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**Replies received in response to the questionnaire prepared by the Special Rapporteur with  
the assistance of the Secretariat**

Topic:  
**International liability for injurious consequences arising out of acts not prohibited by  
international law**

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# INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW

[Agenda item 7]

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## Replies received in response to the questionnaire prepared by the Special Rapporteur with the assistance of the Secretariat

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## Introduction

1. During its consideration, at its thirty-fifth session, of the topic entitled "International liability for injurious consequences arising out of acts not prohibited by international law", the International Law Commission, in response to the proposal made by Mr. Quentin-Baxter, Special Rapporteur for the topic,<sup>1</sup> requested the Secretariat to circulate a questionnaire to selected international organizations.<sup>2</sup> It was hoped that the questionnaire might provide information on the obligations that States owed to each other and that they discharged as members of international organizations and, to that extent, "fulfil[led] or replace[d] some of the procedures indicated in sections 2, 3 and 4 of the schematic outline"<sup>3</sup> of the topic.

2. On 11 August 1983, the Legal Counsel, on behalf of the Secretary-General addressed a questionnaire prepared

by the Special Rapporteur with the assistance of the Secretariat to 16 United Nations bodies, related organs, specialized agencies, other organizations within the United Nations system and other intergovernmental organizations, and requested them to submit their replies and information no later than 16 January 1984. The 16 organizations were chosen by the Secretariat, in consultation with the Special Rapporteur, on the basis of the possible bearing of their activities on matters inquired about in the questionnaire.

3. As of 9 February 1984, replies had been received from the following five organizations, accompanied by the relevant documents: the International Narcotics Control Board, the Food and Agriculture Organization of the United Nations, the World Health Organization, the International Atomic Energy Agency, and the Organization for Economic Co-operation and Development. The replies are reproduced below, and the documents are attached as appendices.

4. The text of the questionnaire reads as follows:

### QUESTIONNAIRE

1. Is your organization involved in any form of co-operative activities among:
  - (a) States only?
  - (b) Non-State entities and States?
2. If the answer to question 1 is positive, please indicate the organization's legislative mandate for such co-operation.
3. Do the activities for which your organization facilitates co-operation mentioned in 1 above occur:
  - (a) Within the territorial jurisdiction of a State?
  - (b) Outside the territorial jurisdiction of a State?
4. Do the activities relate:
  - (a) To the physical use of the environment?
  - (b) To other activities, such as economic, monetary, etc.?
 If yes, please name them.
5. Does your organization's involvement in question 1 begin prior to the initiation of an activity? If the answer to this question is positive, please reply to the following:
  - (a) Does your organization assist in examining the impacts of a proposed activity within or outside of the territory of the State where it will be conducted?
  - (b) What is the composition of the group or the persons who collect the facts in question 5 (a); i.e. experts from the organization, from the member States, government delegations, etc.?

<sup>1</sup> *Yearbook . . . 1983*, vol. II (Part One), p. 220, document A/CN.4/373, para. 64.

<sup>2</sup> *Yearbook . . . 1983*, vol. II (Part Two), p. 83, para. 286.

<sup>3</sup> *Ibid.*

- (c) Is your organization's involvement in the activities described in question 5 (a):
- (i) Compulsory?
  - (ii) Voluntary on the part of the organization?
  - (iii) Upon the request of:
    - (a) The State where the activity will be conducted?
    - (b) Other States, members of the organization which might be affected by that activity?
- (d) Does your organization circulate the facts obtained (by itself, or supplied to it by others) to other members of the organization or to those who might be affected by the proposed activity?
- (e) May your organization suggest any modification in the proposed activity if it is expected to have outside impacts? If yes, please explain the nature of the suggestions, i.e. legislative, technical, time of operation, etc.
- (f) What are some of the criteria which may affect making decisions regarding question 5 (e)?
- (g) Are the decisions made by or through your organization in relation to question 5 (e):
- (i) Recommendatory?
  - (ii) Compulsory?
6. Does your organization's involvement in question 1 begin after the initiation of an activity by its members? If the answer to this question is positive, please reply to the following:
- (a) Does your organization assist in examining the impacts of an ongoing activity, within or outside the territory where it is conducted?
- (b) What is the composition of the group or the persons who collect the facts in question 6 (a), i.e. experts from the organization, from the member States, government delegations, etc.?
- (c) Is your organization's involvement in the activities described in question 6:
- (i) Compulsory?
  - (ii) Voluntary on the part of the organization?
  - (iii) Upon the request of:
    - (a) The State where the activity is being conducted?
    - (b) Other States, members of the organization which are affected by that activity?
- (d) Does your organization circulate the facts obtained (by itself, or supplied to it by others) to other members of the organization or to those who are affected by the activity?
- (e) May your organization suggest any modification in the activity which has or appears to have outside impacts? If yes, please explain the nature of the suggestions, i.e. legislative, technical, time of operation, etc.
- (f) What are some of the criteria which may affect making decisions regarding question 6 (e)?
- (g) Are the decisions made by or through your organization in relation to question 6 (e):
- (i) Recommendatory?
  - (ii) Compulsory?
7. When there is a dispute among the organization's members regarding the negative consequences of a unilateral activity with other members, are they resolved through:
- (a) Direct negotiation among the parties?
  - (b) Negotiation among the parties with the organization's participation?
  - (c) Arbitration?
  - (d) The International Court of Justice or regional courts?
  - (e) Domestic courts?
8. Is your organization, in your opinion, with its structural, economic and political capabilities:
- (a) Sufficiently involved in co-operative activities?
  - (b) Could be more involved in co-operative activities?
9. Are there any other aspects of co-operative activities in which your organization is involved and have not been mentioned in the questionnaire? If yes, please explain.

## Replies to the questionnaire

### I. UNITED NATIONS BODIES

#### International Narcotics Control Board

[Original: English]  
[7 October 1983]

1. It is the task of the International Narcotics Control Board to promote compliance by Governments with the international drug control treaties,<sup>1</sup> the aim of which is to assure and to limit the availability of drugs exclusively to legitimate uses. Action contrary to the provisions of these treaties, which have evolved gradually over a period of 70 years, must be considered prohibited by international law.

2. However, it may be submitted that this branch of treaty law reflects a principle of international solidarity in a wider sense. Thus article 14<sup>2</sup> of the Single Convention, as amended, deals not only with difficult drug control situations caused by the failure of a country (whether a party to the Convention or not) to carry out the provisions of the Convention, but also with situations existing in a country that has not failed to implement the treaty. This article, therefore, implies that a purely domestic situation, without any fault of the Government concerned, may cause significant difficulties for other countries. In such a case, not only would those other countries be justified in making a diplomatic approach to the Government concerned, but the Board itself has the right to ask that Government for explanations or propose the opening of consultations. Under the Convention, the Government in question is not legally bound to accept these proposals for submitting explanations or entering into consultations; only in the case of non-compliance is the Government obligated to furnish the requested explanations to the Board.

3. Article 14, as amended, further authorizes the Board to call upon the Government concerned to adopt appropriate remedial measures. Moreover, the article also gives the Board the right to propose to the Government that a study of the matter be carried out in its territory. Finally, the Board is empowered to draw public attention to a defaulting country, including a country whose continuous lack of action has created a situation amounting to a breach of law, and, in extreme cases, the Board may recommend a drug embargo against such countries.

4. In conclusion, it might be said that the international community of States, by accepting the obligations of the drug control treaties as well as the authority of the Board to propose certain measures against parties and non-parties, has acted in the awareness of a universal problem which can only be resolved in a spirit of global co-operation and solidarity.

<sup>1</sup> Art. 9 of the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961 (see appendix I); and art. 1 (c) of the Convention on Psychotropic Substances (see appendix II).

<sup>2</sup> See appendix I.

#### APPENDIX I

#### Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961<sup>a</sup>

[Articles 9 and 14]

##### *Article 9. Composition and functions of the Board*

1. The Board shall consist of thirteen members to be elected by the Council as follows:

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

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

2. Members of the Board shall be persons who, by their competence, impartiality and disinterestedness, will command general confidence. During their term of office they shall not hold any position or engage in any activity which would be liable to impair their impartiality in the exercise of their functions. The Council shall, in consultation with the Board, make all arrangements necessary to ensure the full technical independence of the Board in carrying out its functions.

3. The Council, with due regard to the principle of equitable geographic representation, shall give consideration to the importance of including on the Board, in equitable proportion, persons possessing a knowledge of the drug situation in the producing, manufacturing, and consuming countries, and connected with such countries.

4. The Board, in co-operation with Governments, and subject to the terms of this Convention, shall endeavour to limit the cultivation, production, manufacture and use of drugs to an adequate amount required for medical and scientific purposes, to ensure their availability for such purposes and to prevent illicit cultivation, production and manufacture of, and illicit trafficking in and use of, drugs.

5. All measures taken by the Board under this Convention shall be those most consistent with the intent to further the co-operation of Governments with the Board and to provide the mechanism for a continuing dialogue between Governments and the Board which will lend assistance to and facilitate effective national action to attain the aims of this Convention.

##### *Article 14. Measures by the Board to ensure the execution of provisions of the Convention*

1. (a) If, on the basis of its examination of information submitted by Governments to the Board under the provisions of this Convention, or of information communicated by United Nations organs or by specialized agencies or, provided that they are approved by the Commission on the Board's recommendation, by either other intergovernmental organizations or international non-governmental organizations which have direct competence in the subject-matter and which are in consultative status with the Economic and Social Council under Article 71 of the Charter of the United Nations or which enjoy a similar status by special agreement with the Council, the Board has objective reasons to believe that the aims of this Convention are being seriously endangered by reason of the failure of any Party, country or territory to carry out the provisions of this Convention, the Board shall have the right to propose to the Government concerned the opening of consultations or to request it to furnish

<sup>a</sup> Adopted at New York on 8 August 1975 (United Nations, *Treaty Series*, vol. 976, p. 105).

explanations. If, without any failure in implementing the provisions of the Convention, a Party or a country or territory has become, or if there exists evidence of a serious risk that it may become, an important centre of illicit cultivation, production or manufacture of, or traffic in or consumption of drugs, the Board has the right to propose to the Government concerned the opening of consultations. Subject to the right of the Board to call the attention of the Parties, the Council and the Commission to the matter referred to in subparagraph (d) below, the Board shall treat as confidential a request for information and an explanation by a Government or a proposal for consultations and the consultations held with a Government under this subparagraph.

(b) After taking action under subparagraph (a) above, the Board, if satisfied that it is necessary to do so, may call upon the Government concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of this Convention.

(c) The Board may, if it thinks such action necessary for the purpose of assessing a matter referred to in subparagraph (a) of this paragraph, propose to the Government concerned that a study of the matter be carried out in its territory by such means as the Government deems appropriate. If the Government concerned decides to undertake this study, it may request the Board to make available the expertise and the services of one or more persons with the requisite competence to assist the officials of the Government in the proposed study. The person or persons whom the Board intends to make available shall be subject to the approval of the Government. The modalities of this study and the time-limit within which the study has to be completed shall be determined by consultation between the Government and the Board. The Government shall communicate to the Board the results of the study and shall indicate the remedial measures that it considers necessary to take.

(d) If the Board finds that the Government concerned has failed to give satisfactory explanations when called upon to do so under subparagraph (a) above, or has failed to adopt any remedial measures which it has been called upon to take under subparagraph (b) above, or that there is a serious situation that needs co-operative action at the international level with a view to remedying it, it may call the attention of the Parties, the Council and the Commission to the matter. The Board shall so act if the aims of this Convention are being seriously endangered and it has not been possible to resolve the matter satisfactorily in any other way. It shall also so act if it finds that there is a serious situation that needs co-operative action at the international level with a view to remedying it and that bringing such a situation to the notice of the Parties, the Council and the Commission is

the most appropriate method of facilitating such co-operative action; after considering the reports of the Board, and of the Commission if available on the matter, the Council may draw the attention of the General Assembly to the matter.

2. The Board, when calling the attention of the Parties, the Council and the Commission to a matter in accordance with paragraph 1 (d) above, may, if it is satisfied that such a course is necessary, recommend to Parties that they stop the import of drugs, the export of drugs, or both, from or to the country or territory concerned, either for a designated period or until the Board shall be satisfied as to the situation in that country or territory. The State concerned may bring the matter before the Council.

3. The Board shall have the right to publish a report on any matter dealt with under the provisions of this article, and communicate it to the Council, which shall forward it to all Parties. If the Board publishes in this report a decision taken under this article or any information relating thereto, it shall also publish therein the views of the Government concerned if the latter so requests.

4. If in any case a decision of the Board which is published under this article is not unanimous, the views of the minority shall be stated.

5. Any State shall be invited to be represented at a meeting of the Board at which a question directly interesting it is considered under this article.

6. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

## APPENDIX II

### Convention on Psychotropic Substances<sup>a</sup>

#### Article 1. Use of terms

...

(c) "Board" means the International Narcotics Control Board provided for in the Single Convention on Narcotic Drugs, 1961.

...

<sup>a</sup> Concluded at Vienna on 21 February 1971 (United Nations, *Treaty Series*, vol. 1019, p. 175).

## II. SPECIALIZED AGENCIES AND OTHER ORGANIZATIONS IN THE UNITED NATIONS SYSTEM

### A. Food and Agriculture Organization of the United Nations

[Original: English]  
[16 January 1984]

#### Question 1

FAO is involved in many co-operative activities which take various forms and are carried out both with States and with non-State entities and States.

(a) The very purpose of the Organization, as an inter-governmental organization in the United Nations system, is to promote and to become involved in co-operative activities among States. In this regard the basic texts of the Organization speak for themselves, and a complete answer to this question is therefore provided under question 2.

(b) It is not clear whether the term non-State entities is intended to refer only to non-governmental institutions or to all institutions, governmental and non-governmental, international and national, which are not States. In any event, the answer to this question is in the affirmative, and details will also be given in the answer to question 2.

#### Question 2

The preamble to the FAO Constitution (1945)<sup>1</sup> starts with an acknowledgement by all States members of the organization of their determination "to promote the *common*\* welfare by furthering separate and *collective*\* action", and with a commitment of all members to "report to one another on the measures taken and the progress

<sup>1</sup> FAO, *Basic Texts*, vols. I and II, 1984 edition, sect. A.

achieved in the field of action set forth above” (essentially ensuring humanity’s freedom from hunger).

The development of international co-operation, of data collection and of dissemination of information, are all part of the basic functions of the Organization. Indeed, article I of the Constitution reads:

*Article I. Functions of the Organization*

1. The Organization shall *collect\**, analyse, interpret and *disseminate\** information relating to nutrition, food and agriculture. . . .

2. The Organization shall promote . . . *international\** action with respect to:

...

(c) *the conservation of natural resources\** . . . ;

3. It shall also be the function of the Organization:

(a) to furnish such technical assistance as Governments may request;

...

(c) generally to take all necessary and appropriate action to implement the purposes of the Organization as set forth in the preamble.

In addition, the FAO Conference may, in accordance with article XIV of the Constitution, approve and submit to member nations conventions and agreements concerning questions related to food and agriculture. Article XV envisages the conclusion of agreements between the Organization and member nations for the establishment of international institutions dealing with questions of food and agriculture. Under article VI of the Constitution, commissions, committees and working parties composed of States may be established and consultations held, thus providing FAO with other means of becoming involved in co-operative activities among States and, in accordance with the applicable rules, non-State entities through their participation in an observer capacity.

Article XIII of the Constitution deals specifically with the matter of co-operation with non-State entities. Co-operation among non-State entities and States is obviously envisaged through the Organization itself. Article XIII is echoed in sections M (Co-operation with international governmental organizations), N (Guiding lines regarding relationship agreements between FAO and intergovernmental organizations”), O (Co-operation with international non-governmental organizations”), P (FAO policy concerning relations with international non-governmental organizations) and Q (Granting of observer status (in respect of international governmental and non-governmental organizations) of the FAO *Basic Texts*).<sup>2</sup>

In addition to the legal basis for co-operation contained in the FAO Constitution, the legal basis for specific activities is also to be found in decisions taken from time to time by the governing bodies of FAO.

*Question 3*

(a) Most activities which FAO undertakes occur within the territorial jurisdiction of a State. However, the Fisher-

ies Department is also active in research, data collection and statistical work on high seas and Antarctic fisheries; the Agriculture Department has a subprogramme on remote sensing technology.

(b) See reply to (a) above.

*Question 4*

(a) A significant part of the activities of FAO relates to the physical use of the environment, agricultural development being largely based on natural resources. As agriculture is defined in paragraph 1 of article I of the FAO Constitution as including fisheries, marine products, forestry and primary forestry products, the programmes of FAO on these resources have been developed in parallel with its important programmes on soil and water resources management and conservation. The Standing Committees of the FAO Council that deal with agriculture, fisheries and forestry are open to all member nations that wish to participate and co-operate in the elaboration and orientation of the Organization’s programmes in those sectors. The majority of FAO field programme activities and projects financed out of regular programme funds (Technical Co-operation Programme) and extrabudgetary funds (e.g. UNDP and Trust Funds) relate to the management of the natural resources base for agricultural development. Member nations also use the good offices of FAO, as a secretariat servicing policy-making bodies, for the promotion of co-operative activities among themselves. As an executing agency for field activities, the Organization is fully involved in co-operative activities among States relating to the physical use of the environment.

(b) The same could be said for the whole series of co-operative activities related to other sectors, in particular the economic sector. For example, through the Committee on Commodity Problems and the Committee on World Food Security, the Organization is actively involved in economic, trade and food security programmes and activities. The FAO Development Department and Economic and Social Policy Department carry out regular and field programme activities which, in one way or another, involve the Organization in co-operative activities among States related to the economic and social sectors.

*Question 5*

The Interdepartmental Working Group on Environment and Energy (set up in 1969-1971), the main function of which is to advise the Director-General on environment and energy matters, recently took the initiative of looking into the possibility of introducing a formal environmental impact assessment (EIA) of field activities carried out by the Organization. It is premature to attempt to predict the outcome of such an initiative. At present no formal EIA exists. However, since environmental protection is a *sine qua non* of sustained long-term agricultural development, as a matter of course FAO has given environmental considerations an important role in its activities. It is therefore only natural that the need for a formal EIA has made itself felt less in FAO than in some organizations which, because of their primarily economic or financial character, have had to call on the formal EIA to make up for their having less experience in the technical aspects of environmental matters arising out of their development activities.

<sup>2</sup> *Ibid.*

(a) FAO has conducted research on the impact on the environment of irrigation, of tropical forest exploitation, of coastal zones development, of pest management, of trypanosomiasis control, of pesticide use, of the pulp and paper industry, and of the hides, skins and leather industry, to name a few examples. Such research covers impacts within or outside the limits of national jurisdiction.

(b) The composition of teams for country programming on project formulation missions, during which environmental data may, whenever relevant, be collected, varies according to the importance of each mission. Such teams are generally composed of experts from the Organization or of consultants.

(c) Field activities are carried out upon the request of the member nation(s) concerned.

(d) Article XI of the Constitution of FAO reads:

*Article XI. Reports by member nations  
and associate members*

1. All member nations and associate members shall communicate regularly to the Director-General, on publication, the texts of laws and regulations pertaining to matters within the competence of the Organization which the Director-General considers useful for the purposes of the Organization.

2. With respect to the same matters, all member nations and associate members shall also communicate regularly to the Director-General statistical, technical and other information published or otherwise issued by, or readily available to, the Government. The Director-General shall indicate from time to time the nature of the information which would be most useful to the Organization and the form in which this information might be supplied.

3. Member nations and associate members may be requested to furnish, at such times and in such form as the Conference, the Council or the Director-General may indicate, other information, reports or documentation pertaining to matters within the competence of the Organization, including reports on the action taken on the basis of resolutions or recommendations of the Conference.

Much of the information obtained—including information based on experience gained in specific programmes or projects having an environmental impact—is available to all member nations of FAO through various FAO publications and reports.

All mission reports are for internal use only, but they may be printed and distributed after final clearance by the Organization, and with the approval of the member nation(s) concerned.

(e) Yes, through suggestions of any nature formulated in the mission reports.

(f) No fixed criteria are established.

(g) Always advisory.

*Question 6*

Yes. Answers provided under question 5 apply *mutatis mutandis* to question 6.

*Question 7*

Disputes among member States of FAO regarding the negative consequences of a unilateral activity of one member State on one or more other members would normally be settled in accordance with the mode of settlement agreed upon by the parties to the dispute or by whatever compulsory mode of settlement may be applicable.

Although the Organization as such does not normally become directly involved in disputes to which its member States may be parties, there are certain conventions and agreements concluded under the FAO Constitution which give the Director-General of the Organization a particular role in the procedure for the settlement of disputes. Thus, article XVII of the Constitution of the European Commission for the Control of Foot-and-Mouth Disease<sup>3</sup> provides that members may request the Director-General of FAO to appoint a committee to settle disputes. Article IX of the International Plant Protection Convention<sup>4</sup> is drafted along similar lines, as well as article VII of the Plant Protection Agreement for the South East Asia and Pacific Region.<sup>5</sup>

In addition, under article XVIII, paragraph 1, of the FAO Constitution any question or dispute concerning the interpretation of the Constitution, if not settled by the Conference, shall be referred to the International Court of Justice. The Organization, by virtue of article XVII, paragraph 2, of its Constitution and its relationship agreement with the United Nations, may request an advisory opinion of the Court on legal questions arising within the scope of its activities.

Finally, it should also be mentioned that no dispute between member States relating to physical transboundary harm has arisen out of activities carried out by FAO.

...

*Question 9*

Yes, but such activities are not pertinent to the topic to which the questionnaire relates.

<sup>3</sup> See appendix A.I.

<sup>4</sup> See appendix A.II.

<sup>5</sup> See appendix A.III.

APPENDIX A.I

**Constitution of the European Commission for the Control  
of Foot-and-Mouth Disease<sup>a</sup>**

*Article XVII. Settlement of disputes*

1. If there is any dispute regarding the interpretation or application of this Constitution, the member or members concerned may request the Director-General of the Organization to appoint a committee to consider the question in dispute.

2. The Director-General shall thereupon, after consultation with the members concerned, appoint a committee of experts which shall include representatives of those members. This committee shall consider the question in dispute, taking into account all documents and other forms of evidence submitted by the members concerned. This committee shall submit a report to the Director-General of the Organization who shall transmit it to the members concerned and to the other members of the Commission.

3. The members of the Commission agree that the recommendations of such a committee, while not binding in character, will become the basis for renewed consideration by the members concerned of the matter out of which the disagreement arose.

4. The members concerned shall share equally the expenses of the experts.

<sup>a</sup> Adopted at Rome, 11 December 1953 (United Nations, *Treaty Series*, vol. 191, p. 285).



## APPENDIX A.II

International Plant Protection Convention<sup>a</sup>

## Article IX. Settlement of disputes

1. If there is any dispute regarding the interpretation or application of this Convention, or if a contracting Government considers that any action by another contracting Government is in conflict with the obligations of the latter under articles V and VI of this Convention, especially regarding the basis of prohibiting or restricting the imports of plants or plant products coming from its territories, the Government or Governments concerned may request the Director-General of FAO to appoint a committee to consider the question in dispute.

2. The Director-General of FAO shall thereupon, after consultation with the Governments concerned, appoint a committee of experts which shall include representatives of those Governments. This committee shall consider the question in dispute, taking into account all documents and other forms of evidence submitted by the Governments concerned. This committee shall submit a report to the Director-General of FAO who shall transmit it to the Governments concerned, and to other contracting Governments.

3. The contracting Governments agree that the recommendations of such a committee, while not binding in character, will become the basis for renewed consideration by the Governments concerned of the matter out of which the disagreement arose.

4. The Governments concerned shall share equally the expenses of the experts.

<sup>a</sup> Concluded at Rome, 6 December 1951 (United Nations, *Treaty Series*, vol. 150, p. 67).

## APPENDIX A.III

Plant Protection Agreement for the South-East Asia and Pacific Region<sup>a</sup>

## Article VII. Settlement of disputes

If there be any dispute regarding the interpretation or implementation of this Agreement, or regarding action taken by any Contracting Government under this Agreement, and such dispute cannot be resolved by the Committee, the Government or Governments concerned may request the Director-General of the Organization to appoint a committee of experts to consider such dispute.

<sup>a</sup> Concluded at Rome, 27 February 1956 (United Nations, *Treaty Series*, vol. 247, p. 400).

## B. World Health Organization

[Original: English]  
[22 December 1983]

1. The information set out below does not conveniently fit into the scheme of the questionnaire. In the first place, the activities concerned are relevant to the subject of the letter of the Secretariat but are outside the focus of the questionnaire: they are essentially either a *lack of activity* (in the case of disease) or a *normal and continuing activity* (in the case of international transport facilities). The ac-

tivities can have an impact on health in all countries of the world. WHO also has some experience and procedures relating to fact-finding missions; the purpose of these is partly informational—to warn other countries of a danger to health or to assure them of the absence of such a danger; but the main purpose is often to enable assistance to be provided to the country concerned.

2. The measures that States must take (as opposed to the maximum measures that they are permitted to take) in the interest of health are mainly set out in articles 2 to 22 of the International Health Regulations 1969.<sup>1</sup> They relate to the duties of States in the case of outbreaks of “a disease subject to the Regulations” (art. 1) and to the duties concerning sanitary facilities in ports and airports. The International Health Regulations are, pursuant to article 22 of the WHO Constitution,<sup>2</sup> binding on most WHO member States.

3. Article 93 of the International Health Regulations<sup>3</sup> provides for a procedure for the referral to the Organization of any question or dispute concerning the interpretation or application of the Regulations. This procedure, however, has not been invoked with respect to the provisions establishing positive duties on States (mainly arts. 2 to 22) as opposed to the other (facilitation) provisions of the Regulations.

4. In accordance with article 11, paragraph 3, of the International Health Regulations:

3. The Organization may, with the consent of the Government concerned, investigate an outbreak of a disease subject to the Regulations which constitutes a serious threat to neighbouring countries or to international health. Such investigation shall be directed to assist Governments to organize appropriate control measures and may include on-the-spot studies by a team.

Article 21, paragraphs 1 and 2, requires the Organization, at the request of the national health administration concerned, to certify, after appropriate investigation, that specified facilities at airports fulfil the conditions required by the Regulations.

5. Neither of the above two procedures has in fact been formally invoked in the context of investigations carried out with respect to the International Health Regulations.

6. The fact-finding missions of the Organization have been carried out on the initiative of World Health Assembly, at the request of States or at the request of organs of the United Nations. The legal basis can be found in the constitutional provision relating to technical co-operation, and in the general function of WHO and the World Health Assembly to take appropriate action to attain or further the objectives of the Organization (art. 2 (v) and art. 18 (m), of the Constitution).<sup>4</sup>

7. Investigations falling within the scope of the subject of the letter of the Secretariat, in that they were relevant to international health, were made pursuant to resolution WHA 13.55.<sup>5</sup> Under this resolution, the World Health

<sup>1</sup> See appendix B.I.

<sup>2</sup> See appendix B.II.

<sup>3</sup> See appendix B.I.

<sup>4</sup> See appendix B.II.

<sup>5</sup> Resolution WHA 13.55 adopted at the Thirteenth World Health Assembly, in May 1960, provides:

Assembly requested the Director-General "to establish an official register listing areas where malaria eradication has been achieved, after inspection and certification by a WHO evaluation team" (para. 5).

8. There is no fixed procedure governing the fact-finding missions organized by WHO. The number of experts varies, and in most cases does not exceed three. The choice of the members normally depends upon the directions of the authority which took the initiative for the mission. In the case of missions requested by Governments, the experts are designated by the Director-General. The terms of reference are normally clear from the purposes of the mission itself or from the resolution establishing it.

9. The report of the mission is submitted to the authority requesting the mission, as well as to the Government concerned. Where the investigation is requested by a Government, the distribution of the report is left to the discretion of that Government.

10. Mention should be made of one exceptional case (in 1970) which does not fit into the pattern outlined above: a Government requested urgent assistance from WHO in the face of the outbreak of an epidemic. As a necessary incident to its assistance, a WHO team carried out an investigation in the country and identified the disease as cholera due to the *eltor* vibrio. This is a disease that, under the Inter-

national Health Regulations, must be immediately notified to the Organization (art. 3), and the Organization must promptly transmit the information received to all health administrations (art. 11, para. 1). The Government, however, refused to make the notification, and the Director-General considered that he had a constitutional duty, nevertheless, to publish the results of the investigation.

11. Finally, it should be stressed that the purpose of WHO fact-finding missions is to obtain information as a means of assisting the Government concerned rather than to obtain information *per se*.

#### APPENDIX B.I

##### International Health Regulations<sup>a</sup>

[Articles 2 to 22 and article 93]

#### PART II. NOTIFICATIONS AND EPIDEMIOLOGICAL INFORMATION

##### Article 2

For the application of these Regulations, each State recognizes the right of the Organization to communicate directly with the health administration of its territory or territories. Any notification or information sent by the Organization to the health administration shall be considered as having been sent to the State, and any notification or information sent by the health administration to the Organization shall be considered as having been sent by the State.

##### Article 3<sup>1</sup>

1. Each health administration shall notify the Organization by telegram or telex within twenty-four hours of its being informed that the first case of a disease subject to the Regulations, that is neither an imported case nor a transferred case, has occurred in its territory, and, within the subsequent twenty-four hours, notify the infected area.

2. In addition each health administration will notify the Organization by telegram or telex within twenty-four hours of its being informed:

(a) that one or more cases of a disease subject to the Regulations has been imported or transferred into a non-infected area—the notification to include all information available on the origin of infection;

(b) that a ship or aircraft has arrived with one or more cases of a disease subject to the Regulations on board—the notification to include the name of the ship or the flight number of the aircraft, its previous and subsequent ports of call, and the health measures, if any, taken with respect to the ship or aircraft.

3. The existence of the disease so notified on the establishment of a reasonably certain clinical diagnosis shall be confirmed as soon as possible by laboratory methods, as far as resources permit, and the result shall be sent immediately to the Organization by telegram or telex.

<sup>1</sup> (1) The notification of an infected area by a health administration must be limited to the territory of that health administration. The initial notification of the extent of the infected area may in certain cases be provisional in nature. When, on epidemiological investigation, redefinition of the infected area is indicated, the health administration should inform the Organization as soon as possible of any change in the initial notification. (WHO, *Official Records*, No. 177, 1969, p. 554.)

(2) In the absence of information on the origin of infection, as required under subparagraph 2 (a), a negative report is in conformity with the Regulations. It is then for the health administration to follow up the notification with such information as may later become available, as soon as possible. (*Ibid.*, No. 135, 1964, p. 32.)

(3) In an effort to avoid delays, health administrations might consider having certain health authorities, e.g., those at towns and cities adjacent to a port or an airport, notify the Organization directly. (*Ibid.*, p. 36; and *ibid.*, No. 143, 1965, p. 45.)

(4) Countries receiving travellers from infected areas should keep the measures applied to a necessary minimum. (*Ibid.*, No. 217, 1974, p. 55.)

<sup>a</sup> WHO, *International Health Regulations*, 3rd ed., annotated (Geneva, 1983).

"The Thirteenth World Health Assembly,

"Having considered the report of the Director-General on the development of the malaria eradication programme;

"Noting the satisfactory progress that has been made in the world-wide campaign for malaria eradication;

"Recognizing that the operational supervision and epidemiological assessment which are essential for the continuing success of the campaign can only be ensured by the adequate staffing of national malaria eradication services with fully trained personnel;

"Noting the steps that have been taken by the Director-General to provide increased facilities for the training of the required national personnel as well as to meet the request for technical advisory services needed by the Governments;

"Believing that it is important to keep constantly in mind the essential element of urgency in malaria eradication programmes, which must be time-limited programmes, and that adequate organizational and financial support is indispensable; and

"Recognizing that co-ordination between neighbouring countries is of special importance to countries reaching an advanced stage in their eradication programmes and that a fundamental element for such co-ordination is the regular reporting of the progress of operations and more particularly of epidemiological assessment,

"1. Urges Governments concerned to intensify their efforts for the training and provision of adequate technical and administrative personnel required to strengthen the supervisory and epidemiological assessment activities of their malaria eradication services, taking full advantage of the facilities provided by the Organization;

"2. Urges Governments concerned to accord to their national malaria eradication programmes the priority needed for the successful completion of the campaign within the shortest period of time;

"3. Requests Governments concerned to continue to keep the Organization regularly informed of the progress of their malaria eradication programmes and, in particular, of their epidemiological assessment activities;

"4. Requests the Director-General to keep under constant review the progress of the world-wide programme, to make available to Governments such technical advisory services as may be required, and to continue to take all the necessary steps to ensure the proper co-ordination of programmes throughout the world; and

"5. Requests the Director-General to establish an official register listing areas where malaria eradication has been achieved, after inspection and certification by a WHO evaluation team."

#### Article 4<sup>2</sup>

1. Each health administration shall notify the Organization immediately of evidence of the presence of the virus of yellow fever, including the virus found in mosquitoes or in vertebrates other than man, or the plague bacillus, in any part of its territory, and shall report the extent of the area involved.

2. Health administrators, when making a notification of rodent plague, shall distinguish wild-rodent plague from domestic-rodent plague and, in the case of the former, describe the epidemiological circumstances and the area involved.

#### Article 5

Any notification required under paragraph 1 of article 3 shall be promptly supplemented by information as to the source and type of the disease, the number of cases and deaths, the conditions affecting the spread of the disease, and the prophylactic measures taken.

#### Article 6

1. During an epidemic the notifications and information required under article 3 and article 5 shall be followed by subsequent communications sent at regular intervals to the Organization.

2. These communications shall be as frequent and as detailed as possible. The number of cases and deaths shall be communicated at least once a week. The precautions taken to prevent the spread of the disease, in particular the measures which are being applied to prevent the spread of the disease to other territories by ships, aircraft, trains, road vehicles, other means of transport, and containers leaving the infected area, shall be stated. In the case of plague, the measures taken against rodents shall be specified. In the case of the diseases subject to the Regulations which are transmitted by insect vectors, the measures taken against such vectors shall also be specified.

#### Article 7<sup>3</sup>

1. The health administration for a territory in which an infected area has been defined and notified shall notify the Organization when that area is free from infection.

2. An infected area may be considered as free from infection when all measures of prophylaxis have been taken and maintained to prevent the recurrence of the disease or its spread to other areas, and when:

(a) in the case of plague or cholera, a period of time equal to at least

<sup>2</sup> (1) See the definition of "infected area" in article 1 of the Regulations.

(2) One of the following criteria should be used in determining activity of the virus in vertebrates other than man:

(i) the discovery of the specific lesions of yellow fever in the liver of vertebrates indigenous to the area, or

(ii) the isolation of yellow fever virus from any indigenous vertebrates. (WHO, *Official Records*, No. 64, 1955, p. 69.)

(3) Measures need not normally be taken against an area which has been notified as infected with wild-rodent plague, unless there is evidence that the wild-rodent plague has infiltrated or is tending to infiltrate into the domestic rodent population, and thus threatens international traffic. (*Ibid.*, No. 56, 1954, p. 47; and *ibid.*, No. 64, 1955, p. 38.)

<sup>3</sup> (1) The period stipulated in paragraph 2 should begin when the last case is identified as a case, irrespective of the time at which the person may have been isolated. (WHO, *Official Records*, No. 127, 1963, p. 33.)

(2) The time-limits in paragraph 2 (a), equal to twice the incubation period of the disease, are minimum limits and health administrations may extend them before declaring an infected area in their territory free from infection and continue for a longer period their measures of prophylaxis to prevent the recurrence of the disease or its spread to other areas. (*Ibid.*, No. 72, 1956, p. 38; and *ibid.*, No. 79, 1957, p. 499.)

twice the incubation period of the disease, as hereinafter provided, has elapsed since the last case identified has died, recovered or been isolated, and there is no epidemiological evidence of spread of that disease to any contiguous area;

(b) (i) in the case of yellow fever not transmitted by *Aedes aegypti*, three months have elapsed without evidence of activity of the yellow-fever virus;

(ii) in the case of yellow fever transmitted by *Aedes aegypti*, three months have elapsed since the occurrence of the last human case, or one month since that occurrence if the *Aedes aegypti* index has been continuously maintained below 1 per cent;

(c) (i) in the case of plague in domestic rodents, one month has elapsed since the last infected animal was found or trapped;

(ii) in the case of plague in wild rodents, three months have elapsed without evidence of the disease in sufficient proximity to ports and airports to be a threat to international traffic.

#### Article 8<sup>4</sup>

1. Each health administration shall notify the Organization of:

(a) the measures which it has decided to apply to arrivals from an infected area and the withdrawal of any such measures, indicating the date of application or withdrawal;

(b) any change in its requirements as to vaccination for any international voyage.

2. Any such notification shall be sent by telegram or telex, and whenever possible in advance of any such change or of the application or withdrawal of any such measure.

3. Each health administration shall send to the Organization once a year, at a date to be fixed by the Organization, a recapitulation of its requirements as to vaccination for any international voyage.

4. Each health administration shall take steps to inform prospective travellers, through the co-operation of, as appropriate, travel agencies, shipping firms, aircraft operators or by other means, of its requirements and of any modifications thereto.

#### Article 9

In addition to the notifications and information required under articles 3 to 8 inclusive, each health administration shall send to the Organization weekly:

(a) a report by telegram or telex of the number of cases of the diseases subject to the Regulations and deaths therefrom during the previous week in each of its towns and cities adjacent to a port or an airport, including any imported or transferred cases,

(b) a report by airmail of the absence of such cases during the periods referred to in subparagraphs (a), (b) and (c) of paragraph 2 of article 7.

#### Article 10

Any notification and information required under articles 3 to 9 inclusive shall also be sent by the health administration, on request, to any diplomatic mission or consulate established in the territory for which it is responsible.

<sup>4</sup> (1) The requirements of countries, as notified by health administrations, are published in the WHO publication, *Vaccination Certificate Requirements for International Travel and Health Advice to Travellers* (Geneva, 1984). Amendments to this publication appear in the *Weekly Epidemiological Record*.

(2) Measures believed to be in excess of the Regulations shall be published by the Organization accompanied by the phrase: "It appears that conformity of this measure with the Regulations may be open to question and the Organization is in communication with the health administration concerned." (WHO, *Official Records*, No. 56, 1954, p. 55; and *ibid.*, No. 79, 1957, p. 499.)

*Article 11<sup>5</sup>*

1. The Organization shall send to all health administrations, as soon as possible and by the means appropriate to the circumstances, all epidemiological and other information which it has received under articles 3 to 8 inclusive and paragraph (a) of article 9 as well as information as to the absence of any returns required by article 9. Communications of an urgent nature shall be sent by telegram, telex or telephone.

2. Any additional epidemiological data and other information available to the Organization through its surveillance programme shall be made available, when appropriate, to all health administrations.

3. The Organization may, with the consent of the Government concerned, investigate an outbreak of a disease subject to the Regulations which constitutes a serious threat to neighbouring countries or to international health. Such investigation shall be directed to assist Governments to organize appropriate control measures and may include on-the-spot studies by a team.

*Article 12*

Any telegram or telex sent, or telephone call made, for the purposes of articles 3 to 8 inclusive and article 11 shall be given the priority appropriate to the circumstances; in any case of exceptional urgency, where there is risk of the spread of a disease subject to the Regulations, the priority shall be the highest available under international telecommunication agreements.

*Article 13<sup>6</sup>*

1. Each State shall forward annually to the Organization, in accordance with article 62 of the Constitution of the Organization, information concerning the occurrence of any case of a disease subject to the Regulations due to or carried by international traffic, as well as on the action taken under these Regulations or bearing upon their application.

2. The Organization shall, on the basis of the information required by paragraph 1 of this article, of the notifications and reports required by these Regulations, and of any other official information, prepare an annual report on the functioning of these Regulations and on their effect on international traffic.

3. The Organization shall review the epidemiological trends of the diseases subject to the Regulations, and shall publish such data, not less than once a year, illustrated with maps showing infected and free areas of the world, and any other relevant information obtained from the surveillance programme of the Organization.

## PART III. HEALTH ORGANIZATION

*Article 14<sup>7</sup>*

1. Each health administration shall ensure that ports and airports in its territory shall have at their disposal an organization and equipment adequate for the application of the measures provided for in these Regulations.

<sup>5</sup> Notification to health administrations by means of the *Weekly Epidemiological Record* and the automatic telex reply service discharges the Organization's responsibilities for notification under articles 11 (first sentence), 20, 21, 22, 69 and 85. (WHO, *Official Records*, No. 56, 1954, pp. 55 and 66.) (See also annex IV of the Regulations: WHO Epidemiological Service to Member States.)

<sup>6</sup> All health administrations should report, even negative information, on the occurrence of diseases subject to the Regulations and other matters relative to the functioning of the Regulations. (WHO, *Official Records*, No. 217, 1974, p. 58; and *ibid.*, No. 240, 1977, p. 45.)

<sup>7</sup> (1) Microbiological sampling of drinking water and food should be part of an overall sanitation programme. (WHO, *Official Records*, No. 217, 1974, p. 58.)

(2) All national health administrations should ensure the quality of food and water provided in airports and aircraft. (*Ibid.*, No. 240, 1977, p. 45.)

2. Every port and airport shall be provided with pure drinking water and wholesome food supplied from sources approved by the health administration for public use and consumption on the premises or on board ships or aircraft. The drinking water and food shall be stored and handled in such a manner as to ensure their protection against contamination. The health authority shall conduct periodic inspections of equipment, installations and premises, and shall collect samples of water and food for laboratory examinations to verify the observance of this article. For this purpose and for other sanitary measures, the principles and recommendations set forth in the guides on these subjects published by the Organization shall be applied as far as practicable in fulfilling the requirements of these Regulations.

3. Every port and airport shall also be provided with an effective system for the removal and safe disposal of excrement, refuse, waste water, condemned food, and other matter dangerous to health.

*Article 15*

There shall be available to as many of the ports and airports in a territory as practicable an organized medical and health service with adequate staff, equipment and premises, and in particular facilities for the prompt isolation and care of infected persons, for disinfection, disinsecting and deratting, for bacteriological investigation, for the collection and examination of rodents for plague infection, for collection of water and food samples and their dispatch to a laboratory for examination, and for other appropriate measures provided for by these Regulations.

*Article 16*

The health authority for each port and airport shall:

- (a) take all practicable measures to keep port and airport installations free of rodents;
- (b) make every effort to extend rat-proofing to the port and airport installations.

*Article 17*

1. Each health administration shall ensure that a sufficient number of ports in its territory shall have at their disposal adequate personnel competent to inspect ships for the issue of the Deratting Exemption Certificates referred to in article 53, and the health administration shall approve such ports for that purpose.

2. The health administration shall designate a number of these approved ports, depending upon the volume and incidence of its international traffic, as having at their disposal the equipment and personnel necessary to derat ships for the issue of the Deratting Certificates referred to in article 53.

3. Each health administration which so designates ports shall ensure that Deratting Certificates and Deratting Exemption Certificates are issued in accordance with the requirements of the Regulations.

*Article 18*

1. Depending upon the volume of its international traffic, each health administration shall designate as sanitary airports a number of the airports in its territory, provided they meet the conditions laid down in paragraph 2 of this article, and the provisions of article 14.

2. Every sanitary airport shall have at its disposal:

- (a) an organized medical service and adequate staff, equipment and premises;

(3) See the following WHO publications: *Guide to Ship Sanitation* (1967); *Vector Control in International Health* (1972); *Guide to Hygiene and Sanitation in Aviation* (2nd ed., 1977); *Guidelines for Drinking-water Quality* are in preparation.

(b) facilities for the transport, isolation, and care of infected persons or suspects;

(c) facilities for efficient disinfection and disinsecting, for the control of vectors and rodents, and for any other appropriate measure provided for by these Regulations;

(d) a bacteriological laboratory, or facilities for dispatching suspected material to such a laboratory;

(e) facilities within the airport or available to it for vaccination against yellow fever.

#### Article 19

1. Every port and the area within the perimeter of every airport shall be kept free from *Aedes aegypti* in its immature and adult stages and the mosquito vectors of malaria and other diseases of epidemiological significance in international traffic. For this purpose active anti-mosquito measures shall be maintained within a protective area extending for a distance of at least 400 metres around the perimeter.

2. Within a direct transit area provided at any airport situated in or adjacent to an area where the vectors referred to in paragraph 1 of this article exist, any building used as accommodation for persons or animals shall be kept mosquito-proof.

3. For the purposes of this article, the perimeter of an airport means a line enclosing the area containing the airport buildings and any land or water used or intended to be used for the parking of aircraft.

4. Each health administration shall furnish data to the Organization once a year on the extent to which its ports and airports are kept free from vectors of epidemiological significance in international traffic.

#### Article 20<sup>b</sup>

1. Each health administration shall send to the Organization a list of the ports in its territory approved under article 17 for the issue of:

- (i) Deratting Exemption Certificates only, and
- (ii) Deratting Certificates and Deratting Exemption Certificates.

2. The health administration shall notify the Organization of any change which may occur from time to time in the list required by paragraph 1 of this article.

3. The Organization shall send promptly to all health administrations the information received in accordance with this article.

#### Article 21

1. The Organization shall, at the request of the health administration concerned, arrange to certify, after any appropriate investigation, that a sanitary airport in its territory fulfils the conditions required by the Regulations.

2. The Organization shall, at the request of the health administration concerned, and after appropriate investigation, certify that a direct transit area at an airport in a yellow-fever infected area in its territory fulfils the conditions required by the Regulations.

3. These certifications shall be subject to periodic review by the Organization, in co-operation with the health administration concerned, to ensure that the required conditions are fulfilled.

#### Article 22

1. Wherever the volume of international traffic is sufficiently important and whenever epidemiological conditions so require, facilities for

the application of the measures provided for in these Regulations shall be made available at frontier posts on railway lines, on roads and, where sanitary control over inland navigation is carried out at the frontier, on inland waterways.

2. Each health administration shall notify the Organization when and where such facilities are provided.

3. The Organization shall send promptly to all health administrations the information received in accordance with this article.

...

#### Article 93

1. Any question or dispute concerning the interpretation or application of these Regulations or of any Regulations supplementary to these Regulations may be referred by any State concerned to the Director-General who shall attempt to settle the question or dispute. If such question or dispute is not thus settled, the Director-General on his own initiative, or at the request of any State concerned, shall refer the question or dispute to the appropriate committee or other organ of the Organization for consideration.

2. Any State concerned shall be entitled to be represented before such committee or other organ.

3. Any such dispute which has not been thus settled may, by written application, be referred by any State concerned to the International Court of Justice for decision.

## APPENDIX B.II

### Constitution of the World Health Organization<sup>a</sup>

#### Article 2

In order to achieve its objective, the functions of the Organization shall be:

...

(v) generally to take all necessary action to attain the objective of the Organization.

#### Article 18

The functions of the Health Assembly shall be:

...

(m) to take any other appropriate action to further the objective of the Organization.

#### Article 22

Regulations adopted pursuant to article 21 shall come into force for all members after due notice has been given of their adoption by the Health Assembly except for such members as may notify the Director-General of rejection or reservations within the period stated in the notice.

<sup>b</sup> Health administrations are urged to make from time to time a review of the ports designated under the Regulations in order to determine whether such designations meet the conditions of traffic. (WHO, *Official Records*, No. 127, 1963, p. 35.)

<sup>a</sup> WHO, *Basic Documents*, 35th ed. (Geneva, 1985), p. 1.

### C. International Atomic Energy Agency

[Original: English]  
[13 January 1984]

#### GENERAL COMMENTS

1. The problem of "international liability for injurious consequences arising out of acts not prohibited by international law" encompasses issues that have some relevance to the area of IAEA involvement in international co-operation.

2. The need for international regulation of inherently hazardous forms of activities with potentially transfrontier implications has led to the adoption of international recommendations or agreements on some specific subject-matters, including peaceful applications of nuclear energy. Although the issues of liability to third parties that may arise from such applications are outside the Agency's specific functions, they are regulated by an international convention adopted under its aegis, the 1963 Vienna Convention on Civil Liability for Nuclear Damage.<sup>1</sup>

3. The development by IAEA of various safety standards for nuclear activities or installations for peaceful purposes and their progressive adoption and application by member States in accordance with their own requirements could contribute to enhancing the safety of such activities or installations and, thereby, preventing or reducing the risk of injurious consequences both within and beyond national boundaries. More specifically, with respect to an assessment of transboundary radiation detriment, IAEA has recently sponsored research with a view to the formulation of an internationally recognized minimum value of radiation detriment that could help to overcome the use of different values for assessing transboundary detriment as compared with that incurred in the country from which it originates.

4. In order to facilitate co-operation among member States for preventing and limiting injurious effects in cases where a nuclear accident may have significant radiological impact in other States, IAEA will convene in 1984 an expert group to consider the need for prior arrangements among the States concerned for establishing a threshold of reportable events, integrated planning and information exchange on a transboundary release of radioactive material. This is in follow-up to the work carried out by two earlier expert groups which met in 1982 and 1983, which resulted in a set of *Guidelines for Mutual Emergency Assistance Arrangements in Connection with a Nuclear Accident or Radiological Emergency*<sup>2</sup> published by IAEA for use by member States as advisory material.

#### REPLIES TO THE QUESTIONNAIRE

##### Question 1

(a) Yes. Under the provisions of its Statute, IAEA is empowered to carry out activities among member States in

<sup>1</sup> IAEA, *International Conventions on Civil Liability for Nuclear Damage*, Legal Series No. 4, rev. ed. (Vienna, 1976), p. 7.

<sup>2</sup> INFCIRC/310. IAEA publication (Vienna), January 1984.

the area of its responsibility to "seek to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world" (art. I).

(b) Yes. In carrying out its functions, IAEA "is authorized to enter into an agreement or agreements establishing an appropriate relationship between the Agency and the United Nations and any other organizations the work of which is related to that of the Agency" (art. XVI). Various forms of co-operation have thus been established with a number of organizations within the United Nations system (UNESCO, ILO, WHO, WMO, ICAO, FAO, IMO, UNEP, UNDP, etc.) and certain global or regional international organizations (OAU, CMEA, EURATOM, NEA/OECD, OAS/IANEC, etc.).

##### Question 2

The authority of IAEA to carry out international co-operation activities in its particular field of competence derives basically from various provisions of its Statute, namely, articles II, III, IX, XI, and XVI.<sup>3</sup>

More detailed rules and procedures for furnishing technical assistance by IAEA to member States are laid down in a special document—the *Revised Guiding Principles and General Operating Rules to Govern the Provisions of Technical Assistance*—approved by the Board of Governors on 21 February 1979.<sup>4</sup>

Specific terms and conditions under which technical assistance projects are implemented are embodied in the Revised Supplementary Agreement to the UNDP Basic Assistance Agreement providing, by reference, for the application of the provisions of that Agreement in addition to those required by the IAEA Statute (non-military diversion of the assistance received, application of relevant safety measures, settlement of disputes).

##### Question 3

(a) Yes. The co-operative activities of IAEA are, in general, restricted to the territory of the member States where such activity is undertaken. One of the basic principles governing the provision of technical assistance by IAEA is that the technical assistance activities of the Agency "shall be carried out with due observance of the sovereign rights of States" (art. III.D).

(b) Yes. Part of the Agency's activities also concerns areas that lie beyond the territorial jurisdiction of States, i.e. the high seas. For example, under the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972,<sup>5</sup> IAEA has been entrusted with (a) defining high-level radioactive wastes and other such matter unsuitable for dumping at sea, and (b) making recommendations to be taken fully into account by the Contracting Parties in issuing permits for the dumping at sea of radioactive matter not prohibited under the Convention.

Similar responsibility is provided for in the Barcelona Convention for the protection of the Mediterranean Sea against Pollution, 1976.<sup>6</sup>

<sup>3</sup> See appendix C.I.

<sup>4</sup> INFCIRC/267 (March 1979).

<sup>5</sup> United Nations, *Treaty Series*, vol. 1046, p. 120.

<sup>6</sup> To appear in United Nations, *Treaty Series*, No. 16908.

*Question 4*

(a) Yes. The activity of IAEA relates, in broad terms, to research on, and development and practical application of, nuclear energy for peaceful purposes.

(b) Yes. One of the major statutory functions of IAEA is to establish and administer safeguards. Essentially, these constitute a means of verifying the fulfilment of international undertakings by States under agreements concluded with IAEA in connection with treaty obligations (e.g. Treaty on the Non-Proliferation of Nuclear Weapons,<sup>7</sup> Tlatelolco Treaty<sup>8</sup>) and other legal arrangements.

IAEA is also actively engaged in fostering the exchange of scientific information in nuclear science and technology, and in providing for scientists and technicians, with particular regard to the special needs of developing countries.

*Question 5*

(a) (b) (c) Yes. At the request of a member State considering a project, IAEA provides assistance in performing data collections and various studies and assessments from the outset. These missions are performed by teams of international experts that may consist of specialists from the secretariat and/or from member States. The assignments are usually carried out in close co-operation with officials and other experts from the requesting country. Where necessary, a joint team of specialists can be established.

(d) Reports resulting from such missions are subject to a two-step procedure for their use. They are first submitted to the authorities of the State for which the project was carried out. Subsequently, if not objected to by the State concerned, they may be released for the general information and benefit of other member States.

(e) (f) (g) The findings and conclusions of such missions are advisory and are presented in the form of suggestions and recommendations of a technical nature. The national authorities concerned may be advised to carry out further in-depth studies on particular topics (e.g. environmental impact assessments, economic feasibility) or to give special attention to preparatory steps required, such as organizational infrastructure, regulatory framework, manpower training and development, evaluation of supplies availability and quality performance, or to delay a project. Regional co-operation may also be encouraged. The study methodology for project assessment does not specifically envisage the evaluation of the transboundary impacts of a contemplated activity. However, in the case of nuclear project, advice on siting and safety requirements are designed *per se* to prevent nuclear damage, no matter where it may be caused, within or outside the territory of a State.

*Question 6*

Yes. See replies to question 5.

*Question 7*

(a) (b) (c) (d) (e) IAEA has no statutory authority to per-

form functions relating to peaceful settlement of disputes among its member States. In case of such disputes, member States, in principle, are bound to act in accordance with their obligations under Chapter VI of the United Nations Charter.

However, special provisions for settlement of disputes through negotiation or other means as may be agreed by the parties concerned, or through arbitration, have been invariably embodied in all agreements of various types concluded between IAEA and its member States.

*Question 8*

(a) (b) Within its statutory framework, IAEA is largely involved in world-wide co-operative activities and has the potential, under its Statute, to increase such international co-operation, depending upon the consensus of its member States.

*Question 9*

No.

## APPENDIX C.1

Statute of the International Atomic Energy Agency<sup>3</sup>

[Articles II, III, IX, XI and XVI]

*Article II. Objectives*

The Agency shall seek to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world. It shall ensure, so far as it is able, that assistance provided by it or at its request or under its supervision or control is not used in such a way as to further any military purpose.

*Article III. Functions*

A. The Agency is authorized:

1. To encourage and assist research on, and development and practical application of, atomic energy for peaceful uses throughout the world; and, if requested to do so, to act as an intermediary for the purposes of securing the performance of services or the supplying of materials, equipment, or facilities by one member of the Agency for another; and to perform any operation or service useful in research on, or development or practical application of, atomic energy for peaceful purposes;

2. To make provision, in accordance with this Statute, for materials, services, equipment, and facilities to meet the needs of research on, and development and practical application of, atomic energy for peaceful purposes, including the production of electric power, with due consideration for the needs of the underdeveloped areas of the world;

3. To foster exchange of scientific and technical information on peaceful uses of atomic energy;

4. To encourage the exchange and training of scientists and experts in the field of peaceful uses of atomic energy;

5. To establish and administer safeguards designed to ensure that special fissionable and other materials, services, equipment, facilities, and information made available by the Agency or at its request or under its supervision or control are not used in such a way as to further any military purpose; and to apply safeguards, at the request of the parties, to any

<sup>7</sup> United Nations, *Treaty Series*, vol. 729, p. 161.

<sup>8</sup> *Ibid.*, vol. 634, p. 281.

<sup>3</sup> IAEA, *Statute of the International Atomic Energy Agency*, as amended up to 1 June 1973 (Vienna, 1973).

bilateral or multilateral arrangement, or, at the request of a State, to any of that State's activities in the field of atomic energy;

6. To establish or adopt, in consultation and, where appropriate, in collaboration with the competent organs of the United Nations and with the specialized agencies concerned, standards of safety for protection of health and minimization of danger to life and property (including such standards for labour conditions), and to provide for the application of these standards to its own operations as well as to the operations making use of materials, services, equipment, facilities, and information made available by the Agency or at its request or under its control or supervision; and to provide for the application of these standards, at the request of the parties, to operations under any bilateral or multilateral arrangement, or, at the request of a State, to any of that State's activities in the field of atomic energy;

7. To acquire or establish any facilities, plant and equipment useful in carrying out its authorized functions, whenever the facilities, plant, and equipment otherwise available to it in the area concerned are inadequate or available only on terms it deems unsatisfactory.

B. In carrying out its functions, the Agency shall:

1. Conduct its activities in accordance with the purposes and principles of the United Nations to promote peace and international co-operation, and in conformity with policies of the United Nations furthering the establishment of safeguarded world-wide disarmament and in conformity with any international agreements entered into pursuant to such policies;

2. Establish control over the use of special fissionable materials received by the Agency, in order to ensure that these materials are used only for peaceful purposes;

3. Allocate its resources in such a manner as to secure efficient utilization and the greatest possible general benefit in all areas of the world, bearing in mind the special needs of the underdeveloped areas of the world;

4. Submit reports on its activities annually to the General Assembly of the United Nations and, when appropriate, to the Security Council: if in connection with the activities of the Agency there should arise questions that are within the competence of the Security Council, the Agency shall notify the Security Council, as the organ bearing the main responsibility for the maintenance of international peace and security, and may also take the measures open to it under this Statute, including those provided in paragraph C of article XII;

5. Submit reports to the Economic and Social Council and other organs of the United Nations on matters within the competence of these organs.

C. In carrying out its functions, the Agency shall not make assistance to members subject to any political, economic, military, or other conditions incompatible with the provisions of this Statute.

D. Subject to the provisions of this Statute and to the terms of agreements concluded between a State or a group of States and the Agency which shall be in accordance with the provisions of the Statute, the activities of the Agency shall be carried out with due observance of the sovereign rights of States.

#### *Article IX. Supplying of materials*

A. Members may make available to the Agency such quantities of special fissionable materials as they deem advisable and on such terms as shall be agreed with the Agency. The materials made available to the Agency may, at the discretion of the member making them available, be stored either by the member concerned or, with the agreement of the Agency, in the Agency's depots.

B. Members may also make available to the Agency source materials as defined in article XX and other materials. The Board of Governors shall determine the quantities of such materials which the Agency will accept under agreements provided for in article XIII.

C. Each member shall notify the Agency of the quantities, form, and composition of special fissionable materials, source materials, and other materials which that member is prepared, in conformity with its laws, to make available immediately or during a period specified by the Board of Governors.

D. On request of the Agency a member shall, from the materials which it has made available, without delay deliver to another member or group of members such quantities of such materials as the Agency may specify, and shall without delay deliver to the Agency itself such quantities of such materials as are really necessary for operations and scientific research in the facilities of the Agency.

E. The quantities, form and composition of materials made available by any member may be changed at any time by the member with the approval of the Board of Governors.

F. An initial notification in accordance with paragraph C of this article shall be made within three months of the entry into force of this Statute with respect to the member concerned. In the absence of a contrary decision of the Board of Governors, the materials initially made available shall be for the period of the calendar year succeeding the year when this Statute takes effect with respect to the member concerned. Subsequent notifications shall likewise, in the absence of a contrary action by the Board, relate to the period of the calendar year following the notification and shall be made no later than the first day of November of each year.

G. The Agency shall specify the place and method of delivery and, where appropriate, the form and composition, of materials which it has requested a member to deliver from the amounts which that member has notified the Agency it is prepared to make available. The Agency shall also verify the quantities of materials delivered and shall report those quantities periodically to the members.

H. The Agency shall be responsible for storing and protecting materials in its possession. The Agency shall ensure that these materials shall be safeguarded against (1) hazards of the weather, (2) unauthorized removal or diversion, (3) damage or destruction, including sabotage, and (4) forcible seizure. In storing special fissionable materials in its possession, the Agency shall ensure the geographical distribution of these materials in such a way as not to allow concentration of large amounts of such materials in any one country or region of the world.

I. The Agency shall as soon as practicable establish or acquire such of the following as may be necessary:

1. Plant, equipment, and facilities for the receipt, storage, and issue of materials;
2. Physical safeguards;
3. Adequate health and safety measures;
4. Control laboratories for the analysis and verification of materials received;
5. Housing and administrative facilities for any staff required for the foregoing.

J. The materials made available pursuant to this article shall be used as determined by the Board of Governors in accordance with the provisions of this Statute. No member shall have the right to require that the materials it makes available to the Agency be kept separately by the Agency or to designate the specific project in which they must be used.

#### *Article XI. Agency projects*

A. Any member or group of members of the Agency desiring to set up any project for research on, or development or practical application of, atomic energy for peaceful purposes may request the assistance of the Agency in securing special fissionable and other materials, services, equipment, and facilities necessary for this purpose. Any such request shall be accompanied by an explanation of the purpose and extent of the project and shall be considered by the Board of Governors.

B. Upon request, the Agency may also assist any member or group of members to make arrangements to secure necessary financing from out-



side sources to carry out such projects. In extending this assistance, the Agency will not be required to provide any guarantees or to assume any financial responsibility for the project.

C. The Agency may arrange for the supplying of any materials, services, equipment, and facilities necessary for the project by one or more members or may itself undertake to provide any or all of these directly, taking into consideration the wishes of the member or members making the request.

D. For the purpose of considering the request, the Agency may send into the territory of the member or group of members making the request a person or persons qualified to examine the project. For this purpose the Agency may, with the approval of the member or group of members making the request, use members of its own staff or employ suitably qualified nationals of any member.

E. Before approving a project under this article, the Board of Governors shall give due consideration to:

1. The usefulness of the project, including its scientific and technical feasibility;
2. The adequacy of plans, funds, and technical personnel to assure the effective execution of the project;
3. The adequacy of proposed health and safety standards for handling and storing materials and for operating facilities;
4. The inability of the member or group of members making the request to secure the necessary finances, materials, facilities, equipment, and services;
5. The equitable distribution of materials and other resources available to the Agency;
6. The special needs of the underdeveloped areas of the world; and
7. Such other matters as may be relevant.

F. Upon approving a project, the Agency shall enter into an agreement with the member or group of members submitting the project, which agreement shall:

1. Provide for allocation to the project of any required special fissionable or other materials;
2. Provide for transfer of special fissionable materials from their then place of custody, whether the materials be in the custody of the Agency or of the member making them available for use in Agency projects, to the member or group of members submitting the project, under conditions

which ensure the safety of any shipment required and meet applicable health and safety standards;

3. Set forth the terms and conditions, including charges, on which any materials, services, equipment, and facilities are to be provided by the Agency itself, and, if any such materials, services, equipment, and facilities are to be provided by a member, the terms and conditions as arranged for by the member or group of members submitting the project and the supplying member;

4. Include undertakings by the member or group of members submitting the project: (a) that the assistance provided shall not be used in such a way as to further any military purpose; and (b) that the project shall be subject to the safeguards provided for in article XII, the relevant safeguards being specified in the agreement;

5. Make appropriate provision regarding the rights and interests of the Agency and the member or members concerned in any inventions or discoveries, or any patents therein, arising from the project;

6. Make appropriate provision regarding settlement of disputes;

7. Include such other provisions as may be appropriate.

G. The provisions of this article shall also apply where appropriate to a request for materials, services, facilities, or equipment in connection with an existing project.

#### *Article XVI. Relationship with other organizations*

A. The Board of Governors, with the approval of the General Conference, is authorized to enter into an agreement or agreements establishing an appropriate relationship between the Agency and the United Nations and any other organizations the work of which is related to that of the Agency.

B. The agreement or agreements establishing the relationship of the Agency and the United Nations shall provide for:

1. Submission by the Agency of reports as provided for in subparagraphs B-4 and B-5 of article III;
2. Consideration by the Agency of resolutions relating to it adopted by the General Assembly or any of the Councils of the United Nations and the submission of reports, when requested, to the appropriate organ of the United Nations on the action taken by the Agency or by its members in accordance with this Statute as a result of such consideration.

### III. OTHER INTERGOVERNMENTAL ORGANIZATIONS

#### **Organisation for Economic Co-operation and Development**

*[Original: English]  
[8 and 13 February 1984]*

The Organisation's reply is presented in two parts. The first part is a general reply to the questionnaire, summarizing the position in OECD as a whole. The second part consists of a series of detailed replies concerning activities in specific fields presented in the form of annexes; it is accompanied by documents of the Organisation concerning these activities.<sup>1</sup> Annexes I (Environment) and II (Nuclear energy) deal with both substantive and procedural

aspects; annexes III to X deal with activities that do not come within the substantive scope of the questionnaire (i.e. international liability for injurious consequences arising out of acts not prohibited by international law) but concern procedural matters that fall within the purview of the second purpose of the questionnaire which, as explained in the Secretariat's letter of 11 August 1983, is to obtain information about procedures used by international organizations involved in co-operation in any other areas which may be useful as models.

#### GENERAL REPLY TO THE QUESTIONNAIRE

##### *Question 1*

OECD takes part in co-operative activities conducted principally by States but which, in the field of energy, and in specific circumstances, sometimes also involve non-State entities.

<sup>1</sup> These documents are too voluminous to be reproduced here, but they may be consulted in the Codification Division; their titles are indicated at the end of the corresponding annexes.

[N.B. the term "activity" is used in the broad sense given to it in the "definitions" contained in the schematic outline of the topic annexed to the letter of the Secretariat.]

#### Question 2

The Organisation's general mandate for such co-operation is to be found in the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960,<sup>2</sup> in particular in the sixth preambular paragraph to the Convention and in articles 3, 5 (c) and 12 of the Convention. In addition, specific mandates for such co-operation may be found in the terms of reference of agencies and committees which are subsidiary bodies of the Organisation as well as in agreements and arrangements concluded among member countries or between member countries and entities other than States.

#### Question 3

The co-operative activities carried out in OECD or developed through OECD normally occur within the territorial jurisdiction of member countries but occasionally take place outside those limits (for example on the high seas).

#### Question 4

(a) Certain activities relate to the physical use of the environment *per se*, at least indirectly, but more often such activities in the field of the environment relate to the consequences for the environment of undertakings or operations carried out by member countries or within member countries.

(b) Activities also relate to the fields of economy, trade, monetary and fiscal problems, energy, multinational enterprises and agriculture, transborder flows of personal data and shipbuilding.

#### Questions 5 and 6

The distinction made in questions 5 (involvement of the Organisation *prior* to the initiation of the activity) and 6 (involvement *after* the initiation of the activity) is not entirely relevant in the context of actual practice and procedures in OECD, inasmuch as the very concept of "involvement" is subject to varying interpretations. Consequently, the Organisation prefers to answer questions 5 and 6 together.

(a) The Organisation does not normally assist in examining the impact of a proposed activity within or outside the territory of the State where it will be conducted.

(b) In exceptional cases where such impact might be examined, the group would be composed of both experts from the Organisation and representatives of member countries.

(c) The Organisation's involvement in activities cannot be characterized in an abstract manner as either compulsory or voluntary. The OECD Convention does not establish a statutory obligation for the Organisation to be "involved" in co-operative activities, but it provides a framework and procedures for such involvement if the

member countries so wish. Thus, pursuant to an act of the OECD Council (composed of a representative of each member), the Organisation's involvement may become compulsory as defined in that act.

(d) Communication of the facts by the Organisation will depend on the particular procedures or arrangements, but in any case will be restricted to Governments.

(e) In the substantive context of the questionnaire as it is circumscribed in the schematic outline of the topic prepared by the Special Rapporteur, the Organisation would not normally be in a position to suggest modifications in a national activity. On the other hand, there are numerous cases where procedures have been established within the Organisation for proposing and even requiring modification in a national action which is contrary to an obligation undertaken within the framework of the Organisation; these are described in the annexes to the Organisation's reply.

(f) The criteria which would be relevant to the case dealt with in subparagraph (e) would not be of a general nature, but would be specific to the subject-matter.

(g) Decisions taken concerning question 5 (e) would normally be of a recommendatory nature.

#### Question 7

In the case of a dispute among the Organisation's members regarding the negative consequences of a unilateral activity with other members, the Organisation may be involved in resolving the dispute if specific provision has been made to that effect in respect of a given activity, but normally such disputes would be resolved directly among the parties concerned by negotiation. The parties might resort to arbitration or to the International Court of Justice or to a regional court if they so wished, but that is outside the Organisation's purview.

#### Question 8

The Organisation plays a wide and important role in international co-operative activities; naturally, further development of its role is subject to political factors as well as to the evolution of economic, social and technical developments.

#### Question 9

As explained in the Organisation's introductory remarks, its reply includes a series of annexes which cover two aspects of the subject. Annexes I and II describe activities which fall within the substantive scope of the subject and which may include procedural aspects as well, while annexes III to X cover only procedural questions.

#### ANNEX I

##### Environment

1. The Environment Committee was established by a resolution of the OECD Council of 22 July 1970. Under its present terms of reference,<sup>3</sup> the Committee is responsible for:

<sup>2</sup> Council of Europe, *European Yearbook*, vol. VIII (1960) (The Hague, Martinus Nijhoff, 1961), p. 259.

<sup>3</sup> Council resolution of 22 July 1980 [C(80)74(Final)].

“(a) Examining on a co-operative basis common problems or foreseeable common problems related to the protection of the environment and to the enhancement of environmental quality with a view to proposing effective means of preventing, minimizing or solving them, taking into account all relevant factors, including economic and energy considerations;

“(b) Encouraging wherever appropriate the harmonization of environmental policies among Member countries;

“(c) Providing Member Governments with policy options or guidelines to prevent or minimize conflicts that could arise between Member countries in the use of shared environmental resources or as the result of national environmental policies; the Committee may organize as appropriate, and with the agreement of the countries concerned, consultations to that effect;

“(d) Reviewing and consulting on actions taken or proposed by Member countries in the environmental field and assessing the results of these actions;

“(e) Assisting Member countries to develop improved means of assessing trends in environmental quality and, on an internationally comparable basis, to improve the information base for decisions pertaining to environmental policy.”

2. The Organisation carries out a wide range of activities in the field of the environment, several of which fall within the purview of the questionnaire. Details concerning each of these are given hereinafter.

#### (a) TRANSFRONTIER POLLUTION

3. The Transfrontier Pollution Group was set up by the Environment Committee in 1975 to examine administrative, legal and institutional aspects of transfrontier pollution with a view to developing practical guidelines and, in so doing, to contribute to the development of harmonized transfrontier pollution policies. The Group is composed of representatives of Governments and designated experts. The work of the Group has been suspended since December 1982 but could be reinstated by decision of the Environment Committee.

4. As a result of the work carried out by the Group, OECD has developed a series of principles related to the solution of transfrontier pollution issues; reports have been prepared on responsibility, liability, information and consultation.

5. Two reports were submitted by the Environment Committee to the Council on the international responsibility of States for protecting the environment against transfrontier pollution.<sup>b</sup> The reports raise a number of questions, including the exchange of mutual information and consultation on transfrontier pollution problems and the establishment of procedures for the settlement of disputes in regard to transfrontier pollution problems that cannot be resolved by negotiation. The second report underlines, however, that the practices described outline the main features of a consistent policy of protection against transfrontier pollution but that they are given only by way of illustration. The question whether any of these practices constitute an obligation under international law was not considered.

6. In its published report on the implementation of a régime of equal right of access and non-discrimination in relation to transfrontier pollution,<sup>c</sup> the Secretary-General noted that the principle of information and consultation fell within the framework of inter-State relations. Information and consultation procedures at that level were already an international “responsibility” of States in relation to transfrontier pollution and might have become—or were in the process of becoming—a custom reflected in the practice of States and in international agreements (the concept of responsibility was used here in the sense given to it in the first interim report of the Environment Committee to the Council on responsibility and liability of States in matters of transfrontier pollution,<sup>d</sup> a report

<sup>b</sup> See, at the end of the present annex, documents 1 and 2.

<sup>c</sup> *Ibid.*, document 20.

<sup>d</sup> *Ibid.*, document 1.

which distinguished between the “responsibility” of States in relation to the protection of the environment at the international level and the international legal liability of States in relation to transfrontier pollution). But OECD has not been a forum for discussing concrete issues of transfrontier pollution at the request of one or more aggrieved parties.

#### (b) TRANSFRONTIER MOVEMENT OF HAZARDOUS WASTE

7. Work on the transfrontier movement of hazardous waste was initiated in 1982 in the framework of the Waste Management Policy Group of the Environment Committee. The terms of reference of the Group cover a wide range of problems concerning waste management policy; the Group was assigned the task of advising the Environment Committee on major new and emerging problems and issues and on appropriate policy options for better waste management, and of recommending ways and means for national and international action.

8. As regards the specific problem at hand, OECD is currently engaged in a programme of activities which should lead to the adoption of guidelines for controlling transfrontier movement of hazardous waste. The first decision and the first recommendation on this subject were adopted by the OECD Council on 1 February 1984.<sup>e</sup> A seminar to be held in May-June 1984 on legal and institutional aspects of transfrontier movements of hazardous waste should be a starting point for elaborating new OECD recommendations or decisions on this issue.

9. It may be doubted, however, whether transfrontier movements of hazardous waste fall strictly within the scope of the questionnaire. The “export” activity may give rise to damage in the importing country; however, the activity which gives rise to damage is in fact the transport activity or the elimination activity within the territory of the importing State.

10. The exporter or the producer of the waste could nevertheless have some responsibility in relation to what happens in the importing country. In particular, he might be under a legal obligation to disclose all pertinent information and to notify the importing State. A trend in the direction of defining the responsibility of the exporter or the producer can already be detected. It might lead to the creation of liability for pollution damage arising in the importing country.

11. Responsibility of the exporting State might also emerge in the future as a result of international agreements to be concluded. For instance, an exporting State might be under the obligation to notify an importing State before a transfrontier movement takes place when such movement concerns some very dangerous waste.

12. The decision and the recommendation adopted on 1 February 1984 contain:

An obligation set out in the decision that member countries control the transfrontier movements of hazardous waste and for this purpose ensure that the competent authorities of the countries concerned are provided with adequate and timely information concerning such movements;

A recommendation containing principles designed to implement the decision, including the provision of additional information at the request of the importing country and the possibility of prohibiting an export at the request of the importing country; and

An instruction to the Environment Committee to review action taken by member countries in pursuance of the decision and the recommendation.

#### (c) TRANSPORT OF AIR POLLUTANTS OVER LONG DISTANCE: SULPHUR OXIDES

13. In the late 1960s, reports began to appear in the specialized press of damage to fish and forests in southern Scandinavia resulting from acid precipitations, and the opinion was expressed that that acidity was related to the increasing use of fossil fuels in the neighbouring industrial countries. The OECD Air Management Policy Group served as a forum to discuss the problem in the 1960s and, after some debate, the countries concerned

<sup>e</sup> *Ibid.*, document 18.

agreed to launch a research programme in co-operation in order to establish the facts.

14. In 1972, after about two years of preparatory work supported by the Scandinavian Council for Applied Research, the OECD Council set up a co-operative technical programme to measure the long-range transport of air pollutants. The objective was "to determine the relative importance of local and distant sources of sulphur compounds in terms of their contribution to the air pollution over a region, special attention being paid to the question of acidity in atmospheric precipitations".<sup>f</sup>

15. Eleven member countries participated: Austria; Belgium; Denmark; Finland; France; Germany, Federal Republic of; Netherlands; Norway; Sweden; Switzerland and the United Kingdom. The programme was supervised by a Steering Committee composed of delegates nominated by the Governments of participating countries. The individual countries were responsible for the allocation and funding of the resources needed to carry out the necessary measurements. Co-ordination of measurements and analysis of data were the responsibility of a Central Co-ordinating Unit at the Norwegian Institute for Air Research. This latter work was funded by special contributions from participating countries.

16. As a result of extensive co-operation between scientists and laboratories in the participating countries, a report was prepared and published in 1977 by OECD on the OECD Programme on Long-Range Transport of Air Pollutants.<sup>g</sup> This report represents the concerted views of the Steering Committee and gives, in particular, a breakdown of the amount of sulphur deposits in Western European countries and originating in each Western European country. It confirms that sulphur compounds travel long distances in the atmosphere and that the air quality in any one European country is measurably affected by emissions from other European countries. The study shows that, in half the countries examined, the major part of total estimated deposition in 1974 originated from foreign emissions. It indicates clearly that, even if a country wanted to reduce substantially the total deposition of sulphur within its borders, it could achieve only a limited improvement if similar action were not taken in a number of other countries.

17. This work provided a basis for the negotiation of the Convention on Long Range Transboundary Air Pollution (Geneva, 1979)<sup>h</sup> and is pursued under the Co-operative Programme for the Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP).

18. OECD also published, in 1981, a methodological study on *The Costs and Benefits of Sulphur Oxide Control*. This study, which required three years of research, represents the first serious attempt to develop a methodology for cost/benefit analysis in this particular field. The study describes how the impact of different control scenarios on ambient air quality is estimated and how the costs of control are calculated. It assesses the benefits of control from the reduction of pollution effects in four chosen economic areas: materials, crops, health and aquatic ecosystems.

19. All these activities were carried out within the framework of the OECD Air Management Group, which conducted fact-finding activities in relation to problems of transfrontier air pollution of great significance in Europe.

20. In parallel, the OECD Council adopted a number of recommendations on transfrontier pollution in general and on specific aspects of transfrontier air pollution [C(74)16(Final) and C(74)219].<sup>i</sup> In particular, OECD recommended to member countries that they use the best available abatement techniques for sulphur oxides and particulate matter and limit the maximum sulphur content of distillate fuels. One of the purposes of these recommendations was to ensure that no significant degradation of the environment should occur, either within or beyond national frontiers [C(79)117].<sup>j</sup>

<sup>f</sup> Decision of the Council of 18 April 1972 [C(72)13(Final)].

<sup>g</sup> *The OECD Programme on Long Range Transport of Air Pollutants. Measurements and Findings* (Paris, 1977).

<sup>h</sup> ECE/HLM. 1/2, annex I.

<sup>i</sup> See, at the end of the present annex, documents 7 and 8.

<sup>j</sup> *Ibid.*, document 9.

21. Although OECD activities were not directly aimed at resolving an important transfrontier pollution issue, they contributed to such solution by providing mutually agreed technical and economic data and by recommending mutually agreed policy options and legal principles which were duly taken into account in the work carried out within ECE, Geneva, both before the signature of the 1979 Convention (see para. 17 above) and subsequently.

#### (d) CHEMICALS

22. Since the early 1970s, work has been carried out within the framework of the OECD Environment Programme on harmonized approaches to chemicals control. The primary objectives of this work have been:

To protect man and the environment from the potential hazards associated with chemicals:

To promote efficient, cost-effective approaches to chemicals control which minimize economic, administrative and other burdens; and

To avoid non-tariff barriers to trade in chemicals.

23. In developing this work, a number of mechanisms have been or are being developed to promote and facilitate exchange of information on chemicals. These mechanisms serve a variety of co-operative purposes and may serve as models for international co-operation in areas other than chemicals control.

#### (i) Legislative and administrative information

24. In May 1971, the OECD Council adopted a resolution concerning a procedure for notification and consultation on measures for control of substances affecting man or his environment [C(71)73(Final)]. The purpose of the procedure is to allow member countries to receive, as far as practicable, prior notification of measures pending, and early notification of measures recently taken, in any country in order to protect man or his environment, in instances where such measures are likely to have significant effects on the economy and trade of other countries. The procedure also provides the opportunity for consultation and discussion among member countries on the technical justification for such measures.

25. In July 1977, member countries established a new procedure for the exchange of information on legislative and administrative developments on chemicals control in member countries. The emphasis in this procedure is on a rapid exchange of information, preferably before actions have been taken. Information is exchanged through a network of designated contact points in member countries.

26. As member countries enacted and implemented chemicals control legislation, there was a felt need for a forum in which administrators could exchange experience on matters of common or international interest. The Chemicals Group Forum was established in 1981 to meet this need.

#### (ii) Data and information on specific chemicals

27. Some 80,000 chemicals are currently on the market and 1,000 to 2,000 new chemicals are introduced each year. A substantial proportion of these are traded internationally or are used in many countries. Significant benefits can be derived by ensuring that data on the health, safety and environmental properties of chemicals are of a sufficiently high quality that they may be relied upon and used internationally. Council decision on mutual acceptance of data [C(81)30(Final)], adopted on 12 May 1981, established conditions which, when met, require that data generated in the testing of chemicals in one OECD country shall be accepted in other member countries for purposes of assessment and other uses relating to the protection of man and the environment.

28. The conditions established for mutual acceptance of data are that the data are generated in accordance with the *OECD Guidelines for Testing of Chemicals* and the OECD principles of good laboratory practice. These tools are the subject of recommendations by the Council in the decision on mutual acceptance of data, and are supported by a further Council recom-

mentation of 26 July 1983 concerning the mutual recognition of compliance with good laboratory practice [C(83)95(Final)].

29. Data on chemicals may have a proprietary value or confidential status. The exchange of information on chemicals can be facilitated by ensuring that any associated proprietary rights or confidential status are protected when exchanged. To this end, the Council adopted three recommendations on 26 July 1983:

Recommendation concerning the protection of proprietary rights to data submitted in notifications of new chemicals [C(83)96(Final)];

Recommendation concerning the exchange of confidential data on chemicals [C(83)97(Final)];

Recommendation concerning the OECD list of non-confidential data on chemicals [C(83)98(Final)].

30. The OECD Council adopted two measures for the control of specific chemicals: a decision dated 13 February 1973 concerning protection of the environment by control of polychlorinated biphenyls [C(73)1(Final)] and a recommendation dated 18 September 1973 on measures to reduce all man-made emissions of mercury to the environment [C(73)172(Final)]. In addition to providing for concerted action by member countries to control these chemicals, these measures also provide for an exchange of statistical data relating to the action taken. Such exchanges establish a quantitative basis for reviewing progress in achieving internationally agreed objectives.

31. Work is currently under way on the development of an international referral system to aid member countries in gaining timely access to unpublished information on specific chemicals, reliably and cheaply, in order to avoid duplication of effort.

### (iii) Chemicals in trade

32. Information exchange relating to exports of banned or severely restricted chemicals is under consideration at this time. A mechanism is being examined whereby exporting member countries might provide certain information about exports of chemicals banned or severely restricted in their countries to importing countries, to enable the latter to make timely and informed decisions about such chemicals.

33. A review has been performed on the principle underlying the labelling of chemicals. Work is also under way on the development of guides for manufacturers and traders of chemicals concerning the safe use of chemicals in importing countries.

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### DOCUMENTS COMMUNICATED BY OECD

1. First interim report of the Environment Committee on the responsibility and liability of States in relation to transfrontier pollution [C(76)54]
2. Second report of the Environment Committee on international responsibility of States for protecting the environment against transfrontier pollution [C(79)3]
3. Recommendation of the Council on principles concerning transfrontier pollution [C(74)224]
4. Recommendation of the Council on equal right of access in relation to transfrontier pollution [C(76)55(Final)]
5. Recommendation of the Council for the implementation of a régime of equal right of access and non-discrimination in relation to transfrontier pollution [C(77)28(Final)]
6. Recommendation of the Council for strengthening international co-operation on environmental protection in frontier regions [C(78)77(Final)]
7. Recommendation of the Council on guidelines for action to reduce

emissions of sulphur oxides and particulate matter from fuel combustion in stationary sources [C(74)16(Final)]

8. Recommendation of the Council on measures required for further air pollution control [C(74)219]
9. Recommendation of the Council on coal and the environment [C(79)117]
10. Decision of the Council on protection of the environment by control of polychlorinated biphenyls [C(73)1(Final)]
11. Recommendation of the Council on measures to reduce all man-made emissions of mercury to the environment [C(73)172(Final)]
12. Resolution of the Council concerning a procedure for notification and consultation on measures for control of substances affecting man or his environment [C(71)73(Final)]
13. Decision of the Council concerning the mutual acceptance of data in the assessment of chemicals [C(81)30(Final) annexes 1 and 2]
14. Recommendation of the Council concerning the mutual recognition of compliance with good laboratory practice [C(83)95(Final)]
15. Recommendation of the Council concerning the protection of proprietary rights to data submitted in notifications of new chemicals [C(83)96(Final)]
16. Recommendation of the Council concerning the exchange of confidential data on chemicals [C(83)97(Final)]
17. Recommendation of the Council concerning the OECD list of non-confidential data on chemicals [C(83)98(Final)]
18. Decision and recommendation of the Council on transfrontier movements of hazardous waste [C(83)180(Final)]
19. Terms of reference of the Waste Management Policy Group (Environment Committee)
20. OECD, *Legal Aspects of Transfrontier Pollution*, 1977: table of contents
21. *Ibid.*, *Compensation for Pollution Damage*, 1981: table of contents
22. *Combating Oil Spills. Economic Aspects*, 1982: table of contents
23. "Cinq ans d'activités du Groupe l'OCDE sur la pollution transfrontière (1975-1980)", by W. Lang, published in *Environmental Policy and Law* (Bonn), vol. 7, No. 4, 1981
24. "Legal principles adopted by the OECD Council", by H. Smets, *ibid.*, vol. 9, No. 4, 1982
25. "Transfrontier pollution: some problems in the 70s and 80s", by J. W. McNeill, *ibid.*, vol. 8, No. 1, 1982
26. OECD, *Transfrontier Pollution and the Role of States*, 1981: table of contents and text of the report by the Environment Committee on application of information and consultation practices for preventing transfrontier pollution
27. *Ibid.*, *Environmental Protection in Frontier Regions*, 1979: table of contents

### ANNEX II

#### Nuclear Energy Agency

#### GENERAL COMMENTS

Although it is clear that the scope and purview of the programme of activities of the Nuclear Energy Agency (NEA) are quite unrelated to the question of "liability for physical transboundary harm" which constitutes the topic of this questionnaire, an effort has been made to offer information concerning certain procedures used by NEA which may be useful in the context of the questionnaire.

The primary objectives of NEA are to promote co-operation between its member Governments on the safety and regulatory aspects of nuclear

development and on the assessment of the future role of nuclear energy as a contributor to economic progress.

This is achieved in particular by:

Encouraging harmonization of Governments' regulatory policies and practices in the nuclear field, with particular reference to the safety of nuclear installations, protection of man against ionizing radiation and preservation of the environment, radioactive waste management, and nuclear third party liability and insurance;

Keeping under review the technical and economic characteristics of nuclear power growth and the nuclear fuel cycle, and assessing demand and supply for the different phases of the nuclear fuel cycle and the potential future contribution of nuclear power to overall energy demand;

Developing exchanges of scientific and technical information on nuclear energy, particularly through participation in common services;

Setting up international research and development programmes and undertakings jointly carried out and operated by OECD countries.

#### REPLIES TO THE QUESTIONNAIRE

##### Question 1

The Agency's co-operative activities are primarily undertaken with States, and only by special arrangement with international governmental organizations such as IAEA and EEC.

##### Question 2

Legislative texts defining the mandate of NEA in respect of co-operation:

###### (a) With States

Statute of the OECD Nuclear Energy Agency (as amended by Council decision of 5 April 1978).

“...  
“Article 1

“(b) ... the purpose of the Agency shall be to further the development of the production and uses of nuclear energy ... for peaceful purposes by the participating countries, through co-operation between those countries and a harmonization of measures taken at the national level.

“Article 4

“(a) The Agency shall promote ... studies and undertake consultations on the programmes and projects of participating countries ... in collaboration with other bodies of the Organisation ...

“...  
“Article 8

“(a) The Agency shall:

“(i) contribute to the promotion, by the responsible national authorities, of the protection of workers and the public against the hazards of ionizing radiations and of the preservation of the environment;

“...”

###### (b) With non-State entities

###### (i) Statute of NEA

“Article 8

“...  
“(c) The Agency shall undertake its activities ... as far as possible in collaboration with the International Atomic Energy Agency and the Commission of the European Communities.

#### “Article 16

“...  
“(b) ... the Agency shall establish with the [European Atomic Energy] Community a close collaboration ...”.

- (ii) Agreement between the International Atomic Energy Agency and the Organisation for European Economic Co-operation, approved by the Council of OEEC on 28 July 1960 and by the General Conference of IAEA on 30 September 1960.<sup>a</sup> This agreement established close co-operation and consultations between IAEA and NEA in regard to matters of common interest, “with a view to harmonizing their efforts as far as appropriate in the light of their ... responsibilities” (art. 1).

##### Question 3

The activities normally take place within the territorial jurisdiction of a State. In one exceptional case, that of the Multilateral Consultation and Surveillance Mechanism for Sea Dumping of Radioactive Waste, activities take place on the high seas.

##### Question 4

The activities, in principle, do not relate to the physical use of the environment. However, they involve the scientific, technical and economic development of nuclear energy.

##### Question 5

Ordinarily, the Agency's involvement does not begin prior to the initiation of an activity. However, when setting up an international joint undertaking or organizing other forms of international scientific and technical projects, for example in the area of sea disposal of radioactive waste, the activity has been preceded by a series of preparatory studies.

(a) The Agency will assist in examining the impacts of a proposed activity (e.g. sea disposal of radioactive waste) within the area in which it is proposed to conduct it.

(b) The collection of data concerning various activities is carried out by committees or working parties composed of representatives of the member countries involved, assisted by the secretariat of the Agency.

(c) The Agency's involvement in activities is requested by the member countries of the Agency.

(d) The Agency circulates the facts obtained to all its members.

(e) With regard to the sea disposal of radioactive waste, the Agency may suggest modifications in the proposed activity.

Prior to 1977, the operations conducted were subject to *ad hoc* and voluntary arrangements by national authorities. With the decision of the OECD Council of 22 July 1977 establishing a Multilateral Consultation and Surveillance Mechanism for Sea Dumping of Radioactive Waste, a régime for monitoring operations was established. This decision formally commits participating countries to apply the guidelines and procedures adopted and to subject their operations to a system of prior consultation and international surveillance.

(f) The primary criterion affecting decision-making is that of safety.

(g) The decisions made are normally in the form of recommendations.

##### Question 6

Not applicable.

##### Question 7

Disputes which the Steering Committee for Nuclear Energy has been unable to settle with regard to the application of the 1960 Paris Convention on Third Party Liability in the Field of Nuclear Energy<sup>b</sup> and the 1963

<sup>a</sup> United Nations, *Treaty Series*, vol. 396, p. 273.

<sup>b</sup> IAEA, *International Conventions on Civil Liability for Nuclear Damage*, Legal Series No. 4, rev. ed. (Vienna, 1976), p. 22.

Brussels supplementary Convention<sup>c</sup> fall within the jurisdiction of the European Nuclear Energy Tribunal. The competence of this tribunal, originally created for the purposes of the Convention of 20 December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy<sup>d</sup> (the application of this security control is at present suspended), was extended by article 17 of the Paris Convention and article 17 of the Brussels supplementary Convention to cover those two Conventions.

#### Question 8

The Agency is involved in co-operative activities within the framework of its structural, economic and political capabilities.

#### Question 9

Although this activity does not clearly come within the scope of the questionnaire, OECD is the depositary of the 1960 Paris Convention on Third Party Liability in the Field of Nuclear Energy. The Convention establishes a system of absolute liability for damage caused by a nuclear incident, including transfrontier damage to the environment. In this respect, it may be useful to mention that, to foster the implementation of this system of private international law, the member countries exchange information, consult each other and carry out joint studies in the framework of the Group of Governmental Experts on Nuclear Third Party Liability, with the assistance of the NEA secretariat.

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#### DOCUMENTS COMMUNICATED BY OECD

1. Statute of the OECD Nuclear Energy Agency (NEA) (1978)
2. Decision of the Council establishing a Multilateral Consultation and Surveillance Mechanism for Sea-Dumping of Radioactive Waste [C(77)115(Final) and Corrigendum]

<sup>c</sup> *Ibid.*, p. 43.

<sup>d</sup> Council of Europe, *European Yearbook*, vol. V (1957) (The Hague, Martinus Nijhoff, 1959), p. 283.

### ANNEX III

#### International Energy Agency

1. The International Energy Agency (IEA) was established as an autonomous body within the framework of the Organisation by a decision of the OECD Council of 15 November 1974. That decision followed the conclusion, on 6 November 1974, of the Agreement on an International Energy Programme. The Governing Board (composed of all participating countries) was given the power to decide upon and carry out an International Energy Programme for co-operation in the field of energy, the aims of which are set out in article 6 of the Council's decision.
2. The Agency co-operates with other competent bodies of the Organization in areas of common interest. In addition: "In order to achieve the objectives of the Programme, the Agency may establish relationships with countries which are not participating countries, international organizations, whether governmental or non-governmental, other entities and individuals." (Art. 12 of the Council decision.)
3. Some 50 energy research and development agreements governing specific areas of research (for example, coal, energy conservation, fusion, solar power, geothermal power and wind power) have been concluded under the auspices of the Agency among Governments and non-governmental parties designated by Governments.

Each agreement provides that any dispute among the contracting parties concerning the interpretation or the application of the agreement which is not settled by negotiation or other agreed mode of settlement shall

be referred to a tribunal of three arbitrators to be chosen by the contracting parties concerned, who shall also choose the chairman of the tribunal. It is provided, further, that the tribunal shall decide any such dispute by reference to the terms of the agreement and any applicable laws and regulations, and its decision on a question of fact shall be final and binding on the contracting parties.

4. Consultation and reporting procedures exist within the Agency on a number of subjects. Participating countries provide data to the secretariat on a monthly basis concerning the state of the oil market. These data are analysed by the secretariat, which prepares a monthly oil market assessment. The assessment is the subject of discussion and consultation within the IEA bodies.

Another example is the Standing Group on Long-Term Co-operation. Periodic reviews conducted by the Group are carried out within the Agency by participating countries concerning their national programmes and policies relating to the accelerated production of alternative sources of energy. The reviews are discussed by the Group, which reports on their results and conclusions to the Agency's Governing Board.

5. In order to facilitate the proper functioning of the International Energy Programme, the IEA countries have agreed on the need to establish a mechanism for settling disputes which might arise under emergency allocations of oil. Consequently the Governing Board of IEA adopted, on 23 July 1980, the Charter of the International Energy Agency Dispute Centre. Operation of the Centre is assigned to the IEA secretariat. The jurisdiction of arbitration tribunals convened pursuant to the Charter covers any dispute:

Between a seller and a buyer of oil; or

Between the parties to any exchange of oil arising out of an oil supply transaction during implementation of the emergency allocation of oil and under the IEA Programme and as between the parties to a particular supply transaction.

However, jurisdiction does not extend to decisions, rights or obligations of IEA countries under the International Energy Programme, including allocation rights and obligations of IEA countries.

In order that jurisdiction extend to a dispute, three conditions must be met:

- (i) The parties must give consent in writing to arbitration pursuant to the Charter;
- (ii) Consent includes, explicitly or implicitly, agreement of the parties to exclude any other remedy;
- (iii) Consent includes, explicitly or implicitly, agreement of the parties that the award shall be binding and final as between them.

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#### DOCUMENTS COMMUNICATED BY OECD

1. Decision of the Council of 15 November 1974 establishing an International Energy Agency of the Organisation [C(74)203(Final)]
2. Charter of the International Energy Agency Dispute Settlement Centre, adopted by the Governing Board on 23 July 1980

### ANNEX IV

#### Trade

1. The Trade Committee was established at the inception of OECD (30 September 1961). Among the functions assigned to the Committee is confrontation of the general trade policies and practices at regular intervals, or whenever requested by a member, having in mind the need for maintaining a system of multilateral trade which would enable members to exchange goods and services freely with each other and with other coun-

tries under conditions of reasonable overall equilibrium in the international balance of payments. It was understood that the provisions relating to the Trade Committee (including the one cited above) would enable any member country to obtain prompt consideration and discussion by the Committee of the trade measures of another member which adversely affected its interests with a view to removing or minimizing such adverse effects.

2. Consultation is thus provided for as an essential instrument available to the Committee for the performance of its functions. Over and above this general mandate, which covers all consultation possibilities, a number of particular arrangements were made. They relate, among other things, to the following:

Administrative and technical regulations which hamper the expansion of trade;

Border tax adjustments;

Internal policies and their incidence on international trade;

Prior consultation on changes in trade practices;

Application of the Trade Declarations of 1974 and 1980.

3. Consultation on trade matters falls, in fact, under two headings:

First, consultation in the narrow sense, relating to problems which one or more member countries may have with regard to measures taken or envisaged by another member country;

Secondly, consultation in the broad sense, relating to general problems or developments in the field of trade or trade policy which are not necessarily linked to specific measures.

4. Although the second type of consultation has always been used, sometimes in response to a request for consultation on a measure introduced in a member country, this type of consultation has been increasingly resorted to since the adoption, in 1974, by the Governments of member countries of OECD, of the first Declaration on Co-operation on Issues of General Economic Policy, and particularly since the Declaration on Trade Policy adopted in 1980.

5. The 1980 Declaration required that the Trade Committee be ready to consider without delay any critical situation that might arise. The Committee itself stated its intention to keep watch on developments and to identify incipient trends and problems before they reached a critical level, so that, on the basis of an analysis of all factors, a consensus could be sought on the best way to approach the problems. In that sense, this is a kind of prior consultation. Consultation in the broad sense, however, may also arise in the case of measures already taken, and have a wider scope than consultation in the narrow sense. Provision is made at the meetings of the Committee for informal exchange of views on major developments, and their purpose is precisely to enable the member countries to inform and consult each other and to have discussions on major current problems that may be linked with measures envisaged or already taken, or on problems of more direct concern to certain countries but likely to have a more general impact.

6. Furthermore, again as a result of the adoption of the 1974 Trade Declaration, notifications of measures taken are automatically reviewed by the Trade Committee, sometimes—particularly in the case of measures of more general scope (relating to a substantial part of a country's foreign trade)—under the aegis of the Council. This may be considered to be a new form of consultation.

7. As for its general characteristics, consultation in the trade field is clearly a very free and non-formalized procedure, its whole foundation resting on an open conception of co-operation between the member countries. There are in fact no consultation procedures in the strict sense, that is to say procedures set out in precise terms complete with objectives, criteria and rules. The consultation procedures are essentially based on pragmatism and flexibility.

8. As provided in the mandate of the Trade Committee, "the provisions relating to the Trade Committee . . . would enable any member country to obtain prompt consideration and discussion by the Committee of trade measures by another member which adversely affect its interests, with a view to removing or minimizing such adverse effects". Prior consul-

tations—i.e. on measures that are envisaged—and consultation on the effects of internal policies, however, are more voluntary in nature.

9. Consultation is normally initiated by one or more member countries. Moreover, as a follow-up to the 1980 Trade Declaration, the Secretary-General has been invited, upon request of a member country or upon his own initiative, to organize in an appropriate way such consultations among member countries as may be required.

Participation in consultations is generally open to all member countries. Explicit provision for bilateral consultation between the parties directly concerned, as a first step, is made only in the case of administrative and technical regulations.

## ANNEX V

### Agriculture

1. OECD, through Council decisions, has elaborated various schemes of a similar nature concerning the certification or control of agricultural products in international trade through which close collaboration among countries is ensured. These schemes are open on a voluntary basis to all member countries of the Organisation as well as to other States Members of the United Nations or members of its specialized agencies. The participating countries are obliged to ensure that the rules of the scheme are strictly respected. The success of the scheme depends on close co-operation between the designated authorities. The implementation of each scheme is under the responsibility of national Governments, which designate authorities for this purpose.

2. OECD is entitled to request the designated authorities to supply samples in order to verify that the scheme is operating satisfactorily. The operation and progress is examined at an annual meeting of representatives of the designated authorities. The schemes are the following:

OECD Scheme for the Varietal Certification of Sugar Beet and Fodder Beet Seed Moving in International Trade;

OECD Scheme for the Control of Vegetable Seed Moving in International Trade;

OECD Scheme for the Varietal Certification of Cereal Seed Moving in International Trade;

OECD Scheme for the Varietal Certification of Herbage and Oil Seed Moving in International Trade.

3. In addition to the usual procedures provided for under these schemes, the OECD Scheme for the Varietal Certification of Seed of Subterranean Clover and Similar Species Moving in International Trade, and the OECD Scheme for the Varietal Certification of Maize Seed Moving in International Trade establish a more detailed mechanism in respect of the duty of States to comply with their obligations. As in the other schemes, they specify that it shall be obligatory for the State to apply the rules and decisions set out in annex I of the scheme, but they also provide that, if a State wants to lodge a protest against the non-execution of an obligation, it may take the matter before the Organisation, where the complaint will be examined by the Committee for Agriculture, which reports to the Council.

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## DOCUMENTS COMMUNICATED BY OECD

1. Decision of the Council establishing an OECD Scheme for the Varietal Certification of Seed of Subterranean Clover and Similar Species Moving in International Trade [C(74)171(Final)]
2. Decision of the Council amending the Decision of the Council establishing an OECD Scheme for the Varietal Certification of Sugar Beet and Fodder Beet Seed Moving in International Trade [C(77)120]



## ANNEX VI

**Restrictive business practices**

OECD, through a recommendation of the Council of 3 July 1973, established a consultation and conciliation procedure on restrictive business practices affecting international trade. Under this system, a member country which considers that there exists a practice of this nature should request consultation with other member countries that are engaged in these practices. The member country so addressed should give full consideration to the case, taking remedial action on its own behalf as well as ensuring that the enterprises concerned do the same. Further, the country should notify the Committee of Experts on Restrictive Business Practices of the nature of the remedial measures adopted. If no satisfactory solution has been found, upon agreement of the countries they should submit the case with a view to conciliation to the Committee of Experts, or look for another means of settlement.

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## DOCUMENT COMMUNICATED BY OECD

Recommendation of the Council concerning a consultation and conciliation procedure on restrictive business practices affecting international trade [C(73)99(Final)]

## ANNEX VII

**International investment and multinational enterprises**

1. Following extensive preliminary work which had taken place within OECD, the Council of the Organisation decided on 21 January 1975 to establish the Committee for International Investment and Multinational Enterprises. At that stage, the Committee was instructed to "consider with regard to issues pertaining to the activities of multinational enterprises and enterprises engaged in international investment . . . the preparation of action proposals for member Governments aimed at developing:

- "(i) Improved exchange of information,
- "(ii) Improved and harmonized statistics,
- "(iii) Uniform standards of behaviour applicable to the enterprises,
- "(iv) Intergovernmental procedures for dealing with possible complaints."

2. The Committee was also to "consider in connection with a further review of issues pertaining to international investment, the organizing of consultations, in particular regarding:

- "(i) Official investment incentives or disincentives,
- "(ii) National treatment for enterprises under foreign control."

3. Pursuant to its terms of reference, the Committee developed proposals which were adopted on the occasion of the meeting of the OECD Council at ministerial level in June 1976. On 21 June 1976, the Governments of OECD member countries agreed on a Declaration on International Investment and Multinational Enterprises which included a recommendation to multinational enterprises operating in their territories to observe the guidelines annexed thereto, and provisions concerning national treatment, international investment incentives and disincentives, and consultation procedures on these matters.

4. On 22 June 1976, the OECD Council adopted decisions on intergovernmental consultation procedures on the guidelines for multinational enterprises, on national treatment and on international investment incen-

tives and disincentives. Each of these decisions makes provision for the exchange of information and consultation.

5. After three years of experience gained in the operation of the Declaration and of the decisions, the OECD Council meeting at ministerial level on 13 June 1979 reviewed these instruments on the basis of a report prepared by the Committee. On that occasion, the guidelines were amended slightly and the three decisions revised. A further review will take place in 1984. The principle of consultation set forth in the Declaration is implemented differently in each of the decisions, in a manner adapted to the requirements of the particular subject covered.

6. The revised decision on intergovernmental consultation procedures on the guidelines for multinational enterprises provides for exchanges of views within the Committee on matters related to the guidelines and experience gained in their application. These exchanges take place periodically or at the request of a member country. In addition, the Committee periodically invites the Business and Industry Advisory Committee of OECD (BIAC) and the Trade Union Advisory Committee of OECD (TUAC) to express their views on matters related to the guidelines. These advisory bodies may also request that an exchange of views take place. Still further, individual enterprises are given the opportunity, if they so request, to express their views either orally or in writing on issues concerning the guidelines which involve their interests. The Committee may not, however, reach conclusions on the conduct of individual enterprises; it does of course draw on such experience in reaching conclusions and interpretations concerning the guidelines. Finally, member countries may request that consultations be held in the Committee on any problem arising from the fact that multinational enterprises are made subject to conflicting requirements.

7. The revised decision on national treatment provides for notifications to OECD by member countries of existing measures constituting exceptions to "national treatment" and of new exceptions which might be introduced subsequently. The Committee reviews periodically the application of the Declaration with a view to extending its application. BIAC and TUAC may be invited periodically by the Committee to express their views on matters related to national treatment. Finally, the Committee acts as a forum for consultations on national treatment, at the request of a member country, and member countries provide the Committee, if it so requests, with all relevant information concerning measures of application of national treatment and exceptions thereto.

8. The revised decision on international investment incentives and disincentives makes provision for consultation in the Committee at the request of a member country which considers that its interests may be adversely affected by the impact on its flow of international direct investment of measures taken by another member country specifically designed to provide incentives or disincentives for international direct investment. Consultations are aimed at reducing such effects to a minimum. It is specified, in addition, that member countries shall supply, under the consultation procedures, all permissible information relating to any measure under consultation. Finally, BIAC and TUAC may be invited periodically by the Committee to express their views on matters relating to international investment incentives and disincentives.

9. In conclusion, the above procedures provide an effective and workable framework for consultations, including fact-finding in some cases. The procedures are used frequently and have proved in practice to be of very great value.

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## DOCUMENT COMMUNICATED BY OECD

OECD, *International Investment and Multinational Enterprises*. Declaration by the Governments of OECD member countries and decisions of the OECD Council on guidelines for multinational enterprises, national treatment, international investment incentives and disincentives, consultation procedures, revised edition, 1979.

## ANNEX VIII

## Insurance

INSTITUTIONAL CO-OPERATION BETWEEN AUTHORITIES OF MEMBER COUNTRIES RESPONSIBLE FOR THE SUPERVISION OF PRIVATE INSURANCE

*Model convention*

OECD, in a recommendation of the Council of 29 February 1980, recommended the use of a model convention as a basis for institutional co-operation in the supervision of private insurance. In using this model convention, the administrative authorities of member countries responsible for supervision of private insurance, upon request of another member country, should exchange directly between themselves information of a general character relating to legislative, regulatory and administrative requirements in this field. Articles 2, 3 and 4 deal with the exchange of information, reciprocal assistance, and the rules of secrecy respectively.

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## DOCUMENT COMMUNICATED BY OECD

Recommendation of the Council concerning institutional co-operation between authorities of member countries responsible for supervision of private insurance [C(79)195(Final)]

## ANNEX IX

## Protection of privacy and transborder flows of personal data

1. On 23 September 1980, the OECD Council adopted a recommendation concerning guidelines governing the protection of privacy and transborder flows of personal data. Pursuant thereto it is recommended that:

(1) Member countries take into account in their domestic legislation the principles concerning the protection of privacy and individual liberties set forth in the guidelines contained in the annex to this recommendation, which is an integral part thereof;

(2) Member countries endeavour to remove or avoid creating, in the name of privacy protection, unjustified obstacles to transborder flows of personal data;

(3) Member countries co-operate in the implementation of the guidelines set forth in the annex;

(4) Member countries agree as soon as possible on specific procedures of consultation and co-operation for the application of these guidelines.

2. In addition to the general recommendation concerning consultation and co-operation, the guidelines include a specific section on international co-operation which provides as follows:

"Member countries should, where requested, make known to other member countries details of the observance of the principles set forth in these guidelines. Member countries should also ensure that procedures for transborder flows of personal data and for the protection of privacy and individual liberties are simple and compatible with those of other member countries which comply with these guidelines.

"Member countries should establish procedures to facilitate:

"(i) information exchange related to these guidelines, and

"(ii) mutual assistance in the procedural and investigative matters involved.

"Member countries should work towards the development of prin-

ciples, domestic and international, to govern the applicable law in the case of transborder flows of personal data."

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## DOCUMENT COMMUNICATED BY OECD

OECD, *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* (1981), containing the recommendation of the Council, the guidelines and an explanatory memorandum

## ANNEX X

## Shipbuilding

Three instruments concerning shipbuilding have been elaborated through work undertaken within OECD. In each instance, however, these instruments have been agreed by member countries outside the scope of the Organisation and the OECD Council has then taken note thereof. They all include provisions on the exchange of information and one also includes provisions on consultation. The details are set out hereinafter.

## 1. GENERAL ARRANGEMENT FOR THE PROGRESSIVE REMOVAL OF OBSTACLES TO NORMAL COMPETITIVE CONDITIONS IN THE SHIPBUILDING INDUSTRY

The Arrangement was first noted by resolution of the OECD Council of 20 and 24 October 1972. Under the original resolution, the Council instructed its Working Party on Shipbuilding to review the Arrangement, to assess progress made and to keep the supply and demand situation under close review and suggest any action required to avoid developments that could lead to strong pressures for reversion to competition-distorting assistance to shipbuilding. The Council also requested that the Secretary-General obtain and circulate information as provided for under the Arrangement.

Pursuant to the Arrangement, any Government participating therein may request information from any other participating Government on the precise situation regarding measures of assistance in force and on progress made in their reduction. Participating Governments must supply such information with all possible speed.

In addition, a participating Government which considers that any measure of assistance applicable to shipbuilding in another country so favours the latter's shipyards in a particular case that, as a result, international competition is significantly distorted, may put forward a substantiated request for detailed information on the measure in question and, after having received a reply to its request, may raise the matter in the Council Working Party on Shipbuilding.

The Arrangement was revised in 1983 and the Council took note thereof in its resolution of 23 February 1983.

## 2. GENERAL GUIDELINES FOR GOVERNMENT POLICIES IN THE SHIPBUILDING INDUSTRY

Following the instructions given by the OECD Council to its Working Party on Shipbuilding, when it noted the General Arrangement referred to above, to keep the situation under review and suggest any action required to avoid reversion to competition-distorting assistance, the members of the Working Party agreed on general guidelines which might guide government action in the adaptation process of the shipbuilding industry and facilitate subsequent national and international discussion.

The OECD Council noted the general guidelines by its resolution of 4 May 1976. Revised general guidelines were adopted in 1983 and noted by the Council by its resolution of 23 February 1983.

Under the guidelines, member Governments of the Council Working

Party decided to keep each other rapidly informed on their national policies and on new measures in this field. The original guidelines provided for the establishment of a system of reciprocal information concerning the volume of new orders taken by each producing country. This was done without delay. The system has been retained and enlarged under the revised guidelines.

### 3. UNDERSTANDING ON EXPORT CREDITS FOR SHIPS

The initial Understanding was noted by the OECD Council on 30 May 1969 and was subsequently revised. The latest revision was noted by the OECD Council on 30 July 1981.

The Understanding provides that any participant therein may obtain information from any other participant on the terms of any official support for an export contract in order to ascertain whether the terms contravene

the Understanding. Participants undertake to supply all possible information requested with all possible speed. A participant may request the Secretary-General of OECD to circulate the information obtained to all participants in the Understanding.

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### DOCUMENTS COMMUNICATED BY OECD

1. Resolution of the Council concerning a revision of the Understanding on Export Credits for Ships [C(81)103(Final) and Corrigendum 1]
2. Resolution of the Council concerning a revision of the General Arrangement for the Progressive Removal of Obstacles to Normal Competitive Conditions in the Shipbuilding Industry [C(82)194(Final)]