and experts on mission for the United Nations in connexion with the Meeting shall have the right to take out of Uruguay at the time of their departure, without any restrictions, any unexpended portions of the funds they brought into Uruguay in connexion with the Meeting at the United Nations official rate of exchange prevailing when the funds were brought in.

9. 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 Meeting. It shall issue without delay any necessary import and export permits for this purpose.

(*w*) Agreement between the United Nations and the Philippines concerning the arrangements for the Regional Intergovernmental Preparatory Meeting for the World Assembly on Aging of the United Nations Economic and Social Commission for Asia and the Pacific, to be held at Manila from 19 to 23 October 1981.[28] Signed at Bangkok and Manila on 23 October 1981

Article IX

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, to which the Government became a part on 28 October 1947, shall be fully applicable with respect to the Meeting. Representatives of Members and Associate Members of the United Nations Economic and Social Commission for Asia and the Pacific and representatives or observers from other States invited to the Meeting shall enjoy the privileges and immunities provided in Article IV of the said Convention. Officials of the United Nations and experts on mission for the United Nations, performing functions for the United Nations at the Meeting, shall enjoy the privileges and immunities set forth in Article V and VI respectively, and VII of the said Convention.

2. Representatives of the specialized agencies of the United Nations and of other intergovernmental organizations invited to the Meeting shall enjoy the same privileges and immunities as are accorded to officials of comparable rank of the United Nations.

3. Representatives of interested non-governmental organizations invited to the Meeting and the personnel provided by the Government pursuant to Article VII, paragraph 2 above, 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 Meeting.

4. Without prejudice to the provisions of the preceding paragraphs, all participants and all persons performing functions in connexion with the Meeting shall enjoy such privileges and immunities, facilities and courtesies, as are necessary for the independent exercise of their functions in connexion with the Meeting.

5. All participants referred to in Article II, and all persons performing functions in connexion with the Meeting who are not residents of the Philippines shall have the right of entry into and exit from the Philippines for the purposes of the Meeting. 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 not later than two weeks before the date of the opening of the Meeting. If the application for the visa is not made at least two and a half weeks before the opening of the Meeting the visa shall be granted not later than three days from the receipt of the application. Arrangements will also be made to ensure that visas for the duration of the Meeting are delivered at the airport to

participants who were unable to obtain them prior to their arrival. 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 Meeting.

Article X

LIABILITY FOR CLAIMS

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

(*a*) injury to person or damage to or loss of property in the premises referred to in Article III above;

(*b*) injury to person, or damage to or loss of property caused by, or incurred in using the transportation referred to in Article V above;

(*c*) the employment of the personnel referred to in Article VII above.

2. The Government shall hold the United Nations and its personnel harmless in respect of any such actions, claims or other demands.

Article XII

IMPORT DUTIES AND TAX

The Government shall allow the temporary importation and waive import duties and taxes for all equipment and supplies necessary for the Meeting. It shall issue without delay to the United Nations any necessary import and export permits.

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3. AGREEMENTS RELATING TO THE UNITED NATIONS CHILDREN'S FUND: REVISED MODEL AGREEMENT CONCERNING THE ACTIVITIES OF UNICEF[29]

Article VI

CLAIMS AGAINST UNICEF

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

Article VII

PRIVILEGES AND IMMUNITIES

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

Agreements between the United Nations (United Nations Children's Fund) and the Governments of Saint Vincent and the Grenadines,[30] Saint Lucia[31] and Zimbabwe,[32] concerning assistance from UNICEF. Signed, respectively, at Kingston, Jamaica on 20 January 1981 and Kingston, Saint Vincent on 10 February 1981, at Saint Lucia on 3 February 1981 and Kingston on 20 March 1981, and at Salisbury on 7 May 1981

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

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4. AGREEMENTS RELATING TO THE UNITED NATIONS DEVELOPMENT PROGRAMME: STANDARD BASIC AGREEMENT CONCERNING ASSISTANCE BY THE UNITED NATIONS DEVELOPMENT PROGRAMME[33]

Article III

EXECUTION OF PROJECTS

. . .

5. [See *Juridical Yearbook*, 1975, p. 24.]

. . .

Article IX

PRIVILEGES AND IMMUNITIES

[See *Juridical Yearbook*, 1975, p. 25.]

Article X

FACILITIES FOR EXECUTION OF UNDP ASSISTANCE

[See *Juridical Yearbook*, 1975, pp. 25-26.]

Article XIII

GENERAL PROVISIONS

. . .

4. . . . [See *Juridical Yearbook*, 1975, p. 26.]

(*a*) Standard basic agreements between the United Nations (United Nations Development Programme) and the Governments of Ethiopia,[34] the Syrian Arab Republic,[35] Papua New Guinea[36] and Saint Lucia[37] concerning assistance by the United Nations Development Programme. Signed respectively at Addis Ababa on 26 February 1981, New York on 12 March 1981, Port Moresby on 7 April 1981 and Castries on 22 July 1981

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

(*b*) Exchange of letters constituting an agreement between the United Nations (United Nations Development Programme) and Albania concerning assistance by the United Nations Development Programme.[38] New York, 21 and 27 January 1981 and 5 February 1981

Provisions similar to articles III, 5, IX, X and XIII, 4 of the standard basic agreement are to be found in this exchange of letters, where it is further provided that "pending the adherence of the Government of Albania to the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the International Atomic Energy Agency, the Government of Albania undertakes to extend the application of the provisions of the Convention on the Privileges and Immunities of the United Nations to the Specialized Agencies and the International Atomic Energy Agency (IAEA) acting as Executing Agencies of the UNDP, their property, funds and assets and to their officials and all other persons performing services on their behalf."

5. AGREEMENTS RELATING TO THE WORLD FOOD PROGRAMME

Basic agreements concerning assistance from the World Food Programme between the United Nations and the Food and Agriculture Organization of the United Nations on behalf of the World Food Programme, and the Governments of Viet Nam,[39] the United Kingdom (Saint Lucia),[39] the United Kingdom (on behalf of Saint Christopher, Nevis and Anguilla),[39] Kenya,[39] China,[39] Angola[39] and Seychelles.[39] Signed, respectively, at Hanoi on 18 February 1979, Rome on 20 February 1979, Rome on 3 April 1979, Nairobi on 7 March 1980, Beijing on 4 October 1980, Luanda on 2 December 1980 and Victoria, Mahé, on 6 February 1981

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

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

In 1981 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:[41]

State	*Date of receipt of instrument of accession or notification*	*Specialized agencies*
China ..... Notification	30 June 1981	IBRD, IMF, IFC, IDA
Cuba ..... Notification	21 July 1981	IFAD
Uruguay ..... Notification	24 June 1981	WMO

As of 31 December 1981, 88 States were parties to the Convention.[42]

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2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) Agreements for the establishment of an FAO Representative's Office

In 1981, agreements or exchanges of letters for the establishment of an FAO Representative's Office, providing, *inter alia*, for privileges and immunities, were concluded with the following countries: Madagascar, Morocco, Peru, Turkey, Western Samoa.

(*b*) 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 *Juridical Yearbook*, 1972, p. 32), were concluded in 1981 with the Governments of the following countries acting as hosts to such sessions: Algeria, Bolivia, Bulgaria, Colombia, Dominican Republic, France,[43] Germany, Federal Republic of,[43] Ghana, Greece, Guyana, Honduras, India,[43]

Indonesia, Ireland,[43] Italy,[43] Japan,[43] Kenya, Mauritius, Mexico,[43] Morocco, Nigeria, Norway, Pakistan, Portugal, Senegal,[43] Singapore, Spain,[43] Sri Lanka,[43] Switzerland,[43] Thailand, Togo, United Republic of Tanzania, Venezuela and Yugoslavia.

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

Agreements concerning specific training activities, containing provisions on privileges and immunities of FAO and participants similar to the standard text (published in *Juridical Yearbook*, 1972, p. 33), were concluded in 1981 with the Governments of the following countries acting as hosts to such training activities: Argentina, Chile, Finland, France,[43] Ghana, Guyana, Hungary, India,[43] Indonesia, Jordan, Kenya, Malawi, Mexico, Pakistan, Peru, Philippines, Senegal, Thailand, United Kingdom,[43] United Republic of Cameroon and Uruguay.

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Agreements relating to conferences, seminars and other meetings

(*a*) Agreement between the Government of the Republic of the Philippines and the United Nations Educational, Scientific and Cultural Organization concerning the Second Conference of Ministers Responsible for the Application of Science and Technology to Development and those responsible for economic planning in Asia and the Pacific (CASTASIA II). Signed at Paris on 8 July 1981

III. PRIVILEGES AND IMMUNITIES

The Government of the Republic of the Philippines shall apply, in all matters relating to this Conference, the Convention on the Privileges and Immunities of the Specialized Agencies, and Annex IV thereto relating to UNESCO to which the Philippines has been a party since 20 March 1950. In particular, it shall ensure that no restriction is placed upon the right of entry into, sojourn in and departure from its territory of any person entitled to participate in this meeting, without distinction of nationality.

In addition, the Government shall apply *mutatis mutandis* to government representatives participating in the Conference the relevant provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961.[44]

(*b*) Agreements containing provisions similar to that referred to in the paragraph above were also concluded between UNESCO and the governments of other Member States

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NOTES

[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.E/1, United Nations publication, Sales No. E.81.V.9).

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

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

[6] Came into force on 20 September 1981.

[7] Came into force on 1 October 1981.

[8] The "Headquarters Agreement" is the Agreement between the United Nations and Austria regarding the Headquarters of the United Nations Industrial Development Organization of 13 April 1967 (reproduced in the *Juridical Yearbook* 1967, p. 44). On 28 September 1979, the United Nations concluded an agreement regarding the Headquarters of the United Nations Industrial Development Organization and other offices of the United Nations which came into force on 1 September 1979 and under which the parties agreed that the area as shown in the map attached to the Agreement should constitute the permanent headquarters Seat of the United Nations Industrial Development Organization as provided for in Section 3 of the Headquarters Agreement and of such offices of the United Nations as are set up in Austria in accordance with Section 45 of the Headquarters Agreement.

[9] See *Juridical Yearbook*, 1972, p. 18-19.

[10] Came into force on 8 December 1981.

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

[12] Came into force on 30 March 1981.

[13] Came into force on 5 April 1981.

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

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

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

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

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

[19] Came into force on 26 June 1981.

[20] Came into force on 28 July 1981.

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

[22] Came into force on 9 August 1981.

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

[24] Came into force on 18 September 1981.

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

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

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

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

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

[30] Came into force on 10 February 1981.

[31] Came into force on 20 March 1981.

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

[33] Document UNDP/ADM/LEG.34 of 1 March 1973.

[34] Came into force provisionally on the date of signature.

[35] Came into force provisionally on the date of signature.

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

[37] Came into force on the respective dates of signature.

[38] Came into force on 5 February 1981.

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

[40] United Nations, *Treaty Series*, vol. 33, p. 26.

[41] 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.

[42] For the list of those States, see *Multilateral Treaties deposited with the Secretary-General* (ST/LEG/SER.E/1 — United Nations publication, Sales No. E.81.V.9).

[43] Certain departures from, or amendments to, the standard text were introduced at the request of the host Government.

[44] United Nations, *Treaty Series*, vol. 500, p. 95.

Part Two

LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter III

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

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

1. DISARMAMENT AND RELATED MATTERS[1]

(a) Comprehensive approaches to disarmament

(i) *General and complete disarmament*

In 1981, the ultimate goal of general and complete disarmament under effective international control was again affirmed in various United Nations bodies as the desired aim of all disarmament efforts. At the same time, as in other recent years, most of the focus on disarmament in the comprehensive sense was directed at stopping the arms race and getting a process of genuine disarmament, particularly nuclear disarmament, started, or at least at achieving specific measures of arms control. This focus was particularly evident in 1981 in the light of continuing tensions and disturbing developments in the international arena. Strong emphasis was placed on the importance of building confidence and restoring and strengthening détente in order to create an international atmosphere conducive to progress in disarmament.

Consideration by the Disarmament Commission

During the 1981 session, held from 18 May to 5 June,[2] emphasis on general and complete disarmament was, for the second time, reduced in favour of emphasis on the difficult international situation and the urgent need to halt and reverse the arms race, particularly the nuclear arms race.

For the first time, the Commission was able to consider the item appearing on its agenda on the basis of the letter of 8 March 1979 from the Chairman of the Special Committee against *Apartheid*,[3] covering the report of the United Nations Seminar on Nuclear Collaboration with South Africa.[4] Furthermore, two new items were added to the agenda, one entitled "Elaboration of a general approach to the study on all aspects of the conventional arms race and on disarmament relating to conventional weapons and armed forces, as well as its structure and scope" and a second item on the preparation of a report on the work of the Commission for submission to the General Assembly at its second special session devoted to disarmament, in 1982. Finally, the Commission established open-ended working groups to deal with the items concerning the reduction of military budgets and the study of conventional disarmament.

In its recommendations to the General Assembly, which were adopted by consensus, the Commission, with regard to the agenda item on various aspects of the arms race,[5] stated, *inter alia*, that it was convinced that the arms race, in particular the nuclear arms race, ran counter to efforts to achieving further relaxation of international tensions; that progress in the field of disarmament would be beneficial to the strengthening of international peace and security and to the improvement of international relations, which in turn would facilitate further progress; and that all nations, nuclear-weapon States and non-nuclear-weapon States alike, had a vital interest in measures of nuclear and conventional disarmament as well as in the prevention of the further spread of nuclear weapons in accordance with the relevant paragraphs of the Final Document.[6]

Consideration by the Committee on Disarmament

The Committee on Disarmament held its 1981 session at Geneva from 3 February to 24 April.[7] Early in the session, the Committee adopted its agenda and programme of work on the basis of

the 10 areas listed in its standard agenda for dealing with the cessation of the arms race and disarmament.[8] The Committee also re-established the *ad hoc* groups that had been set up in 1980 on security assurance to non-nuclear States, chemical weapons and radiological weapons and had the group on the comprehensive programme of disarmament resume its work.

Although a number of States made reference to general and complete disarmament in plenary meetings,[9] many of them were in connexion with the Declaration of the 1980s as the Second Disarmament Decade on the item called "Comprehensive programme of disarmament". As in recent years, greater over-all emphasis was afforded to the current dimensions of the arms race and urgent need to reverse and halt it than was given to the ultimate goal itself.

Consideration by the General Assembly

In 1981, the fundamental recognition of general and complete disarmament as the essential objective of all disarmament efforts was reiterated many times during the thirty-sixth session of the General Assembly, both in plenary meetings and in the First Committee.[10] As in other years, most general references to disarmament emphasized the need for the beginning of a disarmament process rather than the end result.

Under the item "General and complete disarmament" 12 draft resolutions were submitted to the First Committee.[11] All of the draft resolutions — some following substantive revision — were adopted by the General Assembly as resolutions 36/97 A to L. Resolutions E, G, I and K are summarized below. Some of the other resolutions are dealt with under the respective headings of the present summary.

By resolution E, on non-stationing of nuclear weapons, the Assembly, considering that the non-stationing of nuclear weapons on the territories of States where there are no such weapons at present would constitute a step towards the larger objective of the subsequent complete withdrawal of nuclear weapons from the territories of other States, requested once again the Committee on Disarmament to proceed without delay to talks with a view to elaborating an international agreement on the non-stationing of nuclear weapons on the territories of States where there are no such weapons at present and called upon all nuclear-weapon States to refrain from further action involving the stationing of nuclear weapons on the territories of other States.[12]

By resolution G, on prohibition of the production of fissionable material for weapon purposes, the Assembly, once again, considered that the cessation of the production of fissionable material for weapon purposes and the progressive conversion and transfer of stocks to peaceful uses would be a significant step towards halting and reversing the nuclear arms race; it also considered that the prohibition of the production of fissionable material for nuclear weapons and other explosive devices would be an important measure in facilitating the prevention of the proliferation of nuclear weapons and explosive devices.[13]

By resolution I, on strategic arms limitation talks, adopted without a vote, the Assembly, noting that the Treaty between the United States and the USSR on the limitation of strategic offensive arms (SALT II) had not yet been ratified, urged that the process begun by the SALT I Treaty and the signature of the SALT II Treaty should continue and be built upon and trusted that the signatory States would continue to refrain from any act which would defeat the object and purpose of that process. Furthermore, the Assembly urged the United States and the USSR to pursue negotiations, looking towards the achievement of an agreement which would provide for substantial reductions and significant qualitative limitations of strategic arms.

Finally, by resolution K, on disarmament and international security, the Assembly, considering that it was of essential importance to create a climate of confidence in the United Nations which would open the way to co-operation among Member States, in fulfilling the common and basic obligations under the Charter, called upon all States to take prompt action for the implementation of its resolution 35/156 J of 12 December 1980, which would render effective the decisions of the Security Council in accordance with the Charter of the United Nations and thereby be conducive to meaningful disarmament negotiations.[14]

(ii) *Follow-up of the tenth special session of the General Assembly*

In 1981, considerable disillusionment was expressed regarding the paucity of achievements since the 1978 special session of the General Assembly devoted to disarmament and some emphasis was placed on the need for preservation of détente and restoration of confidence as prerequisites for progress. A generally tense international situation prevailed throughout the year and no new hope materialized for early achievement of concrete measures of disarmament in accordance with the Programme of Action set out in the Final Document.

Under the item entitled "Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth Special Session", 13 draft resolutions were introduced in the First Committee at its 27th to 37th meetings and later adopted by the General Assembly as resolutions 36/92 A to M. By resolution K, on prohibition of the nuclear neutron weapon, the Assembly, sharing the world-wide concern on the production and intended deployment of nuclear neutron weapons, expressed by numerous Member States and by many non-governmental organizations, considering that the introduction of the nuclear neutron weapon in the military arsenals of States escalated the nuclear arms race and significantly lowered the threshold to nuclear war, thereby increasing the danger of such a war, and aware of the inhumane effects of that weapon, which constitutes a grave threat, particularly for the unprotected civilian population, requested the Committee on Disarmament to start without delay negotiations in an appropriate organizational framework with a view to concluding a convention on the prohibition of the production, stockpiling, deployment and use of nuclear neutron weapons.[15]

(iii) *Preparatory work for the second special session of the General Assembly devoted to disarmament*

During 1981 the Preparatory Committee held two substantive sessions from 4 to 15 May and from 5 to 16 October.[16] Whilst the precedents established at the 1978 special session facilitated agreement in the Preparatory Committee on procedural matters, the same could not be said regarding its work on the substantive issues that would be before the General Assembly at the second special session devoted to disarmament. There had been wide recognition that the Final Document had not yet led to any achievements of significance in the context of real disarmament and that the international political climate had worsened rather than improved in the past four years. Fundamental differences of views were apparent in 1981 in the discussions which took place in the Preparatory Committee. Nevertheless, there was a deep sense of determination that the disarmament debate must go forward and proposals be found that could be translated into action if humanity was to be saved from itself.

(iv) *Development of a comprehensive programme of disarmament*

Consideration of the comprehensive programme of disarmament continued at the 1981 session of the Committee on Disarmament on the basis of the outline adopted in 1980 in the plenary meetings of the Committee as well as in the *Ad Hoc* Working Group on the Comprehensive Programme of Disarmament.[17] At the conclusion of its work in 1981, the *Ad Hoc* Working Group reported to the Committee that it had been able to make good progress towards the elaboration of the comprehensive programme of disarmament but that considerable work remained to be done in resolving several important issues, in particular, issues relating to measures, stages and nature of the programme.[18]

At the thirty-sixth session of the General Assembly, the elaboration of the comprehensive programme of disarmament was mostly discussed in the context of the second special session devoted to disarmament,[19] with many delegations commenting on the subject and stressing generally that the consideration and adoption of the programme was one of the main items on the agenda of the special session.

(v) *World Disarmament Conference*

Pursuant to resolution 35/151, the *Ad Hoc* Committee on the World Disarmament Conference continued its work during two sessions in 1981. In its report to the General Assembly,[20] the *Ad*

Hoc Committee noted that the idea of convening such a conference had been recently recalled by the Assembly, in particular, in resolution 35/46 entitled "Declaration of the 1980s as the Second Disarmament Decade". Furthermore, the Committee reported that during its proceedings, some of its members expressed the view that the question of holding a world disarmament conference should be reflected in the output of the second special session of the General Assembly devoted to disarmament and that the Disarmament Commission might take up the question in connexion with its recommendations to the Assembly at its special session. The Committee also related in its report that, in accordance with its mandate, it had maintained close contact with the representatives of the nuclear weapon States. The updated indications of positions of these States showed that, as in the previous year, no consensus with respect to the convening of a world disarmament conference under existing conditions had been reached.

The General Assembly, during the general debates both in the plenary meetings and in the First Committee,[21] continued to consider the question of holding a world disarmament conference. By resolution 36/91, the Assembly renewed the mandate of the *Ad Hoc* Committee and requested the Committee to maintain close contact with the representatives of the States possessing nuclear weapons in order to remain currently informed of their attitudes as well as with all other States, and to consider any possible relevant proposals and observations which might be made to the Committee, especially having in mind paragraph 122 of the Final Document of the Tenth Special Session of the General Assembly.[22]

(*b*) Nuclear disarmament

(i) *Nuclear arms limitation and disarmament*

As in 1980, divergent approaches continued to mark the consideration of questions related to nuclear arms limitation and disarmament. The deliberations on the question were, even more than in previous years, characterized by a high degree of controversy: serious differences persisted among the nuclear weapon States with respect to a number of fundamental issues and the search for common grounds had been further complicated by developments in the international situation.

The General Assembly, at its thirty-sixth session, adopted a number of resolutions on measures in the field of nuclear arms limitation, some of which have been dealt with above.[23] By resolution 36/92 I, the Assembly recalled its declaration that the use of nuclear weapons would be a violation of the Charter of the United Nations and a crime against humanity and that the use or threat of use of nuclear weapons should be prohibited pending nuclear disarmament.[24]

(ii) *Cessation of nuclear-weapon tests*

In the eyes of many States, 1981 was a year of continued deadlock; not only did it prove impossible to start negotiations in the Committee on Disarmament on the cessation of nuclear-weapon tests, but the tripartite negotiations between the Soviet Union, the United Kingdom and the United States, which halted in 1980, were not resumed. To overcome the impasse in the Committee on Disarmament, many members proposed the establishment of an *ad hoc* working group on the matter; however, the Committee was unable to find consensus on the creation of such a working group. The resulting frustration among some members of the Committee gave rise to a move to make an addition to the rules of procedure of the Committee, so that the consensus rule could not be used to prevent the establishment of subsidiary bodies: this was subsequently reflected in General Assembly resolution 36/84.[25]

By resolution 36/84, the Assembly further reaffirmed its conviction that a treaty to achieve the prohibition of all nuclear test explosions, by all States for all time, was a matter of the highest priority and urged all States which had not yet done so to adhere without further delay to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water and, meanwhile, to refrain from testing in the environments covered by that Treaty.

By resolution 36/85, the Assembly, *inter alia*, called upon the three negotiating nuclear-weapon States to resume their negotiations and to exert their best efforts to bring them to an early successful conclusion and once again requested the Committee on Disarmament, *inter alia*, to take

the necessary steps to initiate substantive negotiations on a comprehensive test ban treaty as a matter of the highest priority.[26]

(iii) *Strengthening of the security of non-nuclear-weapon States*

In the course of 1981, the two major approaches to the problem of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons remained basically unchanged. Some States continued to emphasize the importance of the unilateral declarations issued by the nuclear Powers in 1978. A majority, however, regarded them as no substitute for a common commitment embodied in a legally binding international instrument.

The Committee on Disarmament, both in plenary meetings[27] and in closed meetings of its *Ad Hoc* Working Group, concentrated its endeavours in 1981 on the search for a common approach or formula, which, later on, could be included in such a legally binding international instrument. There was no objection in principle to the idea of an international convention and the idea of an interim agreement was also considered, particularly an appropriate Security Council resolution.

During the debates in the General Assembly, a number of delegations expressed the hope that positive results on the question might be achieved in connexion with the Assembly's second special session on disarmament in 1982. The two resolutions adopted by the Assembly,[28] *inter alia*, ensured that the Committee on Disarmament would continue negotiations on the subject in 1982.

(iv) *Nuclear-weapon-free zones*

The majority of Member States continued in 1981 to believe that the establishment of nuclear-weapon-free zones was a feasible, practical and effective measure for enhancing regional security, promoting international peace and complementing the non-proliferation régime. The proposals for the establishment of such zones in various parts of the world continued to enjoy general support in the various international disarmament forums: the Disarmament Commission, the Committee on Disarmament and the General Assembly.

During 1981, a forward movement was made with regard to the Treaty of Tlatelolco with the United States becoming a party to Additional Protocol I on 23 November by depositing its instrument of ratification; thus the consideration on the subject was narrowed down to the question of the ratification of Protocol I by France, the only outside State not party to the Protocol having responsibility for territories in the Latin American region.

On the question of denuclearization of Africa, most of the African States reiterated their concern about the threat of South Africa's nuclear plan and capability to the peace and security of the continent. In this connexion, the Assembly adopted resolution 36/86 A, by which it requested the Security Council to intensify its efforts to prohibit all forms of co-operation and collaboration with the racist régime of South Africa in the nuclear field and, in particular, to institute effective enforcement action against that régime so as to prevent it from endangering international peace and security through its acquisition of nuclear weapons, and called upon all States, corporations, institutions and individuals, *inter alia*, to terminate forthwith all military and nuclear collaboration with the racist régime.[29] The proposal for a nuclear-weapon-free zone in the Middle East continued to be overwhelmingly supported by Member States, and the Israeli military attack on the Iraqi nuclear installations in June of the year, although subject of intense debate, was equally strongly condemned. The proposal for the establishment of a nuclear-weapon-free zone in South Asia continued to receive the support of most Member States, and the General Assembly adopted a resolution, *inter alia*, reaffirming its endorsement of the concept of a nuclear-weapon-free zone in South Asia,[30] despite the differences in views that persisted, particularly between India and Pakistan, and the recognition that all States of the region should be in accord if the proposal for such a zone was to be implemented.

(v) *International co-operation in the peaceful uses of nuclear energy*

Questions relating to the peaceful uses of nuclear energy have, over the years, occupied a prominent place in international debate, both within and outside the framework of the United Nations. As a result of those discussions an awareness developed of the pressing need for an

international consensus in the field. In that connexion, the General Assembly in 1980 decided, by its resolution 35/112, to convene in 1983 the United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy, and to establish for that purpose a preparatory committee for the Conference.

In 1981, the Preparatory Committee was established[31] and preparatory work was started in earnest. Although the Committee at its first session concentrated primarily on organizational matters and the preparation of its programme of work, the Committee's report to the General Assembly at its thirty-sixth session provided a valuable opportunity for broadening the understanding between recipient and supplier countries on the problems ahead. On the whole, the debate also contributed to clarification of the positions of the parties on basic questions, particularly that of how to further international co-operation in the peaceful uses of nuclear energy without increasing the dangers of nuclear proliferation.

By its resolution 36/78, adopted without a vote, the Assembly decided that the United Nations Conference for the Promotion of International Co-operation in the Peaceful Uses of Nuclear Energy shall be held at Geneva from 29 August to 9 September 1983.

(*c*) Prohibition or restriction of use of other weapons

(i) *Chemical and bacteriological (biological) weapons*

In accordance with its programme of work and in pursuance of General Assembly resolution 35/144 B, the Committee on Disarmament continued negotiations towards a multilateral instrument on the total prohibition of chemical weapons. Most of the work in 1981 was conducted in closed meetings of the *Ad Hoc* Working Group on Chemical Weapons re-established by the Committee at the beginning of the year with the same mandate which it had had the previous year. Although many delegations expressed regret that the Group's mandate was not widened to enable it to initiate negotiations on the text of a convention on chemical weapons, the Working Group nevertheless carried out a detailed examination of the issues to be dealt with in the negotiations on a multilateral convention and it considered draft elements to be included in such a convention.[32]

Discussions in other forums in 1981 brought mixed results. In the General Assembly, for the first time in many years, the resolution on the continuation in the Committee on Disarmament of negotiations on a chemical weapons ban did not achieve consensus.[33] Furthermore, the bilateral negotiating process between the Soviet Union and the United States was interrupted, with both countries making acrimonious charges and countercharges, and the United States voted against a resolution, initiated by Eastern European States and others, calling, *inter alia*, for the resumption of the bilateral talks and for States to refrain from production of new types of chemical weapons, since it regarded the proposal as designed to preclude it from redressing an existing imbalance.[34]

Finally, the investigation begun in 1981 by the Secretary-General, with the help of experts, to ascertain the facts pertaining to reports on alleged use of chemical weapons in certain parts of the world was inconclusive and the Assembly asked that the investigation be continued in 1982. The United States, in particular, considered that decision to be very important. On the other hand, the Soviet Union and its allies believed that investigation of what they viewed as constructed allegations and unfounded rumours was intended to draw public attention from the negotiations on a chemical weapons ban and to justify the development by the United States of new types of such weapons.

(ii) *New weapons of mass destruction*

As in previous years, proposals concerning the prohibition of the development and manufacture of new weapons of mass destruction and new systems of such weapons received considerable recognition and support in 1981, particularly in the Committee on Disarmament[35] and the General Assembly.[36] Nevertheless, the two established approaches to the question remained divergent as in other recent years and no substantial progress was made.

In the Committee on Disarmament a proposal to establish a group of governmental experts on the question failed to obtain consensus. Instead, the Committee agreed to hold informal meetings, with the participation of qualified governmental experts.

In the General Assembly, the Eastern European States supported a proposal of the Soviet Union that States permanent members of the Security Council and other militarily significant States should make declarations, identical in substance, renouncing the creation of such new weapons and systems as a first step towards the conclusion of a comprehensive agreement on the subject. Western States, on the other hand, while recognizing the need to preclude the development of new weapons of mass destruction, continued to favour agreements on specific weapons as the possibility of their emergence could be clearly identified.

(iii) *Radiological weapons*

As in the previous year, the Committee on Disarmament[37] started its work in 1981 with a certain amount of optimism concerning the possibility of concluding the negotiations on a radiological weapons convention on the basis of the 1979 joint proposal by the Soviet Union and the United States,[38] but it turned out that divergent views on the matter were serious enough to prevent that possibility from materializing.

The main new development was the Swedish proposal on the prohibition of attack on civilian nuclear installations in order to prevent the possibility of a massive release of radioactive material. The proposal was supported by a number of States, but others objected to its incorporation in the text of the envisaged convention, partly because it would enlarge the scope of the convention beyond what had been originally intended and partly because it would involve time-consuming negotiations with various new implications.

In the General Assembly, the main discussion on the question of radiological weapons took place in the First Committee.[39] Although the discussion was mostly a reiteration of views already stated in the Committee on Disarmament, some narrowing-down of the differences was achieved during the course of the negotiations, and some hope remained at the conclusion of the thirty-sixth session that the agreed text of a draft convention might be submitted to the Assembly at its second special session devoted to disarmament.

In its resolution on the subject,[40] the Assembly again called upon the Committee on Disarmament to continue negotiations with a view to an early conclusion of the elaboration of a treaty prohibiting the development, production, stockpiling and use of radiological weapons in order that it might be submitted if possible to the General Assembly at its second special session devoted to disarmament.

(iv) *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*

The rules embodied in the Convention on certain inhumane weapons and the three annexed Protocols fall short of the original hopes and expectations of many countries. Nevertheless, the results achieved may be regarded as optimism in the prevailing international situation and can be considered a significant step in the development of humanitarian law to reduce the suffering of victims of armed conflicts.

A large number of countries signed the Convention at the time of its opening for signature on 10 April 1981, and others between then and the end of the year. Many delegations have expressed the hope that States become parties to it as soon as possible so that it might enter into force in the near future. In this connexion, the General Assembly adopted its resolution 36/93, without a vote, by which it urged those States which had not yet done so to exert their best endeavours to sign and ratify the Convention and the Protocols annexed thereto as early as possible so as to obtain the entry into force of the Convention, and utimately its universal adherence.

(v) *Prohibition of the stationing of weapons and prevention of an arms race in outer space*

In 1978, the General Assembly, in the Final Document of its tenth special session, recognized the inherent dangers of a potential arms race in outer space and called for further measures to be taken and appropriate international negotiations to be held in order to prevent such an occurrence.[41]

Thereafter, in December 1979, the General Assembly commended, by its resolution 34/68, a further instrument of international law concerning outer space, namely, the Agreement Governing Activities of States on the Moon and Other Celestial Bodies, and annexed the text of the Agreement to the resolution. That Agreement describes the moon and its natural resources as the common heritage of mankind, and elaborates in greater detail than the 1967 Treaty the obligations of States to ensure that the moon and other celestial bodies within the solar system are used exclusively for peaceful purposes. In 1968, the first United Nations Conference on the Exploration and Peaceful Uses of Outer Space was held in Vienna. In recent years, the General Assembly has adopted a series of resolutions regarding the holding of a second United Nations Conference on the same subject. The first of these was resolution 33/16 of 10 November 1978,[42] by which the Assembly decided to convene the second United Nations Conference and to have the Committee on the Peaceful Uses of Outer Space act as the Preparatory Committee for the Conference. As a result of the action taken under the item by the General Assembly in 1981, with its adoption of resolution 36/36 of 18 November, the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space was scheduled to be held in Vienna from 9 to 21 August 1982.

In the course of the debates in the General Assembly and, especially, the First Committee,[43] in 1981, a number of Member States expressed concern that rapid advances in science and technology had made the extension of the arms race into the region of outer space a very real possibility. Several noted that in spite of the existence of a number of international agreements, such as the outer space Treaty of 1967 prohibiting nuclear and other weapons of mass destruction from being placed in fixed orbit, new kinds of weapons were still being developed. The majority of speakers who addressed the issue felt that the time had come to consider seriously further measures to halt the trend towards the militarization of outer space.

The two resolutions adopted by the Assembly on the disarmament aspect of the question indicate the possible emergence in the future of somewhat different approaches by Eastern European States on the one hand and Western States on the other to the question of precluding an arms race in outer space. The Eastern European approach, derived from the Soviet request for a specific new agenda item on the subject, focused in 1981 on a broad treaty to prohibit the stationing of weapons of any kind in outer space, and the Assembly, by the resolution adopted under the item,[44] called specifically for the Committee on Disarmament to embark on negotiations on such a treaty. The Western approach, on the other hand, placed emphasis on the contribution of satellites in the verification of disarmament agreements and in promoting peace, stability and international co-operation, and also on the specific question of anti-satellite systems. By the corresponding resolution[45] the Assembly requested the Committee on Disarmament to consider the question of negotiating verifiable agreements aimed at preventing an arms race in space, taking into account existing and future proposals and, as a matter of priority, to consider the question of an agreement to prohibit anti-satellite systems.

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2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) Development and strengthening of good-neighbourliness between States

In its resolution 36/101, which it adopted upon the recommendation of the First Committee,[46] the General Assembly, *inter alia*, invited the United Nations organs, bodies and programmes, as well as the specialized agencies within their fields of competence, to continue to inform the Secretary-General of the aspects of their activities relevant to the development of relations of good-neighbourliness between States and requested the Secretary-General to submit to the Assembly at its thirty-seventh session, on the basis of the replies of States and of the views expressed during the thirty-sixth session, as well as of comments of specialized agencies, a report containing an orderly presentation of the views and suggestions received concerning the content of good-neighbourliness, as well as ways and modalities to enhance it.

(*b*) Implementation of the Declaration on the Strengthening of International Security[47]

In its resolution 36/102, which it adopted upon the recommendation of the First Committee,[48] the General Assembly, *inter alia,* urged all States to abide strictly, in their international relations, by their commitment to the Charter; called upon all States to contribute effectively to the implementation of the Declaration on the Strengthening of International Security; urged all States, in particular the members of the Security Council, to undertake all necessary measures to prevent the further aggravation of the international situation and disruption of the process of détente; requested the Security Council to examine all existing mechanisms and to propose new ones aimed at enhancing the authority and enforcement capacity of the Council in accordance with the Charter; reiterated the need for the Security Council, particularly its permanent members, to ensure the effective implementation of its own decisions in compliance with the relevant provisions of the Charter; reaffirmed again the legitimacy of the struggle of peoples under colonial domination, foreign occupation or racist régimes and their inalienable rights to self-determination and independence; and reiterated its support for the Declaration of the Indian Ocean as a Zone of Peace and expressed the hope that the Conference on the Indian Ocean will be held not later than in the first half of 1983.

(*c*) Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States

By its resolution 36/103, which it adopted upon the recommendation of the First Committee,[49] the General Assembly, *inter alia,* approved the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, the text of which is reproduced below, and requested the Secretary-General to ensure the widest dissemination of this Declaration to States, the specialized agencies and other organizations in association with the United Nations and other appropriate bodies.

Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States

The General Assembly,

Reaffirming, in accordance with the Charter of the United Nations, that no State has the right to intervene directly or indirectly for any reason whatsoever in the internal and external affairs of any other State,

Reaffirming further the fundamental principle of the Charter that all States have the duty not to threaten or use force against the sovereignty, political independence or territorial integrity of other States,

Bearing in mind that the establishment, maintenance and strengthening of international peace and security are founded upon freedom, equality, self-determination and independence, respect for the sovereignty of States, as well as permanent sovereignty of States over their natural resources, irrespective of their political, economic or social systems or the levels of their development,

Considering that full observance of the principle of non-intervention and non-interference in the internal and external affairs of States is of the greatest importance for the maintenance of international peace and security and for the fulfilment of the purposes and principles of the Charter,

Reaffirming, in accordance with the Charter, the right to self-determination and independence of peoples under colonial domination, foreign occupation or racist régimes,

Stressing that the purposes of the United Nations can be achieved only under conditions where peoples enjoy freedom and States enjoy sovereign equality and comply fully with the requirements of these principles in their international relations,

Considering that any violation of the principle of non-intervention and non-interference in the internal and external affairs of States poses a threat to the freedom of peoples, the sovereignty,

political independence and territorial integrity of States and to their political, economic, social and cultural development, and also endangers international peace and security,

Considering that a declaration on the inadmissibility of intervention and interference in the internal affairs of States will contribute towards the fulfilment of the purposes and principles of the Charter,

Considering the provisions of the Charter as a whole and taking into account the resolutions adopted by the United Nations relating to that principle, in particular those containing the Declaration on the Strengthening of International Security, the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the Definition of Aggression,

Solemnly declares that:

1. No State or group of States has the right to intervene or interfere in any form or for any reason whatsoever in the internal and external affairs of other States.

2. The principle of non-intervention and non-interference in the internal and external affairs of States comprehends the following rights and duties:

I

(*a*) Sovereignty, political independence, territorial integrity, national unity and security of all States, as well as national identity and cultural heritage of their peoples;

(*b*) The sovereign and inalienable right of a State freely to determine its own political, economic, cultural and social systems, to develop its international relations and to exercise permanent sovereignty over its natural resources, in accordance with the will of its people, without outside intervention, interference, subversion, coercion or threat in any form whatsoever;

(*c*) The right of States and peoples to have free access to information and to develop fully, without interference, their system of information and mass media and to use their information media in order to promote their political, social, economic and cultural interests and aspirations, based, *inter alia*, on the relevant articles of the Universal Declaration of Human Rights and the principles of the new international information order;

II

(*a*) The duty of States to refrain in their international relations from the threat or use of force in any form whatsoever to violate the existing internationally recognized boundaries of another State, to disrupt the political, social or economic order of other States, to overthrow or change the political system of another State or its Government, to cause tension between or among States or to deprive peoples of their national identity and cultural heritage;

(*b*) The duty of a State to ensure that its territory is not used in any manner which would violate the sovereignty, political independence, territorial integrity and national unity or disrupt the political, economic and social stability of another State; this obligation applies also to States entrusted with responsibility for territories yet to attain self-determination and national independence;

(*c*) The duty of a State to refrain from armed intervention, subversion, military occupation or any other form of intervention and interference, overt or covert, directed at another State or group of States, or any act of military, political or economic interference in the internal affairs of another State, including acts of reprisal involving the use of force;

(*d*) The duty of a State to refrain from any forcible action which deprives peoples under colonial domination or foreign occupation of their right to self-determination, freedom and independence;

(*e*) The duty of a State to refrain from any action or attempt in whatever form or under whatever pretext to destabilize or to undermine the stability of another State or of any of its institutions;

(*f*) The duty of a State to refrain from the promotion, encouragement or support, direct or indirect, of rebellious or secessionist activities within other States, under any pretext whatsoever,

or any action which seeks to disrupt the unity or to undermine or subvert the political order of other States;

(*g*) The duty of a State to prevent on its territory the training, financing and recruitment of mercenaries, or the sending of such mercenaries into the territory of another State, and to deny facilities, including financing, for the equipping and transit of mercenaries;

(*h*) The duty of a State to refrain from concluding agreements with other States designed to intervene or interfere in the internal and external affairs of third States;

(*i*) The duty of States to refrain from any measure which would lead to the strengthening of existing military blocs or the creation or strengthening of new military alliances, interlocking arrangements, the deployment of interventionist forces or military bases and other related military installations conceived in the context of great-Power confrontation;

(*j*) The duty of a State to abstain from any defamatory campaign, vilification or hostile propaganda for the purpose of intervening or interfering in the internal affairs of other States;

(*k*) The duty of a State, in the conduct of its international relations in the economic, social, technical and trade fields, to refrain from measures which would constitute interference or intervention in the internal or external affairs of another State, thus preventing it from determining freely its political, economic and social development; this includes, *inter alia*, the duty of a State not to use its external economic assistance programme or adopt any multilateral or unilateral economic reprisal or blockade and to prevent the use of transnational and multinational corporations under its jurisdiction and control as instruments of political pressure or coercion against another State, in violation of the Charter of the United Nations;

(*l*) The duty of a State to refrain from the exploitation and the distortion of human rights issues as a means of interference in the internal affairs of States, of exerting pressure on other States or creating distrust and disorder within and among States or groups of States;

(*m*) The duty of a State to refrain from using terrorist practices as state policy against another State or against peoples under colonial domination, foreign occupation or racist régimes and to prevent any assistance to or use of or tolerance of terrorist groups, saboteurs or subversive agents against third States;

(*n*) The duty of a State to refrain from organizing, training, financing and arming political and ethnic groups on their territories or the territories of other States for the purpose of creating subversion, disorder or unrest in other countries;

(*o*) The duty of a State to refrain from any economic, political or military activity in the territory of another State without its consent;

III

(*a*) The right and duty of States to participate actively on the basis of equality in solving outstanding international issues, thus actively contributing to the removal of causes of conflict and interference;

(*b*) The right and duty of States fully to support the right to self-determination, freedom and independence of peoples under colonial domination, foreign occupation or racist régimes, as well as the right of these peoples to wage both political and armed struggle to that end, in accordance with the purposes and principles of the Charter;

(*c*) The right and duty of States to observe, promote and defend all human rights and fundamental freedoms within their own national territories and to work for the elimination of massive and flagrant violations of the rights of nations and peoples, and, in particular, for the elimination of *apartheid* and all forms of racism and racial discrimination;

(*d*) The right and duty of States to combat, within their constitutional prerogatives, the dissemination of false or distorted news which can be interpreted as interference in the internal affairs of other States or as being harmful to the promotion of peace, co-operation and friendly relations among States and nations;

(*e*) The right and duty of States not to recognize situations brought about by the threat or use of force or acts undertaken in contravention of the principle of non-intervention and non-interference.

3. The rights and duties set out in this Declaration are interrelated and are in accordance with the Charter.

4. Nothing in this Declaration shall prejudice in any manner the right to self-determination, freedom and independence of peoples under colonial domination, foreign occupation or racist régimes, and the right to seek and receive support in accordance with the purposes and principles of the Charter.

5. Nothing in this Declaration shall prejudice in any manner the provisions of the Charter.

6. Nothing in this Declaration shall prejudice action taken by the United Nations under Chapters VI and VII of the Charter.

(*d*) Implementation of the Declaration on the Preparation of Societies for Life in Peace[50]

In its resolution 36/104, which it adopted upon the recommendation of the First Committee,[51] the General Assembly, *inter alia*, solemnly invited all States to intensify their efforts towards the implementation of the Declaration on the Preparation of Societies for Life in Peace by strictly observing the principles enshrined in the Declaration and taking all necessary steps towards that end at the national and international levels and reiterated its appeal for concerted action on the part of Governments, the United Nations and the specialized agencies, to give tangible effect to the supreme importance and need of establishing, maintaining and strengthening a just and durable peace for present and future generations.

(*e*) Legal aspects of the peaceful uses of outer space

The Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space held its twentieth session from 16 March to 10 April 1981 in Geneva.[52] The Sub-Committee devoted its time mainly to four items on its agenda, namely: legal implications of remote sensing of the earth from space, with the aim of formulating draft principles; elaboration of draft principles governing the use by States of artificial earth satellites for direct television broadcasting; consideration of the possibility of supplementing the norms of international law relevant to the use of nuclear power sources in outer space; and matters relating to the definition and/or delimitation of outer space and outer space activities, bearing in mind, *inter alia*, questions relating to the geostationary orbit. The Sub-Committee considered the first two items on a priority basis.

The Sub-Committee's Working Group on remote sensing continued to review the texts of the draft principles on remote sensing of the earth from outer space.[53] The Working Group considered all but Principles II-X, which were not specifically discussed although references were made by some delegations to some of these principles in the course of the discussion of other principles. During the session two working papers were submitted.[54] There was only a brief and preliminary exchange of views on the working paper submitted by the delegation of Mexico. The Working Group did not complete its consideration of the draft principles.

The Sub-Committee's Working Group on direct television broadcast satellites continued its consideration of the texts of the draft principles on the use by States of artificial earth satellites for direct television broadcasting as they appeared at the conclusion of the nineteenth session of the Sub-Committee (A/AC.105/271, annex 1, appendix). The Working Group held preliminary discussions on the questions of "State responsibility" and "consultation and agreements between States". The remainder of the draft principles were not discussed. Later, informal consultations were held in the hope of reaching agreement on a text to be considered by Governments and the parent body. However, no consensus was reached.

At the first meeting of its twentieth session, the Sub-Committee established a Working Group for consideration of the possibility of supplementing the norms of international law relevant to the use of nuclear power sources in outer space. In this connexion the Working Group had before it the Report of the Legal Sub-Committee on its nineteenth session (A/AC.105/271), the Report of the Scientific and Technical Sub-Committee on its eighteenth session (A/AC.105/287) and three working papers that were submitted in the course of the discussions.[55] The Working Group felt

that its consideration of the agenda item would provide a useful and constructive basis for the continuation of work on that item at the twenty-first session of the Legal Sub-Committee.

The Sub-Committee considered in plenary the question of the definition and/or delimitation of outer space and outer space activities, bearing in mind, *inter alia*, questions relating to the geostationary orbit. During the discussion, a proposal was made to divide the agenda item into two separate items, one on the question of the definition and/or delimitation of outer space and another on the question of the geostationary orbit. The Sub-Committee, however, decided that it would refer the matter for determination to the Committee on the Peaceful Uses of Outer Space.

The Committee on the Peaceful Uses of Outer Space at its twenty-fourth session, held at United Nations Headquarters from 22 June to 2 July 1981,[56] took note with appreciation the report of the Legal Sub-Committee on its twentieth session and made recommendations as to the work to be done by the Sub-Committee at its twenty-first session in 1982.

At its thirty-sixth session, the General Assembly adopted on the recommendation of the Special Political Committee[57] resolution 36/35, in which it, *inter alia*, endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space concerning the future work of its Legal Sub-Committee.

By its resolution 36/35, also adopted on the recommendation of the Special Political Committee,[58] the General Assembly, recalling its resolutions 33/16 of 10 November 1978, 34/67 of 5 December 1979 and 35/15 of 3 November 1980 concerning the convening as well as the preparation of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space, to be held in Vienna from 9 to 21 August 1982, requested the Secretary-General of the Conference, *inter alia*, to continue fulfilling his mandate and to ensure world-wide awareness of the Conference and its objective.

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3. ECONOMIC, SOCIAL, HUMANITARIAN AND CULTURAL QUESTIONS

(*a*) Environmental questions

Ninth session of the Governing Council of the United Nations Environment Programme[59]

The Governing Council of the United Nations Environment Programme met for its ninth session from 13 to 26 May 1981. It held a general debate during which it considered the Introductory Report of the Executive Director[60] and the State of the Environment Report.[61] In the course of the debate[62] environmental law was considered to be a subject of growing importance and support was expressed for UNEP activities in that field. One delegation, particularly, welcomed the fact that UNEP planned to start work on a global convention on environmental impact assessment. A number of delegations welcomed the work done in preparing for the *ad hoc* meeting of senior Government officials expert in environmental law, to be held at Montevideo in November 1981,[63] which should establish a framework and set out a programme for the long-term development of environmental law with particular regard to the interests of developing countries. One suggested that the programme should be so formulated as to include the components of assessment, management and supporting measures. Others, while welcoming the holding of an informal preparatory meeting in Ottawa in 1980, thought that the priorities the participants had enumerated should be broadened to include problems specific to the developing countries in the management, protection and rational exploitation of their natural resources. Another delegation stressed that the Council should give clear guidance to the preparatory committee in developing the agenda for the *ad hoc* meeting and expressed the hope that the preparatory process would result in the identification of issues and discussion topics which would justify its Government's participation.

Sessional Committee I dealt *inter alia* with the question of environmental law.[64] Among various views which were expressed in this connexion the following may be noted.

Several delegations welcomed the conclusions of the Working Group of Experts on Environmental Law on legal aspects concerning the environment related to offshore mining and drilling

within the limits of national jurisdiction, which, it was felt, would contribute significantly to preventing pollution resulting from the offshore exploration and exploitation of hydrocarbons and other minerals. One delegation suggested that the conclusions could be recommended to Member States as minimum criteria to be taken into account in the conduct of operations within the limits of their national jurisdiction; another argued that they needed careful study before being incorporated in national legislation and another said that they should not be adopted until after they had been circulated to Governments for comment. Another expressed reservations with regard to the conclusions of the meeting on the grounds that they did not take account of the responsibilities of States in respect of ecological damage.

One delegation expressed reservations as to the value to UNEP of the proposed biannual meetings of environmental law experts for the consideration of new research programme requirements, and further felt that the proposed seminar for universities teaching environmental law could be deferred without undue loss, although another delegation called for improved training facilities in environmental law.

A few delegations expressed concern over the development by UNEP of legal principles for the guidance of States. One stressed that UNEP should confine itself to developing guidelines rather than principles; the responsibility for identifying shared natural resources rested with States, and UNEP should limit its involvement to consultations with Governments and reporting to the General Assembly. Other delegations, however, welcomed the draft principles of conduct for the guidance of States in the conservation and harmonious exploitation of natural resources shared by two or more States, and urged that they be adopted as soon as possible.

One delegation noted with approval the topics scheduled for discussion by the *ad hoc* meeting of Senior Government Officials expert in Environmental Law (Montevideo) and requested the inclusion of an additional item, "Development of environmental law for the protection of national resources". Another delegation said that full recognition of developing countries' efforts to reconcile environmental considerations with their socio-economic development priorities should be the prime consideration in the development of environmental law at all levels, global, regional or national, and the *ad hoc* meeting should select priority areas for inclusion in the environmental law chapter of the system-wide medium-term environment programme on that basis, while ensuring that the chapter reflected priorities acceptable to both developed and developing countries. One delegation emphasized in that connexion the importance of the formulation of guidelines and the provision of assistance for the development of national environmental legislation and regulations, as well as of procedures for environmental assessment, which, if elevated into a universally accepted legal instrument, with varying approaches appropriate to different levels of concern, and particularly to the practical needs of developing countries, would be a major step forward in the progressive development of environmental law.

The importance of UNEP ensuring that the specific objectives and strategies of the medium-term plan were consistent with the intent of the over-all objective of the programme was stressed. One delegation expressed reservations in connexion with several strategy elements of the plan, for example, the references to the application of conventions which were not yet in existence and, with respect to the law of the sea, the promotion of environmentally sound application of a treaty which had not yet been adopted. Environmental law should be properly only one aspect of environmental policy, and not be considered a subject in itself. Another delegation said that legal guidelines should not be established until a national scientific basis for them had first been established.

At its 9th meeting on 26 May 1981, the Governing Council adopted decision 9/10 C entitled "Environmental Law" whereby the Council, *inter alia*, expressed the wish to assist Governments in promoting legal protection of the environment against marine pollution caused by offshore mining and drilling within the limits of national jurisdiction. To that effect it took note of the conclusions of the study, containing guidelines on offshore mining and drilling within the limits of national jurisdiction, annexed to the report of the Working Group of Experts on Environmental Law on the work of its eighth session[65] and it recommended that States consider the guidelines when formulating national legislation or undertaking the negotiations for the conclusion of international agreements for the prevention of pollution of the marine environment caused by offshore mining and drilling within the limits of national jurisdiction.

Furthermore, at the same meeting, the Governing Council adopted decision 9/19, also entitled "Environmental law", in part A of which the Council, *inter alia*, decided that, further to General Assembly resolution 35/74 of 5 December 1980, the *Ad Hoc* Meeting of Senior Government Officials Expert in Environmental Law would take place at Montevideo in November 1981 and that the Working Group of Experts on Environmental Law, acting as the preparatory committee for the *Ad Hoc* Meeting, would meet at Geneva for two weeks early in September 1981. It further decided that the mandate of the *Ad Hoc* Meeting would be:

(*a*) To establish a framework and methods for the development and periodic review of environmental law, by focusing upon: (i) the identification of major subject areas — such as marine pollution from land-based sources, protection of the ozone layer and disposal of hazardous wastes — suitable for increased global and regional co-ordination and co-operation in elaborating environmental law, with particular regard to the interests of developing countries; (ii) the promotion of guidelines or, where appropriate, of principles, or the conclusion of bilateral, regional or multilateral agreements, in relation to such subject areas; (iii) the identification of other subject areas which could be susceptible to the development of such guidelines, principles or agreements; (iv) the identification of subject areas suitable for the elaboration of preventive measures as well as other mechanisms for the implementation of environmental law, including the improvement of remedies available to the victims of pollution; (v) the means for the promotion and provision of technical assistance to developing countries in the field of environmental law; and (vi) the identification of means by which environmental law could increasingly be included in curricula; (*b*) to set out a programme, including global, regional and national efforts, in furtherance of the above elements.

Moreover, by its decision 9/10 part A adopted also at its 9th meeting on 26 May 1981 the Governing Council, *inter alia*, took note of the report on international conventions and protocols in the field of the environment[66] and authorized the Executive Director to transmit it, together with the fourth supplement to the list of such conventions and protocols,[67] to the General Assembly at its thirty-sixth session, in accordance with Assembly resolution 3436 (XXX) of 9 December 1975. For its part, the General Assembly of the United Nations adopted without a vote on the recommendation of the Second Committee[68] resolution 36/192 of 17 December 1981 whereby the Assembly, *inter alia*, took note of the Report of the Governing Council on the work of its ninth session[69] and the decisions adopted by the Council at that session;[70] took account of the note by the Secretary-General on international conventions and protocols in the field of the environment;[71] and welcomed the convening of an *Ad Hoc* Meeting of Senior Government Officials Expert in Environmental Law at Montevideo, from 28 October to 6 November 1981.

Status and implementation of the Convention on Long-Range Transboundary Air Pollution

In 1981, 7 States became parties to the Convention on Long-Range Transboundary Air Pollution concluded at Geneva on 13 November 1979.

(*b*) Office of the United Nations High Commissioner for Refugees[72]

During the reporting period, while some developments in the field of the international protection of refugees have certainly been positive, the more general context contains elements which necessarily gave rise to concern. With reference to the institution of asylum, for instance, during the reporting period countries in various parts of the world were confronted with increasing requests for asylum. While large numbers of refugees were granted admission on a durable basis, the overall trend has been for States to pursue more restrictive policies with regard to the finding of durable solutions for refugees and asylum-seekers. In certain parts of the world, asylum-seekers are admitted as a matter of principle on a temporary basis only.

It is, of course, important that the principle of asylum — whether it be granted as a durable solution or only on a temporary basis — be applied in an even-handed and non-discriminatory manner. The need for States to accord refugees the benefits of universally accepted principles of protection without discrimination as to race, religion or country of origin is recognized in the major

international refugee instruments, viz. the 1951 United Nations Refugee Convention, the 1967 Protocol and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. The High Commissioner was therefore concerned to note that during the period under review several countries were more restrictive in their approach to asylum requests from certain groups than they were with regard to others.

At the treaty-making level, the institution of asylum has been further strengthened. An important event in this regard was the adoption in July 1981 of the African Charter of Human and Peoples' Rights, which recognizes the right of every individual, when persecuted, to seek and obtain asylum.[73] The Universal Islamic Declaration on Human Rights, adopted in September 1981, is also of significance in that it states that every persecuted or oppressed person has the right to seek refuge and asylum, irrespective of race, religion, colour or sex.[74]

On the national level, new laws and administrative measures concerning the admission of refugees or procedures for determining refugee status — which, of course, are of relevance to asylum — were adopted in a number of countries during the reporting period. Legislation enacted by Japan, pursuant to its accession to the 1951 United Nations Refugee Convention and the 1967 Protocol, contains a provision concerning the grant of temporary asylum to persons arriving by sea and also provides for the possibility of granting permanent residence to recognized refugees. Amendments to immigration legislation adopted by Australia during 1981 also specifically mention persons recognized as refugees as being eligible for permanent residence in that country. A decree establishing a national refugee commission for the purpose of examining asylum requests was adopted in Panama, and in Belgium revised aliens legislation containing more liberal provisions relating to asylum came into force. In Africa, draft legislation on the admission of refugees is under consideration in Burundi, Kenya, Zambia and Zimbabwe and in several of these countries such legislation has reached an advanced stage of preparation. In Swaziland, comprehensive guidelines were issued for the grant of asylum and determination of refugee status.

Concerning the principle of *non-refoulement*, it is disappointing to record that during the reporting period asylum-seekers were forcibly returned to countries where they were in danger of persecution or even in risk of their lives.

With reference to the circumstances in which the activities of a refugee may lead the country of asylum to envisage his or her expulsion it is to be noted that the 1951 United Nations Refugee Convention permits expulsion only in very exceptional circumstances, i.e. when factors of national security or public order are invoked. The United Nations High Commissioner for Refugees seeks to ensure that measures of expulsion should only be taken in respect of a refugee if these are clearly justified, and that the refugee can benefit from the procedural guarantees provided for in article 32 of the 1951 United Nations Refugee Convention. The High Commissioner is encouraged to report that comparatively few refugees were subjected to expulsion measures from their country of asylum during the reporting period and that, in those cases where expulsion was resorted to, the circumstances involved were of a serious nature. The Office of the High Commissioner encourages the inclusion by States in their refugee or aliens legislation of provisions delimiting the circumstances in which an expulsion order may be issued against a refugee. In Portugal, an article contained in the Decree Law on Entry, Residence, Departure and Expulsion of Aliens adopted in 1981 specifies that the measures of expulsion shall only be taken with regard to refugees in conformity with the international refugee instruments to which Portugal is a party. Provisions along similar lines are contained in draft refugee legislation currently under consideration by a number of other countries.

With regard to the physical safety of refugees and asylum-seekers it is to be noted that threats to and violations of the physical safety of refugees and asylum-seekers have continued and, to a certain extent, intensified during 1981. Problems in this connexion included pirate attacks on asylum-seekers in the South China Sea and the conditions of treatment of refugees in camps of certain parts of the world where there is an international presence.

The reporting period has also witnessed an increasing number of incidents in which refugees and asylum-seekers were detained on account of their illegal entry or presence in a country of asylum.

The Office has found that refugees are frequently detained because, pending clarification of their status, they are regarded as illegal immigrants. It should be recalled in this connexion that

article 31 of the 1951 United Nations Refugee Convention provides that States should not impose penalties on refugees on account of their illegal entry or presence, nor should they apply to the movements of such refugees restrictions other than those which are necessary and these only until their status is regularized or admission is obtained into another country.

With reference to the granting of economic and social rights to refugees, as in the past years, the practices of States have varied widely.

Concerning the granting of documentation to refugees, particularly identity documents, it should be noted that during 1981 identity cards were issued to refugees on a large scale in a number of countries. In Pakistan, all recognized refugees were issued with one of several types of identity document. In Honduras, identity cards were issued to all refugees assisted by UNHCR in the border regions. In Malaysia, as in past years, identity cards were issued to all arriving Indo-Chinese refugees awaiting resettlement. Programmes for the issue of identity documentation were also undertaken in Kenya, the Sudan and Zambia; in Kenya, refugees were also exempted from the payment of fees for the issuance and renewal of their Aliens Registration Certificate. In Somalia and the United Republic of Tanzania, agreement was reached between UNHCR and the competent authorities for the issue of identity documentation to refugees lawfully residing in these two countries.

With reference to the determination of refugee status, during the reporting period a number of Governments have adopted a more restrictive approach than in previous years. In some countries, that development involved an assumption that certain groups of asylum-seekers were *a priori* ineligible for refugee status. Elsewhere, it involved more onerous standards of proof being required of certain categories of asylum-seekers. Measures for establishing determination of refugee status procedures were adopted in a number of countries during the reporting period. In Japan, such a procedure was provided for in legislation adopted to implement the 1951 United Nations Convention. In Panama, a decree was adopted during 1981 creating an interministerial refugee commission whose functions include the determination of refugee status. National refugee commissions with similar functions were set up in Honduras and Belize, and in the United Republic of Tanzania a decision was taken to establish a body for determining refugee status during 1982. In other countries, existing procedures for identifying refugees were streamlined or modified. In Australia, improved procedures were adopted with a view to ensuring a more thorough examination of asylum applications. In Canada the recommendations of a task force specially established for the purpose resulted in the adoption of new guidelines for implementing the procedures which can be regarded as exemplary. In the European context, an important development was the adoption by the Council of Europe of a Recommendation on the Harmonization of National Procedures relating to Asylum.[75] This recommendation reflects and further develops the basic requirements for refugee status determination procedures which were identified by the Executive Committee at its twenty-eighth session[76] and thus provides asylum-seekers with additional guarantees for a fair and equitable hearing of their applications. In Costa Rica, administrative regulations were issued which detail the documentary evidence required of applicants for refugee status in support of their claim.

One of the basic functions of the Office of the High Commissioner, as defined in the statute of the Office, is to facilitate the voluntary repatriation of refugees as the best solution for the refugee problem. Where voluntary repatriation is excluded or is not feasible in the foreseeable future, the acquisition by refugees of the nationality of their country of asylum is another of the accepted solutions to refugee problems. During the reporting period, in certain parts of the world large numbers of refugees sought and obtained the nationality of their country of residence. In the United Republic of Tanzania, a programme was completed involving the naturalization of some 36,000 former Rwandese refugees. In certain countries of traditional immigration, refugees continued to benefit from provisions which enable immigrants to acquire nationality within a relatively short period of time. In other countries, the pattern was for very few requests for naturalization to be submitted or granted. The legislation of a number of countries takes special account of the circumstances of the refugees either by reducing the period of residency that is required of an ordinary alien to obtain citizenship or by waiving other formal requirements. Measures of this kind are of course envisaged by article 34 of the 1951 United Nations Refugee Convention, which calls upon

States parties to make every effort to expedite naturalization proceedings (for refugees) and to reduce as far as possible the charges and costs of such proceedings.

Some positive results can also be recorded during the reporting period in the area of family reunification.

With reference to the international instruments regulating the problem of refugees, it should be noted that during the reporting period, as in the past, the High Commissioner frequently relied on his statute to determine which persons fell within his competence and were thus entitled to international protection. In some cases, such determination involved individuals while in others it related to groups of refugees. Determination of refugee status under the UNHCR statute is frequently resorted to in countries where refugee problems occur but where the basic international refugee instruments are not applicable.[77] With reference to the basic international refugees instruments, it should be pointed out that, during 1981, 8 more States became parties to the 1951 Convention relating to the Status of refugees[78] and 8 more States became parties to the 1967 Protocol relating to the status of refugees.[79]

Within the regional level, in Africa, where the legal status of the refugee is well defined in the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the institution of asylum has been further strengthened by the incorporation of a provision on asylum in the African Charter on Human and Peoples' Rights. That charter was adopted in Nairobi in 1981 and specifically affirms the right of every individual, when persecuted, to seek and obtain asylum. In Latin America, an extensive legal framework of relevance to refugees has been developed over the years by the adoption of a number of inter-American conventions relating to asylum.

In the Council of Europe an important development was the adoption on 5 November 1981 by the Committee of Ministers of a Recommendation on the Harmonization of National Procedures relating to asylum which strengthens and expands upon the various criteria accepted to date at the international level. Further accessions to the European Agreement on the Abolition of Visas and the European Agreement on the Transfer of Responsibility for Refugees were recorded during 1981.

With reference to refugee law, in general, it should be pointed out that efforts to promote the teaching of international protection as a separate branch of international law have gained impetus in recent years.

By its resolution 36/125 of 14 December 1981 adopted without a vote on the recommendation of the Third Committee[80] the General Assembly, *inter alia*, noted with satisfaction that a growing number of States had acceded to the 1951 Convention[78] and the 1967 Protocol relating to the status of Refugees;[79] reaffirmed the fundamental nature of the High Commissioner's function to provide international protection and the importance of promoting durable and speedy solutions in consultation and agreement with the countries concerned, through voluntary repatriation or return and subsequent assistance in rehabilitation and, whenever appropriate, integration in countries of asylum or resettlement in other countries of refugees and displaced persons of concern to the Office of the High Commissioner; and urged Governments to intensify their support for activities which the High Commissioner is carrying out in accordance with his mandate and relevant resolutions of the General Assembly and the Economic and Social Council, especially by facilitating the High Commissioner's efforts in the field of international protection, in particular by scrupulously observing the principle of asylum and *non-refoulement* and by protecting asylum-seekers in situations of large-scale influx, as endorsed by the Executive Committee of the Programme of the High Commissioner at its thirty-second session.[81] Furthermore, by its resolution 36/124 of 14 December 1981 adopted without a vote also on the recommendation of the Third Committee,[82] the General Assembly, recalling its resolution 35/42 of 23 November 1980 relating to the International Conference on assistance to refugees in Africa[83] and having considered the report of the Secretary-General on the Conference,[84] decided *inter alia* to request the Secretary-General, in close co-operation with the Secretary-General of the Organization of African Unity and the United Nations High Commissioner for Refugees, to keep the African refugee situation under close and constant scrutiny. It also decided to request the United Nations High Commissioner for Refugees, in close co-operation with the Secretary-General

of the Organization of African Unity, to keep under constant review the situation of refugees in Africa in order to ensure maximum international assistance on a global basis.

(*c*) International drug control

In the course of 1981, 8 more States became parties to the 1971 Convention on Psychotropic Substances,[85] 1 more State became party to the 1972 Protocol amending the 1961 Single Convention on Narcotic Drugs[86] and 1 more State to the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs, 1961.[87] At its thirty-sixth session in 1980, the General Assembly received from the Economic and Social Council the report[88] containing the proposed international drug abuse control strategy requested by the General Assembly.[89] By its resolution 36/168 of 16 December 1981 adopted without a vote on the recommendation of the Third Committee,[90] the Assembly, *inter alia*, adopted the International Drug Abuse Control Strategy and basic five-year programme of action transmitted by the Economic and Social Council in its decision 1981/113 of 6 May 1981; urged that the International Drug Abuse Control Strategy and the programme of action be given priority by all Governments and be implemented as quickly as possible by the relevant bodies of the United Nations and other international organizations; and requested the Commission on Narcotic Drugs, within available resources, to establish a task force to review, monitor and co-ordinate the implementation of the international control strategy and the programme of action and to submit a report to each session or special session of the Commission on the progress made in implementing the drug strategy and programme, and to provide any recommendations it deemed necessary regarding future revision of such strategy and programme of action. Moreover, by its resolution 36/132 of 14 December 1981 adopted without a vote also on the recommendation of the Third Committee,[91] the Assembly recognized the need for an effective international campaign against traffic in drugs in the context of the international drug control strategy, which would involve activities at the national, regional and international levels, with particular emphasis on, *inter alia*, the enactment of effective national legislation and the strengthening of existing legislation against drug abuse, wherever necessary, and the strengthening of law enforcement efforts and increasing co-operation at the regional and international levels.

(*d*) Crime prevention and criminal justice

1. *Draft code of medical ethics*

In 1979 the General Assembly, *inter alia*, had requested the Secretary-General to circulate the draft code of medical ethics prepared by the World Health Organization,[92] and in 1980 the Assembly, *inter alia*, had requested the Secretary-General to renew his request for comments and suggestions on the draft code to Member States, to the specialized agencies concerned and to interested intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council.[93] By its resolution 36/61 of 25 November 1981 adopted without a vote, on the recommendation of the Third Committee,[94] the General Assembly, *inter alia*, took note with appreciation of the comments on the proposed principles of medical ethics and endorsed by the Executive Board of the World Health Organization which were received by the Secretary-General from Governments, specialized agencies and non-governmental organizations;[95] requested the Secretary-General to circulate among Member States for their further comments the revised draft principles of medical ethics; and decided to consider that question at its thirty-seventh session with a view to adopting the draft Principles of Medical Ethics relevant to the role of health personnel in the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. *Action by the General Assembly further to the Sixth United Nations Congress on the Prevention of Crime and the treatment of offenders*

In 1980 the General Assembly had taken note with satisfaction of the report of the Sixth United Nations Congress on the Prevention of Crime and the treatment of offenders which was held at

Caracas and had endorsed the Caracas declaration contained in that report and adopted by consensus by the Congress.[96] By its resolution 36/21 of 9 November 1981 adopted by a recorded vote of 135 to none with 1 abstention on the recommendation of the Third Committee,[97] the General Assembly, *inter alia,* reaffirmed that crime prevention and criminal justice should be considered in the context of economic development, political, social and cultural systems and social values and changes, as well as in the context of the New International Economic Order; invited Member States to intensify efforts to make their criminal justice systems more responsive to changing socio-economic conditions, also through the appropriate development of indigenous forms of social control; requested the Secretary-General to take the necessary measures for the fullest implementation of the Caracas Declaration and for the appropriate preparation of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and called upon the Committee on Crime Prevention and Control, entrusted with the preparation of the United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, to give particular attention, in the formulation of the agenda of the Seventh United Nations Congress, to current and emerging trends in crime prevention and criminal justice, with a view to defining new guiding principles for the future course of crime prevention in the context of development needs and the goals of the International Development Strategy for the Third United Nations Development Decade and a New International Economic Order, taking into account the political, economic, social and cultural circumstances and traditions of each country and the need for crime prevention and criminal justice systems to be consonant with the principles of social justice.

(*e*) Human rights questions

(1) *Status and implementation of international instruments*

(i) *International Covenants on Human Rights*[98]

In 1981, 5 more States became parties to the International Covenant on Economic, Social and Cultural Rights; 4 more States became parties to the International Covenant on Civil and Political Rights; and 2 more States became parties to the Optional Protocol to the International Covenant on Civil and Political Rights.

By its resolution 36/58 of 25 December 1981 adopted without a vote on the recommendation of the Third Committee,[99] the General Assembly, *inter alia,* noted with appreciation the report of the Human Rights Committee on its eleventh, twelfth and thirteenth sessions[100] and expressed satisfaction at the serious and constructive manner in which the Committee was continuing to undertake its functions; again invited States which had not yet done so to become parties to the International Covenants on Human Rights as well as to consider acceding to the Optional Protocol; and also invited States parties to the International Covenant on Civil and Political Rights to consider making the declaration provided for in article 41 of the Covenant which deals with the possibility for any State party to the Covenant to declare that it recognizes the competence of the Committee on Human Rights to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Covenant.

(ii) *International Convention on the Elimination of All Forms of Racial Discrimination*[101]

In 1981, 3 more States became parties to the Convention. By its resolution 36/11 of 28 October 1981 adopted without a vote on the recommendation of the Third Committee[102] the General Assembly, *inter alia,* expressed its satisfaction with the increase in the number of States which had ratified the Convention or acceded thereto; reaffirmed once again its conviction that ratification of or accession to the Convention on a universal basis and implementation of its provisions were necessary for the realization of the objectives of the Decade for Action to Combat Racism and Racial Discrimination; requested States which had not yet become parties to the Convention to ratify it or accede thereto; and appealed to States parties to the Convention to consider the possibility of making the declaration provided for in article 14 of the Convention whereby a State party may recognize the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within its jurisdiction

claiming to be victims of a violation by that State party of any of the rights set forth in the Convention. Furthermore, by its resolution 36/12 of 28 October 1981, adopted by a recorded vote of 145 to 1, with 1 abstention, also on the recommendation of the Third Committee,[102] the General Assembly, *inter alia*, called upon all Member States to adopt effective legislative, socio-economic and other necessary measures for elimination or prevention of discrimination based on race, colour, descent or national or ethnic origin; called upon the States parties to the Convention to protect fully, through the introduction of relevant legislative and other measures, the rights of national or ethnic minorities, as well as rights of indigenous populations; reiterated its grave concern that some States parties to the Convention, owing to reasons beyond their control, were being prevented from fulfilling their obligations under the Convention in parts of their respective territories; and took note with appreciation of the Committee's plans to participate in the preparations and the work of the second World Conference to Combat Racism and Racial Discrimination.

(iii) *International Convention on the Suppression and Punishment of the Crime of* apartheid[103]

In 1981, 7 more States became parties to the Convention. By its resolution 36/13 of 28 October 1981 adopted on the recommendation of the Third Committee[104] by a vote of 124 to 1, with 23 abstentions, the General Assembly, *inter alia*, appealed once again to those States that had not yet done so to ratify or to accede to the Convention without further delay; called upon all States parties to implement fully article IV of the Convention concerning the prevention and prosecution of the crime of *apartheid* by adopting legislative judicial and administrative measures to prosecute, bring to trial and punish, in accordance with their jurisdiction, persons responsible for, or accused of, the acts enumerated in article II of the Convention; requested the Secretary-General to intensify his efforts through appropriate channels to disseminate information on the Convention and its implementation with a view to further promoting ratification of or accession to the Convention; and requested the Commission on Human Rights to continue to undertake the functions set out in article X of the Convention and invited the Commission to intensify, in co-operation with the Special Committee against *Apartheid*, its efforts to compile periodically the progressive list of individuals, organizations, institutions and representatives of States deemed responsible for crimes enumerated in article II of the Convention, as well as of those against whom or which legal proceedings had been undertaken.

(iv) *Status of the Convention on the Elimination of All Forms of Discrimination against Women*

In 1981, 21 States became parties to the 1979 Convention on the Elimination of All Forms of Discrimination against Women.[105] By its resolution 36/131 of 14 December 1981 adopted without a vote on the recommendation of the Third Committee,[106] the General Assembly, *inter alia*, noted with appreciation that a significant number of Member States had already ratified or acceded to the Convention; welcomed with great satisfaction that, as a result, the Convention entered into force on 3 September 1981; noted further that an important number of Member States had signed the Convention; and invited all States which had not yet done so to become parties to the Convention by ratifying or acceding to it. Furthermore, by its resolution 36/130 of 14 December 1981 adopted without a vote also on the recommendation of the Third Committee,[107] the General Assembly, *inter alia*, noting that in some countries legal and administrative regulations hampered the possibilities of accompanying spouses of members of diplomatic missions or consular posts and of staff members of intergovernmental organizations to work, and concerned that women continued to be underrepresented in the professional staffs of international organizations, including the United Nations and the specialized agencies, and were not always exempt from discrimination when they were recruited, invited Governments in host countries to consider granting, when appropriate and to the extent possible, working permits for spouses accompanying members of diplomatic missions or consular posts and staff members of intergovernmental organizations.

(2) *Torture and other cruel, inhuman or degrading treatment or punishment*[108]

By its resolution 36/60 of 25 November 1981 adopted without a vote on the recommendation of the Third Committee,[109] the General Assembly, *inter alia*, welcomed the Economic and Social Council resolution 1981/37 of 8 May 1981, by which the Council authorized an open-ended working

group of the Commission on Human Rights to meet for a period of one week prior to the thirty-eighth session of the Commission to complete the work on a draft convention on torture and other cruel, inhuman or degrading treatment or punishment and requested the Commission on Human Rights to complete as a matter of highest priority, at its thirty-eighth session, the drafting of a convention on the matter, with a view to submitting a draft, including provisions for the effective implementation of the future convention, to the General Assembly at its thirty-seventh session.

(3) *Arbitrary or summary executions*

In 1968, the General Assembly had invited Governments of Member States, *inter alia*, to ensure the most careful legal procedures and the greatest possible safeguards for the accused in capital cases in countries where the death penalty obtained.[110] In 1980, the Assembly had urged Member States concerned to respect as a minimum standard the content of the provisions of articles 6, 14 and 15 of the International Covenant on Civil and Political Rights and, where necessary, to review their legal rules and practices so as to guarantee the most careful legal procedures and the greatest possible safeguards for the accused in capital cases; to examine the possibility of making automatic the appeal procedure, where it existed, in cases of death sentences, as well as the consideration of an amnesty, pardon or commutation in those cases; and to provide that no death sentence would be carried out until the procedures of appeal and pardon had been terminated and, in any case, not until a reasonable time after the passing of the sentence in the court of first instance.[111]

By its resolution 36/22 of 9 November 1981 adopted without a vote on the recommendation of the Third Committee,[112] the General Assembly, *inter alia*, condemned the practice of summary executions and arbitrary executions; strongly deplored the increasing number of summary executions as well as the continued incidence of arbitrary executions in different parts of the world; noted with concern the occurrence of executions that were widely regarded as being politically motivated; urged all States concerned to respect the minimum standard of legal safeguards referred to in its 1980 resolution;[111] and requested the Secretary-General to use his best endeavours in cases where this minimum standard of legal safeguards appeared not to be respected.

(4) *Capital punishment*

In 1980, the General Assembly had decided to consider at its thirty-sixth session the idea of elaborating a draft of a second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, inviting Member States to submit comments and observations on the matter.[113] By its resolution 36/59 of 25 November 1981, adopted without a vote on the recommendation of the Third Committee,[114] the General Assembly, *inter alia*, invited Member States to submit further comments and observations on the draft resolution entitled "Measures aiming at the ultimate abolition of capital punishment (draft Second Optional Protocol to the International Convention on Civil and Political Rights)",[115] submitted at the thirty-fifth session of the General Assembly, and decided to consider at its thirty-seventh session, under the item entitled "International Covenants on Human Rights", the idea of elaborating a draft of a second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

(5) *Elimination of all forms of religious intolerance*

In 1972, the General Assembly had decided to give priority to the elaboration of a draft declaration on the elimination of all forms of religious intolerance before resuming the consideration of an international convention on the subject.[116] In 1974 the Assembly requested the Commission on Human Rights to submit to the Assembly, through the Economic and Social Council, a single draft declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief.[117] The Commission on Human Rights worked on the draft declaration at its thirty-fifth and thirty-sixth sessions. At the latter session the Commission had decided to establish again an open-ended working group at its thirty-seventh session (1981) and to allot more time to that working group in order that it might complete the formulation of the draft declaration.[118] On the

basis of the draft submitted by the Commission, the General Assembly, by resolution 36/55 of 23 November 1981 adopted without a vote on the recommendation of the Third Committee[119] the text of the declaration. The resolution reads as follows:

The General Assembly,

Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the Organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights[120] and the International Covenants on Human Rights[121] proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief,

Considering that the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations,

Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

Convinced that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

Noting with satisfaction the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief,

Proclaims this Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief:

Article 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Article 2

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other beliefs.

2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

Article 3

Discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

Article 4

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.

5. Practices of a religion or beliefs in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.

Article 6

In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the following freedoms:

(*a*) To worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes;

(*b*) To establish and maintain appropriate charitable or humanitarian institutions;

(*c*) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

(*d*) To write, issue and disseminate relevant publications in these areas;

(*e*) To teach a religion or belief in places suitable for these purposes;

(*f*) To solicit and receive voluntary financial and other contributions from individuals and institutions;

(*g*) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

(*h*) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

(*i*) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

Article 7

The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

Article 8

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

(6) *Alternative approaches and ways and means within the United Nations system for improving the effective enforcement of human rights and fundamental freedoms*

By its resolution 36/133 of 14 December 1981, adopted by 135 votes to 1 with 13 abstentions on the recommendation of the Third Committee,[122] the General Assembly, *inter alia*, reaffirmed that it is of paramount importance for the promotion of human rights and fundamental freedoms that Member States should undertake specific obligations through accession to, or ratification of, international instruments in this field and, consequently, that the standard-setting work within the United Nations system in the field of human rights and the universal acceptance and implementation of the relevant international instruments should be encouraged; reiterated that the establishment of the new international economic order is an essential element for the effective promotion and the full enjoyment of human rights and fundamental freedoms for all; affirmed that the efforts of the United Nations and its Member States to promote and to protect civil and political rights as well as economic, social and cultural rights should continue; also reaffirmed that in order to ensure the full enjoyment of all human rights and complete personal dignity it is necessary to promote the right to education and the right to work, health and proper nourishment, through adoption of measures at the national level, including those that provide for the right of workers to participate in management, as well as adoption of measures at the international level, including the establishment of the new international economic order; declared that the right to development is an inalienable human right; and requested the Commission on Human Rights to take the necessary measures to promote the right to development. Furthermore, by its resolution 36/135 of 14 December 1981 adopted without a vote also on the recommendation of the Third Committee[122] the General Assembly recalled its resolution 35/175 of 15 December 1981, in which it decided to consider at its thirty-sixth session the question of the establishment of a post of United Nations High Commissioner for Human Rights under the item entitled "Alternative approaches and ways and means for improving the effective enjoyment of human rights and fundamental freedoms". Having considered the report of the Commission on Human Rights on the thirty-seventh session,[123] and noting that the Commission informed the General Assembly that it had not been able to reach a decision at its thirty-seventh session on the desirability of the establishment of a post of High Commissioner, the Assembly by its resolution 36/135 decided, *inter alia*, to request the Commission on Human Rights at its thirty-eighth session to consider this question with the attention it deserves.

(7) *New international humanitarian order*

By its resolution 36/136 of 14 December 1981 adopted without a vote on the recommendation of the Third Committee[124] the General Assembly, recognizing the importance of further improving a comprehensive international framework which takes fully into account existing instruments relating to humanitarian questions as well as the need for addressing those aspects which are not yet

adequately covered, and bearing in mind that institutional arrangements and action of governmental and non-governmental bodies might need to be further strengthened to respond effectively in situations requiring humanitarian action, decided to request the Secretary-General to seek the views of Governments on the proposal for the promotion of a new international humanitarian order as well as to consider the question at its thirty-seventh session on the basis of the report of the Secretary-General.

(8) *Right to education*[125]

By its resolution 36/152 of 16 December 1981 adopted without a vote on the recommendation of the Third Committee[126] the General Assembly, among other things, invited again all States to consider the adoption of appropriate legislative, administrative and other measures, including material guarantees, in order to ensure the full implementation of the right to universal education through, *inter alia*, free and compulsory primary education, universal and gradually free-of-charge secondary education, equal access to all educational facilities and the access of the young generation to science and culture; invited all States to give all necessary attention to defining and determining in a more precise manner the means for implementing the provisions concerning the role of education in the International Development Strategy for the Third United Nations Development Decade; invited all specialized agencies to co-operate with the United Nations Educational, Scientific and Cultural Organization to ensure education a high priority in the implementation of various programmes and projects, in the framework of the International Development Strategy for the Third United Nations Development Decade; and appealed again to all States, in particular to the developed countries, to support actively through fellowships and other means, including the general increasing of resources for education and training, the efforts of the developing countries in the education and training of national personnel needed in industry, agriculture and other economic and social sectors.

(9) *Measures to improve the situation and ensure the human rights and dignity of all migrant workers*

In 1979, the General Assembly had decided to create, at its thirty-fifth session, a Working Group open to all Member States to elaborate an international convention on the protection of the rights of all migrant workers and their families.[127] By its resolution 36/160 of 16 December 1981 adopted without a vote on the recommendation of the Third Committee[128] the General Assembly, having examined the progress made by the open-ended Working Group during its inter-sessional meeting held from 11 to 22 May 1981 and having considered its report, decided, *inter alia*, to take note of the report and to express its satisfaction with the substantial progress that the Group had so far made in the accomplishment of its mandate. It further decided that the Working Group shall meet during the thirty-seventh session of the General Assembly to continue and, if possible, to complete the elaboration of an international convention on the protection of the rights of all migrant workers and their families.

(10) *Question of the international legal protection of the human rights of individuals who are not citizens of the country in which they live*

The Economic and Social Council, by its resolution 1980/29 of 2 May 1980, had decided to transmit to the General Assembly at its thirty-fifth session the text of the draft declaration on the human rights of individuals who are not citizens of the country in which they live, prepared by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,[129] and amended by the response to decision 1979/36 of the Council,[130] and recommended that the General Assembly should consider the adoption of a declaration on the subject. In 1980 the Assembly had decided to establish an open-ended Working Group for the purpose of concluding the elaboration of the draft declaration.[131]

By its resolution 36/165 of 16 December 1981 adopted without a vote on the recommendation of the Third Committee,[132] the General Assembly, *inter alia*, took note of the fact that although the open-ended Working Group had done useful work it had not had sufficient time to conclude its task;[133] decided to establish, at its thirty-seventh session, an open-ended working group for the

purpose of concluding the elaboration of the draft declaration on the human rights of individuals who are not citizens of the country in which they live; and expressed the hope that the draft declaration will be adopted by the General Assembly at its thirty-seventh session.

(11) *Question of a convention on the rights of the child*

By its resolution 33/166 of 20 December 1978 the General Assembly had taken note of the decision of the Commission on Human Rights to continue at the Commission's thirty-fifth session, as one of its priorities, its consideration of a draft convention on the rights of the child and had requested the Commission to organize its work on the draft convention on the rights of the child at its thirty-fifth session so that the draft of the convention could be ready for adoption, if possible, during 1979, the year proclaimed by the Assembly as the International Year of the Child. In 1979 and 1980 the Assembly adopted two resolutions dealing with this question.[134] By its resolution 36/57 of 25 November 1981 adopted without a vote on the recommendation of the Third Committee,[135] the General Assembly, *inter alia*, noted with appreciation further progress made in the elaboration of the draft convention by the Commission on Human Rights; welcomed Economic and Social Council decision 1981/144 by which the Council authorized an open-ended working group of the Commission on Human Rights to meet for a period of one week prior to the thirty-eighth session of the Commission to complete the work on the draft convention; and requested the Commission on Human Rights to give the highest priority to the question of completing the draft convention.

(12) *Draft declaration on social and legal principles relating to the protection and welfare of children, with special reference to foster placement and adoption nationally and internationally*

On 6 May 1981 the Economic and Social Council adopted resolution 1981/18 entitled "Draft declaration on social and legal principles relating to adoption and foster placement of children nationally and internationally", whereby the Council requested the General Assembly to consider at its thirty-sixth session the draft declaration annexed to the above-mentioned resolution of the Council so that further action proposed by the Council may proceed.[136] By resolution 36/167 of 16 December 1981 adopted without a vote on the recommendation of the Third Committee[137] the General Assembly, bearing in mind the report of the Secretary-General on views of Member States on the text of the draft declaration[138] and convinced that adoption of the draft declaration will promote the well-being of children with special needs, decided, *inter alia*, that appropriate measures be taken at its thirty-seventh session to finalize the draft declaration, including an item to that effect in the provisional agenda of that session.

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

The tenth session of the Third United Nations Conference on the Law of the Sea was held from 9 March to 24 April in New York with the aim of adoption of a convention. Since that goal was not reached, the tenth session of the Conference was reconvened at Geneva from 3 to 29 August 1981,[139] preceded by informal consultations of delegations from 29 to 31 July 1981.

A total of 155 States participated in the first part of the tenth session (see A/CONF.62/113) and 146 States in the resumed tenth session (see A/CONF.62/115).

Question of the Presidency of the Conference

The Conference elected Tommy T. B. Koh of Singapore as its new President to replace H. Shirley Amerasinghe of Sri Lanka, who passed away on 4 December 1980, and Sri Lanka replaced Singapore as a Vice-President.

Organization of the work of the Conference

A revised official draft Convention on the Law of the Sea (A/CONF.62/L.78) was produced as a result of negotiations in 1981 during the tenth and resumed tenth session. This draft incorporated more than 1,500 recommendations from the Drafting Committee, and the decisions taken by the Conference on the sites of the International Sea-Bed Authority and the International Law of the Sea Tribunal. A compromise formula on delimitation of maritime space between States with opposite

or adjacent coasts was worked out and gained the widespread support of States. In addition, the revision took into account the results of the consultations and negotiations conducted during this session and which received substantial and widespread support.

Several problems, relating to the participation in the Convention by regional intergovernmental organizations and national liberation movements, the establishment of a Preparatory Commission, the protection of pioneer investments in sea-bed mining and other, including drafting, issues, remained outstanding.

Decision of the General Assembly

On 9 December 1981, the General Assembly, taking note of the decision of the Conference (A/36/659), adopted resolution 36/79, by which it approved the convening of the eleventh, final decision-making, session of the Third United Nations Conference on the Law of the Sea in New York, for the period 8 March to 30 April 1982. The Assembly authorized the Conference to extend its work beyond 30 April 1982, in consultation with the Secretary-General, exclusively for the purpose of completing its work. It also recommended that the Secretary-General provide the necessary facilities for informal consultations to delegations participating in the Conference, in particular to the members of the Group of 77, and requested the Secretary-General to consult the Government of Venezuela in order to arrange for the signature of the Final Act and the opening of the Convention for signature at Caracas in early September 1982.

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5. INTERNATIONAL COURT OF JUSTICE[140, 141]

Cases submitted to the Court

(1) *United States Diplomatic and Consular Staff in Tehran (United States of America/Iran)*[142]

On 24 May 1980 this case, instituted by the United States against Iran on 29 November 1979, had been the subject of a Judgment[143] wherein the Court, in response to one of the Applicant's submissions, had decided that the form and amount of the reparation owed by Iran to the United States should, failing agreement between the Parties, be settled by the Court, and had reserved for that purpose the subsequent procedure.[144]

By a letter addressed to the Court on 6 April 1981 on behalf of the United States Government, the Applicant, citing Article 88 of the Rules and referring to the commitments entered into at Algiers on 19 January by the United States and Iran, requested that all proceedings pending before the Court with regard to its claims for reparation be discontinued and the case be removed from the General List, but stated also that it reserved the right to reinstitute the proceedings if certain circumstances were not fulfilled. The President of the Court pointed out in a letter of 15 April that a discontinuance subject to a right to reinstitute and pursue the proceedings could not be considered by the Court as falling within the terms of Article 88 of the Rules. By a letter of 1 May the United States Government gave certain explanations and informed the Court that, in seeking a discontinuance, it intended that all currently pending proceedings relating to the United States claims against Iran for reparation be discontinued, and that an Order be made recording their discontinuance and directing their removal from the list; the reservations stated in the letter of 6 April had not been meant to condition or qualify the normal procedural effect of a discontinuance.

Those letters having been transmitted to the Government of Iran, and no observations having been received from it, the President of the Court, on 12 May 1981, made an Order recording the discontinuance of the proceedings and directing that the case be removed from the Court's list.[145]

(2) *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*[146]

The agents of the Parties filed their respective Counter-Memorials within their time-limits and, on 2 February 1981, the two pleadings were exchanged between the Parties at a meeting with the President of the Court.

Meanwhile, on 30 January 1981 Malta had filed an Application requesting permission to intervene under Article 62 of the Statute. Pursuant to Article 83 of the Rules of Court, the Government of Tunisia and the Government of the Libyan Arab Jamahiriya submitted written observations on this Application. Since objection was made therein to Malta's application, the Court, under Article 84 of the Rules, held on 19-21 and 23 March public sittings at which it heard argument presented on behalf of Malta, the Libyan Arab Jamahiriya and Tunisia.

On 14 April 1981 the Court delivered at a public sitting the Judgment[147] which is summarized below:[148]

Procedural context of Malta's application (paras. 1-11)

The Court began its Judgment with a recital of the steps taken in the proceedings (see above) and then set forth in full the provision of the Statute relied upon by Malta, namely Article 62:

"1. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

"2. It shall be for the Court to decide upon this request."

The Court went on to recall that under Article 81, paragraph 2, of the Rules of Court, Malta's application had to set out:

"(*a*) the interest of a legal nature which the State applying to intervene considers may be affected by the decision in that case;

"(*b*) the precise object of the intervention;

"(*c*) any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case."

Legal problems raised by Malta's request (paras. 12-27)

After summarizing the contentions put forward on behalf of the three States on the subject of Malta's application, the Court noted that objections in relation to all three matters specified in Article 81, paragraph 2, of the Rules had been raised by the Parties, which had alleged that Malta had not succeeded in showing possession of an interest of a legal nature which might be affected by the decision in the case, that the object of its request fell altogether outside the scope of the form of intervention for which Article 62 provided, and that it had not established any jurisdictional link with them. If any one of those objections should be found justified, it would, said the Court, clearly not be open to it to give any further consideration to the request.

Before considering the objections the Court retraced the history of the provisions of its Statute and Rules concerning intervention and noted how, from the beginning, it had been agreed not to try to resolve in the Rules of Court the various substantive questions which had been raised but to leave them to be decided on the basis of the Statute and in the light of the particular circumstances of each case.

Interest of a legal nature and object of the intervention (paras. 28-35)

The Court then considered whether the interest of a legal nature relied upon by Malta and the stated object of its intervention were such as to justify the grant of permission to intervene.

The interest of a legal nature which Malta had invoked consisted essentially in its possible concern with any findings of the Court that identified and assessed the geographical or geomorphological factors relevant to the delimitation of the Libya/Tunisia continental shelf and with any pronouncements made by the Court regarding, for example, the significance of special circumstances or the application of equitable principles in that delimitation. Any such findings or pronouncements, in Malta's view, were likely to have repercussions upon Malta's own rights and legal interests in any future settlement of its continental shelf boundaries with Libya and Tunisia. Malta had underlined that only such elements were the object of its request and that it was not concerned with the choice of the particular line to delimit the boundary between those two countries or with the laying-down of general principles by the Court as between them.

The fact that Malta's request related to specific elements in the case between Tunisia and Libya implied, the Court found, that the legal interest which it relied on would concern matters which were, or might be, directly in issue between the Parties and, as Malta had presented them, were part of the very subject-matter of that case. Yet Malta had at the same time made it plain that it did not mean by its intervention to submit its own interest in those matters for decision as between itself and Libya or Tunisia, since its object was not to obtain any decision from the Court concerning its continental shelf boundaries with either or both of those countries.

While Malta, as it had asserted, clearly possessed a certain interest in the Court's treatment of the physical factors and legal considerations relevant to the delimitation of the continental shelf boundaries of States within the central Mediterranean region that was somewhat more specific and direct than that of States outside that region, that interest was nevertheless of the same kind as those of other States within the region. But what Malta had to show in order to obtain permission to intervene under Article 62 of the Statute was an interest of a legal nature which might be affected by the Court's decision in the case.

Under the Special Agreement the Court was called upon to decide the principles and rules of international law to be applied in the delimitation of the respective areas of continental shelf appertaining to Tunisia and Libya. Those two States had therefore put in issue their claims with respect to the matters covered by that instrument and, having regard to the terms of Article 59 of the Statute, the Court's decision in the case would accordingly be binding in respect of those matters. Malta, however, had attached to its request an express reservation that its intervention was not to have the effect of putting in issue its own claims vis-à-vis Tunisia and Libya. That being so, the very character of the intervention for which Malta sought permission showed that the interest of a legal nature which it had invoked could not be considered as one which, within the meaning of Article 62 of the Statute, might be affected by the decision in the case.

The Court found that what the request in effect sought to secure was the opportunity of arguing in favour of a decision in which the Court would refrain from adopting and applying particular criteria that it might otherwise consider appropriate for the delimitation of the continental shelf of Tunisia and Libya. To allow such a form of intervention would leave the Parties quite uncertain as to whether and how far they should consider their own separate interests vis-à-vis Malta as in effect constituting part of the subject-matter of the case. In the view of the Court, a State seeking to intervene under Article 62 of the Statute was clearly not entitled to place the Parties to the case in such a position.

The Court understood Malta's preoccupation regarding possible implications for its own interests of the Court's findings and pronouncements on particular elements in the case between Tunisia and Libya. Even so, for the reasons set out in the Judgment, the request was not one to which, under Article 62 of the Statute, the Court might accede.

Jurisdictional link (para. 36)

Having reached the conclusion that Malta's request for permission to intervene was not one to which it could accede, the Court found it unnecessary to decide in the case under consideration the question whether the existence of a valid link of jurisdiction with the Parties to the case was an essential condition for the granting of permission to intervene under Article 62 of the Statute.

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For those reasons, the Court (para. 37), unanimously, found that Malta's request for permission to intervene in the proceedings under Article 62 of the Statute could not be granted.

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Judges Morozov, Oda and Schwebel appended separate opinions to the Judgment.[149]

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After the Court's decision on Malta's application the case continued its course. On 16 April 1981, both Tunisia and the Libyan Arab Jamahiriya having indicated a wish to submit additional

written pleadings as envisaged in the Special Agreement, the President of the Court made an Order[150] fixing 15 July 1981 as the time-limit for the filing by each Party of a Reply. The Replies in question were on that date filed by the agents of the Parties and exchanged between them at a meeting with the President. The case thus became ready for hearing.

Between 16 September and 21 October 1981 the Court held 22 public sittings and one closed sitting for the purpose of hearing the oral arguments of Tunisia and the Libyan Arab Jamahiriya.

(3) *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal*[151]

On 28 July 1981 the Court received a request submitted by the Committee on Applications for Review of Administrative Tribunal Judgements for an advisory opinion on questions relating to Judgement No. 273 delivered by the Administrative Tribunal of the United Nations in Geneva on 15 May 1981.[152]

The case in question related to the payment to a former United Nations staff member on his retirement of what is known as the repatriation grant. The Secretary-General of the United Nations had refused that grant, on the basis of General Assembly resolution 34/165 of 17 December 1979, but the disputed judgement recognized the right of the staff member to receive the grant as an acquired right.

On 13 July the Committee on Applications for Review of Administrative Tribunal Judgements, to which an application was presented by the Government of the United States of America, decided to request an advisory opinion of the International Court of Justice on the following question:

> "Is the judgement of the United Nations Administrative Tribunal in Judgement No. 273, *Mortished* v. *the Secretary-General,* warranted in determining that General Assembly resolution 34/165 of 17 December 1979 could not be given immediate effect in requiring, for the payment of repatriation grants, evidence of relocation to a country other than the country of the staff member's last duty station?"

The Committee's request was transmitted to the Court by a letter from the Secretary-General of the United Nations dated 23 July 1981, which reached the Registry on 28 July. In that letter, the Secretary-General mentioned in particular that, as required by paragraph 2 of Article 11 of the Statute of the Administrative Tribunal, he would arrange to transmit to the Court any views that the person in respect of whom Judgement No. 273 had been delivered might wish to submit.

By Order of 6 August 1981[153] the President of the Court fixed 30 October 1981 as the time-limit within which written statements might be submitted in accordance with Article 66, paragraph 2, of the Statute of the Court. He further decided that the United Nations, and its Member States considered as likely to be able to furnish information on the question, would be allowed to submit such statements. The time-limit was extended to 30 November 1981 by an Order of 8 October 1981.[154] A written statement was transmitted by the United Nations on behalf of the official concerned in the Administrative Tribunal's Judgement and the Government of France and the Government of the United States of America each submitted a written statement.

In accordance with Article 66, paragraph 4, of the Statute, the Court decided to permit any State or organization having submitted or transmitted written statements to communicate written comments to the Court by 15 April 1982. The Government of France and the Government of the United States of America each submitted such comments within that time-limit.

(4) *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*[155]

On 25 November 1981 the Governments of Canada and of the United States of America had notified to the Court a Special Agreement, concluded by them on 29 March 1979, and having entered into force on 20 November 1981, by which they submitted to a chamber of the Court a question as to the course of the maritime boundary dividing the continental shelf and fisheries zones of the two Parties in the Gulf of Maine area.

The Special Agreement provided for the submission of the dispute to a five-member chamber to be constituted after consultation with the Parties, pursuant to Article 26, paragraph 2, and Article 31 of the Statute of the Court. These are respectively the Articles providing for the establishment of a chamber to deal with a particular case and for the right of a Party, when there is no judge of its nationality upon the bench, to choose a judge *ad hoc* to sit in the case.

The Parties were duly consulted. The Court had already been notified in a letter from the Parties accompanying the submission of the case that, since the Court did not include upon the bench a judge of Canadian nationality, the Government of Canada intended to choose a judge *ad hoc* to sit in the case.

In the course of the Court's consideration of the Special Agreement notified by the Governments of Canada and the United States, some Members of the Court referred to certain problems which they felt likely to give rise to difficulties, in particular on account of certain features which might not be compatible with the Statute and Rules of Court. In the outcome, it was decided that the President would call upon the agents of the Parties to provide the Court with further explanations or clarifications on several points. The President did so in a letter of 18 December 1981.

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6. INTERNATIONAL LAW COMMISSION[156]

THIRTY-THIRD SESSION OF THE COMMISSION[157]

The International Law Commission held its thirty-third session at Geneva from 4 May to 24 July 1981. It continued to make substantial progress in its work for the development of international law and its codification by adopting in particular the final text of the draft articles on succession of States in respect of State property, archives and debts, which it forwarded to the Assembly with the recommendation that the Assembly should convene an international conference of plenipotentiaries to study the draft articles and to conclude a convention on the subject.

With respect to the question of treaties concluded between States and international organizations or between two or more international organizations the Commission finally approved the text of articles 1 to 26 of the draft articles (Part I—Introduction, articles 1 to 5, Part II–Conclusion and entry into force of treaties, articles 6 to 25, and Part III—Observance, application and interpretation of treaties, article 26).

On the question of State responsibility the Commission commenced consideration of Part 2 of the draft articles dealing with the content, forms and degrees of international responsibility. It considered and decided to send to the Drafting Committee articles 1 to 3 of chapter I entitled "General principles" and 4 and 5 of chapter II entitled "Obligations of the State which has committed an internationally wrongful act".

Regarding the question of the jurisdictional immunities of States and their property, the Commission had before it the third report on the topic submitted by the Special Rapporteur[158] containing the text of the following five proposed draft articles: "Rules of competence and jurisdictional immunity" (article 7); "Consent of State" (article 8); "Voluntary submission" (article 9); "Counter-claims" (article 10); and "Waiver" (article 11). Together with the text of draft article 6 on "State immunity" adopted provisionally by the Commission at its 1980 session, those five articles were placed in Part II entitled "General principles". After consideration, the Commission referred draft articles 7 to 11 to the Drafting Committee.

With respect to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier the Commission had before it the second report on the topic submitted by the Special Rapporteur[159] containing the text of six proposed draft articles which constituted Part I entitled "General provisions": "Scope of the present articles" (article 1); "Couriers and bags not within the scope of the present articles" (article 2); "Use of terms" (article 3); "Freedom of communication for all official purposes effected through diplomatic couriers and diplomatic bags" (article 4); "Duty to respect international law and the laws and regulations of the receiving and

the transit State" (article 5); and "Non-discrimination and reciprocity" (article 6). After the debate the Commission decided to refer articles 1 to 6 to the Drafting Committee.

The Commission also considered the questions of international liability for injurious consequences arising out of acts not prohibited by international law and the second part of the topic "Relations between States and international organizations".

Consideration by the General Assembly

At its thirty-sixth session, the General Assembly had before it the report of the International Law Commission on the work of its thirty-third session.[160] By its resolution 36/114, adopted on the recommendation of the Sixth Committee,[161] the Assembly, *inter alia*, recommended that the Commission complete the second reading of the draft articles on treaties concluded between States and international organizations or between international organizations and continue its work aimed at the preparation of draft articles on part two of the draft on responsibility of States for internationally wrongful acts, bearing in mind the need for a second reading of the draft articles constituting part one of the draft. The Assembly also recommended that the Commission continue its work aimed at the preparation of draft articles on international liability for injurious consequences arising out of acts not prohibited by international law, the law of the non-navigational uses of international watercourses, jurisdictional immunities of States and their property and the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. The Assembly further recommended that the Commission continue its study of the second part of the topic of relations between States and international organizations.

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7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[162]

Fourteenth session of the Commission[163]

The United Nations Commission on International Trade Law (UNCITRAL) held its fourteenth session at Vienna from 19 to 26 June 1981.

On the question of international payments the Commission considered the report of the Working Group on International Negotiable Instruments which set forth the progress made by the Group on the preparation of a draft Convention on International Bills of Exchange and International Promissory Notes, and on the preparation of Uniform Rules on International Cheques. The Commission decided that the Working Group should draw up the draft Convention on International Bills of Exchange and International Promissory Notes, and the Uniform Rules on International Cheques, as separate texts and not as a consolidated text and requested the Secretary-General to circulate both texts, together with a commentary, to all Governments and interested international organizations for their comments. At its fourteenth session the Commission had before it also a report of the Secretary-General entitled "Universal unit of account for international conventions" prepared pursuant to the decision of the Commission to "study ways of establishing a system for determining a universal unit of account of constant value which would serve as a point of reference in international conventions for expressing amounts in monetary terms". After discussion the Commission agreed to refer the matter to the Working Group on International Negotiable Instruments. The Commission also took note of the report of the Secretariat on the question of electronic funds transfer.

With respect to international trade contracts the Commission considered the report of the Working Group which had prepared a set of draft uniform rules on liquidated damages and penalty clauses. The Commission requested the Secretary-General to incorporate in those draft uniform rules such supplementary provisions as might be required if the rules were to take the form of a convention or a model law; to prepare a commentary on the draft uniform rules; to prepare a questionnaire addressed to Governments and international organizations seeking to elicit their views on the most appropriate form for the uniform rules; and to circulate the draft uniform rules to all Governments and interested international organizations for their comments, together with the commentary and the questionnaire. The Commission considered also the question of clauses protecting

parties against the effects of currency fluctuations. There was general agreement in the Commission that the Secretariat should continue to study the question of currency fluctuation clauses.

In the course of its fourteenth session, the Commission considered the question of international commercial arbitration. With respect to administrative guidelines to UNCITRAL Arbitration Rules the Commission decided, *inter alia*, that it would be desirable to issue guidelines in the form of recommendations to arbitral institutions and other relevant bodies, such as chambers of commerce, in order to assist them in adopting procedures for their acting as appointing authority or providing administrative services in cases to be conducted under the UNCITRAL Abritration Rules and requested the Secretary-General to prepare a further note with a revised text of the draft guidelines and an explanation thereof. With regard to model arbitration law the Commission decided to proceed with the work towards preparation of a draft model law on international commercial arbitration and entrusted this work to its Working Group on International Contract Practices.

Regarding the new international economic order, the Commission noted with appreciation the report of the Working Group on the matter and the study by the Secretary-General entitled "Clauses related to contracts for the supply and construction of large industrial works". It requested the Working Group to submit a progress report to the fifteenth session of the Commission.

Consideration by the General Assembly

At its thirty-sixth session, the General Assembly had before it the report of UNCITRAL on the work of its fourteenth session.[164] By its resolution 36/32, adopted on the recommendation of the Sixth Committee,[165] the Assembly, *inter alia*, commended UNCITRAL for the progress made in its work and its efforts to enhance the efficiency of its working methods and recommended that UNCITRAL should continue its work on the topics included in its programme of work. With respect to the new international economic order the Assembly welcomed the decision of UNCITRAL to commence the drafting of a legal guide identifying the legal issues involved in contracts for the supply and construction of large industrial works and suggesting possible solutions to assist parties, in particular from developing countries, in their negotiations. The Assembly also requested the Secretary-General to bring certain international instruments concluded under the auspices of UNCITRAL to the notice of all States that have not ratified or acceded to them and to draw the attention of those States to the views of the Commission in which it emphasized that an early entry into force and a wide acceptance of those instruments would be of great value for the unification of international trade law.

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8. LEGAL QUESTIONS DEALT WITH BY THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY AND BY *AD HOC* LEGAL BODIES

(*a*) Enhancing the effectiveness of the principle of non-use of force in international relations

In accordance with General Assembly resolution 35/50, the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations met at United Nations Headquarters from 23 March to 17 April 1981.[166] It held a general debate on the questions within its mandate. It also established a Working Group which considered the working paper submitted by 10 non-aligned countries (Benin, Cyprus, Egypt, India, Iraq, Morocco, Nepal, Nicaragua, Senegal and Uganda)[167] at the previous session.

At its thirty-sixth session, the General Assembly, by its resolution 36/31 which it adopted on the recommendation of the Sixth Committee,[168] took into account that the Special Committee had not completed the mandate entrusted to it and *inter alia* decided that the Special Committee should continue its work with the goal of drafting, at the earliest possible date, a world treaty on the non-use of force in international relations as well as the peaceful settlement of disputes or such other recommendations as the Committee deemed appropriate and requested the Special Committee to

take due account of the efforts made by the non-aligned countries during the Committee's session in 1981 to facilitate the organization of the work of the Committee.

(*b*) Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

By its resolution 36/33 adopted on the recommendation of the Sixth Committee[169] the General Assembly, *inter alia*, took note of the report of the Secretary-General,[170] condemned acts of violence against diplomatic and consular missions and representatives as well as against missions and representatives to international intergovernmental organizations and officials of such organizations and urged States to observe and to implement the principles and rules of international law governing diplomatic and consular relations and, in particular, to take all necessary measures in conformity with their international obligations to ensure effectively the protection, security and safety of all diplomatic and consular missions and representatives officially present in territory under their jurisdiction, including practicable measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts against the security and safety of such missions and representatives. It reiterated its invitation to all States to report to the Secretary-General serious violations of the protection, security and safety of diplomatic and consular missions and representatives, to report on measures taken to bring the offender to justice and eventually to communicate the final outcome of the proceedings against the offender, and further invited the States in which the violation took place to report also on the measures aimed at preventing a repetition of such violations. It called upon States which had not yet done so to consider becoming parties to the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives.

(*c*) International convention against the recruitment, use, financing and training of mercenaries

In accordance with General Assembly resolution 35/48, the *Ad Hoc* Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries met at United Nations Headquarters from 20 January to 13 February 1981.[171] It held a general debate on the questions within its mandate. It also established a Working Group of the Whole to deal with the drafting of an international convention against the recruitment, use, financing and training of mercenaries pursuant to paragraph 3 of General Assembly resolution 35/48.

At its thirty-sixth session, the General Assembly, by its resolution 36/76 which it adopted on the recommendation of the Sixth Committee,[172] *inter alia*, recognized that the activities of mercenaries are contrary to fundamental principles of international law, such as non-interference in the internal affairs of States, territorial integrity and independence, and seriously impede the process of self-determination of peoples struggling against colonization, racism and *apartheid* and all forms of foreign domination, took note of the report of the *Ad Hoc* Committee and decided that it should continue its work with the goal of drafting at the earliest possible date an international convention against the recruitment, use, financing and training of mercenaries.

(*d*) Draft Code of Offences against the Peace and Security of Mankind

By its resolution 36/106 adopted on the recommendation of the Sixth Committee,[173] the General Assembly, *inter alia*, after recalling its resolution 117 (II) of 21 November 1947 by which it directed the International Law Commission to prepare a draft code of offences against the peace and security of mankind and having considered the report of the Secretary-General[174] submitted pursuant to General Assembly resolution 35/49 of 4 December 1980, invited the International Law Commission to resume its work with a view to elaborating the draft Code and to examine it with the required priority in order to review it, taking duly into account the results achieved by the process of the progressive development of international law. The Assembly also requested the International Law Commission to consider at its thirty-fourth session the question of the draft Code and to report to the General Assembly at its thirty-seventh session on the priority it deemed advisable to accord to the draft Code, and the possibility of presenting a preliminary report to the Assembly at its thirty-eighth session bearing, *inter alia*, on the scope and the structure of the draft Code.

(*e*) Progressive development of the principles and norms of international law relating to the new international economic order

By its resolution 36/107 adopted on the recommendation of the Sixth Committee[175] the General Assembly, *inter alia*, took note of the report of the Secretary-General[176] and the study prepared by UNITAR entitled "List of existing and evolving principles and norms of international law relating to the new international economic order concerning the economic relations among States, international organizations and other entities of public international law, and the activities of transnational corporations",[177] and requested UNITAR to prepare the analytical study on the progressive development of the principles and norms of international law relating to the new international economic order. It requested also UNCITRAL, UNCTAD, UNIDO, the regional commissions, the UN Centre on Transnational Corporations and other relevant intergovernmental and non-governmental organizations active in this field, as determined by UNITAR, to submit relevant information and to co-operate fully with the Institute in the implementation of this resolution.

(*f*) Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes

By its resolution 36/109 adopted on the recommendation of the Sixth Committee[178] the General Assembly, *inter alia*, expressed deep concern about continuing acts of international terrorism which took a toll of innocent human lives, re-endorsed the recommendations submitted by the *Ad Hoc* Committee on International Terrorism to the Assembly at its thirty-fourth session relating to practical measures of co-operation for the speedy elimination of the problem of international terrorism[179] and decided to include the item in the provisional agenda of its thirty-eighth session.

(*g*) Questions concerning the Charter of the United Nations and the strengthening of the role of the Organization

Pursuant to General Assembly resolution 35/164, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met at United Nations Headquarters from 17 February to 14 March 1981.[180] It established an open-ended Working Group to discuss the topics referred to in paragraphs 3 and 4 of resolution 35/146 and in paragraphs 4 and 5 of resolution 35/160, namely, the questions of the maintenance of international peace and security, rationalization of existing procedures of the United Nations and peaceful settlement of disputes. In the latter respect, the Working Group continued the elaboration of a draft Manila Declaration on the peaceful settlement of disputes. In accordance with paragraph 10 of resolution 35/146 the Special Committee considered the question of the *Repertory of Practice of United Nations Organs*.

At its thirty-sixth session, the General Assembly, by its resolution 36/122 which it adopted on the recommendation of the Sixth Committee,[181] *inter alia*, noted that significant progress had been made in fulfilling the mandate of the Special Committee, requested the Special Committee at its next session to accord priority in its work to the proposals regarding the question of the maintenance of international peace and security, including those relating to the functioning of the Security Council, with a view to continuing an examination of the compilation of proposals contained in its report on the work of the session it held in 1980[182] and to considering the recommendations and proposals submitted during its session in 1981 or thereafter and to consider proposals made by Member States on the question of rationalization of existing procedures of the United Nations and, subsequently, any proposals submitted during its session in 1981 or thereafter. It also requested the Special Committee to finalize the draft Manila Declaration on the peaceful settlement of international disputes with a view to its consideration and adoption by the General Assembly.

The Assembly, by its resolution 36/123 which it adopted on the recommendation of the Sixth Committee,[183] *inter alia*, took note of the report of the Secretary-General on the status of the

preparation and publication of the *Repertoire of the Practice of the Security Council* and the *Repertory of Practice of United Nations Organs*,[184] recognized the importance and usefulness of the *Repertoire* and the *Repertory* as the principal sources of records for the analytical studies of the application and interpretation of the provisions of the Charter and of the rules of procedure made thereunder and requested the Secretary-General to give high priority to the preparation and publication of the supplements to those publications.

(*h*) Peaceful settlement of disputes between States

At the thirty-sixth session of the General Assembly this question was considered by the Sixth Committee jointly with that of the Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.[185] By its resolution 36/110 adopted on the recommendation of the Sixth Committee,[186] the Assembly after, *inter alia*, expressing deep concern about the continuation of conflict situations and the emergence of new sources of disputes and tensions in international life, and especially about the growing tendency to resort to force or the threat of force and to intervention in internal affairs, and about the escalation of the arms race, which gravely endanger the independence and security of States as well as international peace and security, called again upon all States to adhere strictly in their international relations to the principle that States should settle their international disputes by peaceful means in such a manner that international peace and security and justice were not endangered. It held that the question of the peaceful settlement of disputes should represent one of the central concerns for States and that, to this end, the efforts for examining and further developing the principle of peaceful settlement of disputes between States and the means of consolidating its full observance by all States in their international relations should be continued. The Assembly also stressed that the elaboration, as soon as possible, of a declaration of the General Assembly on the peaceful settlement of international disputes was likely to enhance the observance of the principle in question and to contribute to the strengthening of the role of the United Nations in preventing conflicts and settling them peacefully. It requested the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization to finalize the draft Manila Declaration on the peaceful settlement of international disputes with a view to its consideration and adoption by the General Assembly.

(*i*) Draft articles on most-favoured-nation clauses

By its resolution 36/111 adopted on the recommendation of the Sixth Committee,[187] the General Assembly, *inter alia*, requested the Secretary-General to reiterate his invitation to Member States, organs of the United Nations having competence in the subject matter and interested intergovernmental organizations to submit or bring up to date any written comments and observations on chapter II of the report of the International Law Commission on the work of its thirtieth session[188] and in particular on the draft articles on most-favoured-nation clauses adopted by the Commission and those provisions relating to such clauses on which the Commission was unable to take a decision. It also requested States to comment on the recommendations of the Commission that those draft articles should be recommended to Member States with a view to the conclusion of a convention on the subject.

(*j*) Review of the multilateral treaty-making process

By its resolution 36/112 adopted on the recommendation of the Sixth Committee,[189] the General Assembly after, *inter alia*, taking note of the reports of the Secretary-General submitted to the Assembly at its thirty-fifth[190] and thirty-sixth[191] sessions, including the replies and observations made by Governments and international organizations on the review of the multilateral treaty-making process,[192] decided to establish at the thirty-seventh session a Working Group of the Sixth Committee to consider the questions raised in annex I of the report of the Secretary-General to the Assembly at its thirty-sixth session and any other relevant material submitted by Governments and international organizations and to assess the methods of multilateral treaty-making used in the United Nations and in conferences convened under its auspices, to determine whether the current methods of multilateral treaty-making were as efficient, economical and effective as they could be

to meet the needs of the Member States in order to make recommendations on the basis of the above-mentioned assessment. It further requested the Secretary-General to prepare and publish as soon as possible new editions of the *Handbook of Final Clauses*[193] and the *Summary of the Practice of the Secretary-General on Depository of Multilateral Agreements*[194] taking into account relevant new developments and practices in that respect.

(*k*) United Nations Conference on Succession of States in respect of State Property, Archives and Debts

By its resolution 36/113 adopted on the recommendation of the Sixth Committee,[195] the General Assembly after, *inter alia*, recalling that, as stated in paragraph 86 of the report of the International Law Commission on the work of its thirty-third session,[196] the Commission decided to recommend that the Assembly should convene an international conference of plenipotentiaries to study the Commission's draft articles on succession of States in respect of State property, archives and debts and to conclude a convention on the subject, decided that such a conference should be convened to consider the draft articles in question and to embody the results of its work in an international convention and such other instruments as it may deem appropriate and requested the Secretary-General to convene the United Nations Conference on Succession of States in respect of State Property, Archives and Debts early in 1983.

(*l*) Draft body of principles for the protection of all persons under any form of detention or imprisonment

The item entitled "Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment" was included in the agenda of the thirty-sixth session of the General Assembly pursuant to paragraph 2 of Assembly resolution 35/177. By that resolution, the Assembly took note of the constructive work undertaken by an open-ended Working Group which the Third Committee had entrusted with the task of elaborating a final version of the draft in question,[197] adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirty-first session. Noting, however, that that Working Group had not been able to conclude its task, the Assembly, by the same resolution, decided to refer to its thirty-sixth session the draft Body of Principles for consideration by the Sixth Committee and to establish, at that session, an open-ended working group with the intention of concluding the consideration of the draft Body of Principles, with a view to its adoption by the Assembly.

At its thirty-sixth session, the Assembly adopted, on the recommendation of the Sixth Committee,[198] decision 36/426 by which it decided to refer to its thirty-seventh session the draft Body of Principles[199] for further consideration by the Sixth Committee.[200]

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9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH[201]

In 1981 UNITAR continued its training programmes in New York, Geneva and other locations for officials whose responsibilities are related to the United Nations, as well as its discussion and orientation seminars on major issues facing the United Nations.

Drafting courses on treaties and other instruments were held in New York from 20 to 24 April 1981. They were intended mainly for legal officers or those with international law assignments in their missions. The objective of the seminars was to acquaint participants with the legal aspects of treaties and other international instruments, particularly their relation to diplomatic practice, including that of the United Nations. Discussions were preceded by a brief analysis of customary international law and the Vienna Convention on the Law of Treaties and were followed by drafting exercises and observance of a drafting session of a major United Nations conference.

Briefing and discussion seminars on the law of the sea were held in New York on 6 March 1981 and in Geneva in July 1981. Participants were briefed on the current stage of the treaty

negotiations, as well as on the historical background of the Third United Nations Conference on the Law of the Sea.

UNITAR continued to administer the international law fellowship programme, a 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. A number of fellowships were awarded in 1981 to legal advisers of ministries of foreign affairs, to other legal advisers of governments and governmental institutions and to teachers of international law, mostly from developing countries. The programme included participation in the courses on international law at the Hague Academy of International Law and in special courses and seminars organized by UNITAR during that period. In addition to the programme at the Hague in July and August 1981, the fellows had the choice of attending the international law seminar organized at Geneva in connection with the annual session of the International Law Commission, or of undertaking three months of practical training in the United Nations Office of Legal Affairs or in the specialized agencies.

The United Nations/UNITAR regional training and refresher course in international law for African countries was held in Cairo from 28 February to 13 March 1981. The course is one of the regular training courses organized periodically by UNITAR in Asia, Africa and Latin America under the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. It is basically designed for young government legal advisers and university professors. Participants from 20 African countries received lectures on developments in international law and the legal aspects of the new international economic order.

About 60 experts on international law from various regions of the world attended a joint UNITAR/Uppsala University seminar on international law and organization for a new world order organized in Sweden in June 1981. Its purpose was to give them an opportunity to exchange views on what contribution law can provide in the general debate on the new international economic order.

In 1981 UNITAR began a project on an analytical guide to application of the International Covenant on Economic, Social and Cultural Rights. This project, undertaken jointly with the American Society of International Law, was designed to bring together scholars from a broadly representative group of countries to prepare a handbook explaining the intent and meaning of the Covenant for use by lay judges, lawyers and interested laymen. The study will be published in 1983 and will be based primarily on a scholarly examination of the Covenant's legal content, including *travaux préparatoires*.

UNITAR also undertook a study containing a critical assessment of the role and prospects of the International Law Commission, which was published under the title *The International Law Commission: the Need for a New Direction* [UNITAR publication, Sales No. E.81.XV.PE/1]. It examines the capacity of the Commission to respond to the needs of the United Nations system for legislative drafting and the progressive development of international law as well as the willingness of the United Nations to make creative use of the Commission. The proposals contained in this publication were actively debated in the Sixth Committee during the thirty-sixth session of the General Assembly and were the subject of a conference of legal experts convened at UNITAR.

A study by UNITAR on lessons of the Law of the Sea negotiations examined the institutional arrangements that had the greatest effect on the Third United Nations Conference on the Law of the Sea, including the package deal, the lack of a first draft and the use of consensus. UNITAR also continued to carry out a project on the evaluation of the liability of States for damage caused through scientific and technological innovations. It examines the impact of scientific and technological change on the responsibility of States in international law for injuries arising from their misuse or negligent control of technologically advanced instruments, materials or fuels.

The results of phase I of the study by UNITAR on progressive development of the principles and norms of international law relating to the new international economic order were reported to the General Assembly at its thirty-sixth session in September 1981. These contained an annotated listings of virtually all normative instruments applicable to economic relations between developed and developing countries in a readily accessible form.

Among the studies published by UNITAR in 1981, mention should be made of a compendium entitled *The Progressive Development of the Principles and Norms of International Law Relating to the New International Economic Order.*

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

1. INTERNATIONAL LABOUR ORGANISATION[202]

1. The International Labour Conference (ILC), which held its 67th Session in Geneva in June 1981, adopted the following instruments: a Convention and a Recommendation concerning the Promotion of Collective Bargaining;[203] a Convention and a Recommendation concerning Occupational Safety and Health and the Working Environment;[204] and a Convention and Recommendation concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities.[205]

2. The International Labour Conference (ILC) also adopted the amendment of Article 16, paragraph 9, of the Rules concerning Powers, Functions and Procedure of Regional Conferences convened by the International Labour Organisation concerning the loss and recovery of the right to vote as a result of a State's payment or otherwise of arrears of contributions.[206]

3. The Committee of Experts on the Application of Conventions and Recommendations met in Geneva from 12 to 25 March 1981 and presented its report.[207]

4. The Governing Body Committee on Freedom of Association met in Geneva and adopted Reports No. 207[208] (215th Session of the Governing Body, March 1981); Nos. 208,[209] 209[209] and 210[209] (216th Session of the Governing Body, May 1981); and Reports Nos. 211,[210] 212[210] and 213.[210]

2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

I. Office of the Legal Counsel[211]

A. *Constitutional matters*

In addition to current legal advice and services provided to the Director-General and various departments within the Organization, the Office of the Legal Counsel provided legal services to the Committee on Constitutional and Legal Matters (CCLM), the Conference, the Council and other statutory bodies of the Organization.

(a) *Committee on Constitutional and Legal Matters (CCLM)*

Two sessions of the Committee on Constitutional and Legal Matters (CCLM) were held in 1981. At the first of these sessions[212] the CCLM examined the draft Conference resolution concerning the Special Reserve Account of the Regular Programme which was to be considered by the Council; at the second,[213] it examined a draft Council resolution concerning the Director-General's authority to borrow, which was to be considered by the Finance Committee and the Council.

(b) *Amendments to the Basic Texts of the Organization and to the Statutes of FAO bodies*

The Conference adopted at its Twenty-First Session (7-26 November 1981) a resolution (Res. 15/81) amending Regulations X, XI, XII and Annex I of the Financial Regulations of the Organization.[214] These amendments have also been issued separately for insertion in the 1980 edition of Volumes I and II of the FAO Basic Texts.

At its 53rd session in September 1981 the Committee on Commodity Problems adopted a resolution by which it revised, in accordance with Rule VII.3 of its Rules of Procedure, the Terms

of Reference of the eleven Intergovernmental Commodity Groups and invited these Groups to amend, at the earliest opportunity, the relevant provisions of their Rules of Procedure to bring them into line with their revised Terms of Reference.[215]

Accordingly the Intergovernmental Group on Jute, Kenaf and Allied Fibres adopted new Rules of Procedure at its 17th session in December 1981.

(c) *Establishment of a working party*

The Conference adopted at its Twenty-First Session (7-26 November 1981) a resolution (Res. 14/81) by which it established, under Article VI.5 of the FAO Constitution, a working party consisting of seven Member Nations whose representatives should, in consultation with the Director-General, act as a delegation for the purpose of meeting the Italian Authorities at the highest level, with a view to finding, as a matter of urgency, a permanent solution to the problem of the organization's accommodation.[216]

(d) *Convention concluded under Article XIV of the FAO Constitution*

At its Twenty-First Session (7-26 November 1981), the Conference recalled that when approving amendments to the International Plant Protection Convention by resolution 14/79 at its previous session, it had urged the parties to the Convention to accept the revised text at the earliest possible time. The Conference noted, however, that only 22 acceptances had been received to date, while at least another 33 acceptances were required for the entry into force of the revised text. In view of the importance of the Convention, the Conference reiterated its appeal to States that had not yet accepted the revised text of the Convention to deposit an instrument of acceptance as soon as possible.[217]

(e) *Applications for Membership*

At its 79th session (22 June–2 July 1981) the Council was informed that Bhutan had applied for membership in the Organization. Pending a decision by the Conference on this application, the Council, acting in pursuance of Rule XXV.11 of the General Rules of the Organization and paragraphs B.1, B.2 and B.5 of the "Statement of Principles on the Granting of Observer Status to Nations", authorized the Director-General to invite Bhutan to participate in an observer capacity at appropriate Council meetings, as well as at regional and technical meetings of the Organization of interest to it.[218]

At its Twenty-First Session, the Conference admitted Bhutan, Equatorial Guinea, Saint Vincent and the Grenadines, Tonga and Zimbabwe to membership in the Organization.[219]

(f) *Agreements and arrangements with intergovernmental organizations and bodies*

At its Eightieth Session, the Council agreed that the 1968 Memorandum of Understanding between FAO and the Asian Development Bank be terminated by mutual consent and welcomed the fact that the Director-General and the President of the Asian Development Bank would consequently be in a position to sign a new Memorandum of Understanding.[220] A new Memorandum of Understanding on working arrangements was signed by FAO and the Asian Development Bank in November 1981.

A new Memorandum of Understanding (replacing an earlier one concluded between FAO and the African Development Bank, which entered into force in 1968) was signed in August 1981 by FAO and the African Development Bank and the African Development Fund.

(g) *Treaties concluded at Plenipotentiary Conferences convened by the Organization*

An Agreement for the Establishment of a Regional Centre on Agrarian Reform and Rural Development of Latin America and the Caribbean was adopted at a Plenipotentiary Conference convened by FAO and held in Caracas from 8 to 11 September 1981. The Director-General of FAO is the depositary of this Agreement.

(h) *Activities of legal interest relating to commodities*

(i) Informal price arrangements on Jute, Kenaf and Allied Fibres

Although market prices of jute had remained far below the floor of the agreed price range since early 1980, the FAO Intergovernmental Group on Jute, Kenaf and Allied Fibres agreed in June 1981 to retain the indicative price for jute for the 1981/82 season at its previous level, in order to maintain the principle of its indicative price system. It also agreed on an indicative price range for Thai Kenaf.

(ii) Informal price arrangements on hard fibres

The informal price arrangements operated under the Intergovernmental Group on Hard Fibres were revised in March 1981. The indicative prices for sisal and abaca were maintained, but the operation of the export quota system for sisal and of the trigger mechanism for automatic consultations for abaca remained suspended.

(i) *Other activities of legal interest*

At its Twenty-First Session (7-26 November 1981), the Conference adopted:

(i) resolution 7/81 by which it urged Member Nations and non-governmental organizations to strive, with the support of FAO, to ensure that the annual celebration of World Food Day would further intensify public awareness.[221]

(ii) resolution 8/81 by which it adopted the World Soil Charter and recommended to the United Nations and international organizations concerned to give effect to its Principles and Guidelines.[222]

B. *Environment law*

In 1981, FAO's assistance to governments also related to international and national environment law, including advice on soil conservation and desertification control legislation in arid and semi-arid zones.

In marine environment protection law, FAO strengthened its co-operation with the United Nations Environment Programme (UNEP), especially on the sub-programmes for the West and Central African regions, and for the Mediterranean Sea. It completed the preparatory legal work for the elaboration of a protocol on Mediterranean protected areas, and contributed to a Swedish International Development Authority (SIDA) training course (Halifax, Canada, July 1981) and an FAO/SIDA training programme (Yaoundé, Cameroon, Nov.-Dec., 1981) on marine pollution. It assisted in preparing and actively participated in the UNEP Senior Level Meeting on Environmental Law held at Montevideo in 1981. A comprehensive study on the legal aspects of environmental impact assessment and agricultural development was published in October 1981 as FAO Environment Paper No. 2.

II. Legislation Branch[223]

(a) *Activities connected with international meetings*

The Legislation Branch participated in and provided contributions to the following international meetings:

— Joint FAO/WHO Expert Committee on Food Additives (JECFA) (25th Session, Geneva, 23 March–1 April 1981); the following paper was contributed: "Current national legislation relating to the use of certain hormones in stockraising".

— Interregional meeting of International River Organizations, organized by the United Nations, Dakar, Senegal (5-14 May 1981).

— Seminar on Water Legislation in Arab countries organized in Damascus, Syria (16-19 March) by the Centre Arabe pour l'étude des zones arides et des régions désertiques (ACSAD) and the Centre de formation internationale à la gestion des ressources en eau (CEFIGRE). A special paper was submitted to the seminar.

— Symposium on International River Law, organized by the Government of Bangladesh (Dacca, 5-10 December 1981).

— South Pacific Forum Fisheries Agency, Meeting on regional research and development programme (Honiara, Solomon Islands, 4-8 May 1981).

— Regional training workshop on joint ventures and other commercial arrangements with transnational corporations in the fisheries sector sponsored by FAO/SELA/UNCTC (Lima, Peru, 16-25 November 1981).

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

In 1981 legislative assistance was given to various countries on the following matters:

(i) *Fisheries Legislation*
Benin, Comoros, Equatorial Guinea, Fiji, Guatemala, Indonesia, Liberia, Madagascar, Malaysia, Maldives, Mauritania, Pakistan, Sierra Leone, Solomon Islands, the United Republic of Tanzania, Thailand and Vanuatu;

(ii) *Forestry Legislation*
Cape Verde, Ethiopia, Mozambique, Sierra Leone, Vanuatu;

(iii) *Animal and Animal Products*
Cape Verde;

(iv) *Meat Hygiene and Inspection Legislation*
Lesotho;

(v) *Soil Conservation Legislation*
Morocco;

(vi) *Water Legislation*
Somalia.

Assistance was also given to the Permanent Inter-State Committee for Drought Control in the Sahelian Zone on legal and institutional aspects relating to the establishment of regional grain stocks in its member countries.

(c) *Legal assistance and advice not involving field missions*

Assistance and advice were provided on various subjects, such as: livestock laws in Pakistan; food additive and contaminant legislation in Spain; pesticide legislation in Afghanistan; basic food legislation in Benin, Morocco and Tunisia; food quality control in Algeria; veterinary regulations in Singapore.

(d) *Legislative research and publications*[224]

Research was conducted, *inter alia*, on phytosanitary legislation; plant protection legislation; legislation on food for infants and small children; agricultural insurance legislation; legislation on coastal state requirements for foreign fishing; wildlife and national park legislation in Africa; water law in Latin America; law of international water resources; regional compendia of fisheries legislation.

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

FAO published, semi-annually, *Food and Agricultural Legislation*. Annotated lists of relevant laws and regulations appear regularly in *Land Reform, Land Settlement and Cooperatives*, a semi-annual FAO publication. Similar lists are also published in the semi-annual *Food and Nutrition Review* and in *Unasylva* [An international journal of forestry and forest industries].

3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

1. CONSTITUTIONAL AND PROCEDURAL QUESTIONS

Membership of the Organization

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 covered by this review:

State	*Date of signature*	*Date of deposit of instrument of acceptance*
Samoa	3 April 1981	3 April 1981
Bahamas	23 April 1981	23 April 1981

Under the terms of the relevant provisions of the Constitution[225] each of the above-mentioned States became a member of the Organization on the respective date its acceptance took effect.

2. INTERNATIONAL REGULATIONS

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

In accordance with the terms of its Article 18, the Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in the Arab States, adopted on 22 December 1978 at Paris, France, by an International Conference of States convened by UNESCO, entered into force on 7 August 1981, that is, one month after the deposit with the Director-General of the second instrument of ratification.

(b) *Instruments adopted by International Conferences of States convened by UNESCO*

— Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States (adopted on 5 December 1981 at Arusha, Tanzania).

(c) *Transmission of certified copies of instruments previously adopted*

In pursuance of Article 15 of the "Rules of Procedure concerning Recommendations to Member States and International Convention covered by the terms of Article IV, paragraph 4, of the Constitution", the Director-General transmitted to Member States in early 1981 certified copies of the following three Recommendations which were adopted by the General Conference during its twenty-first session held in Belgrade from 23 September to 28 October 1980:

— Recommendation concerning the status of the artist

— Recommendation for the safeguarding and preservation of moving images

— Recommendation concerning the international standardization of statistics on the public financing of cultural activities.

The certified copies were sent to Member States in order that they could submit these Recommendations to their competent authorities, in accordance with Article IV, paragraph 4, of the Constitution.

Transmitted with the certified copies were copies of a "Memorandum concerning the obligation to submit conventions and recommendations adopted by the General Conference to the 'competent authorities' and the submission of initial special reports on the action taken upon these conventions and recommendations". This Memorandum was prepared, upon instructions from the General Conference, by the Director-General. It contains the various provisions of the Constitution and the regulations applicable, together with the other suggestions that the General Conference itself has found it necessary to formulate, at its earlier sessions, concerning the matters indicated by the Memorandum's comprehensive title.

(d) *Preparation of new instruments*

In implementation of decisions[226] taken by the General Conference at its twenty-first session to that effect, the Director-General prepared and transmitted to Member States for their comments and observations a preliminary report on the following subject:

— Recognition of studies, diplomas, and degrees in higher education in Asia and the Pacific.[227]

3. HUMAN RIGHTS

Examination of cases and questions concerning the exercise of human rights coming within UNESCO's competence

The Committee on Conventions and Recommendations met in private session at UNESCO headquarters from 4 to 12 May and 2 to 11 September 1981 in order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3 of the Executive Board.

At its spring session, the Committee examined 57 communications of which 52 were examined with a view toward their admissibility and 5 were examined on their substance. Of the 52 communications examined as to admissibility, none were declared admissible, 16 were declared inadmissible, the examination of 24 communications was suspended, and 12 communications were struck from the list since they were considered as having been settled. The Committee presented its report to the Executive Board at its 112th session.

At its fall session, the Committee had before it 43 communications of which 39 were examined as to their admissibility and 4 as to their substance. Of the 39 communications which were examined as to their admissibility, one was declared admissible, 8 were declared irreceivable, the examination of 23 communications was suspended, 2 communications were struck from the list since they were considered as having been settled, and 5 communications concerning missing persons were transmitted to the Working Group on Enforced or Involuntary Disappearances, set up by the United Nations Commission on Human Rights. The Committee presented its report on its examination of these communications to the Executive Board at its 113th session.

4. COPYRIGHT AND NEIGHBOURING RIGHTS

(a) *Universal Copyright Convention*

The Intergovernmental Committee of the Universal Copyright Convention held its Fourth Ordinary Session at Geneva from 30 November to 7 December 1981.

The Committee, sitting together with the Executive Committee of the Berne Union which held its nineteenth (seventh ordinary) session at the same place and on the same dates, deliberated upon a number of subject matters, some of which concerned the Intergovernmental Committee alone and some others which concerned also the Executive Committee of the Berne Union.

So far as matters regarding the Intergovernmental Committee alone were concerned, the Committee: (i) examined the findings of its Sub-Committee (Paris, 24-26 November 1980) on the revision of the Rules of Procedure of the Committee and adopted a new wording for Rule 49 of those Rules; (ii) discussed the question of the application of the Universal Copyright Convention *vis-à-vis* the system applicable to works not protected in their country of origin; and (iii) took note of the measures to promote accession to the Convention or its acceptance as well as legal and technical assistance to States to develop national legislation or infrastructures in the field of copyright.

As regards problems of common interest, the two Committees considered, *inter alia*, the following: (i) Application of the revised Paris texts of 1971 of the Universal Copyright Convention and of the Berne Convention in respect of developing countries; (ii) Copyright problems arising from the use of electronic computers for access to or the creation of works; (iii) Problems arising from the transmission by cable of television programmes; (iv) Application of the Universal Copyright Convention and the Berne Convention to material specially intended for the blind; (v) Copyright problems of those suffering from auditory handicaps; (vi) Intellectual property aspects of the protection of folklore; and (vii) Establishment of the Joint International UNESCO-WIPO Service for access by developing countries to works protected by copyright.[228]

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

The Intergovernmental Committee of the Rome Convention held its eighth ordinary session at Geneva from 11 to 13 November 1981.

At this session the Committee considered, in particular: Application of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention); (ii) Application of the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (Phonogram Convention); (iii) Application of the Convention Relating to the Distribution of Programme-carrying Signals Transmitted by Satellite (Satellite Convention); (iv) Adoption of the Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties (Madrid Convention) and its Additional Protocol concerning royalties paid to performers, producers of phonograms and broadcasting organizations; (v) Ways and means of promotion of the Rome Convention, the Phonogram Convention, the Satellite Convention and the Madrid Convention; (vi) Problems arising from the transmission by cable of television programmes in the field of neighbouring rights: "The Committee decided that it should take up once again the problems posed by cable transmission of programs as they affected the rights of the beneficiaries of the Rome Convention" and "that it should meet as a Subcommittee, which could meet with the Subcommittees of the Intergovernmental Copyright Committees . . . ". The joint meeting of these Subcommittees has been scheduled for 15 to 19 November 1982.[229]

(c) *Intellectual Property Aspects of Folklore Protection*

The joint UNESCO-WIPO "Working Group on the Intellectual Property Aspects of Folklore Protection", which had first met at Geneva from 7 to 9 January 1980, held its second and final meeting at Paris from 9 to 13 February 1981 and adopted the "Model Provisions for National Laws on the Protection of Expressions of Folklore". These Model Provisions along with the revised Commentary thereon, to be prepared by the two Secretariats, will be submitted for consideration to the "Committee of Governmental Experts on the Intellectual Property Aspects of the Protection of Expressions of Folklore", convened jointly by UNESCO and WIPO, which will meet at Geneva from 28 June to 2 July 1982.[230]

(d) *Safeguarding of Folklore*

In pursuance of Resolution 5/9.2/1, adopted by the General Conference of UNESCO at its twentieth session (Paris, 1978), the Director-General sent a circular letter CL/2670 accompanied by a questionnaire, on 31 August 1979, to the Member States in order to carry out a study, on the basis of a global survey, on the overall protection of folklore on an interdisciplinary basis. The Secretariat of UNESCO analyzed the responses to the questionnaire received from the Member States and prepared a "Study of the Measures of Preserving Folklore and Traditional Popular Culture", in view of submission to the Committee of Governmental Experts on the Safeguarding of Folklore convened by UNESCO at Paris from 22 to 26 February 1982.

(e) *Impact of Cable Television in the Sphere of Copyright and Neighbouring Rights*

The "Group of Independent Experts on the Impact of Cable Television in the Sphere of Copyright and Neighbouring Rights", convened jointly by UNESCO and WIPO, which held its first session from 10 to 13 March 1980, met at its second session from 25 to 27 May 1981 to examine the "Draft Model Provisions for the Protection of Authors, Performers, Producers of Phonograms and Broadcasting Organizations in Connection with Distribution by Cable" submitted by the two Secretariats. The Group of Experts considered that it was not in a position to adopt a final text and that the drafts should be subjected to further in-depth study. The Group also adopted resolutions, which, *inter alia*, direct the Secretariats to prepare a new working paper dealing with, separately, the rights of the various beneficiaries in the case of the cable distribution of their works and merging the Model Provisions and Commentary.[231]

(f) *Legal Problems Arising from the Use of Computers for Access to or the Creation of Works*

In accordance with the decisions of the first UNESCO-WIPO Committee of Governmental Experts on Copyright Problems Arising from the Use of Computers for Access to or the Creation

of Works (Paris, 15 to 19 December 1980), the Secretariat of UNESCO and the International Bureau of WIPO prepared, in consultation with officers of the Committee, the "Draft Recommendations for Settlement of Copyright Problems Arising from the Use of Computers for Access to or the Creation of Works" and transmitted the same to the Governments of the Member States and to the interested intergovernmental and international non-governmental organizations for their observations, which are to be submitted to the Second Committee of Governmental Experts on the same subject to be held in June 1982.

(g) *Establishment of the "Joint International UNESCO-WIPO Service for Access by Developing Countries to Works Protected by Copyright*

In view of the fact that some of the activities in WIPO's permanent programme concern field already covered by the activity of the International Copyright Information Centre of UNESCO, particularly with regard to access to works of foreign origin, the Director-General of UNESCO entered into negotiations with the Director General of WIPO which culminated in the establishment of the "Joint International UNESCO/WIPO Service for Access by Developing Countries to Works Protected by Copyright" with effect from 1 January 1981 in pursuance of resolution 5/01 adopted by the General Conference of UNESCO at its twenty-first session. And in order to advise the Directors General of those two Organizations on the preparation and implementation of the activities of the Joint Service, a "Joint UNESCO-WIPO Consultative Committee" was also set up.

(h) *Joint UNESCO-WIPO Consultative Committee on the Access by Developing Countries to Works Protected by Copyright*

The Joint UNESCO-WIPO Consultative Committee held its first ordinary session at UNESCO Headquarters from 2 to 4 September 1981 and considered the "Plan of Action for 1981/1982 of the Joint International UNESCO-WIPO Service for Access by Developing Countries to Works Protected by Copyright", which included (i) collection and dissemination of data; (ii) establishment of recommended standards; (iii) arrangements and machinery designed to operate realistic economic conditions; (iv) procedures for settling disputes between users of works in developing countries and foreign copyright owners; and (v) intellectual, technical and financial assistance to developing countries.[232]

(i) *Creation of a Committee for International Copyright Funds (COFIDA)*

The International Fund for the Promotion of Culture, an autonomous financial body under UNESCO, adopted at the April 1981 session of its Administrative Council the Rules of Procedure of the "Committee for International Copyright Funds" (COFIDA). COFIDA is a subsidiary organ of the Fund and provides, *inter alia*, total or partial financing for copyright royalties when a developing country encounters difficulties in paying for the reproduction, translation, adaptation, broadcast or communication to the public by any other means of works of foreign origin of an educational, scientific, technical, technological or cultural nature. The operations of COFIDA may take various forms, such as loans, intellectual and technical assistance to developing countries for purposes related to access to protected works of foreign origin.

4. WORLD BANK

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES (ICSID)

1. *Signatures and Ratifications*

During 1981 Barbados, Costa Rica, Paraguay and the United Arab Emirates signed the Convention;[233] the United Arab Emirates, Ireland and the Solomon Islands deposited instruments of ratification.

2. *Disputes Submitted to the Centre*

Two new cases were registered by the Centre involving respectively: (i) Amco Asia Corporation, Pan American Development Ltd. and P. T. Amco Indonesia *v.* Government of Indonesia;

and (ii) Klöckner Industrie-Anlagen BmbH, Klöckner Belge, S. A. and Klöckner Handlesmaatschappij L.C. *v.* United Republic of Cameroon.

3. *ICSID Publications*

ICSID issued a new brochure (Doc. ICSID/12) describing its activities and revised Model Clauses (Doc. ICSID/5/Rev.1).

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5. INTERNATIONAL MONETARY FUND

The following is a brief description of the principal activities and decisions of the International Monetary Fund that took place during 1981 and that have legal implications.

Membership, quotas, and participation in the Special Drawing Rights Department

Bhutan and Vanuatu joined the Fund on September 28, 1981, raising the membership of the Fund to 143 countries. Both countries elected to participate in the Special Drawing Rights Department and, as a result, all Fund members were participants in that Department at the end of 1981.

The Executive Board began preparatory work in the Eighth General Review of Quotas with consideration of the economic criteria entering into quota calculations.

On December 1, 1980, Saudi Arabia requested a substantial special increase in its quota to reflect the changes in Saudi Arabia's relative economic position. The increase from SDR 1,040.1 million to SDR 2,100 million was recommended by the Executive Board and authorized by the Board of Governors. The increase became effective September 8, 1981 and increased Saudi Arabia's share of total quotas from 1.74 per cent to approximately 3.5 per cent. In a collateral resolution the Board of Governors reaffirmed the size and composition of the Executive Board.

Special Drawing Rights

The Executive Board took major decisions to enhance the role of the special drawing right as an international reserve asset. The valuation basket of the SDR was reduced from 16 currencies to 5 currencies and unified with the SDR interest rate basket, with effect from January 1, 1981. The SDR rate of interest was raised from 80 per cent to 100 per cent of the combined market interest rate, with effect from May 1, 1981. The reconstitution requirement whereby each member was obliged to maintain over time a minimum average level of SDR holdings of 15 per cent of its net cumulative allocation of SDRs was eliminated as of April 30, 1981. SDRs are freely transferable, by agreement between participants, in transactions and may be used freely in prescribed operations that include forward purchases and sales, loans, donations (grants), swaps, and pledges of SDRs.

During the year the Central Bank for West African States was prescribed as an "other holder" of SDRs, bringing the total number of prescribed "other holders" to ten. These institutions can acquire and use SDRs in transactions and operations by agreement with any other holder or with any of the Fund's member countries to the same extent as Fund members. "Other holders", however, are not eligible to receive allocations of SDRs and cannot use SDRs in "transactions with designation", that is, a transaction in which the recipient is required to receive them and give the user a freely usable currency.

The SDR, which is the unit of account of the Fund, is finding increasing acceptance as a unit of account (or as the basis for a unit of account) for private contracts and international treaties. It is also used by other international and regional organizations as the unit of account or the basis for the unit of account, e.g., the Arab Monetary Fund, the Asian Clearing Union, the Economic Community of West Africa, the Islamic Development Bank, and the Nordic Investment Bank.

The reduction in the number of currencies in the SDR valuation basket from 16 to 5 on January 1, 1981 further enhanced its usefulness as a unit of account and gave impetus to the issue of private financial obligations denominated in SDRs. Time deposits denominated in SDRs were accepted by

a number of commercial banks in major financial centers and the Bank for International Settlements. The year also saw the offering of demand deposit accounts denominated in SDRs and clearance finance facilities for SDR-denominated bonds and the acceptance of SDR deposits in payment of SDR-denominated issues. A group of London banks announced in January 1981 that they would issue and trade certificates of deposit (CDs) denominated in SDRs using uniform documentation and agreeing to repurchase CDs they had issued, thereby helping to establish a secondary market in which these CDs could be traded. In February 1981, the Nordic Investment Bank launched a bond issue denominated in SDRs and Sweden obtained a five-year syndicated loan consisting of two tranches, the second denominated in SDRs.

In addition to its role as a unit of account, the SDR also functions as a currency peg. When a member pegs its currency to the SDR, the value of its currency is fixed in terms of the SDR and then is set in terms of other currencies by reference to the SDR value of the other currencies as calculated and published by the Fund.

Consultations

Article IV, Section 3, of the Articles of Agreement provides that the Fund shall oversee the international monetary system and the compliance of each member with its obligations concerning its economic and financial policies. In order to fulfill these tasks the Fund must exercise firm surveillance over the exchange rate policies of members and adopt policies to guide members with respect to these policies. In April 1981, the Executive Board conducted the annual review of the general implementation of the Fund's surveillance over members' exchange rate policies. In the review, Executive Directors supported the continuation of the procedures, adopted by a 1977 decision of the Executive Board regarding surveillance, which provide for the conduct of regular Article IV consultations with members, the World Economic Outlook discussions, and supplemental surveillance procedures for discussions and *ad hoc* consultations. Executive Directors also supported a more active and timely contact with members to enable the Fund to analyze important developments during the interval between regular Article IV consultations.

Borrowing

The Fund may supplement its ordinary resources from member's subscriptions to quotas by borrowing. At the beginning of 1981, the Fund had outstanding borrowing under the General Arrangements to Borrow, the oil facility and the supplementary financing facility from some of its members or their central banks and also from Switzerland or the Swiss National Bank under the latter two facilities.

On May 7, 1981, a large-scale borrowing agreement was concluded between the Fund and the Saudi Arabian Monetary Agency (SAMA) to finance the Fund's policy of enlarged access that became operative on the same date. SAMA agreed to lend to the Fund up to SDR 4 billion in the first year of the commitment period and up to SDR 8 billion in the second year with a possible further commitment for a third year if their balance of payments and reserve position permit. Interest will be paid by the Fund semiannually, on the basis of the weighted average rate of five-year government securities in each of the component currencies of the SDR (U.S. dollar, Deutsche mark, French franc, Japanese yen and pound sterling). The claims of SAMA may be transferred to any member of the Fund or a prescribed holder of SDRs, and SAMA will be able to obtain, at its request, promissory notes in bearer form, which would be transferable to other parties, official or private.

Any disputes under the agreement with SAMA will be settled by mutual agreement and, failing such agreement, by international arbitration. Disputes on bearer notes, if the bearer-note option is taken by SAMA, will be subject to adjudication in the Federal courts in the State of New York, the courts of England or the ordinary Courts of Justice of the Canton of Geneva, Switzerland and, for this purpose only, the Fund will waive its immunity with respect to jurisdiction and execution in any member country.

During 1981, the central banks or official agencies of 16 countries agreed that they will make available to the Fund the equivalent of SDR 1.3 billion over a commitment period of two years.

Effective May 5, 1981, the Executive Board adopted decisions on the establishment of Borrowed Resources Suspense Accounts for holding balances of currencies borrowed pending their transfer to the General Resources Account for use in transactions with members, or received in repurchases made before repayment can be made. Balances held in these Accounts are to be invested until they can be transferred to the General Resources Account for use in a transaction or operation. The Managing Director may invest currencies held in the Borrowed Resources Suspense Account in deposits, denominated in SDRs, with the national official financial institution of a member issuing the currency borrowed or to which the borrowed funds may be transferred for investment or with the Bank for International Settlements.

Charges and remuneration

The Fund took a major decision, effective May 1, 1981, to simplify the Fund's structure of charges and to provide for periodic reviews of the Fund's income position, including a mechanism to assure over time a positive net income for the Fund. It was decided to simplify the structure of the Fund's charges by introducing a single rate of charge on members' use of the Fund's ordinary resources to be fixed by the Executive Board at the beginning of each financial year on the basis of the estimated income and expense of the Fund for the year and the target amount of net income. If at mid-year the net income for the first six months is found to be below projections by more than two per cent of the Fund's reserves at the beginning of the financial year, the level of the rate is reviewed and if no other decision is taken the rate is automatically increased to the level needed to reach the target amount of net income. Beginning May 1, 1981, this single rate of charge was set at 6.25 per cent per annum on the daily average outstanding balances of members' purchases.

The Fund also established the rate of charge on the use by members of borrowed resources under the policy of enlarged access. The rate to be applied was equal to the net cost of such resources to the Fund plus a margin of 0.2 per cent per annum.

The rate of remuneration that the Fund pays to members on their creditor positions, which is linked directly to the SDR rate of interest, remained at 90 per cent of that rate. But in April 1981, the Executive Board took important decisions on the SDR interest rate and the rate of remuneration. Rule T-1 of the Fund's Rules and Regulations was amended to increase the rate of interest on the SDR from 80 per cent to 100 per cent of the combined market rate, rounded to two decimal places. At the same time, Rule I-10 was amended to set the rate of remuneration at 85 per cent of the rate of interest on the SDR, rounded to two decimal places.

Multiple currency practices

Article VIII, Section 3, of the original Articles of Agreement prohibits a member from engaging in, or permitting its fiscal agencies to engage in, multiple currency practices or discriminatory currency arrangements except as authorized under the Agreement or approved by the Fund. As the concept of multiple currency practices is not defined in the Articles, the Fund's policy has evolved from the decisions and guidelines adopted by the Executive Board. The concept originally related to parities or margins being observed for exchange transactions and took account of effective rates of exchange.

Following the currency realignments of 1971, the application of the Fund's policy on multiple currency practices continued to be applied in accordance with decisions on Central Rates and Wider Margins. The criteria of a permissible 2 per cent spread between buying and selling rates for spot exchange transactions between a member's currency and the currency of another member, and of a permissible difference of 2 per cent between any two buying or any two selling rates for spot exchange transactions between a member's currency and the currencies of other members, used to determine the existence of a multiple currency practice, were continued.

The Second Amendment of the Articles of Agreement came into force on April 1, 1978 and created obligations for members with respect to exchange arrangements that differ from those under the original Articles. In 1979, the Executive Board initiated a review of the Fund's jurisdiction over multiple currency practices and in March 1981 concluded that the policy of the Fund in

exercising its approval jurisdiction over multiple currency arrangements remained broadly appropriate. In arriving at this conclusion, the Executive Board approved guidelines for the implementation of the Fund's policy, among them the following: (i) official action by a member or its fiscal agencies that of itself gave rise to a spread of more than 2 per cent between buying and selling rates for spot exchange transactions between the member's currency and any other member's currency would be considered a multiple currency practice and would require prior approval by the Fund; (ii) exchange spreads that arose without official action would not give rise to a multiple currency practice; (iii) deviations between the buying and selling rates for spot exchange transactions and for other transactions would not be considered multiple currency practices if they represented the additional costs and exchange risks for these other transactions; (iv) the Fund was prepared to grant approval of multiple currency practices introduced or maintained for balance of payments reasons provided the member represented that the measures were temporary and were being applied while the member was endeavouring to eliminate its balance of payments problems, and provided the member did not gain an unfair competitive advantage over other members; and (v) as to approval of multiple currency practices introduced or maintained principally for non-balance of payments reasons, the Fund was prepared to grant temporary approval if such practices did not materially impede the member's balance of payments adjustment, did not harm the interests of other members, and did not discriminate among members.

Use of the Fund's resources

Effective May 1, 1981, the Executive Board took decisions under which a member using the credit tranches or the extended Fund facility would have the option to either use or retain a reserve tranche position, giving members greater flexibility in timing the use of their reserve tranche position. This action was taken under Article XXX(*c*) of the Fund's Articles of Agreement, which permits the Fund to exclude purchases and holdings for the purpose of the definition of a reserve tranche purchase. The request for a reserve tranche purchase cannot, by Article V, Section 3(*c*), be subject to challenge, and is therefore met automatically.

On May 13, 1981, the Executive Board adopted a decision on compensatory financing of fluctuations in the cost of cereal imports for assisting members that encounter a balance of payments difficulty produced by an excess in the cost of their cereal imports largely attributed to factors beyond a member's control. This assistance is integrated with that available under the compensatory financing facility for shortfalls in export earnings, with an overall purchase limit of 125 per cent of quota.

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6. UNIVERSAL POSTAL UNION

UPU continued its study of the legal and administrative problems entrusted by Congress to the Executive Council (EC). Among the most important problems which may be of interest to other organizations, specific mention should be made of the following studies:

Organization, functioning and methods of work of Congress;

Organization, functioning and methods of work of the Executive Council (EC) and delimitation of powers between the EC and the Consultative Council for Postal Studies (CCPS);

Jurisdiction of the Union;

Quorum required for amending the Constitution;

Abolition of the Supervisory Authority.

For more than a century, the Swiss Confederation had exercised, as regards UPU, a number of administrative responsibilities in connection with the organization's staff and finances.

Since the establishment of the Executive Council in 1948, Switzerland has gradually been relieved of those functions. A final step was taken in this direction at the eighteenth Congress, when the Union assumed responsibility for its own financing. At the end of its study on the legal

and practical outcome of this system of self-management, the Executive Council concluded that the residual provisions concerning the Supervisory Authority should be deleted from the UPU regulations.

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7. WORLD HEALTH ORGANIZATION

I. Constitutional and legal developments

1. During the year 1981 one country became a member of WHO through the deposit of a formal instrument of acceptance of the Constitution of the WHO following admission to the United Nations, as provided for in Articles 4 and 79(*b*) of the WHO Constitution.

The new member is: Dominica.

The date of acceptance is: 13 August 1981.

The total membership of the Organization was thus at the end of the year 157 members and 1 associate member.

2. The amendments to Articles 24 and 25 of the Constitution, which had been adopted in 1976 by the Twenty-ninth World Health Assembly, and which provide for an increase of the membership of the Executive Board from 30 to 31, were accepted by 8 member States in 1981. This brings the total number of instruments of acceptance so far deposited to 59; a further 46 acceptances are still required for the attainment of acceptance by two-thirds of the members, which is necessary for the entry into force of amendments under Article 73 of the Constitution.

3. The amendment to Article 74 of the Constitution, which had been adopted in 1978 by the Thirty-first World Health Assembly and which includes an Arabic version of the Constitution among the authentic texts, was accepted by 3 member States. The number of acceptances so far received has thus reached 16.

4. The Thirty-fourth World Health Assembly considered the question of periodicity of Health Assemblies, in the light of the views expressed by the regional committees, the discussions at the sixty-seventh session of the Executive Board and the Director-General's report thereon.[234] The Assembly decided to retain the practice of annual assemblies, as a change in the periodicity of the Health Assemblies should take place only in connexion with other structural reforms, such as changes in the composition and size of the Executive Board and the role and function of all bodies of the Organization.[235]

5. The Thirty-third World Health Assembly requested an Advisory Opinion from the International Court of Justice (ICJ) on certain questions regarding the transfer of the Regional Office for the Eastern Mediterranean from Alexandria.[236] The ICJ delivered its Advisory Opinion on the "Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt" on 20 December 1980. The Thirty-fourth World Health Assembly accepted the Advisory Opinion and recommended that all parties concerned be guided by it. It requested the Director-General to initiate action as contained in paragraph 51 of the Advisory Opinion and report the results to the sixty-ninth session of the Executive Board in January 1982 for consideration and recommendation to the Thirty-fifth World Health Assembly in May 1982.[237] The Director-General was also requested to take any action necessary to ensure the smooth operation of the technical, administrative and managerial programmes of the Regional Office for the Eastern Mediterranean during the period of consultation.

6. The Thirty-fourth World Health Assembly adopted, as a recommendation, the International Code of Marketing of Breast-milk Substitutes pursuant to Article 23 of the WHO Constitution.[238] The Health Assembly also urged Member States to translate the International Code into national legislation, regulations or other suitable measures. In the same resolution, the Assembly requested the Director-General to report to the Thirty-sixth World Health Assembly on the status of compliance with and implementation of the Code at the country, regional and global levels.

II. HEALTH LEGISLATION

7. The structure of the *International Digest of Health Legislation* (published quarterly by WHO in English and French editions) was substantially modified as from the first issue for 1981 (Vol. 32, No. 1). To facilitate reference to legislation on specific health topics, material is now presented by subject rather than by country, although the needs of readers who wish to study national legislative measures are catered for by a chronological index by country in each issue. The coverage of significant new publications has been increased. A Symposium on *Self-care and the Law* was published; this examines legal implications of self-care in the USA and seven European countries.

8. Further steps were taken, at the headquarters and regional levels, in the course of 1981 for strengthening co-operation between the Organization and its member States in health legislation, with regard to both the transfer of relevant information and technical co-operation. The measures taken were in line with the resolutions on health legislation adopted by the World Health Assembly in 1977 (WHA30.44) and 1980 (WHA33.28) and by the Executive Board of WHO in 1980 (EB65.R13). There is a growing realization on the part of public health administrators of the importance of legislation as a key element in assuring an effective health system infrastructure at the national level and as a controlling mechanism in some areas of health science and technology.

9. One of these areas is biomedical research involving human subjects, and a review of national legislation and codes on this subject was presented at the XVth CIOMS Round Table Conference on Human Experimentation and Medical Ethics, held in Manila from 13 to 16 September 1981 (the Proceedings will be published by the Council for International Organizations of Medical Sciences in 1982). Another is pharmaceuticals; a consultation on basic elements of drug legislation and regulatory control for developing countries was held in Geneva from 15 to 19 June 1981. A major international study on legislation relating to the treatment of drug-and-alcohol-dependent persons was initiated in 1981. It is anticipated that the final report will be published in 1983.

10. Particularly significant activities at the regional level included the convening of the first meeting of the WHO Regional Office for Europe's Advisory Committee on Health Legislation (Dresden, 24-26 June 1981), and the holding of the First National Seminar on Health Legislation in Dacca, from 24 August to 5 September 1981. The Organization was represented at a national seminar on the child and the law, held in Kabul from 6 to 8 September 1981.

11. Close contacts were maintained with other organizations in the UN system with an interest in areas allied to health legislation, and relevant information was regularly exchanged with officials in other agencies publishing national legislation in legislative series or the equivalent. There was particularly close co-operation with UNEP, and WHO was represented at the *Ad Hoc* Meeting of Senior Governmental Officials Expert in Environmental Law (Montevideo, 25 October-6 November 1981).

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8. WORLD METEOROLOGICAL ORGANIZATION

1. WEATHER MODIFICATION

Review of the present status of weather modification

8. *Economic, social and environmental aspects of weather modification*

8.1 Weather modification is sometimes considered when there is a need to improve the economy of a region by increasing water resources for agricultural use, water supplies for cities, or for hydroelectric power generation. In deciding whether to apply such techniques, it hardly need be emphasized that the benefits of modification should be larger than the costs of a weather modification operation. However, in considering benefits to some segments of the population, losses to other groups must also be weighed, together with possible compensation schemes. For example, whereas one type of crop may benefit from more rain, another may not; more rain may be good

for agriculture, but not for a flourishing tourist industry in the same area; bigger crop yields may lead to lower prices and reduced profitability of some farm operations. Thus it is necessary to consider not only the economics of the segment that desires a certain type of weather modification, but the overall net effect on the whole community.

8.2 Precipitation enhancement has to be viewed from the overall aspect of total water resource management. It may be difficult or impossible to ameliorate drought conditions when they occur. In most droughts, clouds suitable for seeding are normally scarce. Replenishing aquifers with water (which can be pumped to the surface if needed) or filling reservoirs and augmenting snowpacks is obviously easier because the timing of precipitation is not crucial. Thus, changes in agricultural practices, with conversion to storage and irrigation, may be needed.

8.3 Wherever weather modification causes economic conflicts, problems of a legal nature may arise. Besides, weather modification activities within the boundaries of a particular state may be perceived by a neighbouring state as having adverse effects within its borders (the so-called "extra-area effects", which in this case are alleged to go beyond the boundaries of the state carrying out weather modification activity).

8.4 Some countries already have provisions for regulating the conduct of weather modification activities, while the international community is developing guidelines for resolving international conflicts arising out of weather modification activities. However, it must be emphasized that weather modification still remains in the realm of research. Any legal system aimed at regulating weather modification at the international level must be developed hand in hand with scientific knowledge in the field.

8.5 The implications of any projected long-term weather modification operation on ecosystems need to be assessed before long-term, large-scale operations are undertaken. Such impact studies could reveal changes in the balance of economic benefit. During the operational period, monitoring of possible environmental effects should be undertaken as a check against estimated impacts.

2. Questions relating to the Convention and the General Regulations

Interpretation of the term "designated" in Regulation 142 of the General Regulations

The Executive Committee further examined this question in pursuance of its request during its last session to the Secretary-General to study amendments to the Convention and General Regulations which would be deemed necessary for each of the two alternatives considered by the Committee during that session.

The discussion, which was based on the report submitted by the Secretary-General to this effect, confirmed two trends of thought among the members of the Committee corresponding to the two alternatives.

It was, however, generally felt that if the term "designated" in Regulation 142 was to be interpreted as "elected", the Convention should be amended accordingly.

If, on the other hand, the term "designated" would be interpreted as meaning a "decision", the Executive Committee would merely have to amend its Rules of Procedure.

The Committee requested the Secretary-General to prepare a draft report to EC-XXXIV for submission to Ninth Congress containing the study prepared by the Secretary-General and the detailed amendments which would satisfy each of the two alternatives.

The Committee also requested the Secretary-General to emphasize in this report the expressed suggestion to confine the list of candidates for an acting member of the Executive Committee to those coming from the same Region as the outgoing member.

Distribution of seats on the Executive Committee amongst the different Regions

The Executive Committee studied the results of the consultation with the members of the Organization on the subject of the distribution of seats on the Committee amongst the different Regions.

In view of the inability to work out a consensus on this matter, the Committee requested the Secretary-General to communicate the results of his consultation to all members, as requested by Eighth Congress, so that they might send their comments before the next session of the Committee.

Discrepancy between the English and French texts of Article 14(f) of the WMO Convention

The Executive Committee examined the existing discrepancy between the English and French texts of Article 14(*f*) of the Convention and agreed on determining the meaning of this Article on the basis of the French version of the Convention which refers to the term "work programme".

The Executive Committee requested the Secretary-General to incorporate the above meaning in a draft resolution for the interpretation of the Convention which would be submitted by the Committee to Ninth Congress.

Procedures relating to invitations for sessions of constituent bodies

The Committee also noted the heavy concentration of a large number of sessions of constituent bodies during 1981-1982. The Committee reiterated the view expressed at Eighth Congress that such a concentration of sessions is disadvantageous to the members intending to participate in those sessions. As a result, the budgetary and staff resources of the Organization are often overstretched. The Committee was of the view that a balanced programme of meetings should not be sacrificed at the expense of necessarily finding a host country. Instead, in the absence of a host, the session of the constituent body should be held at the WMO Headquarters.

The Committee therefore decided to propose to Ninth Congress to amend Annex I to the General Regulations (Reference: Regulation 16) by incorporating a provision which would automatically shift the session to Geneva in case no formal invitation from the inviting Government to host that session is received at least 300 days before the scheduled date of the opening of the session. The Committee requested the Secretary-General to prepare the appropriate draft proposal for amendment in this respect.

The Executive Committee studied the question of institutionalizing the Bureau of the Executive Committee following the request made by Eighth Congress.

The Executive Committee noted that the Bureau was conceived by the first session of the Executive Committee as a forum for informal consultations for the organization and co-ordination of the work of the Executive Committee both during and between its sessions and that it has been playing an important role in this respect.

After considerable discussion, it was generally agreed that it was neither necessary nor desirable to institutionalize the Bureau and therefore the Committee proposed that no amendments be made to the General Regulations. The General Regulations (Regulation 31) provide for any constituent body to establish working groups to act until the next session of that constituent body. Thus the Executive Committee may establish the Bureau as an Advisory Working Group.

There was general consensus that the role and the composition of the Bureau should continue in a similar fashion as at present. In this connexion, it was noted that the function of the Bureau shall continue to consist of the organization and co-ordination of the work of the Committee.

The Executive Committee requested the Secretary-General to convey its views to Ninth Congress.

3. Staff matters

Amendments to the Staff Rules

Some amendments were made to the Staff Rules applicable to Headquarters staff and to those applicable to Technical Assistance Project Personnel. These amendments are pursuant to the amendments made by the United Nations or have been made following decisions of the International Civil Service Commission.

Staff Rules applicable to Headquarters staff

These amendments relate to provisions regarding maternity leave (Staff Rule 162.2); adjustments of the pensionable remuneration for staff in the Professional category and above, as a result

of the movement of the weighted average of post adjustments (Staff Rule 131.1, Appendix A.1); conditions governing local recruitment (Staff Rule 142.2, Appendix B.2); standards of accommodation and travel time, excess baggage and unaccompanied shipments (Staff Rules 171.8 and 171.19); salary scales for staff in the General Service category (Staff Rule 131.2, Appendix B.1) on two occasions, effective 1 January 1980 and 1 March 1980; new salary scales and post adjustment schedules for staff in the Professional category and above, as a result of the consolidation of thirty points of post adjustment into the base salary (Staff Rule 131.1, Appendix A.1; Staff Rule 133.1, Appendix A.2); revised rates of staff assessment (Staff Rule 132.1); definition of pensionable remuneration (Staff Rule 134.10); maternity leave (Staff Rule 162.2); education grant (Staff Rule 134.2).

Staff Rules applicable to Technical Assistance Project Personnel

These amendments relate to adjustments of the pensionable remuneration for project personnel, as a result of the movement of the weighted average of post adjustments (Staff Rule 203.1, Appendix I); new salary scales and post adjustment schedules, as a result of the consolidation of thirty points of post adjustment into the base salary (Staff Rule 203.1, Appendices I and II); revised rates of staff assessment (Staff Rule 203.4) and the provisions regarding education grant (Staff Rule 203.7).

4. Membership of the Organization

Zimbabwe and Saint Lucia became members of the Organization under Article 3(*b*) of the Convention on 11 February 1981 and 1 April 1981 respectively, those dates being the thirtieth day of the respective deposits of the instruments of accession to the Convention.

The total membership of the Organization at the end of 1981 comprised 149 States and five Territories.

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9. INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

Membership of the Organization

In 1981, the following countries became members of the Inter-Governmental Maritime Consultative Organization: El Salvador (12 February), Costa Rica (4 March) and St. Vincent and the Grenadines (29 April). At 31 December 1981, the number of members of IMCO was 121. There is also one associate member.

1. *Consideration of draft articles for a convention on liability and compensation in connexion with the carriage of noxious and hazardous substances by sea*

The Legal Committee made further progress in its consideration of the draft articles for a convention on liability and compensation in connexion with the carriage of noxious and hazardous substances by sea (HNS Convention) and matters related thereto including, in particular, the question of possible draft provisions on damage arising from fire or explosion on oil tankers carrying or having carried oil in bulk. The draft prepared by the Committee will be submitted to a diplomatic conference in 1983 or 1984.

2. *Possible review of the limits of liability and compensation provided in the 1969 Civil Liability Convention and the 1971 Fund Convention*

The Legal Committee gave further attention to the question of a possible review of the liability and compensation régime in the 1969 Civil Liability Convention[239] and the 1971 Fund Convention[240] based on the results of the work undertaken at an informal meeting held in Washington, D.C. in June 1981. The Committee also took note of the Council's direction to the Committee to devote an appropriate part of the meeting time available in the 1982/1983 biennium to progressing the work on the revision of the 1969 and 1971 Conventions with a view to making it possible for the question to be dealt with also at the proposed diplomatic conference for considering the HNS Convention.

3. *Barratry, unlawful seizure of ships and their cargoes and other forms of maritime fraud*

The twelfth IMCO Assembly adopted on 20 November 1981 Resolution A.504(XII) on barratry, unlawful seizure of ships and their cargoes and other forms of maritime fraud, having considered the proposal made by the Council in the light of recommendations of the *Ad Hoc* Working Group appointed by the Council to examine the subject.

4. *Changes in status of IMCO Conventions*

(*a*) The Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, entered into force on 1 May 1981, in accordance with its Article V.

(*b*) The Maritime Safety Committee adopted, at its 45th session on 20 November 1981, amendments to Chapters II-1, II-2, III, IV, V and VI of the International Convention for the Safety of Life at Sea, 1974, in accordance with Article VIII(*b*) (iv) of the Convention. The Committee determined in accordance with Article VIII(*b*) (vi) (2) (*bb*) of the Convention that all of the above-mentioned amendments shall be deemed to have been accepted unless, prior to 1 March 1984, more than one third of Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not less than fifty per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments.[241]

(*c*) The Assembly at its twelfth regular session adopted, on 19 November 1981, amendments to the International Regulations for Preventing Collisions at Sea, 1972; and decided, in accordance with paragraph 4 of Article VI of the Convention, that each amendment shall enter into force on 1 June 1983 unless by 1 June 1982 more than one third of the Contracting Parties to the Convention have notified their objection to the amendments.[242]

(*d*) The Maritime Safety Committee, at its 44th session, adopted on 2 April 1981 amendments to Annex I to the International Convention for Safe Containers, 1972, in accordance with the terms of Article X(3) of the Convention. The amendments entered into force on 1 November 1981 for all Contracting Parties.

(*e*) The 1976 Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969, entered into force on 8 April 1981, in accordance with Article V of the Protocol.

(*f*) The Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 1972, adopted, at their Fifth Consultative Meeting on 24 September 1980, resolution LDC Res.12(V) concerning the amendment of the lists of substances contained in Annexes I and II to the Convention. In accordance with the terms of the resolution and Article XV(2) of the Convention, the amendments entered into force on 11 March 1981 for all Contracting Parties, with the exception of the Federal Republic of Germany and Japan, which made declarations of non-acceptance.

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10. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

A. MEMBERSHIP

As of 31 December 1981, IFAD had a total membership of 133 countries: 20 in Category I (developed countries), 12 in Category II (OPEC members) and 101 in Category III (other developing countries). At its 5th Annual Session, held from 19 to 22 January 1982, at Rome, the Governing Council admitted the Kingdom of Tonga to the membership of IFAD in Category III. Upon the deposit of its instrument of accession with the Secretary-General of the United Nations, the Kingdom of Tonga became the 134th member of IFAD.

B. LENDING ACTIVITIES[243]

During 1981 the Executive Board of IFAD approved financial assistance totalling the equivalent of about $US 335 million for 30 agricultural and rural development projects in 30 developin

member countries of IFAD in Africa, Asia and Latin America (compared to 27 projects in 1980, 23 projects in 1979 and 10 in 1978). Most of the projects approved concentrated on increasing the production of food crops; however, there were also projects that had cash crop and livestock components as long as the additional income from such projects accrues to the rural poor. Of these 30 projects, 12 are exclusively IFAD financed and the remaining 18 are co-financed with other international financial institutions. For 16 of the 30 projects mentioned, the financial assistance was approved subject to the condition that the President of IFAD will sign financing agreements for each such project only when funds become available. This restriction was imposed by the Executive Board because at the time of approval of those projects, the replenishment of IFAD resources had not been completed.[244]

In addition, technical assistance grants of about $US 23 million were approved during the year 1981. As of 31 December 1981, the total amount of IFAD's loan approvals during its first four years of operation was $US 1,150 million. During the same four-year period, $US 42 million was made available as grants for technical assistance. Thus, total assistance, as loans and grants, provided by IFAD from 1978 to the end of 1981, in 76 member countries, was approximately $US 1,190 million.

C. Rescinding of approved financial assistance

In 1979, the Executive Board of IFAD had approved financial assistance equivalent to SDR 10,192,000 for an agricultural and rural development project in Afghanistan. In approving the financial assistance for the project, the Board had instructed the President to sign the Financing Agreement for the Project, when the situation within the project area indicated that the project could be implemented. The Agreement, however, remained unsigned by the end of 1981, when the International Development Association, which was the principal co-financier in the project, decided to cancel its loan for the project. The co-financier proceeded with the cancellation of its credit for the project as the borrower could not satisfy some of the conditions precedent laid down in the Credit Agreement for the successful implementation of the project. On reviewing the situation, the Executive Board of IFAD during its 14th Session (15-17 December 1981) decided to rescind, with effect from 31 December 1981, its earlier approval of the financial assistance for the project and release the funds committed for that project for other operational activities of IFAD.

D. Replenishment of resources

Section 3 of Article 4 of the Agreement Establishing IFAD provides that: "In order to assure continuity in the operations of the Fund, the Governing Council shall periodically, at such intervals as it deems appropriate, review the adequacy of the resources available to the Fund; the first such review shall take place not later than three years after the Fund commences operations". At its 3rd Annual Session, held in January 1980, the Governing Council of IFAD adopted Resolution 14/III which commenced the exercise for the first replenishment of IFAD's resources. Two years after the adoption of that Resolution, the Governing Council, at its 5th Annual Session, in January 1982, adopted Resolution No. 22/V, completing the replenishment exercise. The operative paragraphs of the Resolution read:

> "(i) The Fund shall accept additional contributions from Members of the Fund and any special contributions to the first replenishment of its resources as indicated in the attached Schedule (Attachment A) and in accordance with the arrangements set forth in the Resolution adopted by the Executive Board for this purpose at its Twelfth Session, as amplified by sub-paragraph (iv) below.
>
> "(ii) To make a contribution, the contributing Member shall, in accordance with its constitutional and budgetary procedures, deposit with the Fund as soon as possible an Instrument of Contribution formally confirming the Member's commitment to contribute to the Fund's resources. A similar procedure shall be followed in respect of any special contribution. The Fund may also accept a joint Instrument of Contribution on behalf of several Member States.

"(iii) The first replenishment shall come into effect on the date that Instruments of Contribution have been deposited with the Fund in an aggregate amount representing at least 50 percent of the respective total contributions of Members in Categories I and II. Each Instrument of Contribution shall become effective when the first replenishment comes into effect or when such Instrument is deposited with the Fund, whichever is later.

"(iv) To enable the Fund to undertake its planned operational programme of US$ 1,350 million contributions shall be paid in one, two or three instalments, in such a manner that the last instalment is paid within the current replenishment period, i.e., before the end of 1983.

"(v) Any Member may, if it chooses, notify the Fund that its contribution, or a part thereof, shall be regarded as an advance contribution which may be utilized by the Fund for the purpose of making commitments prior to the effectiveness of the replenishment. Upon effectiveness of the replenishment, any amounts so contributed shall cease to be regarded as advance contributions."

E. Permanent seat of IFAD

Section 9 of Article 6 of the Agreement Establishing IFAD provides that: "the Governing Council shall determine the permanent seat of the Fund by a two-thirds majority of the total number of votes. The provisional seat of the Fund shall be in Rome". Since its inauguration, IFAD had carried out its operations from this provisional seat. Previously, the Governing Council had requested the interested Member States to indicate their interest in having a permanent seat. Consequently a number of countries, including the Republic of Italy, extended invitations to host the permanent seat of IFAD. As the candidates could not reach a compromise amongst themselves on the seat issue, during its 5th Annual Session, the Governing Council, taking into account the recommendations of the Executive Board, decided to hold the balloting, to determine the permanent seat. There were three ballots held and on the third ballot, Italy received 1,342.88 votes out of the total of 1,800 votes of the Governing Council and Rome was declared by the Governing Council as the permanent seat of IFAD, through its adoption of Resolution No. 21/V. The operative paragraphs of the Resolution read:

"1. The Permanent Headquarters of IFAD shall be located in Rome.

"2. Noting that the 'Agreement between the Government of the Italian Republic and the International Fund for Agricultural Development Regarding the Provisional Headquarters of IFAD' will apply with immediate effect to the Permanent Headquarters of IFAD in accordance with its paragraph 45 (*c*), and in order to make the Agreement fully suitable for the Permanent Headquarters of IFAD, authorizes the President to review the aforesaid Agreement and negotiate with the Government of the Republic of Italy any necessary modifications or additions thereto, submitting the same for approval to the Governing Council.

"3. Requests the President to report to the Governing Council at its Sixth Session concerning the adequacy of the facilities, privileges and immunities and related administrative arrangements for implementing the Agreement."

F. Election of members and alternate members of the Executive Board

Pursuant to Rule 40.2 of the Rules of Procedure of the Governing Council, an election was held by Members in Category III to fill the vacancies created by the expiry of the terms of office of one member and one alternate member of the Executive Board from Asia, and one member and one alternate member of the Executive Board from Latin America. Accordingly, the Council declared as elected to the Executive Board for terms of office of three years the following Member States.

Asia

Member	*Alternate*
Thailand	Turkey

Member	*Alternate*
Jamaica	Panama

G. CO-OPERATION WITH OTHER INTERNATIONAL ORGANIZATIONS

In accordance with Article 8, Section 2 of its Establishing Agreement, IFAD seeks collaboration in its activities with other United Nations organizations, intergovernmental organizations, international financial institutions, non-governmental organizations and governmental agencies concerned with agricultural development. To carry out this collaboration the Fund is empowered to sign co-operation agreements. These agreements assume special importance in co-operation activities involving the identification, preparation and appraisal of projects, since Article 7, Section 2 of the Agreement Establishing IFAD makes it mandatory for IFAD to entrust the administration of its loans, for the purposes of the disbursement of the proceeds of the loans and supervision of the implementation of the projects, to competent international institutions.

During 1981, IFAD signed co-operation agreements with the Arab Organization for Agricultural Development and the United Nations Centre for Human Settlements. Action was also initiated in 1981 to establish co-operation with the Andean Development Corporation, the Central American Bank for Economic Integration, the United Nations Industrial Development Organization, the Organization of African Unity, the Commonwealth Secretariat, the West African Development Bank and the United Nations Fund for Population Activities. The agreements concluded in 1981 were in addition to those concluded in the previous years with the following agencies: the United Nations Food and Agriculture Organization; the World Bank; the United Nations Development Programme; the African Development Bank; the Asian Development Bank; the Inter-American Development Bank; the International Labour Organization; the Islamic Development Bank; the World Health Organization; the World Meteorological Organization; the Arab Fund for Economic and Social Development; and the Caribbean Development Bank.

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11. INTERNATIONAL ATOMIC ENERGY AGENCY

SAFEGUARDS AND NUCLEAR NON-PROLIFERATION

Safeguards agreements were concluded during 1981 with Argentina, Egypt, Spain, Turkey and Viet Nam.

The nuclear non-proliferation régime was strengthened in 1981 by the accession of Egypt to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). In addition, Antigua and Barbuda became a Party to the Treaty. The total number of NPT Parties, including nuclear-weapon States, rose to 116. The total number of States which had NPT safeguards agreements in force with the Agency, at the end of 1981, was 66.

REGIONAL CO-OPERATION

In March 1981 the Government of Viet Nam notified the Director General of its acceptance of the Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (the RCA).[245] By the end of 1981, RCA was in force for the Agency and the following 13 member States: Australia, Bangladesh, India, Indonesia, Japan, the Republic of Korea, Malaysia, Pakistan, the Philippines, Singapore, Sri Lanka, Thailand and Viet Nam.

In June 1981 the Government of India notified the Director General of its acceptance of the Agreement of 23 May 1980 Establishing the Asian Regional Co-operative Project on Food Irradiation[246] within the framework of RCA. By the end of 1981, the Agreement was in force for the Agency and the following ten member States: Bangladesh, India, Indonesia, Japan, the Republic of Korea, Malaysia, Pakistan, the Philippines, Sri Lanka and Thailand.

Advisory services in nuclear law

Advice on the framing of legislation on radiation protection, nuclear safety and third-party liability for nuclear damage was provided to Chile and Ghana at the request of the national authorities concerned, in May and June 1981 respectively.

Physical protection of nuclear material

By the end of 1981, 33 States and the European Atomic Energy Community had signed the Convention on the Physical Protection of Nuclear Material[247] and three States had ratified it. The Convention, which was opened for signature on 3 March 1980, will enter into force on the thirtieth day after the deposit with the Director General of the Agency of the twenty-first instrument of ratification.

International spent fuel management

The Expert Group on International Spent Fuel Management, established in 1979, continued its examination of the potential for international co-operation in the management of spent fuel. Three meetings of the Expert Group and its sub-groups were held in 1981. Work on technical and economic aspects was completed and a summary report drafted. Also, good progress was made in the study of institutional issues.

International plutonium storage

The Expert Group on International Plutonium Storage, first convened in 1978, and its technical sub-groups held six meetings during 1981 and made further progress in examining the technical, operational and legal aspects of implementing Article XII.A.5 of the Agency's Statute as an extension of the safeguards system.

Host country arrangements

Agreements regarding occupancy of the Agency's seat at the Vienna International Centre were signed in January 1981 by the Agency, the Austrian Government and the United Nations. They entered into force on 1 October 1981, except for the agreement establishing a common fund for financing major repairs and replacements, which entered into force retroactively on 1 January 1981.

Negotiations between the Agency and the Austrian Government on a draft agreement for inclusion of the Agency's laboratories at Seibersdorf in the Headquarters of the Agency were concluded late in 1981.

The Agreement of 1975 with the Principality of Monaco regarding the International Laboratory of Marine Radioactivity[248] was extended through exchanges of letters of 5 February and 1 June 1981 between the Agency, the Monagesque Government and the Oceanographic Institute at Monaco until 30 June 1984, subject to termination upon nine months' notice.

Committee on Assurances of Supply

The Committee on Assurances of Supply (CAS), established by the Board of Governors in June 1980, held three sessions in 1981, with some 50 countries participating as members and four international organizations attending as observers. On 17 September 1981, the Board of Governors adopted a resolution prohibiting South Africa from participation in the meetings of CAS.

In November 1981, CAS established two working groups — one on "Principles of international co-operation in the field of nuclear energy in accordance with the mandate of the Committee on Assurances of Supply" and one on "Emergency and back-up mechanisms".

Israeli attack on Iraqi reactor

The Israeli attack of 7 June 1981 on the Tamuz research reactor at the Iraqi nuclear research centre, near Baghdad, was discussed by the Board of Governors and reported to the United Nations Security Council, which, in its resolution 487 of 19 June, strongly condemned the attack and called

upon Israel urgently to place its nuclear facilities under Agency safeguards. It was subsequently debated in the Agency's General Conference and the United Nations General Assembly. In its Resolution GC (XXV) RES/381, the General Conference decided — *inter alia* — to "suspend immediately the provision of any assistance to Israel under the Agency's technical assistance programme"; action to implement this part of the resolution was duly taken. The Conference also decided to consider at its twenty-sixth regular session in 1982 the suspension of Israel from the exercise of the privileges and rights of Agency membership if by that time it had not complied with the provisions of Security Council resolution 487.

NOTES

[1] This summary has been prepared on the basis of *The United Nations Disarmament Yearbook*, vol. 6: 1981 (United Nations publication, Sales No. E.82.IX.7).

[2] *Official Records of the General Assembly, Thirty-sixth session, Supplement No. 42* (A/36/42) and A/CN.10/PV.43-54, A/CN.10/PV.54/Add.1, A/CN.10/PV.41-54/Corrigendum and A/CN.10/32.

[3] A/CN.10/4.

[4] *Official Records of the Security Council, Thirty-fourth Year, Supplements for January, February and March 1979*, document S/13157.

[5] See *Official Records of the General Assembly, Thirty-sixth session, Supplement No. 42* (A/36/42), para. 19.

[6] *Ibid., Tenth special session, Supplement No. 4* (A/S-10/4), sect. III.

[7] The 40 States represented in the Committee in 1981 were: Algeria, Argentina, Australia, Belgium, Brazil, Bulgaria, Burma, Canada, China, Cuba, Czechoslovakia, Egypt, Ethiopia, France, German Democratic Republic, Germany, Federal Republic of, Hungary, India, Indonesia, Iran, Italy, Japan, Kenya, Mexico, Mongolia, Morocco, Netherlands, Nigeria, Pakistan, Peru, Poland, Romania, Sri Lanka, Sweden, USSR, United Kingdom, United States, Venezuela, Yugoslavia and Zaire.

[8] *Official Records of the General Assembly, Thirty-sixth session, Supplement No. 27* (A/36/27), paras. 6-10.

[9] *Ibid., Supplement No. 27* (A/36/27), appendix III (CD/228), vols. I-VII.

[10] *Ibid., Thirty-sixth session, Plenary Meetings*, 5th to 33rd and 91st meetings; *ibid., Thirty-sixth Session, First Committee*, 3rd to 44th meetings; and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[11] *Ibid., Thirty-sixth session, First Committee*, 28th to 44th meetings.

[12] Resolution 36/97 E was adopted by 84 votes to 18 (France, United Kingdom, United States and other Western countries), with 42 abstentions. China did not participate in the vote.

[13] Resolution 36/97 G was adopted by a recorded vote of 125 to 14 (Eastern European and other States), with 6 abstentions.

[14] Resolution 36/97 K was adopted by a recorded vote of 132 to none, with 11 abstentions.

[15] Resolution 36/92 K was adopted by a recorded vote of 68 to 14, with 57 abstentions.

[16] *Official Records of the General Assembly, Thirty-sixth session, Supplement No. 49* (A/36/49 and Corr.1).

[17] *Official Records of the General Assembly, Thirty-sixth session, Supplement No. 27* (A/36/27), paras. 7, 10 and 121-127.

[18] *Ibid.*, para. 127, annex; the Group's report was originally submitted to the Committee in document CD/217 and Corr.1.

[19] *Ibid., Thirty-sixth session, Plenary Meetings*, 5th to 33rd and 91st meetings; *ibid., First Committee*, 3rd to 44th meetings; and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[20] *Ibid., Thirty-sixth session, Supplement No. 28* (A/36/28).

[21] *Ibid., Thirty-sixth session, Plenary Meetings*, 4th to 33rd and 91st meetings; *ibid., First Committee*, 3rd to 44th meetings; and *ibid., First Committee, Sessional Fascicle*, corrigendum.

[22] Resolution 36/91 was adopted without a vote.

[23] See resolutions 36/97 E, G, I and K.

[24] Resolution 36/92 I was adopted by a recorded vote of 121 to 19 (France, United Kingdom, United States and other Western countries), with 6 abstentions.

[25] Resolution 36/84 was adopted by a recorded vote of 118 to 2 (United Kingdom and United States), with 23 abstentions.

[26] Resolution 36/85 was adopted by 140 votes to none, with 5 abstentions.

[27] *Official Records of the General Assembly, Thirty-sixth session, Supplement No. 27* (A/36/27), paras. 95-101.

[28] Resolution 36/94, adopted by a recorded vote of 115 to 17 (mainly Western States), with 12 abstentions, and resolution 36/95, adopted by a recorded vote of 145 to none, with 3 abstentions (India, United Kingdom and United States).

[29] Resolution 36/86 A was adopted by a recorded vote of 129 to 4 (France, Israel, United Kingdom and United States), with 10 abstentions.

[30] Resolution 36/88, adopted by a recorded vote of 93 to 3 (Bhutan, India and Mauritius), with 44 abstentions.

[31] The members of the Preparatory Committee as appointed by the President of the General Assembly: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian SSR, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guatemala, Hungary, India, Indonesia, Iraq, Italy, Japan, Libyan Arab Jamahiriya, Malaysia, Mauritania, Mexico, Morocco, Netherlands, Norway, Pakistan, Philippines, Peru, Poland, Romania, Spain, Sri Lanka, Sweden, Syrian Arab Republic, Thailand, Turkey, Ukrainian SSR, USSR, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Yugoslavia and Zaire.

[32] *Official Records of the General Assembly, Thirty-sixth session, Supplement No. 27* (A/36/27), para. 110; the report was originally distributed as document CD/220.

[33] Resolution 36/96 A, adopted by the General Assembly by a recorded vote of 147 to none, with 1 abstention (United States).

[34] Resolution 36/96 B, adopted by a recorded vote of 109 to 1 (United States), with 33 abstentions (mainly Western States).

[35] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 27* (A/36/27), paras. 111-112 and 118-120.

[36] *Ibid., Thirty-sixth Session, Plenary Meetings,* 5th to 33rd and 91st meetings; *ibid., Thirty-sixth Session, First Committee,* 3rd to 40th meetings; and *ibid., First Committee, Sessional Fascicle,* corrigendum.

[37] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 27* (A/36/27), paras. 111-120.

[38] *Ibid., Thirty-fourth Session, Supplement No. 27* (A/34/27 and Corr.1), appendix III (CD/53 and Corr.1), vol. II, documents CD/31 and CD/32.

[39] *Ibid., Thirty-sixth Session, Plenary Meetings,* 8th to 19th and 91st meetings; *ibid., Thirty-sixth Session, First Committee,* 3rd to 40th meetings; and *ibid., First Committee, Sessional Fascicle,* corrigendum.

[40] Resolution 36/97 B, adopted without a vote.

[41] See *Official Records of the General Assembly, Tenth Special Session, Supplement No. 4* (A/S-10/4), sect. III, para. 80.

[42] Subsequent resolutions on the subject were 34/67 of 5 December 1979, 35/15 of 3 November 1980, and that of 1981 mentioned in the text.

[43] See *Official Records of the General Assembly, Thirty-sixth Session, Plenary Meetings,* 5th to 33rd and 91st meetings; and *ibid., First Committee, Sessional Fascicle,* corrigendum.

[44] Resolution 36/99, adopted by a recorded vote of 123 to none, with 21 abstentions (Western States and Australia, Israel, Japan, New Zealand and Tunisia).

[45] Resolution 36/97 C, adopted by a recorded vote of 129 to none, with 13 abstentions (Eastern European States (except Romania) and Afghanistan, Cuba, Lao People's Democratic Republic and Viet Nam).

[46] See the report of the First Committee to the thirty-sixth session of the General Assembly on agenda item 57 (A/36/760).

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

[48] See the report of the First Committee to the thirty-sixth session of the General Assembly on agenda item 58 (A/36/761 and Corr.1).

[49] *Ibid.*

[50] Resolution 33/73. Also reproduced in the *Juridical Yearbook,* 1978, pp. 65-66.

[51] See the report of the First Committee to the thirty-sixth session of the General Assembly on agenda item 58 (A/36/761 and Corr.1).

[52] For the report of the Legal Sub-Committee, see document A/AC.105/288.

[53] See document A/AC.105/271, annex II, appendix, Principles I-XVII.

[54] *Colombo* (WG/RS(1981)/WP.1) and *Mexico* (WG/RS(1981)/WP.2).

[55] *Canada* (A/AC.105/C.2/L.129), *Venezuela* (WG/NPS(1981)/WP.1) and *Italy* (WG/NPS(1981)/WP.2).

[56] For the report of the Committee see *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 20* (A/36/20).

[57] See the report of the Special Political Committee to the thirty-sixth session of the General Assembly on agenda items 61 and 62 (A/36/657 and Corr.1).

[58] *Ibid.*

[59] For detailed information, see *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 25* (A/36/25 and Corr.1).

[60] See UNEP/GC.9/2.

[61] See UNEP/GC.9/3.

[62] See *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 25* (A/36/25 and Corr.1), paras. 108-109.

[63] See *Juridical Yearbook*, 1980, chapter III, Section A 3 (*c*). General Assembly resolution 35/74 of 5 December 1980 and Governing Council decision 8/15 of 29 April 1980, *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 25* (A/35/25, Annex I).

[64] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 25* (A/36/25 and Corr. 1), paras. 320-329.

[65] See UNEP/GC.9/5/Add.5, annex III.

[66] UNEP/GC.9/5/Add.1.

[67] UNEP/GC/INFORMATION/5/Supplement 4.

[68] Cf. report of the Second Committee to the thirty-sixth session of the General Assembly on agenda item 69 (A/36/694/Add.9).

[69] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 25* (A/36/25 and Corr. 1).

[70] *Ibid.*, annex.

[71] A/36/142.

[72] For detailed information, see *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 12 and Addendum 1* (A/36/12 and Add.1).

[73] See Article 12, para. 3.

[74] See Article 9.

[75] Recommendation No. R (81) 16 adopted by the Committee of Ministers on 5 November 1981.

[76] *Official Records of the General Assembly, Thirty-second session, Supplement No. 12* (A/32/12/Add.1), para. 53 (6) (*a-g*).

[77] See *Juridical Yearbook*, 1980, chapter III, Section A 3 (*d*).

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

[79] See United Nations, *Treaty Series*, vol. 606, p. 267.

[80] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 83 (A/36/725).

[81] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 12A* (A/36/12/Add.1), para. 57 (2).

[82] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 83 (A/36/725).

[83] See *Juridical Yearbook*, 1980, Chapter III, Section A 3 (*d*).

[84] See A/36/316.

[85] United Nations publication, Sales No. E.78.XI.3, p. 7.

[86] E/CONF.63/9.

[87] United Nations publication, Sales No. E.77.XI.3, p. 13.

[88] See A/36/193.

[89] General Assembly resolutions 32/124 of 16 December 1977, 33/168 of 20 December 1978, 34/177 of 17 December 1979 and 35/195 of 15 December 1980.

[90] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 12 (A/36/792).

[91] See Report of the Third Committee on the thirty-sixth session of the General Assembly on agenda item 129 (A/36/785).

[92] For a short background on this question, see *Juridical Yearbook*, 1979, Chapter III, Section A 3 (*e*) (2).

[93] General Assembly resolution 35/179 of 15 December 1980.

[94] Report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 91 (A/36/685).

[95] See A/35/372 and Add.1 and 2; A/36/140 and Add.1-4.

[96] See General Assembly resolution 35/171 of 15 December 1980 and the Annex thereto.

[97] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 90 (A/36/645).

[98] See General Assembly resolution 2200 (XXI). Also reproduced in the *Juridical Yearbook*, 1966, p. 170 *et seq.*

[99] See the report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 87 (A/36/663).

[100] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40* (A/36/40).

[101] See General Assembly resolution 2106 A (XX). Also reproduced in the *Juridical Yearbook*, 1965, p. 65.

[102] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 82 (A/36/623).

[103] General Assembly resolution 3068 (XXVIII), Annex. Also reproduced in the *Juridical Yearbook*, 1973, p. 70.

[104] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 82 (A/36/623).

[105] For the text of the Convention see General Assembly resolution 34/180 of 18 December 1979 and *Juridical Yearbook*, 1979, Chapter IV, Section A.

[106] See Report of the Third Committee to the thirty-sixth Session of the General Assembly on agenda item 89 (A/36/724 and Corr.1).

[107] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 88 (A/36/789 and Corr.1).

[108] For background information on this question see *Juridical Yearbook*, 1980, chapter III, Section A 3 (*g*) (2).

[109] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 91 (A/36/685).

[110] See General Assembly resolution 2393 (XXIII) of 26 November 1968.

[111] See General Assembly resolution 35/172 of 15 December 1980.

[112] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 90 (A/36/645).

[113] See General Assembly decision 35/437 of 15 December 1980.

[114] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 87 (A/36/663).

[115] *Official Records of the General Assembly, Thirty-fifth session, Annexes*, agenda item 65, document A/35/742, para. 20.

[116] See General Assembly resolution 3027 (XXVII) of 18 December 1972.

[117] See General Assembly resolution 3267 (XXIX) of 10 December 1974.

[118] See Commission on Human Rights resolution 35 (XXXVI) of 12 March 1980, *Official Records of the Economic and Social Council, 1980, Supplement No. 3* (E/1980/13 and Corr.1), chap. XXVI, Sect. A.

[119] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 75 (A/36/684).

[120] General Assembly resolution 217 A (III).

[121] General Assembly resolution 2200 A (XXI), annex.

[122] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 79 (A/36/731).

[123] See *Official Records of the Economic and Social Council, 1981, Supplement No. 5* (E/1981/25).

[124] See Report of the Third Committee to the thirty-sixth session of the General Assembly, on agenda item 138 (A/36/786).

[125] For background information on this question see *Juridical Yearbook*, 1980, chapter III, section A 3 (*g*) (5), as well as General Assembly resolutions 34/171 of 17 December 1979 and 35/191 of 15 December 1980.

[126] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 12 (A/36/792).

[127] For background information on this question see *Juridical Yearbook*, 1979, chapter III, Section A 3 (*f*) (4), and 1980, chapter III, section A 3 (*g*) (3).

[128] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 12 (A/36/792).

[129] See E/CN.4/1336.

[130] See E/CN.4/1354 and Add.1-6.

[131] See *Juridical Yearbook*, 1980, Chapter III, Section A 3 (*g*) (7).

[132] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 12 (A/36/792).

[133] See A/C.3/36/11.

[134] See General Assembly resolutions 34/4 of 18 October 1979 and 35/131 of 11 December 1980 as well as *Juridical Yearbook*, 1980, Chapter III, Section A 3 (*g*) (8).

[135] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 86 (A/36/662).

[136] See Economic and Social Council resolution 1979/28.

[137] See Report of the Third Committee to the thirty-sixth session of the General Assembly on agenda item 12 (A/36/792).

[138] See A/35/336 and Add.1.

[139] General Assembly decision 35/452, 11 May 1981.

[140] For the composition of the Court, see *Official Records of the General Assembly, Thirty-third Session, Supplement No. 45*, sect. X, p. 229.

[141] As of 31 December 1981, the number of States recognizing the jurisdiction of the Court as compulsory in accordance with declarations filed under article 36, paragraph 2, of the Statute stood at 47.

[142] For detailed information, see *I.C.J. Reports 1979*, *I.C.J. Reports 1980*, *I.C.J. Reports 1981*, *I.C.J. Yearbook 1979-1980*, No. 34, and *I.C.J. Yearbook 1980-1981*, No. 35. The full text of the Judgment was also reproduced in document S/13989.

[143] *I.C.J. Reports 1980*, p. 3.

[144] *Ibid.*, p. 45.

[145] *I.C.J. Reports 1981*, p. 45.

[146] For detailed information, see *I.C.J. Reports 1979*, *I.C.J. Reports 1980*, *I.C.J. Reports 1981*, *I.C.J. Yearbook 1978-1979*, No. 33, *I.C.J. Yearbook 1979-1980*, No. 34, *I.C.J. Yearbook 1980-1981*, No. 35, and *I.C.J. Yearbook 1981-1982*, No. 36.

[147] *I.C.J. Reports 1981*, p. 3.

[148] The above summary is taken from the *I.C.J. Yearbook 1980-1981*, No. 35, p. 122 *et seq.*

[149] *I.C.J. Reports 1981*, pp. 22, 23-34 and 35-40.

[150] *I.C.J. Reports 1981*, p. 42.

[151] For detailed information, see *I.C.J. Yearbook 1981-1982*, No. 36.

[152] See document AT/DEC/273.

[153] *I.C.J. Reports 1981*, p. 49.

[154] *Ibid.*, p. 52.

[155] For detailed information, see *I.C.J. Yearbook 1981-1982*, No. 36.

[156] For the membership of the Commission, see *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10* (A/36/10), chapter I.

[157] For detailed information, see *Yearbook of the International Law Commission*, 1981, vol. I and vol. II (Parts One and Two) (United Nations publication, Sales No. E.82.V.3 and E.82.V.4 (Parts I and II)).

[158] A/CN.4/340 and Corr.1 and Add.1 and Add.1/Corr.1.

[159] A/CN.4/347 and Corr.1 (English only) and 2 and Add.1-2.

[160] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10* (A/36/10).

[161] See the report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 121 (A/36/800).

[162] For the membership of the Commission, see *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17* (A/36/17).

[163] For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XII, 1981 (United Nations publication, Sales No. E.82.V.6).

[164] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17* (A/36/17).

[165] See the report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 117 (A/36/669).

[166] For the report of the Special Committee, see *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 41* (A/36/41).

[167] *Ibid., Thirty-fifth Session, Supplement No. 41* (A/35/41), para. 172.

[168] See the report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 116 (A/36/649).

[169] See the report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 124 (A/36/667).

[170] A/36/445 and Corr.1 and Add.1-3.

[171] For the report of the *Ad Hoc* Committee, see *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 43* (A/36/43).

[172] See the report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 115 (A/36/727).

[173] See the report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 111 (A/36/774).

[174] A/36/416.

[175] See the report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 112 (A/36/775).

[176] A/36/143 and Add.1 and 2.

[177] A/36/143, sect. II.

[178] See the report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 114 (A/36/77 and Corr.1).

[179] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 37* (A/34/37), para. 118.

[180] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33* (A/36/33).

[181] See the report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 112 (A/36/782).

[182] *Ibid., Thirty-fifth Session, Supplement No. 33* (A/35/33 and Corr.1), sect. II.A.

[183] *Ibid.*

[184] A/C.6/36/2.

[185] See subsection (*g*) above.

[186] See the report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 118 (A/36/778).

[187] See the report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 119 (A/36/779).

[188] *Official Records of the General Assembly, Thirty-third Session*, Supplement No. 10 (A/33/10).

[189] See the report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 120 (A/36/780).

[190] A/35/312 and Corr.1.

[191] A/36/553.

[192] A/36/553/Add.1 and 2.

[193] ST/LEG/6.

[194] ST/LEG/7.

[195] See the report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 121 (A/36/781).

[196] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10* (A/36/10).

[197] A/34/146, annex.

[198] See the report of the Sixth Committee to the thirty-sixth session of the General Assembly on agenda item 125 (A/36/784).

[199] *Ibid.*; see also A/C.3/35/14 and A/C.6/36/L.16.

[200] In the course of its thirty-sixth session, the General Assembly also considered the report of the Committee on Relations with the Host Country (*Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 26* (A/36/26), in connexion with which it adopted resolution 36/115, and the item entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law" (for the report of the Secretary-General on this question, see document A/36/633), in connexion with which it adopted resolution 36/108. It also considered the question of registration and publication of treaties and international agreements pursuant to Article 102 of the Charter of the United Nations (for the report of the Secretary-General on this question, see document A/36/715), in connexion with which it adopted decision 36/425.

[201] For detailed information, see *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 14* (A/36/14 and corrigendum) and *ibid., Thirty-seventh Session, Supplement No. 14* (A/37/14).

[202] With regard to the adoption of instruments, information on the preparatory work, which, by virtue of the double-discussion procedure, normally covers a period of two years, is given, in order to facilitate reference work, in the year during which the instrument was adopted.

[203] *Official Bulletin*, Vol. LXIV, 1981, Series A, No. 2, pp. 107-111; pp. 123-125; English, French, Spanish. Regarding preparatory work see: *First Discussion* — Promotion of Collective Bargaining, ILC, 66th Session (1980), Report V(1) (this report contains, *inter alia*, details of the action which led to the placing of the question on the agenda of the Conference) and Report V(2), 74 and 94 pages respectively; English, French, German, Russian, Spanish. See also 66th Session (1980), *Record of Proceedings*, No. 41; No. 44, pp. 9-13; English, French, Spanish. *Second Discussion* — Promotion of Collective Bargaining, ILC, 67th Session (1981), Report IV(1) and Report IV(2), 45 and 41 pages respectively; English, French, German, Russian, Spanish. See also ILC, 67th Session (1981), *Record of Proceedings*, No. 22; No. 27, pp. 3-10; No. 30, pp. 9-18; English, French, Spanish.

[204] *Official Bulletin*, Vol. LXIV, 1981, Series A, No. 2, pp. 111-118; pp. 125-131; English, French, Spanish. Regarding preparatory work see: *First Discussion* — Safety and Health and the Working Environment, ILC, 66th Session (1980), Report VII(*a*) (1) (this report contains, *inter alia*, details of the action which led to the placing of the question on the agenda of the Conference), and Report VII(*a*) (2), 84 and 100 pages respectively; English, French, German, Russian, Spanish. See also 66th Session (1980), *Record of Proceedings*, No. 35; No. 42, pp. 1-5; No. 43, p. 8; pp. 14-16; English, French, Spanish. *Second Discussion* — Safety and

Health and the Working Environment, ILC, 67th Session (1981), Report VI(1) and Report VI(2), 68 and 79 pages respectively; English, French, German, Russian, Spanish. See also ILC, 67th Session (1981), *Record of Proceedings*, No. 25; No. 30, pp. 1-7; No. 39, p. 4, pp. 9-14; English, French, Spanish.

[205] *Official Bulletin*, Vol. LXIV, 1981, Series A, No. 2, pp. 118-123; pp. 132-138; English, French, Spanish. Regarding preparatory work see: *First Discussion* — Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, ILC, 66th Session (1980), Report VI(1) (this report contains, *inter alia*, details of the action which led to the placing of the question on the agenda of the Conference) and Report VI(2), 69 and 126 pages respectively; English, French, German, Russian, Spanish. See also 66th Session (1980), *Record of Proceedings*, No. 32; No. 38, pp. 1-5; English, French, Spanish. *Second Discussion* — Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, ILC, 67th Session (1981), Report V(1) and Report V(2), 84 and 88 pages respectively; English, French, German, Russian, Spanish. See also ILC, 67th Session (1981), *Record of Proceedings*, No. 28; No. 35, pp. 2-9, No. 39, pp. 1-3, pp. 5-8, pp. 15-16; No. 40, p. 1, pp. 10-16; English, French, Spanish.

[206] *Official Bulletin*, Vol. LXIV, 1981, Series A, No. 2, p. 150. See also ILC, 67th Session (1981), *Record of Proceedings* No. 15, pp. 3-4.

[207] This report has been published as Report III (Part 4) to the 67th Session of the Conference and comprises two volumes: Vol. A: "General Report and Observations concerning Particular Countries" (Report III (Part 4A)), 244 pages; English, French, Spanish. Vol. B: "General Survey of the Reports relating to Convention No. 138 and Recommendation No. 146 concerning Minimum Age" (Report III (Part 4B)), 209 pages; English, French, Spanish.

[208] *Official Bulletin*. Vol. LXIV, 1981, Series B, No. 1.

[209] *Ibid.*, Vol. LXIV, 1981, Series B, No. 2.

[210] *Ibid.*, Vol. LXIV, 1981, Series B, No. 3.

[211] For general information on the organization and functions of the Office of the Legal Counsel, see *Iuridical Yearbook*, 1972, p. 60.

[212] CL 79/5.

[213] CL 80/5.

[214] C 81/REP paras. 335-337.

[215] CL 80/6.

[216] C 81/REP paras. 332-333.

[217] C 81/REP para. 319.

[218] CL 79/REP paras. 206-207.

[219] C 81/REP paras. 354-356.

[220] CL 80/REP paras. 97-99.

[221] C 81/REP paras. 221-223.

[222] C 81/REP paras. 233-235.

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

[224] See the Bibliography, p. 173

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

[226] See Resolutions 21 C/1.01(L).

[227] See document ED-81/WS/88.

[228] Document IGC(1971)/IV/20 (Report of the Committee).

[229] Document ILO/UNESCO/WIPO/ICR.8/7 (Report of the Committee).

[230] Document UNESCO/WIPO/WG.II/FOLK/4 (Report of the Working Group).

[231] Document UNESCO/WIPO/IGE/CTV/II/6 (Note established by the Secretariats).

[232] Document UNESCO/WIPO/CCC/I/6.

[233] Reproduced in the *Juridical Yearbook*, 1966, p. 196.

[234] Document EB67/1981/REC/1, Annex 13.

[235] Resolution WHA34.28. Document WHA34/1981/REC/1, p. 29.

[236] Resolution WHA33.16. Document WHA33/1980/REC/1, pp. 13-14.

[237] Resolution WHA34.11, note 235 above, p. 9.

[238] Resolution WHA34.22, ibid., pp. 21-23.

[239] See *Juridical Yearbook*, 1969, p. 174.

[240] See *Juridical Yearbook*, 1972, p. 103.

[241] Resolution MSC.1(XLV).

[242] Resolution A.464(XII).

[243] See IFAD Annual Report 1981, p. 16.

[244] The replenishment became effective on 18 June 1982 and the loans approved subject to availability of funds were signed during the months of July and August.

[245] Reproduced in document INFCIRC/167. The RCA Extension Agreement is reproduced in document INFCIRC/167/Add.8.

[246] Reproduced in document INFCIRC/285.

[247] Reproduced in document INFCIRC/274/Rev.1.

[248] Reproduced in document INFCIRC/129/Rev.1.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

[No treaties concerning international law were concluded under the auspices of the United Nations and related intergovernmental organizations in 1981.]

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. 268 (8 MAY 1981): MENDEZ *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[2]

Accelerated within-grade increments as a language incentive — Applicability to various categories of staff — Meaning of "Staff subject to Geographical Distribution"

By resolution 2480 B (XXIII) of 21 December 1968, the General Assembly decided, *inter alia*, to shorten the interval between within-grade increments for staff at levels P1 to D2 where adequate and confirmed knowledge of a second official language has been established. By its resolution 2888 (XXVI) of 21 December 1971, the General Assembly incorporated the language incentive into the Staff Regulations by amending Annex I, paragraph 4, accordingly, with regard to "staff subject to geographical distribution who have an adequate and confirmed knowledge of a second official language".

The language incentive scheme has not been applied to staff of UNDP. The applicant requested the Tribunal to order the application of the said scheme to UNDP staff in the P1 to D2 categories.

With regard to the formulation of the applicant's plea, the Tribunal noted that it had competence to hear and pass judgement upon applications submitted in individual cases but it had not been given competence to make orders *erga omnes* which are in the nature of a staff regulation or rule. The Tribunal therefore decided that it would consider only the applicant's individual case, namely the applicability to him of the language incentive.

The applicant had argued that the expression "staff subject to geographical distribution" covered all staff of the United Nations in the professional category and above, excluding only staff in posts with special language requirements.

The Tribunal cited Article 101, paragraph 3, of the Charter and Staff Regulation 4.2 which do not make any distinction with regard to recruitment policy between the different categories of staff and apply equally to the professional category, to the general service, to staff with special language requirements, etc. The Tribunal noted however that the parties were in agreement that the expression "staff subject to geographical distribution" could not be equated to "all staff"; certain categories of the staff were not included in this expression. The parties differed only in the identification of the categories excluded. The applicant asserted that only the general service staff and the language staff did not belong to the class of "staff subject to geographical distribution", while the respondent held that staff in other categories — and among them UNDP staff — belonged to the excluded class.

The Tribunal observed that the disputed expression was not self-explanatory and that it was necessary to look into the history of the practice of the Organization as far as it is relevant to the purposes of the case at hand. From its review of the said practice, the Tribunal concluded that it had become an established practice of the Secretary-General to include in his annual report to the General Assembly on the composition of the Secretariat statistical tables showing "staff in posts subject to geographical distribution." UNDP staff and the staff of subsidiary organs of a similar nature had never been covered by these tables. On the basis of the above, the Tribunal accepted the view of the respondent that in the practice of the Organization, the expression "staff subject to geographical distribution" had developed into a technical term meaning "staff whose posts fall within the scope of geographical distribution according to the system of desirable ranges of posts

apportioned to Member States''. The Tribunal also observed that the *travaux préparatoires* of resolution 2480 B (XXIII) indicated that the above meaning was specifically intended with regard to the language incentive.

A further argument of the applicant's was that the Secretary-General, contrary to Staff Regulation 8.2, did not consult the staff of UNDP before submission of his report which led to the adoption of the General Assembly resolution introducing the language incentive. The Tribunal noted that the applicant himself did not deny that staff representatives were involved in the decision concerning the introduction of the language incentive. The Tribunal could not uphold the view that whenever certain categories of staff were granted advantages, then each and every other category had to be specifically asked to assent.

Finally, the Tribunal rejected the applicant's contention that exclusion of UNDP staff from the applicability of the language incentive constituted a discrimination and a violation of the principle of equal treatment. The Tribunal recalled that the principle of equality meant that those in like case should be treated alike and that those who are not in like case should not be treated alike.

For the above reasons, the Tribunal rejected the application.

2. JUDGEMENT NO. 269 (8 MAY 1981): BARTEL *v.* THE SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION[3]

Article 7.3 of the Statute of the Tribunal — Non-receivability of appeals unanimously declared frivolous by the joint body — Powers of the Tribunal with regard to applications pertaining to such appeals

The Advisory Joint Appeals Board of ICAO had unanimously found that the applicant's two appeals were frivolous. Under Article 7.3 of the Tribunal's Statute, applications against recommendations unfavourable to the applicant made by the joint body and accepted by the Secretary-General are receivable unless the joint body unanimously considers that the appeal is frivolous.

The Tribunal took the view that even when the joint body unanimously concluded that an appeal was frivolous, non-receivability of the application was not automatic and that the Tribunal was not precluded from considering whether the joint body's conclusion was vitiated by some irregularity. In the case at hand, the applicant had alleged that the Advisory Joint Appeals Board had considered a confidential staff report which had never been communicated to him, that the proceedings before the Board were tainted and biased by libellous and untrue statements made by the respondent's representative and ruled out of order by the Chairman, and that the Board was improperly composed because it had included a member who was said to have a case pending before the Board. The Tribunal found that the allegation concerning a confidential staff report was not material to the conclusions reached by the Board and could not invalidate those conclusions, including the decision that the appeals were frivolous. With regard to the allegedly libellous and untrue statements by the representative of the respondent, the Tribunal observed that they had been ruled out of order by the Chairman and had not been taken into consideration by the Board. Finally, the fact that one member of the Board may have had a case pending before it did not, in the Tribunal's view, disqualify him from sitting as a member of the Board to hear the applicant's appeals.

Having thus found that the conclusions of the joint body were not vitiated by any irregularity, the Tribunal, taking note of the joint body's unanimous finding that the appeals were frivolous, declared the application not receivable by the Tribunal.

3. JUDGEMENT NO. 270 (13 MAY 1981): SFORZA-CHRANOVSKY *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[4]

Revision of judgements of the Administrative Tribunal — Powers of the Tribunal with regard thereof — What constituted a newly discovered fact

The Applicant had requested, under article 12 of the Statute of the Tribunal, a revision of its Judgement No. 250, rendered in his case on 9 October 1979. He relied on a letter dated 14 September

1980 from the Vice-Minister of Foreign Affairs of the Republic of Korea stating that neither he nor anybody else at the Ministry had objected to the personal letter the Applicant had sent him on 14 April 1975. The letter further added that neither its author nor any qualified person in the Ministry had suggested the premature end of the Applicant's mission in the Republic of Korea.

Citing article 12 of its Statute, the Tribunal recalled that its powers of revision were specifically limited by its Statute and that it could not enlarge or abridge him in the exercise of its jurisdiction. The Tribunal cited previous judgements in which the same ruling was set forth.

With regard to the letter on which the request for revision was based, the Tribunal noted that the same member of the Korean Government had addressed to the Applicant on 10 July 1975 a letter which contained basically the same sentiments as expressed in the more recent letter of 1980. With regard to describing the Applicant's letter of 14 April 1975 as personal, the Tribunal noted that copy of the said letter was given to the Assistant Resident Representative of UNDP in Seoul by officials of the Korean Foreign Ministry who described it as "completely unacceptable". The Tribunal found that it was inconceivable that the Assistant Resident Representative be given a copy of a supposedly personal letter unless there had been some reaction to it on the part of the authority which had received it and which took the initiative of passing it on to the United Nations Office in Seoul.

For the above reasons the Tribunal could not consider that the further letter from the Vice-Minister dated 14 September 1980 constituted a newly discovered fact of such a nature as to call in question the legal basis of Judgement No. 250. The application for revision was rejected.

4. JUDGEMENT NO. 271 (13 MAY 1981): KENNEDY *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[5]

Revision of judgements of the Administrative Tribunal — Conditions for admitting an application for revision — Rejection of an application not meeting all the said conditions

The Applicant had requested revision of Judgement No. 265 rendered in her case on 19 November 1980. She based her request on a "written deposition" dated 15 October 1980 by a physician who was Director of Health, Western Australia.

The Tribunal observed that under article 12 of its Statute, an application for revision of a judgement had to satisfy three conditions before it could be admitted. Those conditions were (*a*) that the application be based on the discovery of some fact of such a nature as to be a decisive factor, provided that the said fact was unknown to the Tribunal at the time when the judgement was given and unknown also to the party claiming revision through no negligence of his; (*b*) that the application be made within 30 days of the discovery of the said fact; and (*c*) that the application be filed within one year of the date of the judgement.

With regard to the first condition, the Tribunal found that the document invoked by the Applicant did not in any manner bring out new facts which might affect the judgement of the Tribunal. The Tribunal further noted that the said document had obviously been solicited, was issued about eight years after the events and referred to issues not relevant to the consideration of the case before the Tribunal.

With regard to the second condition, the Tribunal observed that inasmuch as the Applicant had not established any new facts, it was unnecessary to consider whether the application was time-barred for not having been filed within 30 days of the discovery of a new fact. The Tribunal noted nevertheless that the document on which the request for revision was based was dated 15 October 1980 while the judgement of which revision was requested was not rendered until 19 November 1980, and the application for revision was filed only on 3 February 1981. If it was assumed that the document contained new facts, there had been a gap of over three and a half months before it was brought to the notice of the Tribunal.

For the above reasons, the Tribunal ruled that the application for revision did not meet the requirements of article 12 of the Statute of the Tribunal and rejected the said application.

5. JUDGEMENT NO. 272 (14 MAY 1981): CHATELAIN *v.* THE SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION[6]

Termination of appointment — Procedural irregularities in arriving at the decision of termination — Compensation for the injured staff member

The Applicant was offered, and accepted, a 2-year appointment as interpreter with ICAO effective 1 September 1978. The letter of appointment did not specify a probationary period but only referred to the provision of the ICAO Service Code on probation. The said provision prescribed a probationary period of one year during which the appointment may be terminated by 1-month notice in writing or salary in lieu thereof. The decision of the Secretary-General in this respect is characterized as final.

On 31 August 1979, the Applicant was notified of the termination of her appointment with immediate effect. This decision resulted from several misunderstandings between the Applicant and her supervisor and from complaints by the latter as to the Applicant's conduct in the discharge of her duties.

Before the Tribunal, the parties disagreed on the question of whether the decision of termination intervened during the probationary period or after its completion. The Applicant invoked several periods of temporary service prior to the 2-year appointment while the respondent argued that the conditions for taking such previous periods into consideration had not been met.

The Tribunal found that it was unnecessary to decide the above question. Whatever the answer, the decision to terminate the Applicant's appointment could not stand if the adverse reports on which the decision was based were vitiated by non-compliance with the relevant procedures laid down in the ICAO Service Code and in the ICAO General Secretariat Instructions (GSI); or if the decision of termination was not taken in accordance with due process of law. The description of the Secretary-General's decision to terminate a probationary appointment as "final" in para. 5 of article IV, part III, of the Service Code did not mean that this discretionary power, assuming that the Applicant was still on probation at the time of her termination, was beyond judicial control. The decision, in the Tribunal's view, cannot be final if it had been improperly arrived at.

The Tribunal cited a provision of the GSI which required that any adverse staff report should without delay be transmitted to the staff member concerned who may make a written reply thereto. The Tribunal also quoted another provision which called for a personal interview between the reporting officer and the staff member, describing the said interview as the core of the appraisal review process.

The Tribunal observed that the draft report shown to the Applicant on 18 June 1979 was incomplete. Because of the omission of parts of the draft report, the Applicant was not made aware of her right to an appraisal interview or to a written record of it, her right to include in the form the "review by the staff member" or her right to see the comments by the reviewing officer.

The Tribunal further noted that the report in its final form was not transmitted or shown to the Applicant until after the termination of her employment. Furthermore, at no time was the Applicant given a personal interview with the reporting officer, described by the GSI as "the core of the appraisal review process".

For the above reasons, the Tribunal concluded that the procedure followed in arriving at the decision to terminate the Applicant's appointment did not comply with the applicable rules. The Tribunal considered that the Applicants's appointment, whether probationary or not, should not have been terminated on the basis of accusations contained in a confidential staff report unless they were set out with sufficient precision to give her a reasonable opportunity to defend herself, and were communicated to her. To do otherwise was in the Tribunal's view, a denial of due process of law because the written accusations contained in the confidential staff report were not dealt with in conformity with the regulation guaranteeing communication of such a report to the staff member concerned.

The Tribunal, therefore, concluded that the Secretary-General's decision was vitiated for failure to adhere to the procedures prescribed by the ICAO General Secretariat Instructions, and also for failure to accord to the Applicant due process of law. Taking into consideration all the circumstances

of the case, the Tribunal did not grant the Applicant's request for reinstatement, but awarded her compensation in the amount of eight months' net base salary and the costs requested by her in the amount of US$ 150. The request for the removal of certain papers from the Applicant's personal file was rejected but the Tribunal ordered the inclusion and retention of a copy of its judgements in the said file.

6. JUDGEMENT NO. 273 (15 MAY 1981): MORTISHED *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[7]

Repatriation Grant — Requirement of evidence of relocation as the condition of eligibility — Retroactive effect of such requirement — Acquired rights — Non-retroactive applicability of the new requirement

In its resolution 33/119 the General Assembly decided that payment of the repatriation grant to entitled staff members shall be made conditional upon the presentation of evidence of actual relocation. Administrative Instruction ST/AI/262 was issued on 29 April 1979 containing the details of the implementation of the General Assembly's resolution. The instruction established 1 July 1979 as the effective date of the new provision and provided further that staff already in service before the said date shall retain the entitlement to repatriation grant proportionate to the years and months of qualifying service which they had already accrued at that date without the necessity of production of evidence of relocation.

Staff Rule 109.5 on repatriation grant was amended to reflect the General Assembly's decision. Subparagraph (*f*) of the amended rule exempted entitlement to repatriation grant accrued before 1 July 1979 from the requirement of evidence of actual relocation.

In its resolution 34/165, the General Assembly decided that — effective 1 January 1981 — no staff member shall be entitled to any part of the repatriation grant unless evidence of relocation of residence away from the country of the last duty station was provided.

Staff rule 109.5 was accordingly amended by the deletion of subparagraph (*f*) referred to above.

The Applicant, who was due to retire on 30 April 1980, challenged the newly imposed requirement that payment of repatriation grant be contingent upon production of evidence of actual relocation. He argued that the repatriation grant was an earned service benefit which could not be retroactively effaced by subsequent amendments to Staff Regulations and Rules.

The Tribunal considered the legal status of staff members and observed that it was governed by the provisions of the letter of appointment as supplemented by documents of general application which are much more detailed. The said documents were an integral part of the contract which the staff member accepted in advance, since his letter of appointment was explicitly "subject to the provisions of the Staff Regulations and Rules, together with such amendments as may from time to time be made". Any new provisions of the Staff Regulations and Rules thus became an integral part of the staff member's contract. The legal status of a staff member was governed by the new provisions immediately on their entry into force.

Citing previous judgements,[8] the Tribunal also observed that supplementary obligations towards a staff member may be assumed by the United Nations at the time of the signing of the contract or subsequently.

The Tribunal cited Staff Regulation 112.1 in which the General Assembly, with reference to the exercise of its own rule-making authority, affirmed the fundamental principle of respect for acquired rights. It further cited Staff Rule 112.2 (*a*) which provided that the Rules may be amended by the Secretary-General in a manner consistent with the Staff Regulations. Thus, the Secretary-General was bound to respect the acquired rights of staff members in the same way as the General Assembly.

Looking into the Applicant's employment history, the Tribunal observed that in 1958 he received an appointment with the United Nations after having worked with ICAO since 1949. The Personnel Action Form reflecting his appointment with the United Nations expressly stated: ". . . services recognized as continuous from 14 February 1949", and "credit towards repatriation grant

commences on 14 February 1949". A formal reference was thus made to the repatriation grant and to the principle of the relationship between the amount of that grant and the length of service. In the Tribunal's view special obligations towards the Applicant were assumed by the United Nations.

The Tribunal considered the history of the repatriation grant, noting that it had been established by General Assembly resolution 470 (V) of 15 December 1950, following the abolition of an annual expatriation allowance. The new grant was payable to staff members with regard to whom the Organization had an obligation to repatriate. The relevant Staff Rule defined the expression "obligation to repatriate" as meaning the obligation to return a staff member to a place outside the country of his duty station. Furthermore, it was stipulated that loss of entitlement to payment of return travel expenses did not affect eligibility for the repatriation grant (Staff Rule 109.5(*i*)). Thus, in the Tribunal's view, the link between the repatriation grant and the actual return to the home country was broken in the Staff Rules as early as 1953.

The Tribunal further observed that in Annex IV to the Staff Regulations on repatriation grant, it was stated that, in principle, the repatriation grant shall be payable to staff members whom the Organization had an obligation to repatriate. The relevant Staff Rule defined the expression "obligation to repatriate" as meaning the obligation to return a staff member to a place outside the Secretary-General the discretionary power to decide what action was appropriate in practice. These provisions of the Staff Regulations, which expressly acknowledged the Secretary-General's rule-making authority with regard to repatriation grant, were still in force. No new provision relating to that grant was added to the Staff Regulations by the General Assembly at either its thirty-third or thirty-fourth sessions. Thus, noted the Tribunal, the question whether the Applicant was entitled to rely on acquired rights did not arise in respect of provisions of the Staff Regulations which fell within the competence of the General Assembly, even though the subject of the application was closely related to the decisions taken by the General Assembly on the repatriation grant.

With reference to subparagraph (*f*) of Rule 109.5, as amended in 1979, the Tribunal noted that the Applicant, having entered on duty before 1 July 1979, fell into the category defined in the said subparagraph. Since he had completed twelve years of service, representing the upper limit of the grant, before 1 July 1979, the Applicant retained his entitlement to the full amount of the grant without the need to produce evidence of relocation.

The question which arose, therefore, was whether the entitlement thus acquired could have been effaced retroactively by the Secretary-General's deletion of subparagraph (*f*) in pursuance of resolution 34/165. The Tribunal noted that at no time did the General Assembly contemplate supplementing or amending the provisions relating to the repatriation grant contained in the Staff Regulations, nor did the Assembly examine the text of the Staff Rules in force since 1979, and it never claimed that there was any defect in the provisions introduced on that date which diminished their validity. The Assembly simply stated a principle of action under which the Secretary-General acted in establishing a new version of Staff Rule 109.5 with effect from 1 January 1980 which replaced the version previously in force on the basis of which the Applicant could have obtained the repatriation grant.

Recalling that it ruled earlier that the Applicant's entitlement to the repatriation grant had been explicitly recognized at the time of his appointment together with the relationship between the amount of the grant and the length of service, the Tribunal concluded that the Applicant had an acquired right to the repatriation grant without the need to produce evidence of actual relocation. In the view of the Tribunal, respect for acquired rights also meant that all the benefits and advantages due to the staff member for services rendered before the coming into force of the new rule remained unaffected. Because of the explicit link between the amount of the grant and the length of service, the Applicant was entitled to invoke an acquired right notwithstanding the terms of Staff Rule 109.5 which came into force on 1 January 1980 with the deletion of subparagraph (*f*) concerning the transitional system.

For the above reasons, the Tribunal ordered the Respondent, in case he failed to recognize the Applicant's acquired right, to pay him as compensation a sum equal to the repatriation grant calculated in accordance with Annex IV to the Staff Regulations.[9]

7. JUDGEMENT NO. 274 (2 OCTOBER 1981): SLETTEN *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[10]

Loss of personal effects attributable to service — Compensation for same — Meaning of expression "reasonable compensation" — Conditions imposed upon payment of sum awarded as compensation — Waiver by staff member of his right to appeal not a valid condition

Having suffered the loss of the entire contents of his apartment in Nicosia because of the civil strife in Cyprus, the applicant claimed $10,000 in compensation under Staff Rule 106.5 and Administrative Instruction ST/AI/149 as subsequently amended.

After a lengthy procedure before the Local Claims Board, the Headquarters Claims Board and the Joint Appeals Board, the applicant was ultimately awarded the sum of $5,259 in compensation. He challenged the said award arguing that compensation should be equal to the cash value of the lost property at the time when the loss occurred. The respondent argued that a fair and proper method of calculating compensation was followed, based on replacement cost less depreciation.

The Tribunal stated that the respondent's obligation to pay compensation turned upon the interpretation and application of Staff Rule 106.5 rather than any general principle of law. The said rule provides for the payment of "reasonable compensation", an expression which, in the Tribunal's view, meant a sum equal to the value of the lost effects at the time and place at which the loss occurred, account being taken of the age and condition at that time. Therefore the Tribunal considered that the basis for assessing the value of lost personal effects was the replacement cost of each item at the time and place of the loss and its condition at that time. If the replacement cost of the item in that condition cannot be ascertained, the cost to be taken into consideration should be that of a new item at the time and place of the loss, less depreciation for such elements as age, obsolescence, wear and tear.

The Tribunal noted that the applicant had not established that the sum of $5,259 he was finally offered fell short of the amount calculated according to the above principles. The maximum limit of $10,000 referred to in the pertinent documents was not relevant to the applicant's claim.

Although Staff Rule 106.5 enabled the Secretary-General to impose conditions on the payment of compensation, the Tribunal was of the opinion that this did not empower the Secretary-General to require the staff member to waive his statutory right of appeal to the Joint Appeals Board and to the Tribunal. The Tribunal noted that the Secretary-General had later accepted the reservation made by the applicant, in signing the release, of his right to appeal. It expressed the view that it would be useful if Administrative Instruction ST/AI/149 were amended accordingly.

Because of the delay in payment to the applicant of the initially-offered award of $3,729.96, resulting from the dispute over his reservation of his right to appeal, the Tribunal confirmed the Joint Appeals Board's award of 6 per cent interest on the above-mentioned sum from 18 June 1975 until the date of payment of that sum to the applicant, i.e. 19 December 1980.

The other claims of the applicant were rejected.

8. JUDGEMENT NO. 275 (5 OCTOBER 1981):[11] VASSILIOU *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS

Time-limits prescribed in Staff Rule 111.3 not relevant to applications to the Tribunal — Receivability of such applications governed solely by article 7 of the Tribunal Statute — Grant of Special Post Allowance — Discretionary power of the Secretary-General with regard thereof — No legal obligation to grant SPA — Consideration by the Secretary-General of recommendations of the Joint Appeals Board — No claim may be based on mere rejection of JAB recommendations unless decision to reject was tainted by prejudice or by any other vitiating factor — Access to documents in the exclusive possession of the Administration — Only production of documents relevant to the proceedings may be ordered

The Respondent had argued that the claims of the Applicant were not receivable before the Tribunal because they were not made within the time-limits laid out in Staff Rule 111.3. The Tribunal observed that the said Rule governed the receivability of appeals addressed to the JAB

against decisions of the Secretary-General. The point had not been explicitly raised before the JAB. Although the Board found that the Applicant failed to establish the existence of an administrative decision which contravened his letter of appointment, it nevertheless dealt with the Applicant's case on its merits and decided to make no recommendation in support of the appeal. The Tribunal was of the view that the time-limits of Rule 111.3 could not be invoked before it because the receivability of applications submitted to the Tribunal was regulated by article 7 of its Statute. In the case at hand, the time-limits prescribed in article 7 had been observed by the Applicant. The Tribunal, therefore, declared the application receivable.

The Applicant claimed a special post allowance from P-5 to D-2 for the period of 14 October 1965 to 1 February 1969 and for D-1 to D-2 for the period of 1 February 1969 to 1 July 1978. His claim was based on the ground that during the said periods he was discharging the responsibilities of the higher posts. The Tribunal recalled its previous ruling,[12] according to which the length of time during which the staff member assumed increased responsibilities, and the manner in which he discharged them could legitimately be included among the criteria for determining the existence of the exceptional cases justifying the granting of a special post allowance under staff rule 103.11. Recalling the discretionary nature of the decision to grant such an allowance, the Tribunal observed that the above-mentioned factors could not on their own be considered as decisive. The Tribunal found that the Applicant did not have any legal entitlement to the payment of a special post allowance and that in his case the general principle of equal pay for equal work was not violated. The fact that he headed a large unit and that some members of that unit were high-ranking officers did not in itself prove the violation of the said principle. The Tribunal, therefore, rejected the Applicant's claim to the payment of a special post allowance.

While making no recommendation in support of the Applicant's appeal the JAB had recommended that an *ex gratia* payment be made to him in the amount that he would have received had a special post allowance for P-5 to D-1 been granted to him, during the period from 14 October 1965 to 1 February 1969. The Secretary-General had rejected this recommendation of an *ex gratia* payment. Before the Tribunal, the Applicant challenged this decision of the Secretary-General. The Tribunal observed that, with regard to recommendations of the JAB, the obligation of the Secretary-General did not go beyond considering them in good faith and in the light of the relevant principles, regulations and rules. In the case at hand, there was no indication that the Secretary-General failed to observe his obligation or that his decision was tainted by prejudice or by any other vitiating factor.

In connexion with his challenge to the rejection of the recommendation of an *ex gratia* payment, the Applicant had requested the Tribunal to order the Respondent to produce copies of all documents stating advice or recommendations on which the Respondent relied when he made his decision to reject the recommendation. The Tribunal recalled its previous ruling[13] according to which the rules of equity and justice required access to documents and information within the exclusive possession of the Administration in so far as it related to the staff member concerned and was relevant to the proceedings under consideration. Denial of such access would amount to lack of due process. In the case at hand, however, production of the documents requested by the Applicant was, in the Tribunal's view, not relevant to the proceedings. The Secretary-General enjoyed complete freedom to seek or act on the advice of the competent units of the Secretariat.

For the above reasons the Tribunal rejected the application.

9. Judgement No. 279 (6 October 1981):[14] Badr *v.* the Secretary-General of the United Nations

Application seeking the validation for pension purposes of a period of service performed by a participant in the United Nations Joint Staff Pension Fund prior to his admission to the Fund — Competence of the Tribunal, notwithstanding the inclusion in the relevant contract of a clause providing that disputes arising from the contract should be settled by recourse to an arbitration procedure — Rejection of the applicant's claim that his contractual status was in fact that of a technical assistance expert and the claim that the contract did not exclude participation in the Pension Fund

Prior to entering the service of the United Nations Secretariat in January 1970 and becoming a participant in the United Nations Joint Staff Pension Fund, the applicant had been placed at the disposal of the Republic of the Congo (now the Republic of Zaire) from January 1963 to January 1965, by virtue of a contract, hereinafter called the "judiciary contract", entered into by the applicant and the United Nations under an agreement then about to be concluded between the United Nations and the Government of the Republic of the Congo. In July 1980, he requested that his period of service from January 1963 to January 1965 should be included in his contributory service with respect to the Pension Fund, stating that no decision excluding him from participating in the Fund during the period in question had ever been communicated to him. He argued that the true nature of his appointment covering that period had been that of a technical assistance expert entitled to participation in the Pension Fund. The Deputy Secretary of the Pension Board, having being requested to look into the matter, pointed out that the case raised a preliminary question, namely, the correct interpretation of the terms of the applicant's employment during the period involved, a matter which was not within the competence of the Fund.

The case was submitted to the Tribunal, which noted that, although the Assistant Secretary-General for Personnel Services had considered that the request was not covered by staff rule 111.3 (*a*) since the applicant was not requesting that an administrative decision should be reviewed, he had agreed that it should be given thorough consideration. In addition, the Secretary-General had agreed to the direct submission of the application to the Tribunal. In those circumstances, although the judiciary contract provided that disputes arising from that contract would be settled by recourse to an arbitration procedure, the Tribunal declared that it was competent in accordance with the precedent set in judgement No. 176 (*Fayad*),[15] inasmuch as the parties had agreed to submit to it a dispute concerning an obligation which the United Nations might have incurred *vis-à-vis* a staff member of the Organization.

The Tribunal noted that the purpose of the application was to obtain recognition of the true nature of the applicant's professional activity in the Congo in order to enable him to establish a right to participate in the Pension Fund for that period. The applicant was seeking to establish that his contractual status had in fact been that of a technical assistance expert and even that of a project manager. However, the Tribunal found, after examining the file, that the United Nations had always considered that the applicant's contract belonged to a special category and that at no time during his stay in the Congo had the applicant contested that situation. Even if, despite the terms of the contract, the applicant had not been assigned to a post as judge, the fact was that he had played the role of a magistrate attached to the Ministry of Justice, where he had performed the required duties under the authority of the Congolese Government.

Concerning the situation regarding the Pension Fund during the period covered by the judiciary contract, the Tribunal recognized that the contract contained no special provisions on that subject. However, in view of the stipulation in the contract that "the magistrate does not acquire the status of a member of the United Nations Secretariat", and taking into account various other documents in the file, it held that the applicant's claim that his contract did not exclude participation in the Pension Fund must be rejected. The Tribunal found that the services performed by the applicant from 1963 to 1965 could not enable him to acquire the status of participant in the Pension Fund because he was not a staff member of a member organization and such participation was expressly excluded by "the terms of his appointment", and it accordingly ruled that he was not entitled to any benefit and hence could not avail himself of the provisions of article 24 (*b*) of the regulations of the Pension Fund to obtain restoration of prior contributory service.

10. JUDGEMENT NO. 277 (6 OCTOBER 1981): BARTEL *v.* THE SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)[16]

Application for revision of a judgement under article 12 of the Statute of the Tribunal — Conditions for receivability of same — Limits on the powers of the Tribunal

The applicant had requested revision, under article 12 of the Statute of the Tribunal, of Judgement No. 269 rendered in his case on 8 May 1981. The application for revision was based on the alleged discovery, since the first judgement was rendered, that the action taken by ICAO

was based upon inadequate and erroneous information about an investigation conducted during the summer of 1979 by the Montreal police.

The Tribunal recalled that under article 12 of its Statute it could revise a judgement only if some fact unknown to the Tribunal and to the party claiming revision was subsequently discovered, provided that such fact was of such a nature as to be a decisive factor and provided further that ignorance of such fact was not due to the negligence of the party claiming revision.

With regard to the allegedly new fact invoked by the applicant, the Tribunal observed that the events to which that fact related took place almost two years before the judgement was given and that the applicant failed to bring them to the notice of the Tribunal at an earlier date.

The Tribunal recalled that its powers of revision were strictly limited by its Statute and could not be enlarged by the Tribunal in the exercise of its jurisdiction.

For the above reasons, the application for revision was rejected.

11. JUDGEMENT NO. 278 (7 OCTOBER 1981): TONG *v.* THE SECRETARY-GENERAL OF THE UNITED NATIONS[17]

Forceful closure of a United Nations office — Effect on appointments of local staff — Effective date of termination — Rate of exchange of local currency applicable to conversion of termination benefits and other entitlements

The applicant was a local staff member of the UNDP office in Phnom Penh, Cambodia, (now Democratic Kampuchea) holding an indefinite appointment. On 17 April 1975, the office was forced to close as a result of the internal conflict in Cambodia. The applicant and his family managed to cross into Viet Nam arriving in Saigon on 6 June 1975.

On 20 May 1976, a letter dated 17 April 1975 was addressed to the applicant through the International Committee of the Red Cross (ICRC) informing him of the termination of his appointment with effect from 17 April 1975. He was also informed that he would receive compensation in lieu of 30 days' notice. The applicant received the said letter on 16 October 1976.

Having filed an appeal with the Joint Appeals Board, with regard to the effective date of the termination, the applicant obtained a favourable recommendation whereby the Board found that the termination became effective only on 20 May 1976 when the letter of termination was sent to the applicant, and that he was therefore entitled to his salary allowances for the period 17 May 1975 to 20 May 1976. In a second appeal, the applicant challenged the rate of exchange applied to the conversion into dollars of his termination benefits and residual salary and allowances. The Board recommended that the rate be established on the basis of a comparison with the salary and allowances of an internationally recruited staff member at the same level as the applicant.

The Secretary-General rejected the Joint Appeals Board's recommendation on the first appeal, thus maintaining the effective date of termination as initially established. Nevertheless, he decided to grant the applicant an *ex gratia* payment in the amount of $1,000. With regard to the second appeal, the Secretary-General decided to maintain the contested decision.

Before the Tribunal the two disputed points were:

(*a*) whether the applicant was entitled to salary until his receipt of written notice of the termination of his appointment; and

(*b*) what method should be followed in calculating the amounts due him upon termination.

The Tribunal considered whether in the extraordinary circumstances of this case the applicant was entitled to consider the relation between UNDP and himself as continuing until he received a written notification that his appointment had been terminated. The Tribunal took note of the fact that on 17 April 1975, armed forces of the Khmer Rouge entered Phnom Penh and forced the closure of the UNDP office there. The international staff of the office were evacuated to Bangkok. Among the twenty or so locally recruited staff, only the applicant and two or three others appeared to have succeeded in escaping. The applicant reached Saigon about 6 June 1975, and from there he sent a telegramme to the UNDP office in Vientiane, Laos, requesting an assignment. The Tribunal further observed that the applicant's contract entitled him to be employed in Cambodia

only. It pointed to the applicant's awareness that his employment had come to an end with the forcible closure of the office as witnessed by his efforts, on arriving in Saigon, to find employment in UNDP at one of its other offices in the region.

The Tribunal found that during this period, the applicant could not reasonably have considered that, from his place of temporary residence in Saigon, his employment with the UNDP office in Phnom Penh was continuing. In the Tribunal's view, the applicant's contract had become ineffective by reason of *force majeure* and his claim to payment of salary until he received written notification was without foundation.

The Tribunal also noted the efforts made by UNDP to find suitable employment for the applicant, which resulted in his being appointed in the field on 6 January 1977 and in his current employment by UNDP at Headquarters under a permanent appointment at the G-5 level.

On the question of the exchange rate, the Tribunal noted that with the installation of the new authorities in Phnom Penh on 17 April 1975, the local currency ceased to have any value and no other currency was established. As a local employee, the applicant was entitled to payment of salary in the local currency and had no right to any payment in dollars. There being no value to the local currency as of the date of payment, and no new local currency having been established, UNDP paid him in US dollars and used an exchange rate of 1650 riels to the dollar, which was the rate applicable to the final month of the applicant's employment at the Phnom Penh office. Given the status of the applicant as a local employee, the Tribunal was unable to find a legal basis for the applicant's claim that a different rate of exchange should have been applied.

For the above reasons, the Tribunal rejected the application.

12. Judgement No. 279 (8 October 1981): Mahmoud *v.* the Secretary-General of the United Nations[18]

Entitlement to daily subsistence allowance — Assignment by the Administration to new duty station — Condition for same — Non-eligibility of staff member who travelled on his own to a place other than his duty station and is assigned to local UN Office at his request

The Applicant was serving with the UNICEF office in Beirut as a locally recruited staff member. During the civil strife in Beirut, the Applicant's husband, a staff member of UNESCO in that city, was evacuated to Paris. It so happened that his wife, the Applicant, has preceded him to Paris with their two children, on annual leave. The Applicant decided to proceed from Paris to Cairo with her two children in order to put them in school and to await the normalization in Beirut. While in Cairo, she visited the local UNICEF office and requested an assignment. She was given secretarial work with two UNICEF staff members who had been reassigned from Beirut to Cairo. By special arrangement, the Applicant continued to receive in Cairo her Beirut salary in US dollars. This resulted in her receiving a much higher pay than staff members at the same level locally recruited in Cairo.

Having learned that some of the Beirut staff assigned to Cairo were in receipt of a daily subsistence allowance, the Applicant claimed payment of such allowance to her during her stay in Cairo. Her request was denied and upon appeal a majority of the Joint Appeals Board recommended that the decision denying her an allowance be maintained.

The Tribunal noted that in determining the Applicant's status during the period for which she was claiming daily subsistence allowance two relevant factors had to be considered, namely (*a*) the terms and conditions of her service in Beirut as a local recruit, and (*b*) the security arrangements made by UNICEF and by UNESCO, where her husband worked, and the circumstances in which the Applicant moved early in October 1975, from Paris to Cairo. As a local recruit, the Applicant was not eligible for evacuation from Beirut as a security measure. When UNESCO evacuated her husband to Paris, the Applicant and her children were already in that city. Thus, the UNESCO security requirements could have been met if the Applicant and her children had continued to stay in Paris. The Tribunal then observed that it was the Applicant who personally took the decision to proceed to Cairo with her two children without informing UNICEF in Beirut or obtaining authorization for such a move.

The Tribunal further observed that the Applicant had written to UNICEF in Beirut inquiring about the possibility of a temporary assignment to UNICEF in Cairo or, if that proved impossible, the granting of leave without pay. The Tribunal concluded that the Applicant had no firm expectation of working with UNICEF in Cairo where she certainly had no right to work as a local recruit appointed in Beirut.

The Applicant contended that her situation was identical with that of two other staff members of Egyptian nationality locally recruited in Beirut and assigned to the Cairo office who were receiving daily subsistence allowances. In reply to this argument, the Tribunal observed that the circumstances surrounding the Applicant's appointment in Cairo were essentially different in so many respects from those affecting other UNICEF personnel transferred temporarily from Beirut. First, the UNICEF office in Beirut had officially reassigned the others to Cairo, while the Applicant went there because of her concern for security and the schooling of her children. Secondly, the work given her in the Cairo office was by way of accommodation in a spirit of helpfulness, at terms much more favourable with regard to salary payments than what she could legitimately have hoped for. Thirdly, the mere fact that other Egyptians were eventually assigned to Cairo does not by itself establish that the Applicant too would have been so assigned if she had happened to be in Beirut at the time. In the Tribunal's view, the Applicant's situation was not comparable to that of the others. By moving to Cairo on her own initiative and volition she placed herself beyond the scope of the Secretary-General's discretion regarding payment of per diem.

For the above reasons, the application was rejected.

13. JUDGEMENT NO. 280 (9 OCTOBER 1981): BERUBE *v.* THE SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION[19]

Offer of a post at a lower level — Implication that the alternative is termination — Requirement of due investigation under the ICAO Service Code — Procedural deficiencies not important enough to invalidate the decision — Compensation for procedural deficiencies

The Applicant was serving with ICAO at the G-7 level when she was offered a choice between agreed termination with payment of an indemnity in the amount of nine months' salary, and re-assignment to another post at the top of the G-5 grade. The Applicant accepted reassignment to a post at a lower level but challenged the decision as involving duress and undue influence and as being contrary to the provisions of the ICAO Service Code and relevant Instructions.

Having reviewed the circumstances of the case, the Tribunal concluded that the treatment accorded to the Applicant amounted to a threat of discharge accompanied by an offer of re-engagement at a lower level. The Tribunal inquired into compliance by the Respondent with the procedure required by the Service Code for decisions of discharge. Such decisions have to be preceded by "due investigation".

The Tribunal ruled that the above-mentioned requirement of "due investigation" had not been complied with because the Applicant had not been shown the investigation report and had been given no opportunity to comment on it before the Respondent reached his decision. Furthermore, an adverse performance evaluation report of 1972 had not been shown to the Applicant, contrary to the relevant provisions of the Instructions.

The Tribunal noted, however, that the substance of the complaints against the Applicant had been known to her for several years and that she had commented on a number of adverse reports. The Secretary-General himself communicated to her orally the substance of the adverse report of 1972.

The Tribunal, therefore, ruled that, while the procedural deficiencies did not invalidate the termination of the Applicant's G-7 contract, they provided ground for payment of compensation.

With regard to the Applicant's contention that her new G-5 contract was vitiated by duress or undue influence, the Tribunal did not consider that the circumstances amounted to duress or to undue influence likely to vitiate the contract.

For the above reasons, the Tribunal awarded the Applicant compensation in the amount of 4,000 Canadian dollars. A separate sum equal to the excess of the contributions made by her to

the Pension Fund for the period of her service above the G-5 level over the contributions she would have made for that period had she remained at the top step of the G-5 level was also awarded.

The Applicant's other claims, including that of reinstatement to the G-7 level, were rejected.

B. Decisions of the Administrative Tribunal of the International Labour Organisation[20, 21]

1. JUDGEMENT NO. 442 (14 MAY 1981): DE VILLEGAS *v.* INTERNATIONAL LABOUR ORGANISATION

Application for review of an earlier judgement of the Tribunal — The only pleas in favour of review that may be allowed, provided they are such as to affect the Tribunal's decision, are omission to take account of particular facts, material error, omission to pass judgement on a claim and discovery of new facts

The complainant requested the review of Judgement No. 404.[22]

The Tribunal first considered the general question of review. It recalled that neither its Statute nor its Rules of Court provided for review of its judgements and that although it had previously heard several applications for review it had not availed itself of those opportunities to consider the general problem of review.

The Tribunal first noted that its judgements, which carried the authority of *res judicata* from the date on which they were delivered, would be reviewed only in exceptional cases. It stated that the following pleas in favour of review would not be allowed: alleged mistake of law, alleged mistake in appraisal of the facts (i.e., the interpretation which the Tribunal placed on the facts), failure to admit evidence and omission to comment on pleas submitted by the parties. However, it observed that certain pleas in favour of review might be allowed if they were such as to affect the Tribunal's decision, namely omission to take account of particular facts, material error, omission to pass judgement on a claim and discovery of a so-called "new" fact, i.e., a fact which the complainant discovered too late to cite in the original proceedings.

With regard to the review proceedings, the Tribunal indicated that it would first determine whether the plea was admissible and that, according to the outcome of that examination, it would dismiss the application or pass on to the second stage and reconsider its judgement on the basis of the evidence adduced in the review proceedings. It added that where a plea was not such as to affect its decision, it would decline not only to reconsider its judgement but also to correct the summary of facts and its legal reasoning.

With regard to the application for review that constituted the subject of Judgement No. 442, the Tribunal noted that it was based first on the disregard of certain facts. It concluded that those facts had either been taken into account or had had no affect on the decision. Secondly, the application for review referred to errors of fact; there again, the Tribunal concluded that the flaws alleged by the complainant had had no influence on the decision and thus afforded no grounds for review.

Thirdly, the complainant invited the Tribunal to strike out from its judgement passages which she considered to be libellous. The Tribunal observed, however, that in those lines it had merely summed up the arguments of the Organisation; the judgement was not libellous and the Tribunal had acted within the scope of its competence. It added that the allegedly libellous nature of a judgement afforded no grounds for reviewing it.

The complainant likewise objected that the Tribunal had not heard her claims for compensation for the moral prejudice she had allegedly suffered. The Tribunal observed, however, that in dismissing all her claims for relief it had rejected by implication her claims for compensation for moral prejudice and that even if its silence afforded valid grounds for review it had no reason to alter its decision so as to award any of the compensation claimed by the complainant.

The complainant also objected that the Tribunal had not considered some of her pleas. The Tribunal emphasized, however, that failure to comment on a plea was not a valid reason for review.

It came to the same conclusion with regard to the objection concerning failure to use a means of obtaining evidence.

Lastly, the Tribunal considered that the new facts cited by the complainant in support of her application for review were not such as to have any effect on the Tribunal's decision and that their discovery afforded no allowable grounds for review.

In the light of the foregoing, the Tribunal dismissed the application.

2. JUDGEMENT NO. 443 (14 MAY 1981): VERDRAGER *v.* WORLD HEALTH ORGANIZATION

Application for review of an earlier judgement of the Tribunal on the ground that the Tribunal omitted to take full account of an item of evidence

The Tribunal noted that in his fourth application for review of Judgement No. 325,[23] the complainant objected that in dismissing his third application in Judgement No. 439[24] the Tribunal had omitted to take account of one line in an item of evidence; in other words, he was objecting to the Tribunal's evaluation of evidence. The Tribunal found that that was not a plea which could afford grounds for review and accordingly dismissed the application.

3. JUDGEMENT NO. 444 (14 MAY 1981): ALEXIS *v.* WORLD HEALTH ORGANIZATION

Conversion of a two-month temporary contract into a fixed-term appointment after extension of the initial two-month contract — Complaint seeking to have the advantages obtainable under the fixed-term contract dated back to the day on which the initial two-month contract expired — Discretionary power of the Director-General with regard to an application for upgrading of the recruitment level initially agreed between the Administration and the staff member

After a period of service with ILO, the complainant had been recruited by WHO — at a lower grade than that he had occupied at the end of his employment with ILO — on a basis of a two-month temporary contract, it being in the minds of both parties that the contract would be replaced by a fixed-term appointment.

The complainant was not, however, offered such an appointment until several months later, his temporary contract having been meanwhile extended. The complainant alleged that that cost him some loss in that not all the elements obtainable under the fixed-term contract had been dated back to 6 June, and contended that at the time of his recruitment he had been "assured" that the appointment would be converted within two months. The Tribunal, noting that the complainant did not claim — or at least had not proved — that the assurance was anything more than an expression of hope and belief, dismissed the complainant's claim under that head.

The complainant likewise contended that in establishing his grade and remuneration WHO had taken no account of his qualifications or of his years of service with ILO doing work at an equivalent level. He invoked staff rule 320.1, which read:

> "On appointment, the net base salary of a staff member shall be fixed at step 1 of the grade of the post he is to occupy. In exceptional circumstances it may be fixed at a higher step in the grade in order to maintain the staff member's former income level."

The Tribunal noted, however, that that rule conferred a power on the Director-General for use in exceptional circumstances but conferred no right on an appointee. The Tribunal added:

> "A person seeking an appointment is of course at liberty to refuse the appointment if he considers the salary offered to be too low. But if he accepts the appointment at the salary offered and applies for a rise, the rule imposes no duty on the Director-General of any sort, whether discretionary or otherwise, to grant the application."

Consequently, the Tribunal dismissed the claim under this head also.

The complainant sought payment of compensation as the *ex gratia* action recommended by the WHO Regional Board of Inquiry and Appeal. The Tribunal observed, however, that those were matters outside its competence, since it was concerned only with non-compliance with the Staff Regulations or with terms of appointment.

Lastly, the complainant sought compensation for "the inordinate delay" caused in the hearing of his appeal. The Tribunal found it unnecessary to consider what remedies were open to a complainant who was injuriously affected by procedural delay, since it was clear in any event that the complainant could not be entitled to compensation without showing financial loss or moral damage, neither of which appeared in this case.

4. JUDGEMENT NO. 445 (14 MAY 1981): VELIMIROVIC *v.* WORLD HEALTH ORGANIZATION

Complaint seeking to have a period of service as a consultant validated for pension purposes

The complainant sought to have validated for pension purposes a four-month period of service as a consultant in 1966.

The Tribunal observed that in accordance with staff rule 710 consultants who were appointed for periods not exceeding 11 months were excluded from participation in the Pension Fund, and that moreover under the rules applicable prior to 1 June 1972 periods of service as a consultant could not be validated for pension purposes. Since the Tribunal considered that the arguments invoked by the complainant were groundless, it deemed it unnecessary to determine whether, as the Organization contended, the complaint should in any event be dismissed as time-barred and simply dismissed the complaint.

5. JUDGEMENT NO. 446 (14 MAY 1981): ESPINOLA *v.* PAN AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

Complaint seeking reclassification of a post — Appreciation of the level of a post should be left to persons who are familiar with the work and cannot be called in question unless a mistaken approach to the problem has been taken

The complainant had applied to have her post of Statistical Assistant reclassified to the Professional level. The Board of Inquiry and Appeal had been unable to reach a unanimous decision, the majority of three had considered that the duties of the post were principally clerical, while the minority had been in favour of reclassifying the post.

The complainant contended that the Tribunal should prefer the minority view, that contention being supported by criticisms in detail of the majority view. The Tribunal considered, however, that the question at issue was one for a general appreciation by persons familiar with the working conditions and could not be solved by a meticulous comparison of duties as set down on paper. It considered that the majority view should be accepted unless there was clear evidence, which there was not in this instance, of a mistaken approach to the problem.

The complainant also alleged violation of certain staff regulations which required the Director in general terms to establish a plan for reclassification of all posts, observing that no such plan had been established for the General Service staff. The Tribunal noted, however, that neither the majority nor the minority had regarded that lack as disabling them from reaching a conclusion on the complainant's application. It concluded that if there had been a violation of the regulations cited, it did not vitiate the decision impugned.

Lastly, the complainant contended that her right to due process had been violated and claimed redress for professional and moral damage. The Tribunal, however, stated that it was not satisfied that there had been such mistreatment of the complainant as would amount to a breach of obligation leading to compensation.

6. JUDGEMENT NO. 447 (14 MAY 1981): QUIÑONES *v.* PAN AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

Complaint containing an inconsistency, of decisive importance for the receivability of the complaint, regarding the date of notification of the decision impugned — It is for the author of a notification to establish its date — Limits of the Tribunal's power of review with regard to a decision concerning a transfer

The complainant impugned a decision relating to her transfer. On the form instituting her complaint she had stated that the impugned decision was dated 21 May 1980, although in the

statement appended to the form she had indicated that she had received the decision on 20 May 1980. The Tribunal noted that if the time-limit for filing the complaint was taken as beginning on the latter date, the complaint was irreceivable. It observed that under the general rules on the burden of proof, it was for the author to establish the date on which a communication was received. In this case, the impugned decision had not been sent by registered post or with an official acknowledgement of receipt and was not even dated; moreover, the date of delivery could not be determined from the written evidence. The Tribunal therefore considered that it should accept the complainant's statement. It was true that the complainant had given two dates but the Tribunal felt that 21 May should be the date taken, *inter alia* because it was likely that the complainant had been anxious to respect the time-limit and if she had received the impugned decision on 20 May she would certainly have acted one day earlier. The Tribunal therefore declared the impugned decision receivable.

It then noted that the decision in question concerned a transfer and that the applicable rules conferred wide discretion on the Director. That being so, the decision could be set aside only if it had been taken without authority, or violated a rule of form or procedure, or had been based on an error of fact or of law, or if essential facts had been overlooked, or if there had been a misuse of authority, or if mistaken conclusions had been drawn from the facts.

The Tribunal noted that in deciding to transfer a staff member the Director was bound, by the applicable rules, to take account not only of the interests of the Organization but also of the staff member's particular abilities and interests, provided that was not at variance with the Organization's main interests. It concluded from the evidence in the file that although the Organization had taken account of the complainant's abilities it had disregarded her particular interests when it was in a position to protect them. Concerning the plea of personal prejudice invoked by the complainant, the Tribunal stated that in order for such a plea to succeed there was no need for the staff member to have suffered unequal treatment, i.e. to have been treated less favourably than another. It was enough that he should have suffered treatment which was not warranted on any objective grounds. The Tribunal found that, despite her age and work record, the complainant had been suddenly transferred to a post which did not suit her, no thought having even been given to finding a solution which would more closely match her legitimate interests. It concluded that only prejudice could account for such lack of consideration.

In view of the two violations of the applicable rules, the Tribunal decided that although the complainant could hardly claim assignment to a post which had already been filled or to a post which would have to be created for her, she was entitled to demand that if she applied for a position comparable to the one she had held up to 1979, her application should be preferred to those of others who were equally well qualified. With regard to the claim for compensation for moral prejudice, the Tribunal observed that in the case of a decision which was not tainted, moral prejudice created no entitlement to compensation unless it was especially grave. But if, as in the present case, the decision was unlawful, it was enough if the moral prejudice was serious. The complainant had certainly been affected by the suddenness of a decision which she regarded as an unfair punishment. Furthermore, her reputation had very probably suffered, since her colleagues must have wondered what the reasons were for such an unaccountable transfer. The Tribunal determined the compensation for moral prejudice *ex aequo et bono* at $8,000.

7. JUDGEMENT NO. 448 (14 MAY 1981): TRONCOSO *v.* PAN AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

Complaint inpugning a decision not to extend a temporary appointment — Although such a decision depends largely on the discretion of the Administration, it can be set aside if it is taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if essential facts were overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the facts

The complainant impugned a decision under which her temporary appointment had been terminated on the basis of a staff rule which stated that "temporary appointments, both fixed-term and short-term, shall terminate automatically on the completion of the agreed period of service".

The Tribunal first decided to admit as evidence excerpts from tape recordings of evidence given to the internal appeals body.

It then observed that, construed literally, the aforementioned staff rule meant that all that was needed for such an appointment to terminate was that the period of the contract should expire. That did not mean, however, that on the expiry of that period the Organization was wholly free to continue to employ the staff member or to let him go: its bodies certainly enjoyed wide discretion, but their decision was subject to review within the limits set by the case law; in other words, it would be set aside if it had been taken without authority or in breach of a rule of form or of procedure, or if it had been based on a mistake of fact or of law, or if essential facts had been overlooked, or if there had been abuse of authority, or if clearly mistaken conclusions had been drawn from the facts.

With regard to the grounds for the impugned decision, the Tribunal observed that it could exercise the power of review which it assumed only in the light of the grounds given for the decision to terminate the appointment, and that if those grounds were not clear from the actual decision it would seek to determine them from the other written evidence. The Tribunal noted that according to evidence given by two of her supervisors before the internal appeals body, the complainant possessed remarkable technical competence and that with respect to her performance, her conduct had been beyond reproach as regards her relations with university circles, but had been criticized as regards her work related to training. With regard to the complainant's political activities, the Tribunal noted that her first-level supervisor had told the internal appeals body he had received oral protests from various Governments, and that the dossier contained no information on the nature of those activities.

With regard to the propriety of the impugned decision, the Tribunal noted that the staff rule providing for the completion of an annual performance report had not been complied with. It considered that although proceedings following a decision not to extend an appointment might sometimes remedy the absence of the report, that had not been the case in the present instance, where the criticisms of the complainant had not only been challenged but were open to various evaluations.

The Tribunal then observed that the impugned decision failed to take account of essential facts in that the Director had overlooked many facts which emerged from the written evidence and did not seem to have inquired into the substance and validity of the protests against the complainant's political activities.

The Tribunal observed that because of the flaws in the impugned decision the Tribunal could either set it aside — which would mean reinstating the complainant — or award compensation. It considered that the mutual trust between the complainant and the Organization had diminished to the point where it was unlikely that she could again be usefully employed and it therefore awarded compensation determined *ex aequo et bono* at 12,000 United States dollars.

8. JUDGEMENT NO. 449 (14 MAY 1981): SALMOUNI ZERHOUNI *v.* UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Complaint brought by a person not competent to file a complaint with the Tribunal

This complaint was dismissed because the complainant, who had never been an official of UNESCO and did not claim to have succeeded to any of the rights of such an official, was not competent to file a complaint with the Tribunal

9. JUDGEMENT NO. 450 (14 MAY 1981): GLORIOSO *v.* THE PAN AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

Claim of reinstatement in staff member's former position within the Organization — Limits to the Tribunal's power of review of a decision of transfer — Absence of factual error, of procedural flaws and of errors in law — Rejection of the plea to quash the decision to transfer

Following misunderstandings between herself and her immediate supervisors, the complainant was transferred from one unit to another in the Secretariat of PAHO. Complaining of the menial

nature of her duties in the new post, she claimed reinstatement in her former position or assignment to a comparable one. She also claimed removal of negative appraisals of her performance from her file, the award of a higher grade and compensation for medical expenses and other material and moral injuries suffered as a result of her transfer.

Confirming its previous case law, the Tribunal recalled that the relevant provision of the Staff Rules allowed transfer whenever PAHO's interests required it. It was thus a discretionary matter for the competent authorities. The Tribunal will quash a decision of transfer only if it was taken without authority or in breach of a rule of form or of procedure, or was based on an error of fact or of law, or if essential facts were overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the facts.

After reviewing the facts of the case, the Tribunal observed that the said facts were open to different interpretations. The complainant's arguments in support of her claim did not appear to carry any greater weight than those put forward against it. Accordingly, the impugned decision was not tainted with any error of fact and did not leave essential facts out of account. It was taken within the scope of the discretionary power recognized by the rules.

On the other hand, the Tribunal observed that the provisions of the Staff Regulations and Rules on transfer based such actions on considerations of efficiency, competence and integrity. These rules, however, did not preclude the transfer of the staff member, regardless of how well qualified he may be, if relations with his supervisors became strained. The Director was therefore entitled to transfer the complainant in the circumstances of this case.

The complainant had contended that the decision to transfer was in breach of a staff rule which referred to the staff member's particular abilities and interests in case of transfer. The Tribunal observed that the said provision indeed called for taking into account the staff member's particular abilities and interests, but only "to the extent possible". The Tribunal was of the view that this qualification meant that account would be taken of those considerations provided PAHO's interests did not dictate a different course of action.

Lastly, the Tribunal considered the complainant's allegation that the impugned decision was motivated by prejudice because of her Staff Association activities. The Tribunal found that the complainant failed to establish any causal link between those activities and the decision.

For the above reasons, the Tribunal dismissed the complaint.

10. JUDGEMENT NO. 451 (14 MAY 1981): DOBOSCH *v.* THE PAN AMERICAN HEALTH ORGANIZATION (PAHO) (WORLD HEALTH ORGANIZATION)

Receivability of the appeal — The requirement that internal means of redress be exhausted not an absolute rule — Failure by the internal appeals body to act for an inordinately long period of time justifies a direct application to the Tribunal

On 22 November 1978, the complainant appealed to the Board of Inquiry and Appeal for Area VI against a decision not to transfer her to a particular unit within PAHO. The case was forwarded by the Area VI Board to the PAHO Headquarters because the claim was considered to be one of reclassification which fell within the competence of the Headquarters Board. On 12 October 1979, the Headquarters Board returned the case to the Area Board on the grounds that it was not one of those cases which lie within the exclusive purview of the Headquarters Board. The Headquarters Board suggested to the Area Board a hearing within 30 days to make up for lost time. The Board nevertheless scheduled a hearing only in March 1980. At this time, further difficulties arose and the Board did not meet. On 18 April 1980, the complainant appealed directly to the Tribunal.

The Tribunal ruled that the requirement of exhausting internal means of redress for an appeal to the Tribunal to be receivable was not a hard and fast rule even though the Statute of the Tribunal did not allow any derogation from it. If a complainant does all in her power to procure a decision and if, nevertheless, the internal appeals body either by its statement or by its conduct evinces an intention not to give a decision within a reasonable time, justice required that an exception should

be made. It was not mere failure to proceed with all due speed and diligence that justified such an exception, but when the proceedings had been allowed to deteriorate to a point at which there was a denial of justice, an intention not to give a decision may be inferred.

Applying the above principle to the circumstances of the case at hand, the Tribunal pointed out that after a year and three-quarters, the Administration was still in default with its written answer and had not even appointed a representative in the appeal. This, in the Tribunal's view, was an inordinate and inexcusable delay. Noting that the complainant had no obligation to explore ways of putting pressure on the Area Board to discharge its duty, the Tribunal observed that the complainant had done all she could to expedite the proceedings.

For the above reasons, the Tribunal decided to consider the appeal receivable despite the lack of compliance with the rule which requires exhaustion of internal means of redress before an appeal to the Tribunal could be properly lodged.

The complainant's claims concerned mainly reassignment to a particular unit within PAHO. She also requested that the description of her duties be in accordance with her qualifications, that accordingly she be assigned a post in the professional category and that damaging documents be removed from her personnel file. She further claimed damages for moral prejudice and mental distress and for injury to her professional reputation. She also claimed that she be awarded costs. The Tribunal observed that the decision impugned was one dated 24 October 1978, which did not resolve the issue of the complainant's reassignment but appointed a committee to study the request, while at the same time informing the complainant that there was no suitable post at the time in the unit concerned. In the event, on 3 September 1980, an offer was made to the complainant of a post in the unit of her choice at a grade which was to be fixed after six months' service. The complainant turned down this offer. The Tribunal found that it was impossible to argue that the Director's failure to respond instantly and affirmatively to the complainant's demands amounted to an abuse of power. For the preceding reasons, the Tribunal decided to dismiss the complaint on the merits.

With regard to costs, the Tribunal recalled that it was unusual to award them to a complainant who had failed, but since in this case the complainant was successful on the important issue of receivability, the Tribunal awarded her $2,000 towards her costs.

11. JUDGEMENT NO. 452 (14 MAY 1981): FOLEY *v.* THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Resignation of Staff Member — Re-employment within 12 months as local recruit at lower grade — Claim of reinstatement in non-local status at former grade and step — New claim made for the first time before the Tribunal — Non-receivability of same for failure to exhaust internal recourses — Claim of reinstatement denied

A staff member since 1968, the complainant resigned her post with FAO on 2 July 1976, having reached grade G-5, Step V and having been granted non-local status. On 6 June 1977, she was re-employed at the G-3 level and was promoted to the G-4 level on 1 October 1977. She was promoted on 1 February 1978 to the G-5 level. Under the rules applicable at the time of her re-employment, she was considered a staff member of local status. She claimed reinstatement in non-local status at her former grade and step but her claim was turned down. This was the decision impugned.

At the outset, the Tribunal declared non-receivable a new claim aiming at payment of certain travel and transport expenses in case the complainant was not to be reinstated as claimed. The Tribunal observed that under Article VII, paragraph 1, of its Statute, the complainant had to exhaust the internal means of remedy prior to appealing to the Tribunal. Since the alternative plea was not made before the internal appeals body, it was not receivable for the first time before the Tribunal.

With regard to the original claim, the Tribunal cited a provision of FAO's staff rules to the effect that if re-employment took place within 12 months of separation, this may, at the option of the Organization, be considered as reinstatement. The Administration had invoked a new policy

laid down in November 1974 under which all General Service staff, regardless of nationality or place of recruitment, would be recruited as local staff after 31 January 1975. The complainant argued that this policy guideline should not be confused with the option given the Administration under the staff rule mentioned above. In exercising the option account should be taken only of the particular circumstances of the staff member and the decision should not be motivated by general conditions. The Tribunal disagreed with this argument, holding that, provided the decision was not taken arbitrarily, the Organization was free to have regard to all relevant considerations, general and particular.

The complainant further contended that the policy decision in question applied only to recruitment and did not apply to reinstatement. Even assuming that this interpretation of the Council declaration of policy was correct, the Tribunal ruled that the Administration was free but not required to reinstate former non-local staff in their previous status. It was a matter of discretion for the Administration and the impugned decision was within this discretion.

Finally, the complainant had contended that there was discrimination in favour of another former non-local staff member who was reinstated, after the policy decision of the Council, as a non-local staff member. Having examined the facts of this other case, the Tribunal concluded that the Administration was not required to follow a general policy if particular circumstances justified a distinction. In the opinion of the Tribunal, there were sufficient grounds for discrimination in the earlier case of the other staff member.

For the above reasons, the Tribunal decided to dismiss the complaint.

12. JUDGEMENT NO. 453 (14 MAY 1981): HEYES *v.* THE WORLD HEALTH ORGANIZATION

Probationary appointment — Non-confirmation of same — Discretionary decision — Limits on Tribunal's power of review

The complainant was appointed to serve on a WHO project in the field. His appointment, which commenced on 11 May 1979, was subject to one year's probationary period. Under Staff Rule 1060 of the WHO, such appointments can continue beyond the one-year period only if they are confirmed before the probationary period is over. Since the complainant's performance and conduct had been criticized by his supervisors, a decision was taken not to confirm his appointment.

The complainant contended that he was unfairly dismissed and made several other minor claims concerning his employment. He requested reimbursement of unrecovered expenses, recovery of lost earnings for the period from 11 May 1980 to 10 May 1981 and an official apology from the WHO.

The Tribunal noted that the decision not to confirm the complainant's probationary appointment was, in the circumstances of the case, conclusive unless it could be shown to have been based upon a clearly mistaken appreciation of the relevant facts. The Organization had maintained that the facts indicating unsuitability for international service, and so justifying the decision not to confirm the complainant's probationary appointment were:

(1) the complainant's written complaints about his working conditions and his accommodation, and

(2) his failure to establish satisfactory working relations.

The Tribunal looked into these two sets of facts and concluded that the grounds upon which the Organization supported the impugned decision were not above criticism. The Tribunal inquired, however, whether when the criticism had been absorbed there was enough left to sustain the decision. It observed that there was certainly enough to show that the complainant was a man whom it was difficult, and perhaps impossible to work with. It ruled out the possibility of a future improvement in the complainant's attitude, judging by the correspondence addressed by him to the Director-General of the WHO. The Tribunal ruled that it was not its duty to form its own judgement and substitute it for that of the Director-General. It found it sufficient to state that it was not persuaded that the Director-General's conclusion regarding the complainant's unsuitability for service was clearly a mistake.

For the above reasons, the Tribunal decided to dismiss the complaint.

13. JUDGEMENT NO. 454 (14 MAY 1981): GAVELL *v.* THE UNITED NATIONS FOOD AND AGRICULTURE ORGANIZATION

Partial commutation of pension benefits into a lump sum — United States income tax on same — Entitlement to reimbursement of the income tax (No)

Upon his retirement on 31 January 1978, the complainant, who was a United States citizen, obtained from the United Nations Joint Staff Pension Fund the commutation of one-third of his pension entitlements into a lump sum which he received on 24 March 1978. The complainant applied to the Food and Agriculture Organization for reimbursement of the income tax which he had paid on the said sum. He invoked Judgement No. 237 of the U.N. Administrative Tribunal which endorsed the United Nations' practice of reimbursing to retired staff members the amount of the United States income tax paid by them on the lump sum. His request was turned down by the Administration of the FAO which informed him on 14 June 1979 that he was not entitled to reimbursement. In his complaint to the Tribunal, the complainant requested that the FAO be ordered to reimburse the tax in question.

The Tribunal referred to its earlier Judgement No. 426 in which it considered and rejected a similar claim raising the same issues and arguments made against the WHO.[25] Noting that the complainant had failed to distinguish the above-mentioned case from his own, the Tribunal dismissed the complaint.

14. JUDGEMENT NO. 455 (14 MAY 1981): PINI *v.* THE UNITED NATIONS FOOD AND AGRICULTURE ORGANIZATION

Termination of probationary appointment — Discretionary nature of same — Limits on the Tribunal's power of review

On 1 November 1975, the complainant was given a fixed-term appointment for two years as a printer, subject to a probationary period of one year. The probationary period was extended by six months to 30 April 1977. On 14 April, the complainant was notified that his appointment would be terminated and that he would receive one month's salary in lieu of notice.

The Tribunal noted that the extension of the probationary period was decided upon because of the complainant's bad performance and with a clear indication to him that without substantial improvement his appointment would be terminated. The Tribunal referred to the findings of an investigation into the complainant's challenge to the decision of termination which showed that the average productive index in the printing shop was 218 while the figure for the complainant was 163. The following lowest individual figure was 190.

The Tribunal noted the discretionary nature of a decision to terminate a probationary appointment. That discretionary nature left the Tribunal with only a limited power of review. Where, as in the case at hand, there was ample evidence to support the conclusion that the complainant's work was unsatisfactory, that was the end of the matter. It was not open to the Tribunal to reassess the evidence as the complainant requested.

For the above reasons, the Tribunal decided to dismiss the complaint.

15. JUDGEMENT NO. 456 (14 MAY 1981): BARBERIS *v.* THE WORLD TOURISM ORGANIZATION

Communication to staff member — Contention that it was not received acceptable in absence of proof that it was received — Failure by Administration to take a decision upon a claim within 60 days — 90-day time-limit for filing complaint with Tribunal runs following expiry of the 60-day period — Complaint filed beyond the 90-day time-limit non-receivable

A claim made by the complainant elicited a negative reply from the Administration of WTO dated 3 July 1979 in which the complainant was informed that the Secretary-General saw no need to exercise his rights under the staff regulations to refer the claim to a joint committee for observations and report. The complainant contends that the said reply of 3 July 1979 was never received by her, and that she only knew of it from a reference in a letter dated 5 October.

The Tribunal observed that under the general rules on the burden of proof it is for the sender to establish the date on which a communication was received. For want of evidence as to the actual date of receipt of the letter of 3 July the Tribunal accepted the complainant's statement that the said letter was not received by her.

The Tribunal then recalled the provisions of Article VII of its statute which require exhaustion of internal means of recourse in order for a complaint to the Tribunal to be receivable. The same article provides that the complaint must be filed within 90 days after the notification of the final decision. Finally, Article VII provides that where the Administration fails to take a decision upon any claim within 60 days the staff member may appeal to the Tribunal within 90 days from the date of expiry of the above-mentioned 60-day time-limit.

Having ruled that the letter of 5 July was not received by the complainant the Tribunal considered the case at hand as falling under the provision of article VII of its statute regarding cases where the Administration fails to take a decision upon the staff member's claim. The Tribunal further observed that the complainant's claim was made on 3 April 1979 and repeated on 21 May. Therefore, the complainant was required, under Article VII (3) of the statute, to appeal to the Tribunal within 90 days following the 60-day period after presentation of her claim. The Tribunal noted that the complainant filed her complaint only on 13 March 1980, long after the expiry of the above-mentioned time-limit.

For the above reasons the Tribunal dismissed the claim as time-barred.

16. JUDGEMENT NO. 457 (14 MAY 1981): LEGER AND PEETERS *v.* THE EUROPEAN PATENT ORGANISATION

Decision not to promote — Discretionary nature of same — Limits on the Tribunal's power of review — Decision not to promote may be invalidated only if tainted with certain specific defects

The complainants challenged EPO's decision not to include their names in a promotion register prepared by a committee set up in August 1979. They alleged that the Administration did not abide by the selection criteria set for the committee and that according to those criteria they were eligible for promotion. They moved the Tribunal to quash the decision notified on 17 December 1979 and to order their promotion to A.3 from 1 January 1979.

The Tribunal observed that a final decision to promote or not to promote fell squarely within the discretion of the chief administrative officer of the organisation. Such a decision would be set aside only if it was taken without authority or was tainted with a formal or procedural flow, or if it was based on a mistake of fact or of law, or if essential facts were left out of account, or if there was misuse of authority or if clearly mistaken conclusions were drawn from the facts.

The Tribunal found no reason to question the calculation of the length of the complainants' service, which was the main challenge addressed at the decision. There was no mistaken appraisal of facts which vitiated the Committee's decision on the complainants' case. The essential point was that length of service would be taken into account on the condition that earlier experience appeared useful to the work of the organization. It was for the President of the EPO to settle this matter. The Tribunal found no grounds for ruling that the President abused his discretionary power.

For the above reasons the Tribunal decided to dismiss the complaint.

17. JUDGEMENT NO. 458 (14 MAY 1981): GABA *v.* THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Direct appeal to the Tribunal without exhaustion of internal recourse procedure — Not receivable except in agreement with the Administration — Silence of the Administration not tantamount to agreement

The complainant filed his complaint with the Tribunal on 24 November 1980 without first appealing to the Appeals Board. The internal means of redress not having been exhausted the complaint was not receivable.

The complainant had contended that on 30 October 1980 he sought from the Director-General the agreement required for a direct application to the Tribunal, asking for a reply by 15 November 1980. Having received no reply by that date he considered himself free to appeal to the Tribunal, taking the Administration's silence to denote agreement.

The Tribunal noted that the Director-General was not bound to answer the complainant by the deadline he had arbitrarily set at 15 November 1980 and that the complainant was therefore wrong to infer the Director-General's agreement from the absence of a reply. The Tribunal further observed that the complainant had not asked for the Director-General's agreement until over 45 days had elapsed after the notification to him of the impugned decision. The time-limit set in the Appeals Board statutes for addressing an appeal to the Board had already expired by the time the complainant sought the Director-General's agreement to a direct application to the Tribunal. The complainant should therefore have expected the Director-General to withhold his agreement.

The Tribunal rejected the complainant's argument that since an appeal is a procedure introduced for the benefit of the staff, the Director-General's failure to reply raised a presumption of agreement. The Tribunal ruled that the procedure touched the interests of the Organisation as well as those of its staff.

For the above reasons the Tribunal dismissed the complaint as being non-receivable.

18. JUDGEMENT NO. 459 (14 MAY 1981): ZREIKAT *v.* THE WORLD HEALTH ORGANIZATION

Change of date of birth — The date of birth provided by staff member upon appointment considered as correct for all the purposes of the contract — Changing said date of birth calls for new agreement of the parties — Validity and evidentiary value of documents delivered by Governments not at issue

The complainant was appointed by the WHO on 1 July 1976 as a translator. In several documents including his personal history form he gave 25 March 1918 as his date of birth. His one-year contract of appointment was extended to 31 March 1978 and at the time the complainant gave the same date. On 10 November 1977, however, he informed the Personnel Office that his date of birth was wrong and he supplied a copy of a birth certificate provided by a Greek Orthodox church in his home country and dated 10 October 1977 which gave his date of birth as 25 March 1920. The Personnel Office amended his file accordingly. The complainant's appointment was further extended to 31 March 1980 when he would have reached the retirement age of 60. On 29 May 1979 the complainant again asked the Personnel Office to correct his date of birth for the second time to 25 March 1925 on the strength of a new certificate from the above-mentioned church giving his date of baptism as 25 May 1925 instead of 17 June 1920. He later provided a birth certificate from the Ministry of Interior in his home country and a certificate from the Swiss social insurance authorities, both showing his date of birth as 25 March 1925. This time the Personnel Office turned down the complainant's request and no further change in his date of birth was made. The Board of Inquiry and Appeal recommended dismissal of the complainant's appeal and the Director-General endorsed that recommendation. The complainant challenged the Director-General's decision before the Tribunal.

The complainant's main argument was that international organizations were under a duty to respect the decisions of national authorities and were bound to accept the date of birth given by them as being the staff member's correct date of birth.

The Tribunal declined to consider the dispute from the standpoint of the validity or the evidentiary value of certificates issued by national authorities. Instead it determined the issue within the framework of the contractual relationship between the staff member and the Organization. The Tribunal observed that upon receiving an appointment a staff member was required to give the date of his birth and that the date so recorded in his contract of appointment may affect his rights and obligations in a number of ways, more particularly with regard to the date on which he would retire. The date of birth supplied by the staff member is therefore warranted by him as correct for all the purposes of the contract.

The Tribunal envisaged only two possibilities for changing the staff member's date of birth. The first possibility was that the contract may be amended by common consent of the parties. This

not being the case the Tribunal may not interfere. The second possibility was that the Tribunal may require the parties to make the amendments called for by the application of the principle of good faith. In this regard the Tribunal found that the complainant could not rely successfully on the said principle since in any case, when the first correction of date was made, he ought to have taken every precaution to determine the exact date of his birth.

For the above reasons the Tribunal decided to dismiss the complaint.

19. JUDGEMENT NO. 460 (14 MAY 1981): ROMBACH *v.* THE EUROPEAN PATENT OFFICE

Salary upon promotion — Requirement that it should not be reduced as compared to the pre-promotion salary — Special allowance for discharging duties at a higher level — Temporary nature of same — Claim to continued payment of said allowance after promotion denied

The complainant was in receipt of a special allowance since May 1979 for discharging the duties of a post at a higher level than his own. In September 1979 he was promoted to the higher level with retroactive effect from 1 August 1979. From September 1979 his total net remuneration was reduced by an amount equal to that of the special allowance.

Before the Tribunal the complainant invoked the principle that in no case shall total net remuneration be reduced as the result of advancement to a higher grade. This principle was embodied in the staff regulations.

The Tribunal noted that comparison of the complainant's emoluments before and after promotion showed (*a*) an increase in his base salary; (*b*) cancellation of the special allowance, and (*c*) cancellation of almost the full amount of the compensatory allowance. As a result the complainant's remuneration after promotion was lower by 141.58 guilders, i.e. exactly the amount of the special allowance he was paid since May 1979.

Citing article 49, paragraph 13, of the Staff Regulations the Tribunal noted that the fundamental question was the construction to be put on the term "total net remuneration" which, under the said article, should not be reduced as a result of promotion. Citing article 64 of the Staff Regulations the Tribunal concluded that it must be taken to mean basic salary and any benefits and allowances.

With regard to the complainant's request that he continue to receive the special allowance over and above his salary increase the Tribunal noted that this would be tantamount to receiving two increases in remuneration in respect of a single promotion. To grant such a claim would discriminate against staff members who were being paid no special duty allowances before promotion.

The Tribunal made the distinction between benefits and allowances which are permanent or at least payable over a fairly lengthy period and temporary benefits and allowances payable for a limited time only. The safeguard provided in article 49, paragraph 13, was applicable to the first category of allowances. The special duty allowance was a temporary one. The staff member who received it knew that he would continue to do so only so long as he was performing duties pertaining to a higher grade. When he was promoted to the higher grade there were no grounds for payment of the special duty allowance and no legal basis for it in article 49, paragraph 13.

While denying the complainant's claim to continued payment of the special duty allowance the Tribunal recognized his entitlement to a remuneration which would not be lower than the one he used to receive before his promotion. It therefore quashed the decision reducing the complainant's total net remuneration after promotion and remitted the case to the President of the EPO to enable him to make such special arrangements as may be appropriate to ensure that the complainant's total net remuneration was no lower than the sums he was receiving before promotion.

20. JUDGEMENT NO. 461 (14 MAY 1981): HECKSCHER *v.* THE INTERNATIONAL CENTRE FOR ADVANCED TECHNICAL AND VOCATIONAL TRAINING

Appeal procedure — Clear challenge to a decision as prerequisite for the existence of an appeal — Exhaustion of internal remedies a condition for the receivability of applications to the Tribunal

On 22 April 1980, the applicant was informed that his contract would not be renewed beyond 31 July 1980. On 31 March he had written to the Director a communication not expressly related

to the question of non-renewal of contract. After the decision of non-renewal was taken, he again wrote to the Chief of Personnel on 7 May 1980, describing the decision as unwarranted because the allegations made against him were unfounded.

The Tribunal cited Article 12.1 of the Staff Regulations of the International Centre for Advanced Technical and Vocational Training which requires that a complaint be addressed to the Director through the staff member's responsible Chief and through the Chief of Personnel within six months of the decision complained of. The Tribunal observed that for there to be an appeal, the staff member must have clearly indicated his intention to challenge the decision to which he objects. Since the decision was taken on 22 April 1980, the complainant's reliance on the communication dated 31 March 1980 was misplaced. As to the communication dated 7 May 1980, the Tribunal found that it did not constitute a challenge to the decision.

For the above reasons, the Tribunal ruled that the complainant had failed to exhaust the internal remedies and therefore decided to dismiss the complaint.

21. Judgement No. 462 (14 May 1981): Vyle *v.* the Food and Agriculture Organization of the United Nations

Acquired rights — Language allowance — Method of ascertaining continued proficiency — No new rules could deprive the staff member of an allowance to which he became entitled under the then existing rules — No acquired right attaches to a particular method of ascertaining continued proficiency

The complainant, whose mother tongue was English, passed the language proficiency examination in Spanish and was granted a language allowance. At that time (1972), staff members receiving such an allowance were relieved of the obligation of undergoing a further test every five years provided that the supervisor certified that the staff member's proficiency in the particular language was satisfactory. From 1 January 1976, everyone was required to take the further test every five years. The complainant failed the said test more than once and payment of her allowance was discontinued on 1 May 1978.

The complainant argued that she had obtained entitlement to the allowance under a régime which did not require further tests and that a new rule requiring such tests was retroactive and violated her acquired right to the allowance.

The Tribunal cited FAO Staff Regulation 301.135 and Staff Rule 302.3033 which, read together, require demonstration of continued proficiency in the use of two or more official languages and provide for the possibility of requiring staff members to undergo further tests at intervals of not less than five years in order to demonstrate their continued proficiency.

The Tribunal recalled its case law according to which an acquired right is one which was of decisive importance to the staff member when he accepted an appointment with the Organization. The Tribunal observed that the possibility of obtaining a language allowance under certain conditions was not ordinarily a matter of decisive importance to a new recruit. It is not therefore an acquired right within the meaning of the Tribunal's case law.

The Tribunal, however, elaborated further on the concept of acquired rights, ruling that it should be developed to take account of situations analogous to those which gave rise to the doctrine. When a staff member had earned the right to an allowance under rules in force, it would be inequitable for the rules to be arbitrarily altered so as to deprive him of it. In this sense, a staff member may be said to acquire the right to the allowance under the terms of rules in force at the time when he earned it. This did not mean, in the Tribunal's view, that every detail of the rules must be maintained. It meant that they must not be changed so as to amount to an arbitrary deprivation.

In the case at hand, observed the Tribunal, it was at all times a condition of the continued payment of the language allowance that the staff member demonstrate continued proficiency. It was also at all times the rule that such proficiency could be demonstrated by tests at intervals of not less than five years. The temporary régime which substituted the supervisor's certification for the five-year test did not carry an acquired right to the continuance of this alternative. The essential

condition for continued payment was continued proficiency. The method by which such proficiency was to be ascertained was not of the essence. The alteration of method which resulted in the complainant's being deprived of the allowance because she failed the further test did not constitute an arbitrary deprivation of an acquired right.

For the above reasons, the Tribunal decided to dismiss the complaint.

22. JUDGEMENT NO. 463 (14 MAY 1981): USAKLIGIL *v.* THE WORLD TOURISM ORGANIZATION

Leave without pay unilaterally imposed — Sudden departure from the duty station — No entitlement to remuneration exists in respect of a period during which no services were rendered — Payment of service benefit at the family rate — Existence of a dependent spouse not a condition for same

The applicant's appointment was extended for the last time to 31 December 1979 and it was agreed that he would retire on that date. On 13 December 1979, an argument between the Secretary-General of WTO and the applicant erupted, the outcome of which, according to the applicant was that the Secretary-General told him that he could leave the Secretariat at once. This is contested by the Secretary-General who stated that he had said that the complainant could leave if he wished. The complainant handed back the letter extending his appointment and left the duty station the next day (14 December 1979). Three staff movement notices were sent to the complainant. The first notice recorded the fact that the appointment expired on 14 December 1979. The second notice cancelled the first and stated that the appointment expired on 31 December 1979 and that the staff member had been put on leave without pay from 15 to 31 December 1979. This second notice mentioned that the service benefit had been calculated at the family rate. The third notice changed the service benefit by putting after it the words "without dependent" in brackets.

The complainant made two claims:

(*a*) that the period from 15 to 31 December should not be treated as leave without pay because he had never asked for such a leave; and

(*b*) that the service benefit should be calculated with due regard to the fact that he had a wife.

The Tribunal noted that the general rule was that the staff member was not entitled to remuneration in respect of a period during which he has rendered no service. It was open to the Administration to relieve the staff member from his duty without loss of salary, but such relief must be in clear terms. When, as in the case at hand, there was doubt about what the parties said, and what they may have intended, the general rule must be applied. Without resolving the issue of the grant of a special leave without pay unilaterally, the Tribunal found that the complainant was not entitled to payment of salary for the period in question under the above-mentioned general rule.

As to the calculation of the service benefit, the Tribunal rejected WTO's argument to the effect that since no family allowance was paid in respect of the complainant's spouse, the service benefit was properly calculated at the individual rate. The Tribunal observed that the term "spouse" was unqualified in the provision of the staff rules concerning service benefits. To invoke the provisions concerning the grant of family allowances with regard to the calculation of the service benefit was wrong. Family allowances were intended to provide additional remuneration on the grounds of the staff member's family situation during employment. By contrast, service benefit became due only after the termination of employment and was intended to facilitate the transition to other employment or to retirement. The amount of the service benefit due to the complainant should therefore be calculated according to the rate applicable to "officials with dependants" in the relevant schedule.

For the above reasons, the Tribunal quashed the decision not to pay the complainant the service benefit at the family rate and dismissed his claim for payment of salary and of damages.

C. Decisions of the World Bank Administrative Tribunal[26, 27]

1. DECISION NO. 1 (5 JUNE 1981): LOUIS DE MERODE ET AL. *v.* THE WORLD BANK

Condition of employment — Distinction between "fundamental and essential" conditions and those which are less fundamental and essential — Employing Organization's power to amend unilaterally conditions of employment which are not fundamental and essential — Limitations to same — Entitlement to reimbursement of national income tax, a fundamental and essential condition of employment — Method of computation of reimbursable amount not fundamental and essential — Relevance of practice of Organization in the absence of statutory provisions — Periodic salary adjustments tied to a number of factors including CPI — Challenge to such adjustment on the ground that it resulted in a lesser increase than the increase in the CPI rejected

The Applicants challenged certain decisions of the Bank:

(*a*) Unilateral changes in the system by which the reimbursable amount representing national income tax is computed, resulting in the reductions of tax reimbursements to staff of US nationality; and

(*b*) A periodic salary adjustment which resulted in an increase less than the increase in the Consumer Price Index (CPI) in the Washington metropolitan area.

Regarding the challenge to the unilateral amendments to the tax reimbursement system, the Tribunal made a distinction between conditions of employment which are fundamental and essential in the balance of rights and duties of the staff member on the one hand, and other conditions of employment which are less fundamental and less essential in this balance, on the other. The Tribunal acknowledged the difficulty of determining in abstract terms the line of demarcation between these two categories of conditions of employment. It held that the distinction turned ultimately upon the circumstances of the particular case. With regard to terminology, the Tribunal preferred to use the terms "fundamental" and "non-fundamental", and "essential" and "non-essential", with reference to the various elements in the conditions of employment, rather than such terminology as "contractual rights" and "statutory rights",[28] giving its reasons for this preference.

The Tribunal further preferred not to use the phrase "acquired rights" as invoked by the Applicants because the content of this phrase was difficult to identify. In the Tribunal's view "acquired rights" is simply a label for elements of the conditions of employment which are unchangeable unilaterally. The cause of their being unchangeable unilaterally is to be found in their fundamental and essential character.

While the fundamental and essential elements of the conditions of employment may not be amended unilaterally, the non-fundamental and non-essential elements are subject to unilateral amendment by the Organization. Its power is, however, subject to certain limitations such as non-retroactivity of the amendments, lack of abuse in the exercise of this discretionary power and proper consideration of all the relevant facts.

Applying the above principles to the tax reimbursement situation, the Tribunal noted that while the entitlement to reimbursement of the national income tax was a fundamental and essential condition of employment, the method by which the reimbursable amount was computed was non-fundamental and non-essential. The Tribunal observed that the application of the new amended system still ensured full reimbursement of the national income tax paid by the staff, and maintained the equality of net pay among all staff regardless of nationality. The previous method of computation had resulted in reimbursement in excess of taxes paid. Additional amounts thus received were represented by the Applicants as constituting an integral part of their gross remuneration, to the reduction of which they were now objecting. The Tribunal did not go along with this contention. It observed that, under the new method, all taxes which a staff member was required to pay, were reimbursed by the Bank and that in no case did any US staff member receive a net salary lower than that which he would have received had he not been subject to US taxation. Thus the fundamental and essential element of the conditions of employment was observed and the Applicants' challenge to the decision amending the method of computation was not justified. In so ruling, the Tribunal noted that the change of the tax reimbursement method had no retroactive effect and that the objective of the Bank was not to reduce the income of staff members of a certain nationality but

to ensure a better functioning of the institution by a more equitable personnel policy. There was therefore no abuse of discretion and no misuse of power on the part of the Bank.

With regard to salary adjustment, the Tribunal noted that the conditions of employment contain no provision for periodic salary adjustments and still less for an automatic adjustment to meet the cost of living. In considering the facts of the case, the Tribunal concluded that contrary to the Applicants' contention, there was no decision taken in 1968 to adjust salaries automatically in proportion to the increase in the CPI. What happened was that the President of the Bank made certain recommendations in 1968 which were not followed upon and had never become part of the conditions of employment of the Applicants.

The Tribunal was of the opinion that, under certain conditions, the practice of an international organization may be an independent source of rights and duties in the legal relationship between the organization and its staff. In reviewing the practice of the Bank with regard to periodic salary adjustments, the Tribunal observed that several factors besides the cost of living were taken into account in formulating one or another of the past *ad hoc* salary adjustments. Such other factors included comparison with salaries offered by rival potential employers and the need to recruit staff from various countries who possessed the highest standards of efficiency and integrity.

Going over past salary adjustments, the Tribunal observed that they did not represent systematic increases equal to those of the CPI. Only in two of the eleven adjustments considered was there an exact coincidence between the rise of the CPI and the salary increases. The Tribunal further rejected the Applicants' contention that as a minimum, the increases resulting from salary adjustments should meet the rise in the cost of living so that the real value of Bank remuneration was maintained. This argument was inconsistent with the fact that in four different years staff at higher levels received increases below the CPI through the application of a "tapering" system. The existence of such a system was by itself a sufficient basis for discarding the Applicants' thesis that increases should not be lower than the increase in the CPI.

On the basis of the above considerations, the Tribunal reached the conclusion that there did not exist any decision or practice to automatically increase salaries in order to at least meet the rise in the cost of living.

For the above reasons, the Tribunal unanimously decided to reject the applications.

2. Decision No. 2 (5 June 1981): Rudolph Skandera *v.* the World Bank

Termination of Fixed-term Appointment — Incorrect reason stated in the Notice of Termination — Delay in communicating correct reason — Compensation for Staff Member

The applicant was granted a two-year fixed-term appointment as an advisor with a technical assistance project in Lesotho. His contract provided that the appointment was for two years "subject to termination by the World Bank for any cause or if circumstances necessitated a substantial shortening of the assignment." The applicant's performance was considered quantitatively and qualitatively unsatisfactory and certain aspects of his personal behaviour were objected to by his supervisors. A notice of termination dated 21 February 1980 was addressed to him, stating that the termination was at the request of the Lesotho Government. The contractual four months' notice was taken into account in determining the effective date of separation.

The applicant challenged the decision to terminate his fixed-term appointment contending that there were no sound grounds for the action. He attributed bad faith and malice to the respondent, requesting rescission of termination of his appointment and compensation for damage to his professional reputation, as well as for loss of earnings under his contract. He also claimed compensation for alleged illness sustained while serving in Lesotho.

The Tribunal observed that after having mentioned the request of the Lesotho Government as the reason for termination when communicating its decision to the applicant, the Bank later conceded that the true reasons were those which related to the applicant's performance and behaviour. Nevertheless, the Tribunal found that in the circumstances of the case, there were in fact reasonable grounds on which the Bank could validly reach a decision to terminate the applicant's appointment.

The Bank's authority to terminate the appointment was explicity provided for in the Letter of Appointment. The Tribunal rejected the applicant's contention that the termination was based upon such motives as hatred, malice, prejudice and bad faith. It found that the termination was not improperly motivated.

The Tribunal ruled, however, that a notice of termination should communicate to the staff member concerned the true reason for the decision. By failing to state accurately the said reason in the notice of termination, the Bank impaired the applicant's ability to protect his interests. Although prompt and candid disclosure of the true reasons might well not have affected the Tribunal's decision regarding the propriety of the termination, the fact that the true reasons were communicated to the applicant four months later, resulted in the applicant's inability to deal in an informed manner with the Bank's decision. This was a prejudice which called for compensation.

With regard to the applicant's other claims, the Tribunal concluded that they were not substantiated by the facts of the case.

For the above reasons, the Tribunal awarded the applicant compensation in the amount of three months' net base salary and otherwise rejected the application.

3. DECISION NO. 3 (5 JUNE 1981): GEORGE KAVOUKAS ET AL. *v.* INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Article XVII of the Statute of the Tribunal — Time-limit for filing of applications under the said article — Non-receivability of tardy applications

The Statute under which the World Bank Administrative Tribunal was established in 1980 contains a provision in Article XVII whereby the Tribunal is retroactively granted jurisdiction over disputes in which the cause of action arose prior to its establishment but not earlier than 1 January 1979. The action about which applicants were complaining was taken between the aforementioned two dates. Article XVII sets forth a time-limit for filing applications under its provision, namely 90 days after the entry into force of the Statute, that is to say, by 29 September 1980. Applicants having filed their applications on 4 December 1980, they have failed to observe the said time-limit. The Tribunal observed that applicants had not shown any exceptional circumstances which would justify tardiness of their applications, even assuming that Article II of the Statute which sets forth the regular procedure for cases arising after the establishment of the Tribunal were applicable in their case. Under article XVII, which alone governs the present case, the Tribunal was not empowered to consider these applications.

For the above reasons, the Tribunal declared the applications inadmissible.

4. DECISION NO. 4 (5 JUNE 1981): JACQUELINE SMITH SCOTT *v.* INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Article XVII of the Statute of the Tribunal — Conditions for filing of applications under the said article — Non-receivability of tardy applications and of those pertaining to causes of action anterior to 1 January 1979

The Statute under which the World Bank Administrative Tribunal was established in 1980 contains a provision in Article XVII whereby the Tribunal is retroactively granted jurisdiction over disputes in which the cause of action arose prior to its establishment but not earlier than 1 January 1979. The administrative decisions about which Applicant was complaining were all taken before 1 January 1979. Moreover, Article XVII sets forth a time-limit for filing applications under its provision, namely 90 days after the entry into force of the Statute, that is to say, by 29 September 1980. Applicant had filed her applications only on 10 December 1980. She thus met neither of the two conditions of Article XVII.

For the above reasons, the Tribunal declared the application inadmissible.

NOTES

[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 1981, 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 succeeded to the staff member's rights on his death or who can show that he is entitled to rights under any contracts or terms of appointment.

[2] Mme P. Bastid, President; Mr. Endre Ustor, Vice-President; Mr. Herbert Reis, member and Mr. Arnold Kean, alternate member.

[3] Mr. Francisco A. Forteza, Vice-President, presiding; Mr. Samar Sen and Mr. Arnold Kean, members.

[4] Mme P. Bastid, President; Mr. Endre Ustor, Vice-President; Mr. Francisco A. Forteza, Vice-President; Mr. Samar Sen, alternate member.

[5] Mme P. Bastid, President; Mr. Samar Sen; Mr. Arnold Kean, members.

[6] Mr. Endre Ustor, Vice-President, presiding; Mr. Arnold Kean and Mr. Herbert Reis, members.

[7] Mme P. Bastid, President; Mr. Endre Ustor, Vice-President; Mr. Francisco A. Forteza, Vice-President; Mr. Herbert Reis, alternate member (dissenting).

[8] Judgement No. 95, summarized in the *Juridical Yearbook* 1965, p. 207, and Judgement No. 42, summarized in the *Juridical Yearbook*, 1971, p. 152.

[9] On 20 July 1982, the International Court of Justice delivered its Advisory Opinion in the *Case Concerning an Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal*. The Court ruled that the Administrative Tribunal did not err on a question of law relating to the provisions of the Charter of the United Nations and did not commit any excess of the jurisdiction or competence vested in it, thus rejecting, in effect, the application for review of the above Judgement.

[10] Mr. Endre Ustor, Vice-President, presiding; Mr. Arnold Kean and Mr. Herbert Reis, members.

[11] Mr. Endre Ustor, Vice-President, presiding; Mr. Samar Sen and Mr. Arnold Kean, members.

[12] Judgement No. 155, summarized in the *Juridical Yearbook*, 1972, p. 124.

[13] Judgement No. 74. For the text of the judgement, see "*Judgements of the United Nations Administrative Tribunal*, Nos. 71 to 86 (United Nations publication, Sales No. 63.X.1).

[14] Mme P. Bastid, President; Mr. F. A. Forteza, Vice-President; Mr. T. Mutuale, member; Mr. Samar Sen, alternate member.

[15] For a summary of the Judgement, see *Juridical Yearbook*, 1973, p. 107.

[16] Mr. Francisco A. Forteza, Vice-President, presiding; Mr. Samar Sen and Mr. Arnold Kean, members; Mr. T. Mutuale, alternate member.

[17] Mme P. Bastid, President; Mr. Endre Ustor, Vice-President; Mr. Herbert Reis, member.

[18] Mme P. Bastid, President; Mr. Samar Sen and Mr. Herbert Reis, members.

[19] Mme P. Bastid, President; Mr. Francisco A. Forteza, Vice-President; Mr. Arnold Kean, member.

[20] 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 1981, 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, the Inter-Parliamentary Union, the European Molecular Biology Laboratory and the World Tourism Organization. The Tribunal is also competent to hear disputes

with regard to the execution of certain contracts concluded by the International Labour Organisation and disputes relating to the application of the Regulations of the former Staff Pension 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.

[21] Mr. M. Letourneur, President; Mr. A. Grisel, Vice-President; Lord Devlin, Judge.

[22] For a summary of this judgement, see *Juridical Yearbook*, 1980, p. 162.

[23] For a summary of this judgement see *Juridical Yearbook*, 1977, p. 184.

[24] For a summary of this judgement, see *Juridical Yearbook*, 1980, p. 178.

[25] For a summary of this judgement, see *Juridical Yearbook*, 1980, p. 171.

[26] The Tribunal is competent to hear and pass judgement upon any applications alleging non-observance of the contract of employment or terms of appointment, including all pertinent regulations and rules in force at the time of the alleged non-observance, of members of the staff of the International Bank for Reconstruction and Development, the International Development Association and the International Finance Corporation (referred to collectively in the Statute of the Tribunal as the "Bank Group").

The Tribunal is open to any current or former member of the staff of the Bank Group, any person who is entitled to claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

[27] E. Jimenez de Arechaga, President; T. O. Elias, P. Weil, Vice-Presidents; A. K. Abul-Magd, R. Gorman, N. Kumarayya and E. Lauterpacht, members.

[28] Terminology used by the United Nations Administrative Tribunal, see Judgements Nos. 19 to 25, 27 and 53.

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. CREDENTIALS ARRANGEMENTS FOR AN EMERGENCY SPECIAL SESSION — EXTENT TO WHICH THE ARRANGEMENTS MADE FOR THE PRECEDING REGULAR SESSION MAY BE RETAINED

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

1. Due to the emergency nature of an emergency special session of the General Assembly there is a tendency to simplify the rules and practices of the Assembly by applying certain arrangements for the most recent regular session of the Assembly to the emergency session. Thus rule 63 of the rules of procedure provides that the President and Vice-President of an emergency special session shall be, respectively, the chairmen of those delegations from which the President and Vice-Presidents of the previous session were elected. Similarly, the practice has developed whereby the Credentials Committee for an emergency special session has the same composition, and a chairman from the same delegations, as during the preceding regular session.

2. Notwithstanding this assimilation of certain arrangements for purposes of convenience, an emergency special session is different from the preceding regular session and representatives to the emergency session are required to submit credentials empowering them to represent their respective States at that session in accordance with rule 27 of the rules of procedure of the Assembly. Permanent Representatives whose credentials entitle them to represent their respective States at all sessions of the General Assembly are not required, of course, to submit special credentials for a special emergency special session.

31 August 1981

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2. QUESTION WHETHER A REDUCTION, DUE TO FINANCIAL STRINGENCY, OF THE SERVICES OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST (UNRWA) WOULD REQUIRE PRIOR CONSIDERATION BY THE GENERAL ASSEMBLY

Memorandum to the Commissioner-General of UNRWA

1. This is in response to a request for a legal opinion concerning the suggestion that certain drastic reductions in the Agency's program that might be necessitated by the non-availability of funds may only be undertaken after the matter had been referred to the General Assembly.

2. You will recall that the question of the authority, indeed the obligation of the Commissioner-General, to reduce the Agency's program if the funds for continued operations were not available, constituted the subject of a legal opinion on 26 June 1975 (A/10013, Annex IV). That opinion held, *inter alia*, that the Commissioner-General is "responsible to the General Assembly for the prudent conduct of UNRWA operations. Such conduct would necessarily involve a planned reduction of services if maintenance of such services at current levels would, in the Commissioner-General's view, lead to the bankruptcy and consequent collapse of UNRWA". The legal circumstances on which that opinion was based have not changed in any essential respect, and thus the conclusions then stated are still applicable in the present situation.

3. Article 9.5 of the Financial Regulations of UNRWA, adopted pursuant to paragraph 9(*c*) of General Assembly resolution 302 (IV) by which the Agency was established, provides since 1967 that:

> "After consideration by the General Assembly the budget shall constitute authority to the Commissioner-General to incur commitments and to make disbursements for the purposes provided, to the extent that contributions are actually received or other funds are actually available, provided that the Commissioner-General may additionally incur commitments against contributions pledged by governments but not yet received where the contributing governments have confirmed that their contributions will apply to the budget of the current or a prior fiscal year and will be paid in a currency which the Agency can use to meet commitments incurred against such contributions."

It is thus clear that, within the limits of the budget considered by the General Assembly,[1] the Commissioner-General's authority to incur commitments and make disbursements is absolutely limited to funds actually available and to certain confirmed governmental pledges. As the Commissioner-General may not incur commitments in excess of these specified amounts, he has no choice but to conduct the Agency's operations in such a way that he does not incur such excess commitments. Even aside from the Financial Regulations, it must be recognized that he has no authority either to borrow funds or to commit the United Nations to obligations, *vis à vis* either staff or suppliers, that might have to be paid from funds other than those available for the Agency, so that he must conduct the Agency's operations within the limits of those funds.

4. The General Assembly was given full opportunity at its thirty-fifth session to consider the question of the possible forced reduction of services, as the Commissioner-General called its attention to this likelihood repeatedly, both in his formal report[2] and in his oral statements;[3] nevertheless, the Assembly gave no special directive to the Commissioner-General, but merely addressed an appeal to Governments to increase their contributions (resolution 35/13A, para. 7). If the funds available to UNRWA are insufficient to permit full operations until the Assembly can again be consulted, the Commissioner-General must take the necessary actions to protect the Agency's financial situation in good time. He has no authority to propose the convening of a special session of the General Assembly; however, through his several warnings, including those addressed to the Advisory Committee of UNRWA, he has enabled any Member State concerned to propose convening a special session of the Assembly pursuant to rule 9(*a*) of the rules of procedure.

16 March 1981

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3. Treaties concluded by South Africa which "explicitly or implicitly include Namibia" under the terms of paragraph 9(*i*) of General Assembly resolution 3031 (XXVII) — Scope of applicability of the principle that treaties of this type concluded subsequent to the termination of South Africa's mandate have no legal application to Namibia

Memorandum to the Director, Office of the Commissioner for Namibia

1. I wish to refer to your memorandum of 17 March 1981 on the above subject and, specifically, to the request of Standing Committee I of the United Nations Council for Namibia for advice on the question of the "replacement" of South Africa as the party representing Namibia in all relevant bilateral and multilateral treaties.

2. Before responding to the specific questions raised, it may be useful to state the view of this Office that resolution 3031 (XXVII) does not postulate *de jure* succession. The Council for Namibia is not a State but a subsidiary organ of the General Assembly charged with the responsibility for administering the territory until independence. As was pointed out in the Secretary-General's Written Statement to the International Court of Justice" . . . it will be for the future lawful Government of Namibia to determine the extent of its continuing treaty relationships, arising from past as well as current treaties, in accordance with the relevant principles of international law".[4]

These principles are now codified in the Vienna Convention on Succession of States in Respect of Treaties of 1978.[5]

3. The foregoing clarification is necessary in order to avoid any misconception or confusion as to the legal nature and scope of the role of the Council for Namibia with respect to bilateral and multilateral treaties affecting Namibia, pursuant to relevant General Assembly and Security Council resolutions. The "replacement" of South Africa as the party representing Namibia in bilateral and multilateral treaties is, strictly speaking, a function of the Council's administering authority, as defined by the General Assembly, pending the achievement of independence by Namibia.

4. With regard to treaties concluded by South Africa purporting to apply to Namibia subsequent to the General Assembly's termination of South Africa's mandate, this Office, as was stated in the Secretary-General's Written Statement referred to above, is of the view that they have no legal application to Namibia by operation of law. This results from the fact that upon termination of the Mandate, South Africa had no right or authority to act for Namibia. Such treaties would be void *ab initio* in respect of Namibia and the question of "replacing" South Africa in such treaties does not arise. Consequently, no decision of the Council is necessary in respect of this class of treaties. The question whether the Council for Namibia might accede to such treaties or become an original signatory to a particular treaty will depend on the terms of the treaty.

5. The exception referred to in paragraph 122 of the Advisory Opinion[6] relates to *existing* multilateral treaties of a humanitarian character, i.e., treaties entered into prior to revocation of the mandate and not to treaties entered into post-revocation. This is clear from a careful reading of paragraph 122. Obviously, if the position is taken that all treaties entered into by South Africa on behalf of Namibia post-revocation are inapplicable by operation of law, no exception is possible. One may, however, conceive of other ways in which this class of treaties may nevertheless be regarded as applicable to Namibia.

6. Turning first to existing multilateral treaties of a humanitarian character, how are these to be identified and which organ is competent to take the necessary measures? While the Court does not define what is meant by the term "general conventions of a humanitarian character", it would certainly include the 1949 Geneva Conventions and international human rights instruments. In regard to this class of treaties, the competent organ and the measures to be taken must be determined by reference to the terms of the particular treaty.

7. With regard to such treaties entered into post-revocation, while they may not be made applicable to Namibia in the same manner as existing treaties, in the view of this Office, to the extent that such treaties may be characterized as *jus cogens*, or as representing a rule of customary international law they are applicable to Namibia.

8. Paragraph 125 of the Advisory Opinion refers to the continuing in force for the people of Namibia of the advantages deriving from international cooperation. This would include treaties which are the constituent instruments of international organizations. With regard to this class of treaties, the competent organ would normally be the governing body of the organization (Assembly, Council, etc.) and the measures to be taken would be determined by the terms of the constituent instrument itself. This had been the case with respect to such agencies as the ILO, FAO, UNESCO and WHO.

9. With regard to bilateral treaties extended to Namibia prior to revocation of the Mandate the obligation, correctly stated by the Court in our view, is that Member States must abstain from invoking or applying treaties or provisions of treaties concerning Namibia which would involve active intergovernmental cooperation. Paragraph 124 of the Written Statement cites an example of such a treaty.

10. As regards the possible termination or suspension of existing bilateral treaties, this Office is of the view of that the Vienna Convention on the Law of Treaties[7] establishes the necessary rules to be invoked as between the parties to such a treaty.

11. Finally, you have asked for the advice of this Office on the action to be taken in relation to the Agreement between the Minister of Finance of the Union and the Administrator of the Territory of South West Africa for the avoidance of double taxation. This document is not and

cannot be regarded as an international agreement. At the time of its conclusion in 1959, South West Africa was a territory under Mandate in accordance with the 1950 Advisory Opinion of the International Court of Justice.[8] As such, South Africa's rights and obligations *vis-à-vis* South West Africa were governed by the Mandate instrument of 17 December 1920, Article 2 of which provided that the Mandatory (South Africa) shall have full power of administration and legislation over the territory. The Agreement in question was, therefore, merely an internal administrative act and not an international agreement. As such it does not call for any action by the Council pursuant to paragraph 9(*i*) of General Assembly resolution 3031 (XXVII).

8 April 1981

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4. PROVISIONS OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE CONCERNING THE FILLING OF CASUAL VACANCIES ON THE COURT — QUESTION WHETHER, NOTWITHSTANDING THOSE PROVISIONS, A SPECIAL ELECTION FOR THE FILLING OF A CASUAL VACANCY COULD BE DISPENSED WITH IN CASE REGULAR ELECTIONS ARE SCHEDULED TO BE HELD WITHIN A BRIEF PERIOD FROM THE EARLIEST POSSIBLE DATE AT WHICH THE SPECIAL ELECTION COULD TAKE PLACE

Memorandum to the President of the Security Council

1. By a communication of 17 August 1981, the Registry of the International Court of Justice informed the Secretary-General of the death, on 15 August 1981, of the President of the Court, Sir Humphrey Waldock (United Kingdom of Great Britain and Northern Ireland). Sir Humphrey Waldock had been elected to the Court on 30 October 1972, for a term of office to expire on 5 February 1982. His seat is one of the five seats to be filled for a regular nine-year term, commencing on 6 February 1982, during the elections to the Court to be held in the Security Council and in the General Assembly during the forthcoming thirty-sixth session of the General Assembly.

2. Sir Humphrey Waldock's death has occasioned a casual vacancy on the Court. The Statute contains a number of provisions for filling such vacancies.

Article 14 of the Statute provides:

> "Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council."

Article 5, paragraph 1, of the Statute provides:

> "At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the States which are parties to the present Statute, and to members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court."

Article 15 provides:

> "A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term."

3. The foregoing provisions lay down a procedure for filling casual vacancies whereby the Council fixes the date of the election at least three months after the request for nominations to fill the vacancy has been sent out by the Secretary-General. This statutory three-month minimum time-limit has always been observed,[9] even in cases where this has resulted in a lapse of almost a year between the occurrence of a vacancy and the election to fill it.

4. Sir Humphrey has died closer to the end of his term of office than any other judge in the history of the present court. Were the provisions of Article 14 of the Statute to be deemed to apply

in the circumstances, a situation would result where a regular election to fill the seat concerned for a nine-year term of office, commencing on 6 February 1982, would in all probability be held before a casual election to fill the same seat for a brief period of a number of weeks ending on 5 February 1982. Because of the three-month time-limit between the dispatch of invitations for nomination of candidates and the election to fill the casual vacancy, as well as the preparation of the necessary documentation, that election could not take place at the earliest before the very end of November 1981 and a date in the middle of or late December would be more realistic. Regular elections are normally held in October of the year in which they take place.

5. Having in mind its responsibilities under Article 14 of the Statute of the Court to fix the date of an election to fill a casual vacancy, the Security Council may wish to consider whether that article necessarily applies in the circumstances described above. The legislative history of the article indicates that its purpose was to obviate extensive delays in the filling of casual vacancies and there is no indication it was meant to apply where only very brief periods are involved. In the present case no extensive delay would be occasioned by leaving the casual vacancy open, as the seat concerned would be filled during the regular elections for a term of office commencing on 6 February 1982. Having regard to the fact that periods of almost a year have in a number of cases elapsed between the occurrence of a casual vacancy and the election to fill it, the practice of the Security Council and of the General Assembly would also support a conclusion that, in the circumstances, the intention underlying Article 14 would equally well be served by leaving the casual vacancy open and filling the seat at the regular election.

6. Were the Security Council to endorse the suggestion just made, it would be unnecessary for a special election to be held at the very end of November or in December 1981 to fill the casual vacancy, and the Secretary-General would not be required to invite nominations for such an election. The dispatch of such invitations has been delayed, pending an indication of the Council's decision.

7. The President of the Council may wish to raise the matter referred to in this memorandum with the members of the Council at any early date in order that a timely decision may be made.

19 August 1981

ANNEX

NOTE ON THE PRACTICE OF THE UNITED NATIONS AND THE LEAGUE OF NATIONS IN FILLING CASUAL VACANCIES ON THE INTERNATIONAL COURT OF JUSTICE — QUESTION OF THE APPLICATION OF THE THREE MONTHS' LIMIT PROVIDED FOR IN ARTICLE 5 OF THE STATUTE OF THE COURT

Introduction

1. Article 14 of the International Court of Justice provides as follows:

> "Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council."

Article 5, paragraph 1, reads:

> "1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the States which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court."

Under the foregoing provisions it is the duty of the Secretary-General to send out invitations calling for nominations. In this respect, it has always been the understanding of the Secretariat that the three months' period provided for in Article 5 of the Statute between the dispatch of invitations and the earliest possible date for elections applies not only to regular elections, but also to the filling of occasional vacancies. This understanding has been based on the legislative history of the relevant Article of the Statute, namely Article 14, as well as on past practice.

Legislative history of Article 14 of the Statute of the Court

2. In the original Statute, which came into force in 1921, Article 14 provided only that "vacancies shall be filled by the same method as that laid down for the original election". In the revised Statute, which came

into force in 1936, Article 14 contained provisions requiring the Secretary-General to issue invitations within one month of the occurrence of the vacancy, and requiring the Council to fix the date of the election. Save for the drafting changes necessitated by substitution of United Nations organs for League organs, the above text is substantially the present text. The minutes of the Committee of Jurists which drafted the revised text in 1929 reveal that the amendments to Article 14 were intended to lessen unduly extended delays, by requiring the Secretary-General to send out invitations promptly and by envisaging the possibility that the Council, in the appropriate case, might also convene an extraordinary session of the Assembly for the purpose of the election. However, the minutes also clearly show that the three month period stipulated for in Article 5 between dispatch of invitations and the earliest possible date for the election was intended to apply. Mr. Fromageot, the sponsor of the amendments to Article 14, is recorded[10] as saying that "the Secretary-General might . . . proceed to the notification provided for in Article 5, and the date of the election might be fixed to coincide with the sessions of the Council following the expiry of the period of three months during which the national groups selected their candidates". Mr. Formageot, therefore, expressly referred to the three month period in relation to the filling of an occasional vacancy.

Past practice of the League of Nations and of the United Nations in filling casual vacancies

3. The above interpretation of Article 14 has been confirmed by reference to actual practice. Two special elections were arranged for and carried out by the League after the amended version of Article 14 came into force in 1936. In both cases, considerably more than three months elapsed between the date of the vacancy and the date of the election.[11] Nine occasional vacancies, prior to the present one occasioned by the death of Sir Humphrey Waldock, have occurred[12] in the International Court of Justice since its establishment, and, again, more than three months have, in each case, elapsed between the dispatch of invitations and the holding of the election in the Security Council and in the General Assembly. One judge, Sir Benegal Rau, died in November 1953 during the eighth regular session of the General Assembly, but the election to fill the vacancy was not held until October of the following year during the next session of the Assembly. Judge Guerrero, likewise, died in October 1958, during the thirteenth regular session of the General Assembly. On 25 November 1958 the Security Council adopted a resolution, at its 840th meeting, providing that the election to fill this vacancy "shall take place during the fourteenth session of the General Assembly or during a special session before the fourteenth session". From the terms of this resolution, it may be inferred that the Council was giving effect to the minimum three month limit, as it would otherwise have been open for it to decide that the election should be held during the then current thirteenth session of the General Assembly. The election to fill this vacancy was in fact held in September 1959. Judge Abdel Hamid Badawi died on 4 August 1965, just prior to the opening of the twentieth regular session of the General Assembly in September 1965. On 10 August 1965, the Council adopted a resolution, at its 1236th meeting, providing that "an election to fill the vacancy shall take place during the twentieth session of the General Assembly". The note by the Secretary-General submitted to the Security Council on this occasion (S/6599) provided that the:

> " . . . Council may wish to decide that the election to fill the vacancy shall take place during the twentieth session of the General Assembly. This would be done on the understanding that the actual election would be held on a date subsequent to the expiry of the three-month time-limit specified in Article 5, paragraph 1, of the Statute."

No disagreement was voiced either in the Council or in the General Assembly regarding this interpretation of the application of the minimum three month time limit, and the election was in fact held on 16 November 1965, more than three months after the despatch of the invitations for nominations (12 August 1965). Judges Richard R. Baxter and Salah El Dine Tarazi died on 25 September and 4 October 1980 respectively, after the opening of the thirty-fifth regular session of the General Assembly. In the note submitted by the Secretary-General to the Security Council concerning the date of the elections to fill these two vacancies (S/14246), reference was made to the dates of dispatch of invitations for nominations to fill the vacancies and it was stated that "the three-month time-limit will expire on 8 January 1981". The Secretary-General then proposed that the Council might "wish to decide that the elections to fill the vacancies shall take place during a resumed thirty-fifth session of the General Assembly in January 1981". By its resolution 480 (1980) of 12 November 1980 the Council decided "that elections to fill the vacancies shall take place on 15 January 1981 at a meeting of the Security Council and at a meeting of the resumed thirty-fifth session of the General Assembly".

4. Obviously the three months' rule was inserted in Article 5 to give sufficient time for the completion of the nomination procedures provided for in the Statute. These procedures may be lengthy in certain instances. This consideration applies not only to nominations for regular elections, but also to nominations for casual vacancies. The Security Council and the General Assembly have clearly recognized that the three months' rule is a minimum statutory requirement.

18 August 1981

5. FILLING OF A CASUAL VACANCY ON THE INTERNATIONAL COURT OF JUSTICE — REQUIREMENT UNDER THE STATUTE OF THE COURT THAT ELECTIONS BE HELD CONCURRENTLY IN THE SECURITY COUNCIL AND IN THE GENERAL ASSEMBLY — ALTERNATIVES OPEN TO THE SECURITY COUNCIL IN FIXING THE DATE OF THE ELECTION

Memorandum to the President of the Security Council

1. The President of the International Court of Justice, by a communication dated 12 December 1981, has informed the Secretary-General of the death, on 12 December, of Judge Abdullah El-Erian (Egypt). It will be recalled that Judge El-Erian was elected to the International Court of Justice by the Security Council and the General Assembly on 31 October 1978 for a term to expire on 5 February 1988. Thus a vacancy in the Court has occured and it must be filled in accordance with the terms of the Statute of the International Court of Justice.[13]

2. Article 14 of the Statute provides:

> "Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provisions: the Secretary-General shall within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council."

Article 5, paragraph 1, of the Statute provides:

> "At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the States which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a Member of the Court."

3. Since, under Article 14 of the Statute, the Security Council has to fix the date of the election, it is suggested that the Council might consider this question at an early meeting. It will be noted that Article 5 of the Statute provided for a three month delay between the dispatch of invitations for nominations and the date of the election. The invitations are being dispatched within the next few days. As the three month delay is considered to be mandatory, the election could take place any time after late March 1982.

4. Elections to the Court are, under its Statute, held concurrently in the Security Council and the General Assembly, which meet simultaneously to conduct the balloting. In fixing the date for election, the Security Council could either decide that:

(*a*) The election should be held at a resumed meeting of the thirty-sixth session held any time after late March 1982. It is my understanding that the thirty-sixth session will not be closed, but will recess towards the end of this week, with one or two items being carried over to a resumed session next year. There is already an item on the agenda of the current session on elections to the International Court of Justice, which could also be carried over by the Assembly if the Security Council were to act before the end of this week to decide that the election be held at a meeting of the resumed thirty-sixth session.

(*b*) The election should be held at the thirty-seventh regular session of the General Assembly or at any special session prior to that date.

5. The first alternative set out above has the clear advantage of filling the vacancy on the Court as expeditiously as the Statute permits, and thus allowing the Court to function with a full complement of judges at a time when several important cases may be considered. It would also follow the most recent precedents, where vacancies on the Court arising as the result of the deaths of two judges late in 1980 were filled at elections held at a resumed thirty-fifth session early in 1981. To postpone the election until the thirty-seventh session would leave a vacancy on the Court for a long period.

14 December 1981

6. QUESTION WHETHER THERE WOULD BE ANY LEGAL IMPEDIMENT TO THE ADOPTION OF A DECLARATION BY A UNITED NATIONS BODY OTHER THAN THE GENERAL ASSEMBLY OR A SPECIAL CONFERENCE — STATUS OF DECLARATIONS AND RECOMMENDATIONS IN UNITED NATIONS PRACTICE

Cable to the Legal Liaison Officer, United Nations Environment Programme

We refer to your query concerning the proposed adoption of a declaration by the Governing Council of UNEP at its forthcoming special session. From the legal standpoint there would be no impediment to the adoption of a declaration by the Governing Council. In the practice of the United Nations a Declaration is a formal and solemn instrument suitable for those occasions when principles considered to be of special importance are being enunciated. Apart from the solemnity and formality associated with a declaration there is legally no distinction between a declaration and a recommendation which is less formal. In the practice of the United Nations all declarations of major importance have been adopted by resolution of the General Assembly or by special United Nations conferences. At its sixty-first session the Economic and Social Council exceptionally adopted the Declaration of Abidjan by resolution 2009 (LXI) of 9 July 1976 but because of its general nature this is probably not a useful example. We are not aware of any significant declarations having been adopted by other United Nations bodies.

16 November 1981

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7. QUESTION WHETHER A FORMAL AGREEMENT OF CO-OPERATION CAN BE CONCLUDED BETWEEN THE UNITED NATIONS SECRETARIAT AND AN INTERGOVERNMENTAL ORGANIZATION IN THE ABSENCE OF AN EXPRESS AUTHORIZATION OF THE GENERAL ASSEMBLY TO THAT EFFECT

Memorandum to the Chief, Executive Office of the Administrator, United Nations Development Programme

1. This is in reply to your memorandum of 2 April 1981 requesting our views regarding the formalization of co-operation between UNDP and the Organization of the Islamic Conference (OIC).

2. The question whether a formal agreement on co-operation can be concluded between the United Nations Secretariat and intergovernmental organizations has been considered on several occasions and for legal and other considerations a negative reply was given in nearly every case. As a matter of general policy it was usually decided not to conclude such formal agreements without express authorization from the General Assembly or other competent deliberative organs. Hence, except in the case of an agreement on co-operation between the Secretariats of ECA and the OAU, there are no precedents where the United Nations formally concluded general agreements on co-operation with intergovernmental organizations such as OAU, OAS and the League of Arab States. In light of this policy and since there is no compelling legal reason to the contrary, we recommend that, unless the appropriate authority specifically authorizes the formal conclusion of agreements on co-operation, these relationships be based on an informal memorandum of understanding and not on a formal agreement. We draw your attention in this connection to the memorandum of understanding with the League of Arab States which has served as the basis for co-operation between the Secretariats of the two organizations for many years.

27 April 1981

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8. ARTICLES 20 AND 4 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES — PRACTICE OF THE SECRETARY-GENERAL AS DEPOSITARY OF MULTILATERAL TREATIES WHEN MAKING NOTIFICATION OF THE ENTRY INTO FORCE OF A TREATY TO WHICH RESERVATIONS HAVE BEEN MADE

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

With reference to your letter please find below the Secretariat comments on the queries from the Ministry of Foreign Affairs of your country concerning certain points of the Vienna Convention on the Law of Treaties.

I. *Article 20*

1. Sub-paragraph 4(*c*) of article 20 determines the moment at which a reserving State may be considered as a State which has ratified or otherwise become bound by a treaty. Paragraph 5 provides for the conditions under which, in the absence of objections, reservations are to be considered as tacitly accepted.

2. In this regard attention is directed to the comments made by the Secretary-General on the corresponding provisions of the ILC draft articles on the law of treaties (namely paragraphs 4(*c*) and 5 of article 17), provisions which were incorporated without change into the Vienna Convention.[14]

> "The relation between this article [article 17] and the practice of the Secretary-General regarding entry into force of treaties is not quite clear. The Secretary-General, in accordance with General Assembly resolutions 598 (VI) and 1452 B (XIV), is precluded from passing upon the legal effects of instruments containing reservations or of objections to them. The situation, for depositaries as well as States, will be somewhat clarified by paragraph 4(*c*) of draft article 17, which provides that an act expressing a State's consent to be bound is effective as soon as at least one other contracting State has accepted the reservation, but it may be anticipated that, in the future as in the past, express acceptance of reservations will be rare, and that much will continue to depend upon tacit acceptance. In the situation that has thus far existed, the practice of the Secretary-General, when required to make notification of the entry into force of a convention to which reservations have been made, has been as follows. When he has received the number of instruments specified in the treaty as required for entry into force (whether or not reservations in those instruments have been objected to or expressly accepted), the Secretary-General makes a notification referring to the entry into force clause of the treaty, to the receipt of the number of instruments specified therein, and to any objections that have been made to the reservations. Ninety days after such notification, if no objection to entry into force has been received, the Secretary-General proceeds with the registration of the treaty as having entered into force on the date of receipt of the necessary number of instruments. No objection has ever been received either to entry into force or to the ninety-day period allowed for States to express their views.
>
> "Article 17, paragraph 5, states that a State is not considered to have tacitly accepted a reservation until the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later. Is the effect of this time-limit, in the absence of any express acceptance of a reservation, to prevent an instrument containing that reservation from being counted towards entry into force until twelve months after notification has been given of the reservation? If so, there may be considerably more delay in the entry into force of treaties than under the present practice of the Secretary-General. Should this be considered undesirable, a remedy could be found by shortening the period of twelve months specified in paragraph 5."

3. The relevant practice of the Secretary-General since 1967 has developed on the basis of the same principles:

— When a treaty is in force and a State deposits an instrument of ratification, acceptance, approval or accession that contains a reservation, the Secretary-General indicates the date of entry into force for that State under the provisions of the treaty, subject to the legal effects that each party might wish to draw from the reservation as regards the application of the treaty.

— For the purpose of determining the general entry into force of the treaty, the Secretary-General takes into account instruments accompanied by reservations that have not given rise to objections within a period of 90 days from their circulation,[15] thereby presuming that States that have not objected to a reservation within the 90-day time limit are likewise not objecting to counting the instruments in question for the purpose of the entry into force of the treaty. This does not imply specific acceptance of the reservation and it is understood that each State remains free to notify the Secretary-General, through an objection, of the legal consequences it attaches to the reservation in its treaty relations with the reserving State. The Secretary-General's practice in this regard is compatible with the provisions of the Vienna Convention.

II. *Article 4*

4. The Vienna Convention on the Law of Treaties, as all other codification conventions, poses the problem of determining the applicability of its provisions following entry into force in relations between contracting and non-contracting States. Article 4 of the Convention, concerning its non-retroactivity, relates to this problem. The Secretary-General, however, is not authorized to offer any interpretation. The right to interpret the Convention belongs to the parties and prospective parties thereto, and was exercised by the Swedish delegation in its statement at the thirtieth plenary meeting of the Vienna Conference on 19 May 1969,[16] as well as by Ecuador in the declaration it made upon signature of the Convention.[17] It may nevertheless be noted that this question seems to be of a more theoretical than practical nature. Although only thirty-nine States have ratified or acceded to the Convention,[18] a great majority, if not the whole of the international community, in practice appears to follow the rules of international law codified by the Convention.

7 May 1981

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9. International Cocoa Agreement, 1980 — Provision under which the Agreement may be put in force "in whole or in part" — Legal meaning and intent of this phrase — Limits to the freedom of action of Governments in deciding to put the Agreement in force partially

Cable to the Deputy Secretary-General, United Nations Conference on Trade and Development

1. You have asked for our views on the meaning of the phrase "in whole or in part" appearing in article 66, paragraph 3[19] of the International Cocoa Agreement, 1980. Our comments on this question and related questions arising from article 66 (3) are as follows.

2. It should first of all be pointed out that the United Nations has no special authority to interpret commodity agreements or proposed agreements, except insofar as depositary functions are concerned. Therefore, in spite of any opinions expressed herein, the States concerned remain free in their interpretations of the text of the International Cocoa Agreement, 1980.

3. Although the concept of putting an agreement into force in whole or in part, as provided in article 66, paragraph 3 of the International Cocoa Agreement, 1980, has appeared in earlier commodity agreements, it has never actually been tested or resorted to in the past. Therefore, any attempt to ascertain the legal meaning of the concept cannot be based on practice. It may, however, be noted that the International Sugar Agreement, 1973, which contains no economic provisions, provides in article 36, paragraph 3 that the International Sugar Agreement may be put into force in whole or in part, which suggests that even the merely administrative provisions might be put into force in part.

4. The concept of putting an agreement into force "in part" seems intended to permit the entry into force of a "modified" agreement so as to ensure the continued existence of an existing commodity organization established by an earlier but expiring commodity agreement. It permits the countries concerned, subject to what is said below, to determine the provisions which they wish to put into force, whether these are the economic provisions or the administrative provisions, or some combination of both.

5. Article 66, paragraph 3 of the International Cocoa Agreement, 1980 does not explicitly state that the agreement can be put into force by stages over a period of time, e.g. first the administrative provisions and later the economic provisions. Although the last sentence of the article foresees the possibility of meetings subsequent to the one convened by the Secretary-General, no mention is made that at such future meetings additional parts of the agreement may be put into force.

6. If the countries concerned decide to put the agreement into force partially, either provisionally or definitively, (i) they should not negotiate a new agreement in the context of the existing Agreement; (ii) they should not indiscriminately select the provisions to be put into force, because

doing so could amount to circumventing the basic purpose and objective of the new agreement; and (iii) they should not make basic changes to individual provisions, except for adaptations, where required, to permit the proper functioning of the agreement among a limited number of countries and to ensure consistency among the provisions that are put into force.

7. As article 66, paragraph 3 does not contain a time-limit for putting the agreement into force, the countries concerned may decide to postpone that decision and take it at a later date.

8. Article 66, paragraph 3 does not require a minimum number of countries to participate in the meeting convened pursuant to that article, nor does it require a particular majority of the countries convened in order to put the agreement into force among themselves. In other words one or more countries that have deposited a ratification, notification or similar instrument cannot block a decision by other such countries, either by staying away from the meeting or by "voting" against a decision to put the agreement into force, but, of course, any objecting or non-participating country would not be bound by the agreement.

9. In any event, if the countries do not decide to put the agreement into force, any obligations they might have in respect of the agreement, by virtue of articles 18 and 30 of the Vienna Convention on the Law of Treaties, would be cancelled. Therefore an entirely new agreement could then be negotiated, which could take the form of a text largely based on the 1980 text, with any departures therefrom that are considered desirable.

10. The meeting convened pursuant to article 66, paragraph 3 could decide to be guided by the rules of procedure of the 1980 United Nations Cocoa Conference, *mutatis mutandis*.

11. In view of this uncertainty with respect to putting a commodity agreement into force "in part", it appears desirable to state in future agreements whether they can be put into force stage by stage.

12 June 1981

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10. Convention on the Prevention and Punishment of the Crime of Genocide — Submission by a State Party of an instrument withdrawing reservations made at the time of ratification and formulating new reservations — Practice of the Secretary-General as depositary of multilateral treaties with respect to reservations

Internal memorandum

1. By a letter dated on 9 September 1981, addressed to the Legal Counsel, the Permanent Representative of [name of a Member State] to the United Nations transmitted a formal instrument under the signature of the Acting Minister for External Relations of his country withdrawing the Declarations to articles IX and XII of the Convention on the Prevention and Punishment of the Crime of Genocide made by the State in question at the time of deposit of the instrument of ratification of the said Convention, and making new declarations in their place.

2. It appears that in substance the above action can be analyzed as follows:

(i) Withdrawal of objections made by the Member State concerned, at the time of ratification, in respect of reservations effected by certain States concerning articles IX and XII of the Convention, and

(ii) Formulation of new reservations by the said Member State in respect of articles IX and XII of the said Convention.

3. Under the international practice to which the Secretary-General, in his capacity as the depositary of multilateral agreements, has consistently adhered, the withdrawal of reservations and of objections to reservations may be effected at any moment, and the action referred to under paragraph 2(i) above does not, consequently, present any difficulty.

4. Under the same practice, on the other hand, the formulation of reservations may be effected only upon signature, ratification, acceptance, approval or accession, or with the unanimous consent of the parties concerned.

5. In this light, one alternative might be for the Government concerned to denounce the Convention and accede thereto with the new reservations that it wishes to formulate. Attention is drawn, however, to article XIV of the Convention (relating to denunciation), which reads as follows:

"The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

"It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

"Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations."

The Convention having entered into force on 12 January 1951, the first period provided for under the above article expired on 11 January 1961, and the following ones on 11 January 1966, 11 January 1971, 11 January 1976 and 11 January 1981, respectively. The current period will expire on 11 January 1986 and, consequently, denunciation of the Convention will have to be effected by 11 July 1985 for the Convention to cease to have effect in respect of the Member State concerned on 12 January 1986.

6. Under the circumstances, the Government of the Member State concerned may wish to effect immediate withdrawal of the objections referred to in paragraph 2(i) above and, simultaneously or at a later stage (in any case by 11 July 1985 at the latest), denounce the Convention as ratified on behalf of the Member State in question on 4 March 1953 and accede thereto with the reservations included in the letter from the Acting Minister for External Relations dated 25 August 1981, the said denunciation and accession to take effect on 12 January 1986.

7. Alternatively, the Government might want to consider circulation by the Secretary-General, in his capacity as the depositary, to all parties concerned, of the proposal contained in the Acting Minister's letter. In the absence of objections by any of those States within 90 days from the date of circulation, the new reservations would be deemed to have been accepted and would be deposited as part of the Member State's ratification of the Genocide Convention, it being understood that the withdrawal of the original objections would take effect as at 15 September 1981, the date of receipt of the Acting Minister's letter of 25 August 1981.

13 November 1981

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11. CONVENTION SUR LA PRÉVENTION ET LA RÉPRESSION DES INFRACTIONS CONTRE LES PERSONNES JOUISSANT D'UNE PROTECTION INTERNATIONALE, Y COMPRIS LES AGENTS DIPLOMATIQUES — QUESTION DE SAVOIR SI LES COMMUNICATIONS QUE LES ETATS PARTIES SONT TENUS D'ADRESSER AU SECRÉTAIRE GÉNÉRAL EN VERTU DE L'ARTICLE 11 CONCERNANT LE RÉSULTAT DE PROCÉDURES PÉNALES ENTRENT DANS LE CADRE DES FONCTIONS DÉPOSITAIRES

Memorandum intérieur

1. L'article 11 de la Convention sur la prévention et la répression des infractions contre les personnes jouissant d'une protection internationale, y compris les agents diplomatiques[20] se lit ainsi :

"L'Etat partie dans lequel une action pénale a été engagée contre l'auteur présumé de l'infraction en communique le résultat définitif au Secrétaire général de l'Organisation des Nations Unies, qui en informe les autres Etats parties."

En exécution de cet article, un Etat partie a communiqué au Secrétaire général par note n° 501/80 du 7 janvier 1981 un rapport sur une procédure pénale intervenue sur son territoire.

2. Cette communication est la première de ce genre, et la question qui se pose à cet égard est de déterminer quel est le service du Secrétariat auquel incombera la responsabilité de diffuser aux Etats parties cette catégorie d'information. Il est au surplus probable que dans l'avenir le Secrétaire général recevra d'autres communications semblables, en vertu soit de l'article 11 soit des paragraphes 1 des articles 5 et 6 de la Convention.

3. La circulation de ce genre de communications ne paraît pas être du ressort des fonctions dépositaires, comme le sont par exemple les notifications relatives aux signatures, aux ratifications ou à l'entrée en vigueur ou celles qui visent la désignation d'autorités. Ces communications "d'information" ne modifient pas le statut ou la portée de la Convention; elles se rapportent davantage à des fonctions administratives qui, en général, incombent au service administratif chargé du contrôle de l'exécution d'une convention. Ainsi en va-t-il, par exemple, de la communication des rapports sur les droits de l'homme en vertu des Pactes internationaux relatifs aux droits de l'homme[21], de la communication de renseignements sur les objets spatiaux lancés sur orbite en vertu de la Convention sur l'immatriculation des objets lancés dans l'espace extra-atmosphérique[22] et de la diffusion des renseignements relatifs à la Convention internationale sur l'élimination et la répression du crime d'*apartheid*[23].

19 janvier 1981

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12. IMPOSITION BY A MEMBER STATE OF CLEARANCE PROCEDURES REGARDING UNITED NATIONS MATERIALS — IMMUNITY OF THE UNITED NATIONS FROM CENSORSHIP

Memorandum to the Director, External Relations Division, Department of Public Information

1. You have requested a legal opinion on the imposition by a Member State of clearance procedures regarding United Nations materials emanating from a United Nations Information Centre.

2. The position of the United Nations with regard to the "clearance" of its publications or any official materials is firmly rooted in the provisions of the Charter and the Convention on the Privileges and Immunities of the United Nations to which the Member State concerned is a party.

3. In general terms, Article 100 of the Charter provides 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, while Member States, for their part, undertake to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

4. A number of provisions of the Convention on the Privileges and Immunities of the United Nations directly or indirectly support the position that United Nations materials cannot be submitted to any form of prior censorship. Section 3 provides that the property and assets of the organization shall be immune from any form of interference by executive, administrative, judicial or legislative action and Section 4 provides that all documents belonging to or held by the United Nations shall be inviolable.

5. It is clear from the foregoing that, as a matter of law, the United Nations cannot be subjected to censorship by a Member State. Furthermore, it may be remarked that in practice the United Nations has rarely, if at all, been confronted with the problem of censorship.

29 October 1981

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13. RULES GOVERNING THE USE AND DISPLAY OF DISTINCTIVE EMBLEMS BY UNITED NATIONS ORGANS — PRACTICE OF THE UNITED NATIONS CHILDREN'S FUND (UNICEF) IN THIS REGARD

Memorandum to the Special Assistant to the Executive Director, United Nations Children's Fund

1. The present emblem of the United Nations was adopted by the General Assembly in its resolution 92 (I) of 7 December 1946. By that resolution the Assembly recognized "that it is desirable to approve a distinctive emblem of the United Nations and to authorize its use for the

official seal of the Organization", which emblem was to be "the emblem and distinctive sign of the United Nations". This resolution, by its wording, appears to preclude other emblems or "distinctive signs" from replacing, in official use, the existing United Nations emblem.

2. In order to assist United Nations organs (UNICEF is a subsidiary organ of the General Assembly and is an integral part of the United Nations) and those concerned with the issuance of documents and publications, an Administrative Instruction has been issued which regulates the use of the United Nations emblem on documents and publications (see document ST/AI/189/Add.21). Part II of this Administrative Instruction contains detailed rules governing the use of emblems by United Nations bodies and organs such as UNICEF. The Administrative Instruction specifically recognizes and permits the use of distinctive emblems by United Nations bodies as follows:

> "Such bodies may also use distinctive emblems of their own, subject to the following considerations:
>
> "(*a*) On official documents, which must bear the United Nations emblem, the distinctive emblem of the United Nations body may be used in conjunction with the United Nations emblem, provided that the latter is given greater typographical prominence;
>
> "(*b*) On non-official documents, the distinctive emblem may be used alone; it should not be combined with the United Nations emblem."

The Instruction thus permits current UNICEF practice, in particular, use of the UNICEF emblem alone on promotional material.

3. The Administrative Instruction does not deal with the use of emblems on official correspondence but since the Instruction is an elaboration of the general principles contained in resolution 92 (I), the principles it contains apply equally well to official correspondence. Thus UNICEF could continue its present practice of using only the United Nations emblem on its letterhead or it could use the United Nations emblem in conjunction with its own distinctive emblem, provided that the former emblem is given greater typographical prominence.

4. Insofar as UNICEF is concerned about regional variations in the use of its emblem, the Executive Director has, of course, the authority to direct that UNICEF offices comply with the principles contained in General Assembly resolution 92 (I), conveniently elaborated in the Administrative Instruction. The Executive Director could direct that UNICEF use only one emblem or he could conceivably permit regional variations, provided that in each region the use of the distinctive emblem complies with resolution 92 (I).

5. Insofar as use of emblems by UNICEF National Committees — which are not United Nations bodies — is concerned, the question is a little more complex in that National Committees are not part of UNICEF and thus not directly subject to General Assembly resolution 92 (I) and the Administrative Instruction. However, under the basic Recognition Agreement with the National Committees, each Committee agrees to conduct its operations in harmony with UNICEF's policies as established by the Executive Board and administered by the Executive Director (article 5). This would enable UNICEF to require uniformity in the use of its emblem by National Committees. We would imagine that it might be useful to establish a set of guidelines for the use of the UNICEF emblem along the lines of the guidelines of the International Year of the Child (IYC) emblem.

11 November 1981

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14. Bidding for a United Nations construction project in the territory of a Member State — Position to be taken by the Organization in respect of companies whose practice is to bring their work force from their home country

Memorandum to the Assistant Secretary-General for General Services

1. Your memorandum of 28 October asks advice on the position to be taken by the United Nations in respect of companies invited to bid on a United Nations construction project in the

territory of a Member State and whose practice is to bring their entire work force from their home country.

2. Neither the Headquarters Agreement between the United Nations and the Member State concerned nor the Convention on the Privileges and Immunities of the United Nations obligates the State in question to issue entry permits or to accord any other special status or immunities to non-local employees outside the usual categories of United Nations officials, experts on mission and persons otherwise on business connected with the United Nations or other related organizations. It is relevant to note that, in the drafting stage of the relevant Headquarters Agreement, suggestions were made by the United Nations to include a provision covering contractors and their employees, but none appears in the actual text (Such a provision is included in UNDP agreements for technical assistance, but not in most host country agreements).

3. With regard to local law — which is therefore applicable — it appears that the entry of non-local persons intending to work there is restricted to specified business and professional categories not covering all envisaged construction personnel but only architects or quantity surveyors, engineers and accountants.

4. In the circumstances, apart from the fact that the use of a local work force would be more beneficial to the State concerned, and that the presence of a foreign work force for the United Nations building project might cause friction disadvantageous to United Nations' relations with the host country, it is reasonable to anticipate that a contractor would encounter delays and difficulties in securing permits for many of its workers and also to bear in mind that the United Nations would have no legal basis for requesting the Government to facilitate their entry. This is certainly relevant to an asessment of the contractor's ability to perform.

5. In our view, problems incidental to a bidder's proposed importation into the host country of a substantial number of non-local workers in probable competition with local personnel are factors properly to be weighed with price, financial standing and professional competition in deciding on the award.

5 November 1981

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15. INVITATION TO BID ISSUED BY A UNITED NATIONS ORGAN — DEMAND FOR ARBITRATION SUBMITTED BY A CORPORATION WHOSE OFFERS WERE NOT ACCEPTED — FAILING WRITTEN ACCEPTANCE OF THE BID, THERE IS NO CONTRACT AND THEREFORE NO AGREEMENT TO ARBITRATE AND NO BASIS FOR A DEMAND FOR ARBITRATION

Extracts from letters addressed to the Administrator of a commercial arbitration tribunal

I

I refer to your Notice of Filing dates 25 August 1981 concerning the Demand for Arbitration of 14 August 1981 made to [name of a subsidiary organ of the United Nations] by [name of a corporation] for arbitration of a disappointed bidder's claim under the name of [a commercial arbitration tribunal]. The Demand for Arbitration and the Notice of Filing concerning the appointment of three arbitrators were received by the organ concerned on 17 August 1981 and 28 August 1981, respectively.

The matter has been referred to the Office of Legal Affairs of the United Nations for representation.

. . .

The Demand for Arbitration submitted is based on invitations to Bid which constitute mere "offers" by the corporation concerned as is indicated by the following phrase which appears at the bottom of the Invitation to Bid form:

> "BID . . . In compliance with the above Invitation to Bid, and subject to all the conditions thereof, the undersigned *offers* and agrees, *if this bid be accepted* within 10 calendar days from the date of the opening, to furnish *any* or all of the items upon which prices are quoted,

at the prices set opposite each item, within the time and at the place indicated." (Emphasis added).

The "offers" of the corporation concerned were not accepted. Thus, a fundamental defect in the Demand for Arbitration appears on the face of the documents presently before you. It may be noted that the claimant cites in its Demand for Arbitration the two *bid opening* dates of 6 July 1979 and 2 June 1980, respectively, as the dates of a "written contract" supporting its allegation that it is "(a) party to an arbitration agreement contained in a written contract . . . providing for arbitration . . .".

The written agreements alleged in the claimant's Demand for Arbitration are non-existent since the bid offers were never accepted. Moreover, in terms of the Demand for Arbitration, the corportion concerned claims not as a contractor but as a disappointed bidder by protesting awards to another (lower) bidder.

It is the United Nations policy to make provision in its contracts for arbitration of disputes arising thereunder. In addition, certain disputes other than disputes covered by such arbitration clauses in contracts may be submitted for arbitration on an *ad hoc* basis. Such submission is intended as an alternative to voluntary submission by the United Nations to judicial process in a particular case.

In the present case the Demand for Arbitration is made by a disappointed bidder whose alleged contract right to arbitration is not based on any written contracts and whose standing to contest the contract awards to another (and lower) bidder is not conceded. Nonetheless, in order to accord the corporation concerned the opportunity to present its claim before an impartial body, the United Nations is prepared to submit to final and binding arbitration without prejudice, however, to any legal position — either preliminary or on the merits — which either party may wish to maintain in the arbitration. . . .

4 September 1981

II

. . .

Our present letter is intended to reiterate the position we expressed in our letter of 4 September 1981 and to request appropriate consideration by your respective offices of the question whether the claimant's Amended Demand of 17 September 1981 is property before the [commercial arbitral tribunal] absent an agreement to arbitrate this particular claim.

There was a fundamental defect in the original Demand, namely, the assumption that a bid can give rise to a contractual right to arbitration. The Amended Demand of 17 September 1981 does not cure that fundamental defect. The Amended Demand, in fact, now emphasizes that defect because the claimant has substituted the word "bid" for the word "contract" in the first line of the Amended Demand. Accordingly, you will see that the claimant's allegation of a "written *bid* dated 2 June 1980, providing for arbitration" does not comply with your Rules. A bid can not give rise to a contractual right to arbitration.

The claimant also refers in its letter of 15 September 1981 to Condition 8 on the reverse of the Invitation to Bid form. Condition 8 provides, *inter alia,* that "Any claim or controversy arising out of or relating to *this* or any *contract* resulting herefrom, or the breach thereof, shall be settled by arbitration . . .". (Emphasis added). The claimant contends in the third paragraph of its letter of 15 September that the demonstrative adjective "this" underlined above means "(*i.e.*, the bid itself)". But, we would point out that the demonstrative adjective "this" modified the word "contract" and a "contract" does not result until the bid (*i.e.*, the offer) is accepted.

We wish to emphasize that the standard form document describes three successive stages in the contracting process which is to be completed only by (3) the acceptance of (2) the bid offered by the would-be contractor in response to (1) the Invitation to Bid. The contract comes into effect only after written acceptance of the bid. (As you will note it is the Bid which contains the arbitration provision as one of the Conditions printed on the reverse side of the Invitation. However, the arbitration provision remains a part of the offer until the offer is accepted.)

Thus, absent a submission agreement as proposed in our letter of 4 September 1981, there is no basis on which the [commercial arbitral tribunal] can proceed with an arbitration.

Contract law precludes the claimant's position that its offer gives rise to a contractual obligation to arbitrate. Moreover, such a position on the part of the claimant is obviously inconsistent with the statement contained in the Invitation to Bid that [the United Nations organ concerned] may "reject any and all bids" when it is in its interest to do so. The Instructions to Bidders which stipulates the procedure for the award of contracts on the reverse of the Invitation to Bid form do not contain any reference to arbitration but do emphasize right of the organ concerned to reject any and all bids as follows:

> "8. Award or rejection of bids. The contract will be awarded to the lowest responsible bidder complying with the conditions and specifications of the invitation for bids provided his bid is reasonable and it is to the interest of [the organ concerned] to accept it. The Bidder to whom the award is made will be notified at the earliest possible date. *[The organ concerned], however, reserves the right to reject any and all bids and to waive any informality in the bid received whenever such rejection or waiver is in [its] interest . . .* It also reserves the right to reject the bid of a bidder who has previously failed to perform properly or complete on time contracts of a similar nature, or a bid of a bidder who in [its] opinion is not in a position to perform the contract."

There is, for these reasons, no basis, in the absence of a submission agreement, for the [commercial arbitral tribunal] to find even a colorable contractual basis for the claimant's present Demand for Arbitration.

Accordingly, [the organ concerned] must continue to maintain its position that, in the absence of a submission agreement there is no agreement to arbitrate and thus there is no valid basis for the claimant's request that the [commercial arbitral tribunal] should initiate administration of an arbitration. It, of course, reserves its other grounds for denial, including the claimant's lack of standing to contest the award of contracts by [the organ concerned].

30 September 1981

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16. United Nations Peace-Keeping Force in Cyprus — Liability insurance for contingent-owned vehicles

Memorandum to the Director, Field Operations Division, Office of General Services

1. I refer to your memorandum of 3 August 1981 by which you requested our views as to the obligation of the United Nations to insure against third party liability Austrian contingent-owned vehicles in UNFICYP.

2. Vehicles assigned for service in a peace-keeping force, whether owned by the United Nations or by a Government, are operated on behalf and under the control of the United Nations. All vehicles carry a distinctive United Nations identification mark and license (paragraph 21 of the Agreement concerning the status of the Force).[24] Relevant also is paragraph 32 of the Regulations of UNFICYP[25] according to which "orders concerning driving of service vehicles and permits or licenses for such operation shall be issued by the Commander. Any damage or injuries caused by those vehicles to third parties therefore engage the responsibility of the United Nations and third parties may claim compensation from the United Nations. The United Nations thus has an insurance interest in vehicles of its peace-keeping fleet which are contingent-owned.

3. The actual decision of whether, and up to what limit, to carry third party liability insurance for contingent-owned vehciles in UNFICYP is to a large extent an administrative and financial one, which depends on the extent to which the United Nations wishes to be self-insured, as well as on possible arrangements which may have been agreed upon between the United Nations and specific contributing States by which the vehicles are owned. In the past, this Office has always advised in favour of having: (*a*) third-party liability insurance for United Nations-operated vehicles

in view of the high financial risk involved in self-insurance and (*b*) appropriate United Nations settlement procedures to replace the void stemming from national legal process of the United Nations and its drivers.

4. Reference should also be made to General Assembly resolution XII.6 E of 13 February 1946 by which the Secretary-General was instructed "to ensure that the drivers of all official motor-cars of the United Nations . . . shall be properly insured against third party risks".

5. From the documentation available to us there also seem to be no special arrangements between the United Nations and Austria with regard to the participation in UNFICYP which would render unnecessary the placing of insurance against third party risks of contingent-owned vehicles. Indeed, paragraph 16 of the Regulations of UNFICYP provides that "within the limits of available voluntary contributions [the Secretary-General] shall make provisions for the settlement of any claims arising with respect to the Force that are not settled by the Governments providing contingents or the Government of Cyprus"; such "settlement" could include settlement by an insurer pursuant to a contract with the United Nations.

6. In summary, although we see no legal obligation on the United Nations to ensure contingent-owned vehicles against third party liability, we see no legal objection to the United Nations doing so, and, given the Organization's liability for third party claims arising out of the operation of such vehicles, you may consider it advisable to ensure them.

12 August 1981

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17. CHARGE LEVIED BY A MEMBER STATE IN CONNECTION WITH CERTAIN TRANSACTIONS BY UNITED NATIONS OFFICES AND STAFF — APPLICABLE TREATY PROVISIONS — EXEMPTION OF THE UNITED NATIONS FROM ALL DIRECT TAXES UNDER DECISION 7 (*a*) OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS — MEANING OF THE TERM "PUBLIC UTILITY" AS CONTAINED IN THAT SECTION — QUESTION WHETHER THE IMPOSITION BY A MEMBER STATE OF A SPECIAL TAX ON THE TRANSACTIONS OF UNITED NATIONS OFFICIALS IS CONSONANT WITH RELEVANT INTERNATIONAL INSTRUMENTS

Memorandum to the Acting Chief, Division for Administration and Management Services, Bureau for Finance and Administration, United Nations Development Programme

1. I wish to refer to your memorandum dated 9 April 1981 requesting the comments of the Office of Legal Affairs on the decision of the Ministry of Foreign Affairs of [name of a Member State] to levy a 10 per cent charge on services rendered in connexion with certain transactions by United Nations offices or staff. Your request has been referred to the Office of the Legal Counsel for reply.

2. As far as the legal aspects of this question are concerned I wish to refer to the Agreement between the country concerned and the United Nations Development Programme concerning assistance by the UNDP to the Government, signed on 8 November 1976 (the "Standard Basic Assistance Agreement"[26] hereinafter referred to as "the Agreement"). I also wish to refer to the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946 (hereinafter referred to as "the Convention").

3. The Agreement which entered into force on 21 October 1978 provides in its Article IX, paragraph 1, that the Government shall apply the Convention "to the United Nations, and its organs, including the UNDP and United Nations subsidiary organs acting as UNDP executing agencies, their property, funds and assets, and to their officials, including the resident representatives and other members of the UNDP mission in the country", and paragraph 3 of Article IX further provides that "Members of the UNDP mission in the country shall be granted such additional privileges and immunities as may be necessary for the effective exercise by the mission of its functions."

4. As far as transactions by the United Nations, including the UNDP, are concerned, the applicable provision is contained in Section 7 (*a*) of the Convention. This provision reads:

> "The United Nations, its assets, income and other property shall be:
>
> "(*a*) Exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services".

In this connexion it is clear from the description of the "service fee" contained in the Foreign Ministry's circular No. 4/100/56/2/42, of 7 March 1981, and in the letter dated 24 March 1981 from the Resident Representative that the Diplomatic Services Office is not a public utility as this expression is used in the Convention. The term "public utility" in Section 7 (*a*) ordinarily is understood to mean public corporation or agencies providing such services as water, gas or electricity for consumption by the United Nations. The Diplomatic Services Office, however, appears to be a unit of the Foreign Ministry, established to serve the policies and purposes of the Government. Accordingly, the amount of the "service fee" is not calculated on the basis of the actual services rendered, but is levied directly on the United Nations as a tax for the purpose of defraying the administrative expenses incurred by the Government in connexion with its Diplomatic Services Office. Moreover, since it appears to be mandatory under local regulations that the United Nations conduct its transactions through the Diplomatic Services Office, it becomes even more clear that the "service fee" constitutes a direct tax on the United Nations. For the foregoing reasons, it is the position of the Office of Legal Affairs that exemption should be claimed under Section 7 (*a*) of the Convention in respect of all transactions by the United Nations, whether sale, purchase or lease of goods or services.

5. Turning now to transactions by United Nations officials acting in a non-official or private capacity, it is not possible to base a claim to exemption from the "service fee" on any explicit provision of the Convention which grants exemption to officials (except those with diplomatic status referred to in Section 19) merely "from taxation on the salaries and emoluments paid to them by the United Nations". Nevertheless, it is at least arguable that the drafters of the Convention did not foresee — in 1946 — that a Member State might take steps to levy a special charge or tax on transactions by international civil servants serving in the Member State in question, and that if the possibility had been foreseen, an explicit exemption would have been included in the Convention. Thus it may be said with considerable justification that imposition of a special fee or tax on United Nations officials is contrary to the intent of the Convention which is to give effect, *inter alia*, to the provision in Article 105 of the United Nations Charter that officials of the United Nations shall enjoy in the territory of each Member State such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization. In respect, in particular, of United Nations officials attached to UNDP activities it further appears that levying of the special "service fee" is at variance with the provision, in Article IX, paragraph 3 of the Agreement, referred to in paragraph 2 above, which requires the Government to grant such privileges and immunities — in addition to those provided by the Convention — as may be necessary for the effective exercise by the UNDP mission of its functions. Consequently, the Office of Legal Affairs is of the view that exemption should be claimed also in respect of transactions by United Nations officials on the grounds that the "service fee" interferes with the effective exercise by the officials of their functions in the country concerned.

8 June 1981

18. PRIVILEGES AND IMMUNITIES OF OFFICIALS OF THE UNITED NATIONS AND THE SPECIALIZED AGENCIES — CONCEPT OF FUNCTIONAL IMMUNITY — RIGHT OF THE SECRETARY-GENERAL UNDER THE INTERNATIONAL INSTRUMENTS IN FORCE TO INDEPENDENTLY DETERMINE, IN CASE A STAFF MEMBER IS BEING SUBJECTED TO LEGAL PROCESS, WHETHER AN OFFICIAL ACT IS INVOLVED — MEANING OF THE TERM "OFFICER" IN THE CONVENTIONS ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS AND OF THE SPECIALIZED AGENCIES

Statement made by the Legal Counsel at the 59th meeting of the Fifth Committee of the General Assembly on 1 December 1981

1. The Legal Counsel, referring to the report of the Secretary-General on respect for the privileges and immunities of officials of the United Nations and the specialized agencies (A/C.5/36/31), said he would like to thank the members of the Committee for the expressions of concern regarding respect for the privileges and immunities of international officials and the affirmation that the international instruments dealing with the status, privileges and immunities of such officials must be strictly respected in order to ensure the independence and integrity of the international civil service. The increase in membership in international organizations and the corresponding increase in the number of States which were hosts to international organizations and their subsidiary bodies gave added importance to the question of immunities. Conditions in any one duty station had an impact on all the staff of the international organizations, wherever they might serve, and directly affected the morale and efficiency of the international civil service.

2. The law of international immunities, which was based principally on the United Nations Charter, the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies and other instruments referred to in paragraph 3 of the Secretary-General's report, distinguished between diplomatic and functional immunities. The very great majority of officials of the United Nations and specialized agencies were accorded functional rather than diplomatic immunities. That distinction was significant both from the point of view of the scope and content of the immunity and because of the fundamentally different character of the two types of immunity. While diplomatic immunity attached to the person, the functional immunity of international officials was organizational. Thus, section 20 of the Convention on the Privileges and Immunities of the United Nations provided that "Privileges and immunities are granted to officials of the United Nations in the interests of the United Nations and not for the personal benefit of the individuals themselves". An identical provision was contained in the Convention on the Privileges and Immunities of the Specialized Agencies.

3. That distinction was essential to an understanding of the nature of the violation of immunities reported by the Secretary-General in document A/C.5/36/31. The various cases referred to in the report involved a breach of the organizations' rights. For example, where violations involving immunity from legal process — the type of case most frequently cited — were concerned, the substance of the Secretary-General's protest in such cases was not that a particular staff member had been subjected to legal process but that he had been prevented from exercising his right under the international instruments in force to independently determine whether or not an official act had been involved. Where a determination was made that no official act was involved, the Secretary-General had, by the terms of the Convention on Privileges and Immunities of the United Nations, both the right and the duty to waive the immunity of any official.

4. As the Secretary-General stated in his report, Member States had on the whole respected the Organization's right to functional protection, which had been clearly enunciated by the International Court of Justice in its advisory opinion of 1949 in the Bernadotte[27] case and which now formed part of generally accepted international law. It was not the intent of the provisions regarding immunity from legal process or the principle of functional protection to place officials above the law but to ensure, before any action was taken against them, that no official act was involved and that no interest of the Organization was prejudiced.

5. A second question concerned who was entitled to privileges and immunities. It had been suggested by some delegations that locally recruited staff members were not officials of the United Nations and specialized agencies for the purpose of privileges and immunities and that they were

first and foremost nationals of the country concerned and, as such, were subject to its laws. On that point, he would like to clarify the meaning of the term "officials" as it was used in the Conventions. Section 17 of the Convention on the Privileges and Immunities of the United Nations stated that the Secretary-General would specify the categories of officials to which articles V and VII of the Convention should apply. The Convention on the Privileges and Immunities of the Specialized Agencies and the IAEA Agreement contained similar provisions. In 1946, the General Assembly had adopted resolution 76 (I), in which it had approved the granting of the privileges and immunities referred to in articles V and VII of the Convention on the Privileges and Immunities of the United Nations to all members of the staff of the United Nations, with the exception of those who were recruited locally and were assigned to hourly rates. The specialized agencies and IAEA had taken similar actions. Consequently, all staff members regardless of rank, nationality or place of recruitment, whether Professional or General Service, were considered as officials of the organizations for the purposes of privileges and immunities except for those who were both locally recruited and employed at hourly rates. United Nations locally recruited staff such as clerks, secretaries and drivers were in nearly every case paid according to established salary or wage scales and not at hourly rates and they were, therefore, covered by the terms of General Assembly resolution 76 (I).

6. With regard to the discrepancy which existed between the régime applicable at United Nations Headquarters in New York and that which was applicable in virtually all other duty stations, including the headquarters seats in Geneva, Nairobi, Vienna and the seats of the regional economic commissions, it was perfectly true, as one delegation had pointed out, that in New York the range of staff members to whom diplomatic privileges and immunities were accorded was narrower than the range in other duty stations. The more restrictive régime, which was patterned exclusively on the provisions of the Conventions on Privileges and Immunities adopted in 1946 and 1947, had been made applicable at United Nations Headquarters in New York at a time when it had been anticipated that the staff of the United Nations would be largely concentrated in New York and a more liberal régime would have resulted in very large numbers of staff members being assimilated to diplomatic personnel. Although that discrepancy in treatment was undesirable and it would have been preferable to obtain equality of treatment for staff members regardless of their duty station, it should be noted that in absolute terms the number of staff members having diplomatic privileges and immunities in New York and the other major duty stations was roughly comparable.

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19. LEGAL PROVISIONS GOVERNING THE QUESTION OF IMPORTATION OF HOUSEHOLD EFFECTS AND AUTOMOBILES OF UNITED NATIONS OFFICIALS ASSIGNED TO A REGIONAL ECONOMIC COMMISSION — QUESTION WHETHER FIELD SERVICE OFFICERS ARE OFFICIALS WITHIN THE MEANING OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS AND OF THE RELEVANT HEADQUARTERS AGREEMENT — MEANING OF THE TERM "FURNITURE AND EFFECTS" UNDER THE ABOVE-MENTIONED INSTRUMENTS

Note verbale to the Permanent Representative of a Member State

The Legal Counsel of the United Nations presents his compliments to the Permanent Representative of [name of a Member State] to the United Nations and has the honour to refer to the status, privileges and immunities of United Nations Field Service Officers assigned to the Economic and Social Commission for Asia and the Pacific in Bangkok. By letters dated 20 November 1980 and 20 January 1981 the Director of the Office of the Legal Counsel brought to the attention of the Permanent Representative certain problems encountered by Field Service personnel regarding, in particular, the importation of their household effects including automobiles. The Legal Counsel is dismayed to learn that despite these earlier interventions these problems have not been resolved and that discussions between the ESCAP Secretariat and the Ministry of Foreign Affairs have reached an impasse. The Legal Counsel wishes, therefore, to take the opportunity to set out comprehensively the legal issues in the hope that the authorities concerned will be able to resolve

this matter in accordance with the law and practice of United Nations privileges and immunities.

The relevant international legal provisions governing the question of importation of household effects and automobiles of United Nations officials in [the Member State concerned] are contained in Section 18 (*g*) of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946[28] and Section 17 (*i*) of the ECAFE Headquarters Agreement of 26 May 1954.[29] Section 18 (*g*) provides that "Officials of the United Nations shall: . . . Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question"; Section 17 (*i*) provides that "officials of the ECAFE shall enjoy . . . the following privileges and immunities: The right to import, free of duty and other levies, prohibitions and restrictions on imports, their furniture and effects within six months after first taking up their post . . . ; the same regulations shall apply in the case of importation, transfer and replacement of automobiles as are in force for the resident members of diplomatic missions of comparable rank."

In relation to the applicability of these provisions to the Field Service Officers in question, the following questions would appear to be legally relevant:

(i) Are Field Service Officers "officials" within the meaning of Sections 18 (*g*) and 17 (*i*) of the agreements cited above?

(ii) What is the meaning of the expression "furniture and effects" in Section 18 (*g*) of the Convention and Section 17 (*i*) of the Headquarters Agreement?

(iii) Do Section 18 (*g*) of the Convention and Section 17 (*i*) of the Headquarters Agreement relate to the same subject matter and if so are they complementary or in absolute conflict?

(iv) If there is a difference of interpretation or application of these agreements between the United Nations and the host country concerned how shall this difference be resolved

In regard to the first of these questions, in view of the Legal Counsel there is no doubt in law or in practice that Field Service Officers are "officials" within the meaning of Section 18 (*g*) and Section 17 (*i*). The term "officials" was not defined in the Convention itself but by the General Assembly which in resolution 76 (I) of 7 December 1946 approved "the granting of the privileges and immunities referred to in articles V and VII of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates". The key expression here is "all members of the staff of the United Nations". Field Service Officers are staff members of the United Nations, recruited in the same way as all other staff members and paid from the regular budget of the United Nations. The definition contained in resolution 76 (I) is confirmed by the ECAFE Headquarters Agreement which provides the following definition in Article 1 (*h*): "The expression 'Officials of the ECAFE' means all staff members of the United Nations Secretariat, other than manual workers locally recruited, who are at any time working with the ECAFE, and whose names are communicated from time to time to the appropriate . . . authorities". In the light of the foregoing, the Legal Counsel is of the opinion that Sections 18 (*g*) and 17 (*i*) of the agreements apply in full to Field Service Officers wherever they are assigned.

The next question to arise is the meaning of the expression "furniture and effects" which, it is to be noted, is used in both Section 18 (*g*) and Section 17 (*i*). The expression is not expressly defined in either instrument but the United Nations has consistently taken the position that the term "effects" included automobiles and that a United Nations official, therefore, has the right to import his automobile free of customs duty at the time of first taking up his post whether at United Nations Headquarters or at any other duty station. This position is based upon logic and practical necessity and has been accepted without exception by Member States. This is confirmed by the fact that more recent Economic Commission Headquarters Agreements such as the Agreement between the United Nations and Iraq relating to the Headquarters of the Economic Commission for Western Asia (ECWA) have expressly incorporated such a provision. Article 8, 1 (*j*) of the ECWA agreement accords to officials of the Commission the personal right to import a car free of duty once every three years. Furthermore, Section 17 (*i*) of the ECAFE Agreement is clear in authorizing the importation of automobiles and, it should be noted, it does so in a provision dealing with furniture and effects. The clear and unambiguous meaning of this provision is that ECAFE officials shall

have the right to import automobiles free of duty. The only distinction between automobiles and furniture and other effects is that in the case of automobiles the regulations in force for the resident members of diplomatic missions of comparable rank shall apply. Thus, the second part of Section 17 (*i*) of the ECAFE Agreement does not modify the *substance* of the rule which is contained in the first part of Section 17 (*i*) and in Section 18 (*g*) of the Convention but only relates to the *procedures* to be followed in implementing the rule.

In the opinion of the Legal Counsel, Sections 18 (*g*) and 17 (*i*) unequivocally relate to the same subject matter, that is the importation of furniture and effects including automobiles, and consequently should be treated as complementary in accordance with Section 25 (*b*) of the ECAFE Agreement. There is no basis in law or in practice for treating these provisions as being in absolute conflict. But even if, for the sake of argument, the provisions are deemed to be in absolute conflict, this would merely mean that Section 17 (*i*) would prevail and as has already been explained, all that this provision states is that the procedural aspects of importation of an automobile shall be governed by the regulations in force for diplomatic personnel of comparable rank. It is to be noted that the expression used is "comparable", not "equivalent", rank which is explained by the fact that United Nations officials, including Field Service Officers, are, by definition, not diplomats but international officials.

The Legal Counsel trusts that this comprehensive analysis will enable the appropriate authorities to promptly resolve this problem which has caused considerable inconvenience and expense to the Organization and to the officials concerned. If no resolution of the problem is forthcoming, the Legal Counsel would be of the opinion that there exists a difference of interpretation or application of the instruments in question which would have to be settled in accordance with the procedures foreseen in Section 30 of the Convention on the Privileges and Immunities of the United Nations. Since the matter is also one which falls within the scope of operative paragraph 3 of General Assembly resolution 35/212, the Legal Counsel would be obliged if he could receive an early response.

3 June 1981

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20. QUESTION WHETHER THE ESTABLISHMENT OF A REPORTING LINK BETWEEN THE SECRETARIAT OF THE INTERNATIONAL NARCOTICS CONTROL BOARD AND THE SECRETARIAT OF THE UNITED NATIONS ON SUBSTANTIVE MATTERS WOULD BE IN CONFORMITY WITH THE CHARACTER AND STATUS OF THE INCB SECRETARIAT

Memorandum to the Director, Administrative Management Service, Department of Administration, Finance and Management

1. I wish to refer to your memorandum of 30 October 1981 requesting the comments of the Office of Legal Affairs on the status of the International Narcotics Control Board Secretariat of the United Nations in particular as it relates to the draft recommendation of the Administrative Management Service that a reporting link be established between the secretariat of the INCB and Headquarters for substantive and administrative matters. The INCB secretariat has questioned the legal basis for this recommendation insofar as it relates to substantive matters.

2. The status of the secretariat of the INCB within the United Nations may be defined in the light of the status of the INCB itself, the body which that secretariat services. The INCB is an organ established by the Single Convention on Narcotic Drugs of 1961,[30] that is to say that legislatively, it is a treaty organ distinct from the United Nations. Historically the INCB is the successor of the Permanent Central Board and the Drug Supervisory Body which were independent League of Nations-related treaty organs. In establishing the INCB, the parties to the 1961 Convention were, therefore, constrained, partly for historical reasons and partly for substantive reasons, to create an independent body even though for certain administrative purposes it was desirable to establish links with the United Nations.

3. The status of the secretariat of the INCB within the United Nations is, therefore, directly related to the character and status of the Board. In addition to being a treaty organ distinct from the United Nations (States parties to the Convention are not necessarily members of the United Nations), the INCB is considered to be a quasi-judicial body and the Economic and Social Council is expressly enjoined by Article 9, paragraph 2, of the 1961 Convention "to ensure the full technical independence of the Board in carrying out its functions". The importance of this independence is fully recognized by the Administrative Management Service draft report which cites the conclusions reached by an internal management survey conducted in 1965 to the effect that integration of the secretariats of the Commission and the Board should take place "subject to such special measures as would be deemed advisable to secure the full technical independence of INCB" and which, after reviewing the legislative history, particularly Economic and Social Council resolutions 1196 (XLII) of 16 May 1967, concludes that "the non-management considerations which justified the establishment of a separate secretariat for the INCB still prevail" and "recommends that the INCB secretariat should be retained in its present form".

4. The factors cited by Administrative Management Service regarding the independence of the Board and a separate secretariat apply *a fortiori* to substantive reporting procedures.

5. In conclusion, the Office of Legal Affairs shares the opinion expressed by the secretariat of the INCB that the Administrative Management Service recommendation to establish a reporting link between it and Headquarters on substantive matters would not be in conformity with the character and status of that Secretariat as provided for by the 1961 Single Convention on Narcotic Drugs and that, consequently, the Secretary-General would not be in a position to legally implement the recommendation.

23 November 1981

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21. "GROSS NEGLIGENCE" ON THE PART OF A STAFF MEMBER, RESULTING IN DAMAGE TO UNITED NATIONS PROPERTY — CRITERIA TO BE APPLIED IN DETERMINING WHETHER GROSS NEGLIGENCE IS INVOLVED

Memorandum to the Assistant Secretary-General, Office of Financial Services

1. I refer to our correspondence concerning the question of the basis on which United Nations Property Survey Boards could conclude that damage to United Nations property is attributable to "gross negligence" rather than to "ordinary" negligence or to circumstances involving no fault.

. . .

3. As you know, the question of "gross negligence" arises in cases where a staff member, or a member of a peace-keeping contingent, has caused damage to United Nations property. (The greater percentage of such cases involves vehicles.) If the damage is found attributable to "gross negligence", a payment is required of the staff member or of the government providing the peacekeeping contingent. If "gross negligence" is not found, no payment is required of the staff member or of the government providing the peacekeeping contingent for the reason that the damage is then properly regarded as a normal operating cost to be covered by insurance or absorbed by the United Nations if self-insurance be the economical course.

4. It is relatively easy to find the presence or absence of "gross negligence" in a clear case. There would be "gross negligence", for example, where a vehicle is driven at an extremely high speed because of the drunkenness of its driver. There would be no "gross negligence" where a vehicle is driven at an extremely high speed because of real emergency.

5. More frequently, the conduct and circumstances which the Property Survey board has to evaluate are less clear cut inasmuch as most accidents are the result of "negligence" but not "gross negligence" which is, by definition, extraordinary.

6. After much thought and comparative law research, we have concluded that it would be appropriate and feasible to offer only general advice to assist the Property Survey Board in performing its function and reaching its determination in particular cases:

(*a*) "Gross negligence" is negligence of a very high degree involving wilfulness, recklessness or drunkenness and, in consequence, manifest disregard for the safety of life and property.[31]

(*b*) It is necessary that all the facts of a case, including all mitigating circumstances, be considered.

(*c*) "Necessity" may excuse conduct that might otherwise be regarded as "gross negligence".

(*d*) Gross negligence should not be inferred *solely* from:

(i) a failure to take a precautionary measures; or

(ii) a violation of a rule of the road or traffic regulation or other directive although either of the above should be taken into account in reaching a determination.

A Property Survey Board should, in the course of time, develop and record its own body of precedents which would then be of guidance.

7. Some examples of conduct and cases of what we consider to be gross negligence and also of cases of what we consider to be lesser negligence are set out in the Attachment to this memorandum.

30 June 1981

ATTACHMENT

Examples of grossly negligent conduct

(*a*) Racing of vehicles,

(*b*) Purposely using a vehicle to frighten a person (be it a passenger, passer-by, or other driver) or an animal,

(*c*) Drunken driving.

Examples of gross negligence cases

(*a*) The driver of a United Nations vehicle, in a non-emergency situation, intentionally drove it off the road and across the adjoining terrain. The vehicle overturned, resulting in injuries to the driver and passengers and damage to the vehicle.

(*b*) The driver of a United Nations vehicle, driving at night on a poorly lit highway, in poor visibility, pulled out, in a non-emergency situation, from behind a line of vehicles moving in the same direction as he was and, when passing them at an excessive speed, collided with a stationary vehicle in the passing lane.

Examples of negligence cases

(*a*) A United Nations vehicle was travelling at 25 m.p.h. in light rain on a main thoroughfare too close to the automobile ahead, in light of the road condition, when the automobile ahead suddenly stopped. The driver applied his brakes but was unable to prevent his vehicle from colliding with the other automobile. Although the driver was negligent in following too close for the road condition, nonetheless since he was not driving recklessly and was not speeding, and since the other automobile driver had stopped suddenly, the negligence of the United Nations driver was not "gross".

(*b*) A United Nations vehicle was being driven through an intersection at a moderate speed when an automobile coming from the right crossed in front of it. The United Nations driver applied his brakes and swerved but could not avoid a collision. Although he was negligent in failing to ensure that his vehicle could enter the intersection safely, nonetheless, in view of the moderate speed of his vehicle, and his prompt action to attempt to avoid a collision, his negligence was not "gross".

(*c*) A United Nations vehicle swerved to avoid striking a cow and overturned in circumstances under which the accident might have been avoided by sharper attention. However, because the driver was driving within the speed limit and the accident was caused as a result of his swerving to avoid another accident, his negligence was not "gross".

22. QUESTION WHETHER UNITED NATIONS OFFICERS SHOULD BE CHARGED FOR DAMAGE TO VEHICLES ARISING OUT OF ORDINARY NEGLIGENCE

Memorandum to the Assistant Secretary-General, Office of Financial Services

. . . this Office maintains the view that United Nations drivers should not be charged for damage to motor vehicles occurring in the course of official use and attributable to ordinary negligence. This would comport with modern employment policy which recognises that results of ordinary negligence are natural incidents of employment. Of course, frequent and recurring acts of negligence might well be inconsistent with satisfactory performance, but would not give rise to financial liability. Indeed, it is established policy and practice under Appendix D to the Staff Rules — as it is in workmen's compensation law generally — to compensate "as a natural incident of the performance of official duty" personal injuries of drivers of United Nations cars even if "negligence" was attributable to them. It would seem anomalous to afford a staff member compensation for personal injury resulting from a motor vehicle accident and then to deduct therefrom the cost of repairing the damage to the United Nations car involved in the same accident.

Should you so agree, we see no need for any amendment to Staff Rule 112.3 which simply authorizes such assessments but leaves the matter to administrative discretion by saying that "Any staff member *may* be required to reimburse the United Nations . . .". Moreover, we would advise against amending the Staff Rule to refer to "gross negligence" in view of the difficulties in marginal cases and the undesirability of introducing express limits to the existing administrative discretion in this regard.

3 September 1981

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23. APPLICABILITY OF THE JURISDICTION OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL TO THE INTERNATIONAL CENTRE FOR THE STUDY OF THE PRESERVATION AND THE RESTORATION OF CULTURAL PROPERTY (ICCROM) IN CASES RELATING TO UNITED NATIONS STAFF PENSION BOARD

Memorandum to the Secretary, United Nations Joint Staff Pension Fund

1. The question has been raised whether and how article 49 of the Regulations of the United Nations Joint Staff Pension Fund is applicable to the International Centre for the Study of the Preservation and the Restoration of Cultural Property (ICCROM) whose admission to the Pension Fund the General Assembly approved as of 1 January 1981 (resolution 35/215 A, Part III).

2. The cited article is applicable to any "member organization [of the Pension Fund] which has accepted the jurisdiction of the [United Nations Administrative] Tribunal in Joint Staff Pension Fund cases"; the Regulations of the Joint Staff Pension Fund define the member organizations in article 3, paragraph (*b*) of which provides for the membership of "specialized agencies" as well as of "any other international, intergovernmental organization which participates in the common system of salaries, allowances and other conditions of service of the United Nations and the specialized agencies". Thus there is no reason to restrict article 49 to specialized agencies, and indeed the two other member organizations of the Pension Fund that are not specialized agencies, namely the IAEA and ICITO/GATT, have already concluded agreements with the Secretary-General accepting the jurisdiction of the Tribunal pursuant to that article;[32] though there has been no occasion to test, in any case before UNAT, the validity of either of these acceptances, the agreement with the IAEA was reported to the General Assembly (A/5801, pt IX.16) and no doubt was expressed there or anywhere else as to its effectiveness.[33] Only such a broad interpretation of article 49 is consistent with the evident desire of the General Assembly to make available to all Pension Fund participants, subject to the agreement of their employing organizations, access to UNAT in cases involving decisions of the United Nations Joint Staff Pension Board.

3. Two objections might be considered:

(*a*) The General Assembly's specific appeals to organizations to accept the jurisdiction of UNAT in respect of cases involving the Joint Staff Pension Fund were only addressed to specialized agencies (resolutions 678 (VII), para. 3; 771 (VIII), para. 2; 956 (X), para. 1). However, these resolutions were all adopted at a time when, aside from the United Nations, only specialized agencies were member organizations of the Pension Fund.

(*b*) Article 14 of the UNAT Statute, which permits the extension of the jurisdiction of the Tribunal, refers only to specialized agencies. However, it has long been accepted that article 49 of the UNJSPF Regulations (and its predecessor, Article XLI adopted by resolution 955 (X)) constitutes an independent source for the jurisdiction of the Tribunal, not based on any provision of its Statute. It is, incidentally, on that basis that the President of the International Court of Justice concluded, in his letter of 26 February 1981, that members of the staff of the ICJ Registry, who are not considered to be members of the staff of the United Nations Secretariat for the purposes of article 2 of the UNAT Statute, but are covered by the Pension Fund as members of the staff of a member organization (i.e. the United Nations) within the meaning of article 21(*a*) of the UNJSPF Regulations, should therefore automatically be considered as covered by article 49 of those Regulations.

4. Consequently, ICCROM should be invited to conclude an agreement with the United Nations pursuant to article 49 of the UNJSPF Regulations along the lines of that concluded with ITU.[34]

26 March 1981

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24. TIME-LIMIT FOR THE SUBMISSION OF APPLICATIONS FOR REVIEW OF JUDGEMENTS OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL—PRACTICE OF THE SECRETARIAT OF THE TRIBUNAL WITH RESPECT TO THE SENDING OF COPIES OF THE JUDGEMENTS

Memorandum to the Special Assistant to the Under-Secretary-General, Department of Administration, Finance and Management

You have requested information concerning the procedure applicable to the submission of applications for review of Administrative Tribunal judgements by the Committee established by the General Assembly for that purpose. Specifically you have asked:

(*a*) What is the time-limit for the submission of such applications and what is the practice of the Committee on Applications for Review of Administrative Judgements in this regard.

(*b*) Whether it is the practice of the Tribunal secretariat to send copies of judgements delivered by the Tribunal to all Member States.

With regard to the time-limit for the submission of applications for review of Administrative Tribunal judgements, Article 11 (1) of the Statute of the Tribunal provides:

> "If a Member State, the Secretary-General or the person in respect of whom a judgement has been rendered by the Tribunal (including any one who has succeeded to that person's rights on his death) objects to the judgement on the ground that the Tribunal has exceeded its jurisdiction or competence or that the Tribunal has failed to exercise jurisdiction vested in it, or has erred on a question of law relating to the provisions of the Charter of the United Nations, or has committed a fundamental error in procedure which has occasioned a failure of justice, such Member State, the Secretary-General or the person concerned may, within thirty days from the date of the judgement, make a written application to the Committee established by paragraph 4 of this article asking the Committee to request an advisory opinion of the International Court of Justice on the matter."

The Provisional Rules of Procedure adopted by the Committee provide further guidance with regard to the time-limit for applications. Article II of the Provisional Rules of Procedure provides *inter alia* that "for the purposes of paragraph 1 of Article 11 of the Statute of the Administrative Tribunal, the date of the judgement is the date when a copy of the judgement is received by the

applicant, which shall be deemed to be, in the case of an applicant residing in the country in which the Tribunal has its seat, one week after the dispatch of that copy by the Secretary of the Tribunal and, in any other case, two weeks after such dispatch".

Under the relevant provisions of the Tribunal's Statute the Secretary is required to communicate copies of the Tribunal's judgements to the parties concerned and on request to other interested persons. It is our understanding that it is not the practice of the Secretary of the Tribunal to communicate copies of the judgements to Member States at the same time.

In the light of the provisions referred to above it is not clear what time-limit applies to applications submitted by Member States but in any event it is our view that they would be entitled to the same periods that are available to individual applications i.e. 30 days after the receipt of the copy of the judgements by the applicants, the date of receipt being one week or two weeks as the case may be depending on the place of residence of the applicants after the copies of the judgement have been communicated to the parties by the Secretary of the Tribunal. The judgement you enquired about *Mortished against the Secretary-General of the United Nations* (Case No. 257) Judgement No. 273[35] was delivered by the Tribunal in Geneva on 15 May 1981 and communicated to the parties on the same date by the Secretary of the Tribunal.

With respect to the payment of compensation, pursuant to the Tribunal's judgement in the event that an application for review of the Tribunal's judgement is submitted and an advisory opinion is requested of the International Court of Justice, the provisions of Article 11 paragraph 5 of the Tribunal's Statute will apply. This paragraph reads as follows:

> "In any case in which award of compensation has been made by the Tribunal in favour of the person concerned and the Committee has requested an advisory opinion under paragraph 2 of this article, the Secretary-General, if satisfied that such person will otherwise be handicapped in protecting his interests, shall within fifteen days of the decision to request an advisory opinion make an advance payment to him of one-third of the total amount of compensation awarded by the Tribunal less such termination benefits, if any, as have already been paid. Such advance payments shall be made on condition that, within thirty days of the action of the Tribunal under paragraph 3 of this article, such person shall pay back to the United Nations the amount, if any, by which the advance payment exceeds any sum to which he is entitled in accordance with the opinion of the Court."

In view of the interest that this case is likely to generate among Member States and given the fact that any Member State is entitled to request review of the judgement, you might wish to consider communicating copies of the judgement to all Member States under cover of a note verbale from the Secretary-General.

22 May 1981

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

INTERNATIONAL LABOUR ORGANISATION

The following memoranda, dealing with the interpretation of international labour Conventions, were drawn up by the International Labour Office at the request of two Governments:

(*a*) Memorandum on the Working Environment (Air Pollution, Noise and Vibrations) Convention, 1977 (No. 148), drawn up at the request of the Government of the Federal Republic of Germany, 23 May 1981. Document GB.220/16/4, 220th Session of the Governing Body, May-June 1982.

(*b*) Memorandum on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), drawn up at the request of the Government of the United States, 1 October 1981. Document GB.220/16/4, 220th Session of the Governing Body, May-June 1982.

NOTES

[1] For 1981, see *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 13* and Chapter II.

[2] *Ibid.*, paras. 6 and 9 and Chapter II.

[3] SPC/35/SR.6, paras. 7 to 11.

[4] *I.C.J., Proceedings, Oral Arguments, Documents. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, vol. 1, p. 106, para. 122.

[5] See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III, p. 185.

[6] *I.C.J. Reports*, 1971, p. 16.

[7] *Official Records of the United Nations Conference on the Law of Treaties*, Documents of the Conference, p. 286.

[8] *I.C.J. Reports*, 1950.

[9] See Annex, entitled "Note on the practice of the United Nations and the League of Nations in filling casual vacancies on the International Court of Justice: Question of the application of the three-months' limit provided for in Article 5 of the Statute of the Court".

[10] Minutes of the Committee of Jurists on the Statute of the Permanent Court of International Justice, March 11th-19th, 1929. Doc. C.166.M,66,1929,V., p. 37.

[11] Baron Rolin-Jacquemyns died on 11 July 1936 and his successor was elected on 27 May 1937. Judge Hammarskjold died on 7 July 1937, and his successor was elected on 26 September 1938. (See Hudson, *The Permanent Court of International Justice*, 1943, pp. 256-257, paras. 243 and 244).

[12] Judge Azevedo died on 7 May 1951, and his successor was elected on 6 December 1951. Judge Golunsky resigned on 27 July 1953, and his successor was elected on 27 November 1953. Sir Benegal Rau died on 30 November 1953, and his successor was elected on 7 October 1954. Judge Hsu Mo died on 28 June 1956 and his successor was elected on 11 January 1957. Judge Guerrero died on 25 October 1958, and his successor was elected on 29 September 1959. Judge Sir Hersch Lauterpacht died on 8 May 1960, and his successor was elected on 16 November 1960. Judge Abdel Hamid Badawi died on 4 August 1965, and his successor was elected on 16 November 1965. Judge Richard R. Baxter died on 25 September 1980 and Judge Salah El Dine Tarazi on 4 October 1980, their successors being elected on 15 January 1981.

[13] See *I.C.J. Acts and Documents No. 4*, p. 59.

[14] See *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 86, document A/6827/Add.1.

[15] For a more detailed description of this practice, see *Juridical Yearbook*, 1976, p. 220.

[16] *Official Records of the United Nations Conference on the Law of Treaties*, Summary records of the plenary meetings and of the meetings of the Committee of the Whole, Second Session, Thirtieth plenary meeting, para. 23.

[17] See *Multilateral Treaties Deposited with the Secretary-General* (ST/LEG/SER.F/2), pp. 652-653.

[18] As of 15 February 1984, this figure had raised to 44.

[19] Reading as follows:

"3. If the requirements for entry infor force under paragraph 1 or paragraph 2 of this article have not been met by 31 May 1981, the Secretary-General of the United Nations shall, at the earliest time practicable, convene a meeting of those Governments which have deposited instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this Agreement into force provisionally or definitively among themselves in whole or in part. While this Agreement is in force provisionally under this paragraph, those Governments which have decided to put this Agreement into force provisionally among themselves in whole or in part shall be provisional members. Such Governments may meet to review the situation and decide whether this Agreement shall enter into force definitively among themselves, or continue in force provisionally, or terminate."

[20] Résolution 3166 (XXVIII) de l'Assemblée générale, Annexe. Document reproduit dans l'*Annuaire juridique*, 1983, p. 81.

[21] Résolution 2200 (XXI) de l'Assemblée générale, Annexe. Egalement reproduite dans l'*Annuaire juridique*, 1966, p. 182.

[22] Résolution 3235 (XXIX) de l'Assemblée générale. Egalement reproduite dans l'*Annuaire juridique*, 1974, p. 95.

[23] Résolution 3068 (XXVIII) de l'Assemblée générale. Egalement reproduite dans l'*Annuaire juridique*, 1973, p. 76.

[24] Reproduced in the *Juridical Yearbook*, 1964, p. 40.

[25] Document ST/SGB/UNFICYP/1.

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

[27] *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion, I.C.J. Reports*, 1949, p. 174.

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

[29] *Ibid.*, vol. 260, p. 35.

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

[31] We have examined the concept of "gross negligence" and the equivalent concepts as they appear in various legal systems. The various legal systems concur in this description of "gross negligence". Few legal systems go into much more detail in the definition, and the determination in each case is reached by the "fact finder", i.e. jury or judge (analogous to the Property Survey Board in the United Nations administrative context).

[32] Subsequently renumbered 48 and reading as follows:

"*Jurisdiction of the United Nations Administrative Tribunal*

"(*a*) Applications alleging non-observance of these Regulations arising out of the decisions of the Board may be submitted directly to the United Nations Administrative Tribunal by:

"(i) Any staff member of a member organization which has accepted the jurisdiction of the Tribunal in Joint Staff Pension Fund cases who is eligible under article 21 of these Regulations as a participant in the Fund, even after his employment has ceased, and any person who has succeeded to such staff member's rights upon his death;

"(ii) Any other person who can show that he is entitled to rights under these Regulations by virtue of the participation in the Fund of a staff member of such member organization.

"(*b*) In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by a decision of the Tribunal.

"(*c*) The decision of the Tribunal shall be final and without appeal.

"(*d*) The time-limits in article 7 of the Statute of the Tribunal are reckoned from the date of the communication of the contested decision of the Board."

[33] For the agreement in respect of the IAEA see United Nations, *Treaty Series*, vol. 480, p. 484. The agreement in respect of ICITO/GATT has only recently been concluded and has not yet appeared in the *Treaty Series*.

[34] See United Nations, *Treaty Series*, vol. 670, p. 368.

[35] For a summary of the judgement, see p. 115 above.

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 1981.]

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. France

BENVENUTI & BONFANT COMPANY *v.* THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF THE CONGO. JUDGEMENT OF 26 JUNE 1981

Request for arbitration addressed to the International Centre for Settlement of International Disputes — Order of a national court granting recognition of the award subject to a reservation concerning measures of execution — Limits to the authority of the requested court under article 54 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States

On 16 April 1973, an Agreement was executed by the Government of the People's Republic of the Congo and the Italian company Benvenuti & Bonfant, relating to the creation of a semi-public company for the manufacturing of plastic bottles.

This Agreement included, under Article 12, the following arbitration clause:

> "Any dispute between the parties arising out of the performance of this Agreement, which could not be amicably settled, shall be submitted to arbitration within the framework of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, of March 18, 1965, prepared by the I.B.R.D.; the proceedings shall be conducted in the French language. The parties hereby agree to abide by the arbitral award and undertake to comply with its terms, and to waive any right to any appeal or other power [*sic*] of such award. The costs of arbitration shall be borne equally by the parties."

Following the creation of the Plasco company and the execution of a contract dated 21 April 1973 between that company and the Socisca company for the delivery, on a turn-key basis, of a plant for the manufacturing of thermo-plastic bottles, capable of producing about 8 million units and of a plant for the bottling of mineral waters, disputes arose between the parties to the Agreement of 16 April 1973.

On 15 December 1977 the Benvenuti & Bonfant Company addressed a request for arbitration, dated 12 December 1977, to the International Centre for Settlement of Investment Disputes.

The arbitral tribunal rendered its award on 8 August 1980.

At the request of the Benvenuti & Bonfant Company, the President of the *Tribunal de Grande Instance* (the court of first instance) of Paris, by order of 23 December 1980, granted recognition to the award, however, subject to the following reservation:

> "We rule that no measure of execution, or even a conservatory measure, can be taken pursuant to said award, on any assets located in France without our prior authorization."

The Benvenuti & Bonfant Company, consistent with the rules of French procedure in such cases, lodged an appeal against that part of the order granting recognition which contained the reservation quoted above.

The President of the *Tribunal de Grande Instance* was asked, pursuant to article 952, para. 1 of the New Code of Civil Procedure, whether he would consider amending or deleting that part of his order which was objected to. By order dated 13 January 1981, he answered in the negative.

Before the Court of Appeal, the appellant Company contended that the part of the order under appeal made it, in effect, impossible to enforce the award.

The Company argued that under article 54, paragraph 2 of the Convention of Washington of 1965,[1] the lower judge could only ascertain the existence (authenticity) of the award and that he

had mixed up two different steps, i.e., that relating to the recognition and enforcement of the award and that regarding specific measures of execution.

The Company contended that the lower judge did not have to deal with this second step, which might raise the question of the immunity from execution of foreign States.

Accordingly, the Benvenuti & Bonfant Company requested the deletion of that part of the order to which it objected.

The Court of Appeal stressed that, as set forth in article 54 of the Convention of Washington of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, which had been acceded to by the People's Republic of the Congo on 27 December 1965, by Italy on 18 November 1965, and by France on 22 December 1965:

> "(1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.
>
> "(2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.
>
> "(3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought."

The Court noted that these provisions offered a simplified procedure for recognition and enforcement (*exequatur simplifié*) and restricted the function of the court designated for the purposes of the Convention by each Contracting State to ascertaining the authenticity of the award certified by the Secretary-General of the International Centre for Settlement of Investment Disputes.

While observing that under article 55 of the aforesaid Convention of Washington

> "Nothing in article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution",

the Court pointed out that the order granting recognition and enforcement to an arbitral award did not constitute a measure of execution but was only a decision preceding possible measures of execution and that, as a result, the lower judge, requested pursuant to article 54 of the Convention of Washington, could not, without exceeding his authority, deal with the second step, that of execution, to which related the question of the immunity from execution of foreign States.

The Court therefore ordered the deletion from the order rendered on 23 December 1980 by the President of the *Tribunal de Grande Instance* of the following provision:

> "We rule that no measure of execution, or even a conservatory measure, can be taken pursuant to said award, on any assets located in France, without our prior authorization."

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2. United States of America

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

TUCK *v.* PAN AMERICAN HEALTH ORGANIZATION: DECISION OF 13 NOVEMBER 1981

Case brought against an international organization coming under the International Organizations Immunities Act — Motion to dismiss presented by the defendants on the basis of their alleged immunity from suit — Extent of the immunity from suit enjoyed by foreign sovereigns

The case concerned a United States lawyer who had been placed on a retainer by the Staff Association of the Pan American Health Organization — an organization related to the World Health Organization. The Staff Association of PAHO had arranged to instal him on PAHO premises in an office assigned to the Association. The Director of PAHO having ordered him to vacate those premises, the appellant filed suit in the United States District Court for the District of Columbia, which dismissed the suit for failure to state a cause of action. Before the United States Court of Appeals for the District of Columbia Circuit, the appellant alleged that the PAHO and its Director had (1) breached and tortingly interfered with his contract with the PAHO Association, (2) discriminated against him on the basis of race in violation of the Fifth and Fourteenth Amendments and (3) interfered with his relationship with PAHO employees in violation of the First and Fifth Amendments. The defendants on the other hand moved to dismiss the suit on jurisdictional and immunity grounds.

The Court found that the District Court had jurisdiction to consider the claims inasmuch as counts (2) and (3) of the complaint alleged violations of the appellant's and his clients constitutional liberties, thus furnishing the Court with federal jurisdiction.

On the issue of immunity, the Court stated the following:

> "As had been frequently noted, immunity, where justly invoked, properly shields defendants 'not only from the consequences of litigation's results but also from the burden of defending themselves'. *Dombrowski* v. *Eastland*, 387, U.S. 82, 85 (1967) (per curiam), quoted in *Davis* v. *Passman*, 442 U.S. 228, 235 n.11 (1979). This shield would be lost if the merits of a complaint were fully tried before the immunity question was addressed.[2]
>
> "Upon consideration of the claims raised by appellant . . . , we find that appellees are in most respects immune from suit in District Court. However, like the panel of this court in *Broadbent* v. *Organization of American States*, 628 F.2d 27 (D.C. Cir. 1980),[3] we need not decide whether the International Organizations Immunities Act of 1945, 22 U.S.C. § 288a (*b*) (1976), when read in light of the Foreign Sovereign Immunities Act, 26 U.S.C. §1604, 1605 (1976), grants the PAHO absolute or restrictive immunity. After full review of the parties' arguments, we conclude that even under the less expansive restrictive immunity standard, which permits a lawsuit based on "commercial activity" to be maintained against a sovereign without its consent, 28 U.S.C. §1605 (*a*) (2) (1976), the PAHO is immune from suit in this case. [The] claims arise from the PAHO's supervision of its civil service personnel and from its provision and allocation of office space. Neither constitutes a "commercial activity" potentially subjecting the PAHO to suit. *See* 28 U.S.C. §1603 (*d*); *Broadbent* v. *Organization of American States*, 628 F.2d 27, 33-36 (D.C. Cir. 1980). Because the PAHO is immune from this suit if restrictive immunity applies, it is *a fortiori* immune if absolute immunity applies."

The Court also found the Director of the PAHO "immune from suit in his official capacity", so that, to the extent that the acts charged in the complaint related to his functions as Director of the PAHO, the provisions of the International Organizations Immunities Act protected him from suit.

The Court of Appeals however noted that the District Court had not passed upon the appellant's claims against the Director of PAHO in his individual capacity, and therefore remanded the case for the District Court's consideration of those claims.

NOTES

[1] Reproduced in the *Juridical Yearbook*, 1966, p. 196.

[2] The Court however recognized that "because the issues often are so intertwined, it may be impossible in some suits to resolve a claim of immunity without first conducting a limited factual inquiry". *See Forsyth* v. *Kleindienst*, 599 F.2d 1203 (3d Cir. 1979), *cert. denied*, 101 S.Ct. 3147 (1981).

[3] For a summary of that case see *Juridical Yearbook*, 1980, p. 224.

Part Four

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C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS
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A. INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW IN GENERAL
ORGANISATIONS INTERNATIONALES ET DROIT INTERNATIONAL EN GÉNÉRAL
МЕЖДУНАРОДНЫЕ ОРГАНИЗАЦИИ И МЕЖДУНАРОДНОЕ ПРАВО В ЦЕЛОМ
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ORGANIZACIONES INTERGUBERNAMENTALES RELACIONADAS CON LAS NACIONES UNIDAS

Particular organizations
Ouvrages concernant certaines organisations
Отдельные организации
Organizaciones particulares

Food and Agriculture Organization of the United Nations
Organisation des Nations Unies pour l'alimentation et l'agriculture
Продовольственная и сельскохозяйственная организация Объединенных Наций
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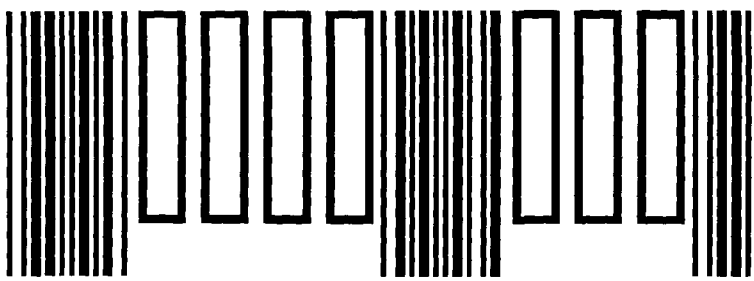

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