

include alternative provisions proposed by the Working Group. After the draft text had been circulated to Governments, the Executive Director of UNEP convened a meeting of experts in January 1976, to discuss the provisions of the draft in order to find some alternative for a number of provisions.

10. In the case of the Kuwait Convention and Protocol, the above-mentioned two expert meetings revised and finalized the draft texts, leaving provisions on which no agreement was reached in brackets. No special working group was convened to revise or modify the text after two meetings and it was circulated to Governments for adoption at a conference of plenipotentiaries. The secretariat sought comments from the Office of Legal Affairs of the United Nations to the drafts; the comments were considered in subsequent meetings held to revise the text.

#### 5. *Adoption of the draft instruments at a conference of plenipotentiaries*

11. In the case of the Barcelona Convention, a conference of plenipotentiaries of the Coastal States was convened in February 1975 to adopt the instruments. The level of changes introduced into the text at the Conference was not considerable. In the case of the Kuwait Convention, the Kuwait Regional Conference of Plenipotentiaries was convened by UNEP in April 1974. The level of changes was again not very considerable.

#### 6. *Characteristics of the UNEP approach to the development of multilateral treaties*

12. The general procedures adopted by UNEP are not very different from those adopted by other United Nations bodies. Certain aspects are quite unique. The approach adopted by UNEP in the context of the Barcelona and Kuwait Conventions was therefore to limit the main agreement to general obligations and financial and administrative matters only, leaving detailed provisions to related protocols or likewise. This approach speeded up the pace of negotiations considerably. Furthermore, these conventions were supplemented by technical annexes which would require constant review and amendments. It is therefore not difficult to amend them, when they do not form the main body of the instrument.

13. UNEP considers that the early involvement of government experts in the process of development of the proposed instrument is essential to success. UNEP considers that all environmental problems require co-operation of all the organizations competent in various aspects of the solution of the problem.

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## II. SPECIALIZED AND RELATED AGENCIES

### A. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)

#### 1. *Decision as to the type of instrument*

1. In FAO, the type of instrument to be developed is usually envisaged by its governing bodies or the secretariat at an early stage in the multilateral

treaty-making process. The type of instrument is, generally, a world-wide convention or a regional or supplementary agreement under Article XIV, paragraphs 1 and 2 of the Constitution; an agreement between FAO and Member Nations under Article XV of the Constitution; or a convention or agreement to be concluded under its auspices but outside its constitutional framework. However, in one instance, the Organization was faced with the problem of deciding the most appropriate way of establishing a regional plant protection body.

2. In October 1964, a proposal for the establishment of a regional plant protection organization for the Caribbean was presented at the second meeting of the Caribbean Food Crops Society. In August 1965, the first Caribbean Plant Protection Conference recommended that FAO be requested to establish a Caribbean Plant Protection Commission as a subsidiary body of the Organization under Article VI of its Constitution. The question was considered by the Thirteenth Session of the FAO Conference (1965), and subsequently by the FAO Council, with a view to determining how such a body could best be established and what action it might take to achieve this purpose. Governments in the Caribbean area were consulted by the Director-General to obtain their views. Out of the ten Governments consulted, replies were received from seven. Six expressed the view that the proposed Commission should be established under Article VI of the Constitution; one was in favour of its establishment by means of a treaty concluded under Article XIV of the Constitution.

3. In the light of the replies from the Governments and in compliance with the Council's request, the Committee on Constitutional and Legal Matters (April 1967) considered the legal and constitutional implications of the establishment of the proposed commission under Articles VI or XIV respectively of the FAO Constitution. The CCLM reached the conclusion that, as regards the form which the Caribbean Plant Protection body might take, there were three possibilities, as follows: (a) a regional commission under Article VI, paragraph 1 of the Constitution, in which case an appropriate resolution would have to be adopted by the Conference or Council; (b) an Article XIV body, on the basis of an agreement to be drafted by a technical meeting or conference of Member Nations, and approved by the Conference or Council of the Organization; (c) a Regional Plant Protection Convention set up by a supplementary agreement to the International Plant Protection Convention. An organization established in the manner envisaged under (c) would also be an Article XIV body and, consequently, the supplementary agreement would likewise have had to be drafted by a technical meeting or conference of Member Nations and submitted to the FAO Conference or Council for approval.

4. The Council (June 1967), after having considered the views expressed by the Governments concerned, the legal and constitutional implications of the establishment of such a body and the three possible solutions, established the Caribbean Plant Protection Commission under Article VI, paragraph 1 of the FAO Constitution. A Council Resolution was adopted to this effect and, therefore, no multilateral treaty was concluded.

## 2. Languages

5. The first version of the FAO Constitution, which entered into force on 16 October 1945, did not contain a definite policy concerning the use of

languages in the Organization. In fact, Article XXIII of the Constitution merely provided that "pending the adoption by the Conference of any Rules regarding languages, the business of the Conference shall be transacted in English".

6. The Conference at its Special Session held in 1950, when amending its Rules of Procedure (now General Rules of the Organization), adopted Rule XXXIII whereby "Chinese, English, French and Spanish shall be the official languages of the Organization. English, French and Spanish shall be the working languages".

7. Nevertheless, both the Constitution and the General Rules were silent on the question of the use of languages in the drawing up of multilateral treaties under the aegis of FAO. Therefore, during the early days of the Organization some texts of multilateral treaties were drawn up in a single language, either English or French, such as the Agreement for the Establishment of the Indo-Pacific Fisheries Council (now Commission) originally drawn up in English in 1948 and the Agreement for the Establishment of a General Fisheries Council for the Mediterranean originally drawn up in French in 1949. Other treaties were drawn up in English, French and Spanish, the texts of which were equally authentic.

8. The Conference at its Ninth Session (1957) adopted a set of "Principles and Procedures which should govern conventions and agreements concluded under Articles XIV and XV of the Constitution" and "Guiding Principles with Respect to Agreements under Article XV of the Constitution for the Establishment of International Institutions dealing with questions relating to Food and Agriculture", and included in these Principles the following provisions on languages:

"16. Unless otherwise decided by the Conference or Council, all conventions and agreements [under Article XIV] shall be drawn up in the three working languages of the Organization, i.e. English, French and Spanish, which languages would be equally authentic.

"17. Unless otherwise decided by the Conference, the Agreement [under Article XV] should be drawn up in the three working languages of the Organization, i.e. English, French and Spanish, which languages would be equally authentic."

9. After the adoption of the aforementioned Principles, authentic versions of several multilateral treaties were drawn up in the three working languages, while authentic versions in other languages were adopted for treaties drawn up in only one authentic language version: e.g. equally authentic English and Spanish versions of the Agreement for the Establishment of a General Fisheries Council for the Mediterranean were approved by the FAO Conference after the Agreement had entered into force.

10. Following decisions taken by the Conference in 1969 and 1977 respectively (Conference resolutions 10/69 and 18/77), authoritative Arabic and Chinese texts of the Constitution were adopted and the provisions concerning languages appearing in Rule XLI of the General Rules of the Organization and of the Principles adopted by the Conference were amended to read as follows:

*Rule XLI of the General Rules of the Organization*

“Arabic, Chinese, English, French and Spanish are the languages of the Organization.”

This does not necessarily mean that Conventions and Agreements would henceforth have to be drawn up in all five languages. Although they would have to be submitted to Conference or Council for approval, and documents presented to these governing bodies are normally reproduced in the five languages, the authentic languages would still be specified in each treaty, in accordance with the “Principles and Procedures” referred to above.

PRINCIPLES AND PROCEDURES WHICH SHOULD GOVERN CONVENTIONS AND AGREEMENTS CONCLUDED UNDER ARTICLES XIV AND XV OF THE CONSTITUTION, AND COMMISSIONS AND COMMITTEES ESTABLISHED UNDER ARTICLE VI OF THE CONSTITUTION

“Authentic languages

“16. Unless otherwise decided by the Conference or Council, all conventions and agreements shall be drawn up in English, French and Spanish, which languages shall be equally authentic.”

GUIDING PRINCIPLES WITH RESPECT TO AGREEMENTS UNDER ARTICLE XV OF THE CONSTITUTION FOR THE ESTABLISHMENT OF INTERNATIONAL INSTITUTIONS DEALING WITH QUESTIONS RELATING TO FOOD AND AGRICULTURE

“Authentic languages

“17. Unless otherwise decided by the Conference, the agreements should be drawn up in English, French and Spanish, which languages would be equally authentic.”

11. Consequently, under the Principles quoted above, the Conference or Council is free to decide whether authentic texts of conventions or agreements concluded under Article XIV or XV of the Constitution should also be drawn up and approved in Arabic, Chinese or any other language if appropriate, bearing in mind, especially, the potential parties to the treaty and the languages in which the FAO Secretariat normally works.

12. With respect to treaties concluded under the auspices of FAO, but outside its framework, the authentic language versions have likewise been determined on the basis of the potential participation in the treaties concerned and the languages used by the Secretariat.

*3. Records and reports*

13. FAO's general practice on the maintenance of records of its proceedings is that verbatim records are kept for all plenary meetings of the Conference and its main commissions (including Commission III, which normally deals with legal and constitutional matters). Copies of all verbatim records and a report embodying all resolutions, recommendations, conventions, agreements and other formal decisions adopted by the Conference are transmitted by the Director-General to all Member Nations of the Organization after each session of the Conference (Rule XVIII, 1 and 3, General Rules of the Organization).

14. Likewise verbatim records are kept for all plenary meetings of the Council. Such verbatim records are sent to all Member Nations of the Organization soon after the closure of the session concerned. In addition, the Director-General, after each session of the Council, transmits to all Member Nations of the Organization a report embodying the text of all resolutions, recommendations, conventions, agreements, supplementary conventions or agreements, and of other formal decisions adopted by the Council (Rule VI of the Rules of Procedure of the Council).

15. Thus, whenever the Conference or Council is involved in the multilateral treaty-making process, the discussions are recorded in these verbatim records and in the final reports. On the other hand, verbatim records are not kept of sessions of standing Committees of the Council (e.g. Programme, Finance, Constitutional and Legal Matters), which may also be involved in some stages of the treaty-making process. In the case of such Committees and technical meetings of Member Nations concerned with the drafting of conventions or agreements, their deliberations, recommendations and proposals are reflected in final reports for submission to the Council, the Conference or the Director-General, as the case may be.

16. To secure proper consultation with Governments and adequate technical preparation prior to consideration by the Conference or Council of proposed treaties, the Director-General notifies Member Nations of any proposed treaty, not later than the time when he dispatches the agenda of the Conference or Council session at which the matter is to be considered. Such notification is accompanied by: (i) any reports on the matter by the Director-General, including a report on the technical, administrative and financial implications of the treaty concerned; (ii) a request for comments and information on the matter and for such representation as Member Nations may wish to make (Rule XXI.1 of the General Rules).

17. As regards the practice followed recently at the Plenipotentiary Conference and the Government Consultation for the Establishment of Integrated Rural Development Centres for Asia and the Pacific and for Africa, the proceedings of plenary meetings were recorded only on tape. The proceedings were transcribed from the tapes after the Plenipotentiary Conference and Consultation and then edited. Provisional verbatim records were circulated to participants for their comments, after which the final verbatim records were prepared, circulated to the Governments which had been represented at the Conference or Consultation and sent to the Centres concerned for safekeeping. Apart from the Final Acts, no final reports were adopted for circulation.

18. The draft Agreements sent to interested Governments before the Plenipotentiary Conference and the Consultation were accompanied by an explanation concerning the financial provisions. No other commentary was provided.

#### 4. *Voting majorities*

19. The voting majority required for the approval of multilateral treaties concluded within the framework of the Organization is governed by Articles XIV and XV of the FAO Constitution.

20. Under Article XIV.1, the Conference may, by a two-thirds majority of the votes cast and in conformity with rules adopted by it, approve conventions relating to food and agriculture.

21. In accordance with Article XIV.2, the Council, under rules adopted by the Conference, may, by at least two thirds of the membership of the Council (49 Member Nations elected by the Conference), approve agreements which are of particular interest to Member Nations of geographical areas specified in such agreements, and supplementary conventions and agreements designed to implement any of the above-mentioned conventions or agreements.

22. Finally, pursuant to Article XV, the Conference may, by a two-thirds majority of the votes cast, authorize the Director-General to enter into agreements with FAO Member Nations for the establishment of international institutions dealing with questions relating to food and agriculture. The signature of such agreements by the Director-General is subject to prior approval by the Conference by a two-thirds majority of the votes cast. The Conference may delegate the authority of approval to the Council, requiring a vote of at least two thirds of the Council's membership for the approval.

23. In the case of multilateral treaties concluded under the auspices of FAO but outside its framework, the required majorities for the adoption of decisions are usually spelt out in the Rules of Procedure of the Conference held for the purpose of adopting the treaty concerned.

24. The Rules of Procedure of the Conferences of Plenipotentiaries on the Conservation of Atlantic Tunas and on the Conservation of the Living Resources of the Southeast Atlantic (both convened by FAO) provided that decisions of these Conferences on all "matters of substance" shall be taken by a two-thirds majority of the representatives present and voting, whereas decisions on "matters of procedure" shall be taken by a simple majority of the representatives present and voting.

25. The Rules of Procedure of the Plenipotentiary Conference on the Establishment of a Centre on Integrated Rural Development for Asia and the Pacific and those of the Government Consultation on the establishment of a similar centre for Africa, although basically the same as the two previously mentioned Plenipotentiary Conferences, are somewhat more elaborate. These Rules specifically provide that the adoption of the Agreements for the establishment of these Centres and of any related resolutions shall require a two-thirds majority of the representatives present and voting "unless the Plenipotentiary Conference or the Consultation, by the same majority decides otherwise"; whereas other decisions shall be taken by a simple majority "unless the Plenipotentiary Conference or the Consultation decides otherwise".

##### *5. Post-adoption concerns*

26. In all treaties concluded under Article XIV of the Constitution, the method of participation is that of acceptance by the deposit of an instrument of acceptance, with the exception of two treaties, i.e. the International Plant Protection Convention (signature followed by ratification or adherence) and the Plant Protection Agreement for the Southeast Asia and Pacific Region (signature, signature followed by ratification, or adherence).

27. Regardless of the method of participation, during the first decade of FAO, six conventions and agreements concluded under the aforementioned constitutional provision had come into force in a relatively short period, an average of 6 months. Possibly, the reason for this was the rather low number of instruments required for the entry into force of such treaties, i.e. 3, 5 and 6, with the exception of one which required the deposit of at least 10 instruments of acceptance.

28. As from 1959, the acceptance process became slower in spite of the fact that FAO kept the number of instruments required at a low level, i.e. 3 and 5, with the exception of one which required 12 instruments of acceptance. In fact, out of five conventions and agreements concluded under Article XIV between 1959 and 1973, two came into force in a period of 9 to 12 months and three in a period of 20 to 30 months.

29. The entry into force of two multilateral treaties concluded outside the framework of FAO was a relatively long process. Thus the International Convention for the Conservation of Atlantic Tunas, which required 7 instruments of ratification, approval or adherence, came into force 34 months after it was opened for signature, and the Convention on the Conservation of the Living Resources of the Southeast Atlantic, which required 4 instruments of ratification, acceptance or approval, came into force 24 months after it was opened for signature. On the other hand, two agreements for the establishment of integrated rural development centres for Asia and the Pacific and for Africa, both requiring 6 instruments of ratification or accession, entered into force 10 and 6 months respectively after they were opened for signature.

30. The Organization has also experienced delays in the acceptance of amendments to some conventions and agreements. For instance, the Plant Protection Agreement for the Southeast Asia and Pacific Region was amended by the FAO Council in November 1967. The amendments came into force after 21 months, i.e. on the thirtieth day after acceptance by two thirds of the contracting parties as required by the Agreement. The Agreement was further amended by the Council in June 1979. So far the required number of acceptances has not been obtained and therefore the amended text of the Agreement has not yet come into force.

31. Likewise, in November 1979, the FAO Conference approved a revised text of the International Plant Protection Convention, but the said text, not having been accepted by a two-thirds majority of the parties as required by the Convention, is not yet in force. At present, 82 States are parties to the Convention and instruments of acceptance of the amendments have been received from only 19 contracting parties.

32. In an attempt to expedite the acceptance of the revised Convention, the Conference in its resolution approving the amendments stressed that it was in the interest of the international community that the revised text should enter into force without delay and urged the parties to accept it at the earliest possible time. In view of the slow response of Governments to this appeal, the Conference at its forthcoming session in November 1981 might take action in this respect.

33. Unfortunately, the Organization has no specific mechanism to improve the post-adoption situation, except the provision of paragraph 4 of

Rule XXI of the General Rules, under which, when speedy action is required, signature, accession or acceptance of treaties may be effected by the delegate of the Government concerned or the head of its diplomatic mission in the country where signature, accession or acceptance is to take place, subject to the deposit with the Director-General of a written statement issued by the head of the diplomatic mission certifying that such action is being taken in accordance with full powers conferred by the Government and that the necessary formal instrument will be forthcoming.

34. This device proved particularly useful on one occasion. The Conference in November 1959 approved, under Article XV of the Constitution, an Agreement for the Establishment of a Latin-American Forest Research and Training Institute. The Agreement was to come into force upon acceptance by Venezuela and four other Member Nations, provided that such acceptance took place within one year of the Conference approval. Since, a short time before the deadline, the number of acceptances required to bring the Agreement into force had not been reached, the FAO Council in October 1960 drew the attention of its Members to Rule XXI.4 and four Governments availed themselves of the procedure, thus becoming parties to the Agreement. Subsequently, all four Governments deposited the necessary formal instruments.

#### 6. *Supplementing and updating treaties*

35. The Organization's procedures for amending treaties are rather rigid and uniform. These procedures are set forth in paragraph 8, Section A, of the "Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution" (Section R of the Basic Texts) and read as follows:

##### "Amendments

"8. Conventions and agreements shall contain, when appropriate, provisions reflecting the following principles:

"(a) Amendments to all conventions and agreements concluded under Article XIV of the Constitution shall require Council approval, unless the Council considers it desirable to refer these amendments to the Conference for approval. In addition, such amendments shall be subject to prior approval by at least a two-thirds majority of all the parties to the convention or agreement. Amendments to conventions and agreements which do not provide for the establishment of a body shall be submitted to an advisory committee prior to consideration by the Council.

"(b) Amendments are not to become operative before approval by the Council or the Conference. The actual date on which they come into force shall be specified in the text.

"(c) Amendments involving new obligations for the contracting parties shall come into force in respect of each contracting party only on acceptance by it. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General of the Organization who shall inform all the contracting parties of the receipt of acceptances and the entry into force of amendments.

"(d) Conventions and agreements shall contain a provision regarding the position of contracting parties that do not accept amendments."

36. All conventions and agreements concluded within the framework of FAO contain specific provisions reflecting the above principles. With respect to subparagraph (c) above, it should be noted that all of these conventions and agreements, with the exception of two, provide that the rights and obligations of contracting parties that have not accepted amendments involving additional obligations shall continue to be governed by the provisions of the treaty concerned as they stood prior to the amendment.

37. Three multilateral treaties contain annexes to them. The Annex to the International Plant Protection Convention, the "Model Phytosanitary Certificate", is part of the Convention and as such may be amended only following the same procedure as for the amendment of the Convention, namely by approval of the Conference and acceptance by a two-thirds majority of the contracting parties.

38. Any annexes to the Agreement for the Establishment of a Regional Animal Production and Health Commission for Asia, the Far East and the South-West Pacific, containing common regional standards and practices of animal production and health recommended by the Commission established under the Agreement, may be amended in accordance with detailed procedures adopted by that Commission itself.

39. Finally, under the Plant Protection Agreement for the Southeast Asia and Pacific Region, Appendix A, containing a List of Destructive Pests and Diseases, and Appendix B, relating to measures to exclude South American Leaf Blight of Hevea from the Region, may be modified by a decision of the Committee established under the Agreement. The relevant provisions do not specify the required majority for the amendment of Appendix A, but a unanimous decision is needed to amend Appendix B. In any event, no approval by the Governing Bodies of FAO is necessary.

40. The amendment procedure with regard to the four multilateral treaties concluded under the auspices of FAO but outside its constitutional framework tends to be stricter than that of the treaties concluded under Articles XIV and XV of the Constitution.

41. The International Convention for the Conservation of Atlantic Tunas and the Convention on the Conservation of the Living Resources of the Southeast Atlantic may be amended by three fourths of the contracting parties, instead of two thirds as required by FAO. The Agreements on the Establishment of Integrated Rural Developments for Asia and the Pacific and for Africa may be amended by three fourths of the contracting parties, provided, however, that such majority is more than one half of the States parties to these Agreements.

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## B. GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)

1. In the multilateral treaty-making techniques and procedures in GATT, a distinction should be made between the preparatory stage and the actual negotiations.

2. The preparatory stage is initiated already when Governments recognize the existence of problems in certain areas and agree to begin discussions with a

view to exploring opportunities for making progress in the attainment of the objectives of the General Agreement in the particular area.

3. It is normally in the annual sessions of the Contracting Parties of GATT that discussions of such a nature are initiated and machinery is established, e.g. in the form of a committee, to proceed further with the work at the level of governmental experts. Occasionally, the discussions in the GATT Council of Representatives may also lead to the establishment of a working party, to examine the problems or the situation in a particular area.

4. The early stage of this type of preparatory work is of a fact-finding nature. The committees or working parties determine the type of information they would need for an examination of the factual situation and instruct the secretariat to compile the data or to invite, by means of a questionnaire, Governments to submit such statistics and other information as may be relevant.

5. It is the task of the secretariat to make the factual information available to the committee concerned in a way that can usefully serve as a basis for further discussions. Sometimes, the secretariat is instructed to make a factual descriptive study for this purpose.

6. In the course of their work, which may take several years, the committees or working parties regularly, i.e. at least once a year, report to the governing body concerned on progress made. The subsequent discussions in the Contracting Parties to GATT or the Council may result in certain guidelines or directives to be given to the committees concerned as to how to proceed with their further work.

7. Depending on the complexity of the matters under discussion, the committee concerned may decide to refer certain aspects or parts of the problems to a sub-group specifically created for that purpose. The sub-groups thereafter carry out their function under the guidance and supervision of the committee concerned.

8. It may be pointed out that the preparatory work, carried out initially on the basis of studies of a factual situation and subsequently on the basis of discussions as to the nature of the problems, may not at all lead to the conclusion that there may be prospects for a solution in initiating negotiations for a multilateral treaty. Sometimes, not infrequently, delegations draw from this preparatory work the conclusion that there are no real prospects for a mutually acceptable solution in the near future. In such cases the work in the committee or working party concerned may be interrupted and the committee or working party may be dissolved or simply become inoperative.

9. In other cases, however, the preparatory work may prove to be more fruitful. Thus, the Contracting Parties of GATT, in November 1971, agreed that it was their intention, as a principal objective, to pursue in GATT a new major initiative for dealing with the longer-term trade problems as soon as this was feasible. The Contracting Parties of GATT directed the Council to make arrangements to analyse and evaluate techniques and modalities for dealing in GATT with longer-term problems affecting world trade in the industrial and agricultural sectors.

10. The initiative for entering into multilateral negotiations is normally taken by one or a few contracting parties and presented at the session of the

Contracting Parties of GATT or to the GATT Council. If there is a favourable response to such initiative, the Contracting Parties of GATT (or the Council) set up machinery for the actual carrying out of the negotiations. For example, in preparing the current round of multilateral trade negotiations the Contracting Parties of GATT, in November 1972, agreed to establish a Preparatory Committee and agreed that arrangements be made for the convening of a meeting at ministerial level in September 1973 to consider the report of the Preparatory Committee, to establish a Trade Negotiations Committee and to provide the necessary guidelines for these negotiations.

11. The Tokyo Declaration, adopted in September 1973, determined the objectives and the scope and pattern of the multilateral trade negotiations and established a Trade Negotiations Committee to elaborate and put into effect detailed trade negotiating plans, to establish appropriate negotiating procedures and to supervise the progress of the negotiations.

12. The actual negotiating techniques are different depending on the subject matter. Thus, especially in earlier tariff negotiations carried out in GATT, the negotiations were conducted strictly on a bilateral basis. Each contracting party submitted to other participating contracting parties a list containing a request of the tariff concessions it was seeking to obtain from that contracting party. Likewise, each contracting party distributed to the other participating contracting parties a list of tariff concessions it was, in principle, prepared to grant, if agreement on the exchange of concessions could be reached. On the basis of these offers and request lists bilateral negotiations were conducted. The results of these bilateral negotiations, i.e. the comprehensive list of tariff concessions each contracting party had undertaken to grant, were incorporated in the Schedule of tariff concessions attributed to the contracting party concerned and annexed to the General Agreement. These concessions thereafter were applicable to all contracting parties under the general most-favoured-nation provisions of the General Agreement.

13. In the current multilateral trade negotiations, as well as under the Kennedy Round, the emphasis of the tariff negotiations, on the other hand, was rather on negotiating an overall tariff-cutting formula to be applied by all concerned on an across-the-board basis. The negotiations, therefore, were of a multilateral nature and were carried out in a multilateral group established for that purpose. Once an agreement in principle on the overall formula was achieved, negotiations basically of a bilateral nature proceeded with a view to ensuring that the exceptions from the general tariff-cutting formula were kept to the minimum and the overall balance of reciprocal benefits and concessions was not distorted.

14. For the various matters other than tariffs to be negotiated in the current multilateral trade negotiations, the Trade Negotiations Committee established groups, each of which was assigned with a particular sector of the negotiations. Some of these groups, such as the Group on Non-Tariff Measures, established a number of Sub-Groups, each of which was assigned a particular task, such as Quantitative Restrictions, Subsidies and Countervailing Duties, Technical Barriers to Trade, or Customs Matters.

15. The negotiations in the Groups and Sub-Groups are basically of a multilateral nature, which does not preclude delegations from entering into bilateral or plurilateral negotiations with each other in order to see whether a

solution to certain specific problems can be reached, which subsequently can be presented for consideration to other delegations.

16. On the other hand, while negotiations for a multilateral solution regarding certain types of non-tariff measures were proceeding, bilateral negotiations were also initiated, with a view to obtaining concessions of a specific nature from individual contracting parties for the removal or reduction of non-tariff measures relating to individual product items. These negotiations, in line with earlier tariff negotiations, are conducted on the basis of specific request lists addressed to individual contracting parties.

17. While there is, therefore, a clear difference in techniques and procedures depending on the subject matter, as described above, the duration of the negotiations would not appear to be related to the techniques and procedures actually used. The duration depends rather on the complexity of the subject matter itself and generally on the question as to whether the overall economic and political climate is propitious for the conclusion of trade negotiations. Similarly, the eventual participation in a multilateral agreement is not related to any of the techniques used, but depends fully on the number of countries interested in the subject matter. For example, the Arrangement Concerning Certain Dairy Products, of 12 January 1970, has 14 participants; the Agreement on Implementation of Article VI of the General Agreement, of 30 June 1967, has 26 parties; the Agreement Regarding International Trade in Textiles, of 23 December 1973, has 40 parties. While the techniques and procedures for negotiating these agreements were virtually the same, the great discrepancy in participation can be explained only by relating it to the subject matter of the agreement concerned.

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### C. INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA)

1. The Statute of the International Atomic Energy Agency does not specifically mention the formulation of multilateral legal instruments as one of this Agency's functions, nor does it provide for any special mechanism to apply thereto. However, in the discharge of its statutory functions, IAEA has played a role and adopted some practices over the past twenty years in the multilateral treaty-making process in connection with several aspects of the peaceful uses of atomic energy.

2. The first multilateral convention adopted under the auspices of IAEA was the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, which entered into force on 12 November 1977. The process of its elaboration extended over five years, from 1958 to 1963.<sup>1</sup> In brief, it involved:

- Advance studies and initial work carried out by the IAEA secretariat;
- The holding of a series of meetings of a panel of experts to advise the secretariat on further steps in the proceedings;
- The participation of Member States in the convention-making process through extensive comments provided by them at various stages;
- The establishment of an intergovernmental committee by the Board of Governors to advise it on further developments; and

—Finally, the convening of an international conference under the auspices of IAEA for final consideration and adoption of the draft convention thus formulated.

3. Efforts were also made for the elaboration of other multilateral legal instruments in which IAEA has been involved but which did not produce concrete results.<sup>2</sup> It may be said that the techniques and procedures used in those cases followed broadly the procedural steps outlined above with respect to the Vienna Convention.

4. In recent years, IAEA activities in the area of physical protection of nuclear material and facilities have led to the convening, under IAEA auspices, of a Meeting of Governmental Representatives to Consider the Drafting of a Convention on the Physical Protection of Nuclear Material (CPNM).

5. In order to achieve the objective of considering ways and means of facilitating international co-operation in dealing further with problems of physical protection of nuclear facilities and materials, the Meeting was opened on 31 October 1977 and the governmental experts participating in the work constituted three working groups and a Drafting Committee. The meetings continued along these lines with a minimum of formality and dealt with all relevant questions within the same forum, from the initial draft to the Final Act. No Credentials Committee was established and the participants were not required to submit credentials. An initial divergence of views concerning the need for a Final Act was resolved and consensus was reached to adopt a Final Act.

6. The Meeting held several sessions and elaborated and adopted a text to apply to the physical protection of nuclear material during international transport. Information on IAEA activities in the area of physical protection of nuclear material and facilities was presented to the twenty-second regular session of the IAEA General Conference by the Director General in document GC (XXII)/INF/178. On 3 March 1980 the Convention was opened for signature at the Headquarters of the Agency and of the United Nations.

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#### NOTES

<sup>1</sup> For details see P. C. Szasz, "The Law and Practices of the International Atomic Energy Agency", *IAEA Legal Series*, No. 7, 1970, pp. 704-710.

<sup>2</sup> *Ibid.*, pp. 710-721.

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#### D. INTERNATIONAL LABOUR ORGANISATION (ILO)

##### 1. *General considerations*

1. ILO procedures for the preparation of its standard-setting work in the form of Conventions were evolved over many years with a view to ensuring, as formally required by the Constitution of the Organisation since 1948, the most thorough technical preparation and fullest consideration of the texts adopted. They have stood the test of time and, not having been entirely free from criticism, they nonetheless continue to be considered adequate and satisfactory by the great majority of the members of the Organisation and have made possible the adoption of 156 international labour Conventions and 165 international labour recommendations in 1981.

2. The International Labour Conference is the only body within the Organisation empowered to adopt international labour Conventions.<sup>1</sup>

3. The formal point of origin of an international labour Convention is the inclusion of its subject matter on the agenda of the session of the International Labour Conference; thus it may adopt Conventions on the basis of proposals with regard to an item on its agenda.

4. The agenda of the Conference is settled by the Governing Body, although the Conference has the power to include an item in the agenda of its following session. Normally an item is included in the agenda with a view to the so-called double-discussion procedure. The technical agenda of a session of the Conference is generally fixed 18 months before the opening of that session.

## 2. *Office reports and conference discussions*

5. After the inclusion of the item on the agenda, the International Labour Office is required to prepare a preliminary report "setting out the law and practice in the different countries and any other useful information, together with a questionnaire". This report reviews the legislation and the situation in various countries in order to indicate what problems exist, which of them might be appropriately dealt with in an international instrument and at what level. The questionnaire is designed to ascertain the scope and level of new standards which Member States would accept and any divergencies of views or practices which might constitute major obstacles to the adoption of a homogeneous or generally acceptable instrument.

6. Typically this questionnaire is drafted in the form "Do you consider that the instrument(s) should provide that/for . . .", and a suggested substantive formulation of a provision follows. This approach is designed to enable the Members consulted to come to grips with specific issues formulated in carefully drafted language and to permit, on the basis of the replies to the questionnaire, the preparation of what is, in effect, a first draft of an instrument.

7. The preliminary report and the questionnaire are sent to Governments,<sup>2</sup> and must reach them no later than twelve months before the opening of the Conference session at which the question is to be discussed for the first time. Government replies to the questionnaire are to reach the Office no later than eight months before the opening of that session.<sup>3</sup> As a matter of constitutional practice, now given legal form in the Tripartite Consultations (International Labour Standards) Convention, 1976, Governments are invited to consult employers' and workers' organizations in preparing their replies.

8. On the basis of the replies to the questionnaire, the Office prepares a further report indicating the principal questions which require consideration by the Conference. This report is communicated by the Office to the Governments as soon as possible and every effort is made to secure that the report reaches them not less than four months before the opening of the session of

the Conference at which the question is to be discussed for the first time. In practice, this further report contains a summary of Government replies to the questionnaire and, in the light of these, proposed conclusions as to the form the instrument should take (Convention, Recommendation or a Convention supplemented by a Recommendation) and what its substantive provisions might be.

9. The preliminary report and the further report are then discussed at the session of the Conference. The Standing Orders of the International Labour Conference provide for the possibility of discussion of the reports in plenary sitting of the Conference, while constant practice is to refer them to a tripartite Committee especially constituted for the purpose. After some general discussion, that committee usually proceeds with a provision-by-provision analysis of the proposed conclusions contained in the further report. The amendments submitted are translated and distributed before the discussion to all members of the Committee present at the sitting.<sup>4</sup> Draft provisions and amendments put to the vote are adopted by a simple majority of the votes cast by the members of the Committee present at the sitting, under a system of weighted voting to ensure equality of voting strength among employers, workers and Governments. No vote is valid if the number of votes cast for and against is less than two fifths of the total voting power.

10. Each technical committee is required to set up its drafting committee.<sup>5</sup> The drafting committee checks the text of the "proposed conclusions" as agreed in the full Committee for internal consistency, ensures that it adequately reflects the technical committee's decisions and verifies that the two authentic versions (the English and French) of the final instrument say the same thing. The drafting committee also attempts to keep as near as possible to the standard drafting style and presentation used in other ILO instruments.

11. The draft text established by the drafting committee is sent back to the technical committee for approval and adoption. It is then presented, along with the technical committee's report, to the plenary sitting of the Conference for adoption.<sup>6</sup> It is standard practice for the Conference, at the same time, to adopt a resolution formally including the subject matter of the draft instrument in the agenda of its next session for second, and final, discussion.

12. Immediately after the session of the Conference at which the first discussion took place, the Office prepares the text of a draft Convention based essentially on the conclusions adopted by the Conference. The draft text must reach Governments no later than two months after the closing of the session of the Conference at which the first discussion took place, with the request that Governments state within three months whether they have any amendments to propose. On the basis of replies from the Governments, the Office draws up a final report containing a revised draft text of the instrument; that report must reach Governments not less than three months before the opening of the session of the Conference at which the question is to be discussed for the second time. Procedure at the Conference during the second discussion is similar to that used during the first discussion until the draft instrument is submitted by the technical committee to plenary sitting of the Conference. Each clause is then placed separately before the Conference for adoption. Amendments can be proposed at this time.

13. Once all of the clauses have been adopted by the Conference in full sitting, the text is referred to the Conference Drafting Committee.<sup>7</sup> The Conference Drafting Committee, apart from reviewing the technical provisions of the proposed Convention for the last time, adds thereto the final provisions—concerning such matters as ratification, entry into force, denunciation and revision—which are standard in form and substance for most ILO Conventions.

14. After the text has been approved by the Conference Drafting Committee, it is circulated to delegates and no further amendments are permitted unless the President of the Conference, after consultation with the Vice-Presidents, agrees to place them before the Conference at the same time as the draft text; this is very rare. The text is then put to the Conference for a final vote.

15. In order to be adopted the text must be approved by two thirds of the votes cast by the delegates present and voting.

16. The main alternative to the double-discussion procedure described above is the procedure under which there is only one discussion by the General Conference, the so-called single-discussion procedure. It is used primarily, though not exclusively, for the preparation of Conventions in the maritime field, which are normally adopted by special maritime sessions of the International Labour Conference.

17. There are two variants of the single-discussion procedure. Under one, the double-discussion procedure is telescoped, so that the preliminary report, with questionnaire, is followed by the final report which normally precedes the second discussion, and by consideration by the Conference in the manner appropriate to a second discussion. Under the other, the matter is first considered by a preparatory technical conference, and there may then be either a consultation of Governments or simply a final report as a basis for the Conference discussion. The procedure using a preparatory technical conference is more common.

### 3. *Procedures for the consideration and adoption of conventions revising existing conventions*

18. The Standing Orders of the Governing Body and of the Conference provide for special procedures for the consideration and adoption of Conventions revising existing Conventions. The essence of these provisions is the consultation of Governments by the Governing Body prior to the matter being placed on the agenda of the Conference, followed by a single discussion in the Conference.

19. In fact this procedure is very seldom used. In most cases it has been found preferable to use the normal double-discussion procedure. The legal process of revision is then the result of a provision in the new Convention to the effect that it revises such-and-such earlier Convention(s). The process is facilitated by the fact that virtually all international labour Conventions adopted since 1927 include a paragraph worded as follows:

“1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then unless the new Convention otherwise provides:<sup>8</sup>

“(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article . . . (article concerning denunciation) above, if and when the new revising Convention shall have come into force;

“(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

“2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.”

20. In certain cases, particularly with respect to instruments of a complex and wide-ranging character (e.g. the Minimum Standards of Social Security Convention, 1952 (No. 102)) there are, in addition to the usual provisions on revision described above, special provisions such as the following, which constitutes Article 75 of the Convention mentioned:

“If any Convention which may be adopted subsequently by the Conference concerning any subject or subjects dealt with in this Convention so provides, such provisions of this Convention as may be specified in the said Convention shall cease to apply to any Member having ratified the said Convention as from the date at which the said Convention comes into force for that Member.”

#### 4. *Amendment procedures*

21. In certain cases, in particular where the subject matter of the Convention is highly technical and liable to be affected by technological or scientific discovery and development, the Conference has included a provision such as the following in the instrument:

“1. The International Labour Conference may, at any session at which the matter is included in its agenda, adopt by a two-thirds majority amendments to Schedule I (the list of occupational diseases) to this Convention.

“2. Such amendment shall take effect in respect of any Member already a party to the Convention when such Member notifies the Director-General of the International Labour Office of its acceptance thereof.

“3. Unless the Conference otherwise decides when adopting the amendment, an amendment shall be effective, by reason of its adoption by the Conference, in respect of any Member subsequently ratifying the Convention.” (Employment Injury Benefits Convention, 1964, Article 33.)

22. The procedure for the preparation of such amendments tends to be consideration by a meeting of experts, followed by a single Office report and a single Conference discussion.

### 5. *Other methods of relating new conventions to existing ones*

23. The revision procedures apply to cases in which a new Convention is designed to replace an existing one. At the same time, given the very substantial body of international labour Conventions already in existence, new Conventions which are not designed to replace existing ones may overlap, parallel or otherwise impinge on instruments already binding on some Members. Methods have had to be evolved, in the elaboration of new Conventions, to take account of this, and to avoid duplication, conflict and doubt as to legislative intent. This has been all the more important as, under the standard final provisions included in a substantial number of international labour Conventions, denunciation is possible only at ten-yearly intervals, whereas, in view of the fact that certain obligations relating to such Conventions arise directly from the Constitution of the Organisation, it has been considered impossible also to set them aside by *inter se* agreements amongst certain parties thereto.

24. As from the preliminary (questionnaire) report, the Office draws attention to existing Conventions which, in one manner or another, have relevance to the new subject being considered. Furthermore, often as from the questionnaire, but at latest from the first preparation of the text of a Convention, the Office prepares for inclusion in the preamble of the new Convention language which recalls these existing instruments and, as appropriate, explains briefly the gap which the new standards are designed to fill. Finally, the attention of the competent bodies in the Conference is systematically drawn to any provisions which, for any reason, parallel provisions in existing instruments so that variations in language are used only to reflect intended differences in meaning.

25. Whereas those procedures are applied frequently and systematically in relation to international labour Conventions, there are cases in which they become applicable also to instruments adopted elsewhere and, in particular, under the auspices of another organization of the United Nations system. This is in conformity with the principles on the co-ordination of legislative activities agreed in ACC (see Annual Report of the Administrative Committee on Co-ordination to the Economic and Social Council for 1973-74, paragraphs 200-209).

### 6. *Methods of ensuring flexibility necessary for universal application*

26. Under constant constitutional practice, the ratification of international labour Conventions cannot be made subject to reservations. The reasons for this, related in large part to the tripartite structure of the Organisation, and particularly of the Conference or the body adopting them, were set out in the Memorandum submitted by the Organisation to the International Court of Justice in connection with the case concerning reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. They do not need to be gone into further here.

27. At the same time, this constitutional practice places on the bodies participating in the elaboration of international labour Conventions a special

burden of ensuring that these instruments have, in their terms, the flexibility necessary to make them both acceptable and meaningful, universally.

28. The basis for relevant methods is contained in Article 19, paragraph 3 of the Constitution, as follows:

“In framing any Convention . . . of general application, the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries”.

29. As a first step towards compliance with that requirement, every questionnaire prepared by the Office, under the single- or double-discussion procedure, contains standard questions designed to elicit from Governments an indication of special difficulties faced by them in connection with an instrument on the lines envisaged in the questionnaire. There is also a standard question addressed to federal States, with a view to determining the distribution of power in relation to the subject matter at issue.

30. By reference to the information obtained in response to those standard questions, as well as in the replies to the substantive questions, a large range of so-called flexibility devices has been evolved. It is, of course, the International Labour Office which is most familiar with these devices, and it is usually the Office which assumes the responsibility—most frequently as from the report preceding the first discussion, but sometimes after and in the light of that first discussion—of suggesting recourse to one or other of them. There are however cases in which such a device is introduced at the Conference itself, sometimes to balance a tightening of substantive provisions.

31. This is not the place to consider the various devices in detail, but the following examples give an indication of the types of techniques used: (1) possibility of ratifying a Convention by parts; (2) possibility of excluding from the scope of the Convention a sector (e.g. agriculture) raising particular difficulties of application; (3) possibility for developing countries to ratify initially on the basis of a more limited scope, or a lower level of protection, than others, the scope and level of protection open to them being specified; (4) possibility for ratifying States to specify the level of obligation accepted by them, subject to a minimum (escalator clauses). Specific reporting obligations included in flexibility clauses are designed to ensure that these are used only to the extent necessary.

#### *7. Authentication of conventions adopted by the Conference*

32. Article 19, paragraph 4, of the Constitution provides that “two copies of the Convention or Recommendation shall be authenticated by the signatures of the President of the Conference and of the Director-General.” On taking up membership in the Organisation, the member States must communicate

their formal acceptance of the Constitution, and hence agree in advance to this procedure for authentication. This procedure thus falls within the rule set out in clause (a) of Article 10 of the Vienna Convention, being one "agreed upon by the States participating in the drawing up of the text".

33. There is no procedure of authentication of a text by signature or initialling in the ILO. In the words of an Office Note of 1931: "This, however, is only one among a number of other normal and logical consequences of the major innovation introduced by Part XIII (of the Treaty of Versailles) in giving up the rule of unanimity and the system of discussion by plenipotentiaries. It is a definite legal fact that the preparation of the International Labour Conventions is entrusted not to a meeting of the plenipotentiaries requiring unanimity for their decisions, but to a specially constituted assembly taking its decisions by a two-thirds majority".<sup>9</sup>

#### 8. *Current review of procedures for adoption of multilateral treaties (conventions)*

34. During 1974-1979 the Governing Body undertook an in-depth review of all facets of international labour standard-setting, including a review of procedures for the adoption of Conventions and Recommendations.<sup>10</sup> In the course of this review a number of suggestions for modifications on these procedures were put forward, but no final conclusions were reached. This question is, however, continuing to receive attention, and it may be useful to mention briefly the main ideas which have been put forward.

35. One suggestion has been that the time-limits for consultation with Governments should be extended. Certain federal Governments in particular have experienced great difficulty in holding adequate consultations with authorities in their constituent units within the time-limits existing at present. Any such prolongation has, however, met with strong opposition in several quarters of the Organisation's membership on the grounds that it would slow down the standard-setting activity to an unacceptable extent.

36. Another proposal is that it might be possible to replace the double-discussion procedure by greater recourse to a single discussion preceded by a technical meeting and subsequent consultation of Governments within time-limits corresponding to those at present covering the double-discussion period. This would give more leisure for government consultation, and would reduce the number of items before the Conference at any one time, without slowing down standard-setting. The principal objections to this innovation which have been voiced centre around the difficulty of ensuring adequate representation of all points of view at technical meetings whose composition is necessarily far more limited than that of the Conference.

37. Some Conference Committees have already experimented with procedures under which the full Committee discusses major issues and then refers amendments submitted to texts to working groups. This leaves drafting in the hands of a more manageable body, while reducing the number of meetings of the full Committee and hence the pressure on smaller delegations. This proposal has been generally well received.

**APPENDIX I**

**Timetable of double-discussion procedure**

If item placed on agenda less than 18 months before first discussion, Governing Body can approve a programme of reduced intervals (50, 39(5)).  
 If less than 11 months, Governing Body can approve a programme of reduced intervals (50, 39(8)).

**ADOPTION**

18 months before first discussion, Conference agenda set  
 Opening of first discussion Conference session  
 Opening of second discussion Conference session

May June July Aug Sept Oct Nov Dec Jan Feb Mar Apr May June

*First Discussion*

Preliminary report setting out law and practice questionnaire communicated to Governments so as to reach them 12 months before opening of first discussion Conference session (50, 39(1))  
 Government replies should reach Office (50, 39(2))  
 Extra month for federal systems and where report has to be translated into local language (50, 39(2))

Office report to Governments indicating principal questions for discussion (50, 39(3))

Draft texts sent out within two months after closing of Conference session (50, 39(6))  
 Governments' comments on draft texts latest three months before re-opening of session of draft and discussion (50, 39(6))  
 Final report to Governments three months before opening of session (50, 39(7))

*Second Discussion*

38. There is also general recognition that demands on and of the present system make it very difficult to find the time necessary to keep the corpus of ILO instruments, the International Labour Code, completely up to date by means of revision, re-editing or completion. This is a question of vital importance in respect of such a vast, long-standing and dynamic programme of treaty-making as the ILO's, but no generally accepted proposals as to how to deal with this problem as a whole have yet been forthcoming.

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NOTES

<sup>1</sup>The Conference is composed of four representatives of each Member State, of whom two represent the Government of that State and two represent respectively the employers and the workpeople of that State; it is required to meet at least once in every year.

<sup>2</sup>In certain cases they are sent also to the United Nations and other specialized agencies.

<sup>3</sup>A month's extension can be given, if requested, to Governments of federal countries and countries where it is necessary to translate the questionnaire into the national language.

<sup>4</sup>Amendments to the draft must be submitted in writing.

<sup>5</sup>It consists of one government delegate, one employers' delegate, one workers' delegate, the Reporter or Reporters of the Committee and the Legal Adviser of the Conference.

<sup>6</sup>Amendments are possible at this stage but relatively rare.

<sup>7</sup>Long-standing practice is that the Conference Drafting Committee be composed of the President of the Conference, the Secretary-General of the Conference (i.e., the Director-General of the International Labour Office), the Legal Adviser and one or two other members of the Secretariat having considerable drafting experience. Members of the Committee Drafting Committee are *ex officio* members of the Conference Drafting Committee in respect of the text coming from their Committee.

<sup>8</sup>In certain cases where it has been considered desirable to keep the earlier instrument(s) open for ratification, for instance, as an interim target of social policies, a specific provision has been included in the later Convention stating that it does not close the earlier instrument to subsequent ratifications.

<sup>9</sup>ILO, 15th session (Geneva, 1931), Record of Proceedings, p. 677.

<sup>10</sup>Of particular pertinence in this connection are the following Governing Body documents: GB.194/PFA/12/5, GB.198/PFA/11/22, GB.199/PFA/7/3, GB.199/PFA/7/12, GB.201/PFA/13/28, GB.209/PFA/6/3 and GB.209/PFA/7/24.

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E. INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

1. The International Civil Aviation Organization has been actively involved in the preparation of international multilateral conventions. So far under the auspices of ICAO, thirteen international multilateral instruments have been adopted. The basis for this work of the Organization is the Constitution of the Legal Committee approved by ICAO Assembly resolution A7-5 and resolution A7-6, which is entitled "Procedure for Approval of Draft Conventions" (see annex below).

2. The usual technique for preparation of an international instrument is that a subject on the General Work Programme of the Legal Committee is studied by a rapporteur, then by a sub-committee of the Legal Committee or several sessions thereof and, finally, by the Legal Committee itself. A draft which the Legal Committee considers as ready for presentation to the States as a final draft is transmitted to the Council of ICAO, which may convene an International Conference of Plenipotentiaries. Such "Diplomatic Conferences", once convened by the Council of ICAO, sit as sovereign bodies independent of the constitutional structure of the Organization.

## ANNEX

### Procedure for Approval of Draft Conventions (Assembly resolution A7-6)

1. Any draft convention which the Legal Committee considers as ready for presentation to the States as a final draft shall be transmitted to the Council, together with a report thereon.
2. The Council may take such action as it deems fit, including the circulation of the draft to the Contracting States and to such other States and international organizations as it may determine.
3. In circulating the draft convention, the Council may add comments and afford States and organizations an opportunity to submit comments to the Organization within a period of not less than four months.
4. Such draft convention shall be considered, with a view to its approval, by a conference which may be convened in conjunction with a session of the Assembly. The opening date of the conference shall be not less than six months after the date of transmission of the draft as provided in paragraphs 2 and 3 above. The Council may invite to such a conference any non-Contracting States whose participation it considers desirable, and shall decide whether such participation carries the right to vote. The Council may also invite international organizations to be represented at the conference by observers.

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## F. INTERNATIONAL MARITIME ORGANIZATION (IMO)<sup>1</sup>

### 1. Introduction

1. This paper contains an outline of the various methods which have been used by the International Maritime Organization (IMO) to bring about the adoption of international multilateral instruments in the period from the Organization's inception to the end of 1976.

2. The competence to arrange for the preparation and adoption of treaties is explicitly granted to the Organization in the Convention on the Inter-governmental Maritime Consultative Organization,<sup>2</sup> which states that the function of the Organization shall be, *inter alia*, "to provide for the drafting of conventions, agreements, or other suitable instruments, and to recommend these to Governments and to inter-governmental organizations, and to convene such conferences as may be necessary".<sup>3</sup> In other words, the Convention differentiates between the preparatory work for the elaboration of an instru-

ment and its formal adoption. The first step is left entirely within the competence of the Organization; the second step, however, the adoption of a convention, must occur within the framework of a conference, participation in which is not restricted to the members of the Organization but open to a much wider circle of States.<sup>4</sup>

3. For each of the treaties covered by the paper, there is a brief outline of the various steps which led to their elaboration and adoption, beginning with the initial steps undertaken within the Organization on the subject matter and terminating with the adoption of the relevant instrument by a conference.

4. Covered are all those instruments with which IMO was associated in the stages prior to their adoption and which were eventually adopted under the auspices of IMO. As will be seen below, in a number of cases, the role of IMO in the adoption of instruments was not exclusive, but occurred under various forms of co-operation between IMO and other inter-governmental organizations. Not included are, of course, all those conventions in the adoption of which the Organization participated in the role of an observer.

5. In a number of cases, the Organization, while not involved in the preparation and adoption of treaties, was requested to perform certain functions, particularly those of a depositary nature, in respect of such treaties. Among them are mainly those conventions which were elaborated and adopted before the entry into force of the IMO Convention. They are the International Convention for the Safety of Life at Sea, adopted in 1948,<sup>5</sup> and the International Convention for the Prevention of Pollution of the Sea by Oil, adopted in 1954.<sup>6</sup> The substance of these two conventions constituted the cornerstone of IMO's activities in its early stages. Much more recently, another convention in the preparation of which the Organization participated, but which was adopted by an inter-governmental Conference convened by the United Kingdom rather than under the auspices of IMO, was deposited with the Organization.<sup>7</sup>

6. With one exception this paper does not include a discussion of the various amendments adopted in respect of the instruments dealt with. The method of adopting amendments to a treaty is usually prescribed by the treaty itself and therefore largely pre-determined.

## 2. *International Convention on Safety of Life at Sea, 1960*

7. In August 1957 the United Kingdom, depositary of the 1948 Safety of Life at Sea Convention proposed to the Contracting Governments that a Conference be held in 1960 to revise the 1948 Convention.<sup>8</sup> By 1959 one third of the Contracting Governments of the 1948 Convention had expressed the desire for a revision, and a revision conference became necessary under the provisions of that Convention.<sup>9</sup> In the meantime, however, the Organization had been established and, at its first session, the Assembly had decided that the Organization should assume the depositary and other functions, in accordance with Article XV of the 1948 Convention.<sup>10</sup> With the agreement of the United Kingdom, the Organization thereupon informed Governments of the planned conference and invited them to submit proposals for amending the 1948 Convention.<sup>11</sup>

8. The Maritime Safety Committee did not consider any of the substantive proposals put forward by Governments in preparation of the Conference; in other words, IMO's organs were not involved in any preparatory work for the 1960 Conference as far as substance was concerned. The Maritime Safety Committee did, however, deal with a number of organizational and procedural matters. In particular, it approved proposals, put forward by the Secretariat, that the Conference establish eight substantive Committees. It also approved draft Rules of Procedure for the Conference prepared by the Secretariat.<sup>12</sup> The Secretariat circulated all comments, observations and proposals received<sup>13</sup> as well as detailed proposals on the organization of work of the Conference and the terms of reference for each Committee,<sup>14</sup> and the draft Rules of Procedure approved by the Maritime Safety Committee.<sup>15</sup> More importantly, the Secretary-General submitted directly to the Conference a number of proposals of a substantive nature relating to several draft articles and regulations.<sup>16</sup>

9. The Conference met from 17 May to 17 June 1960. Thirty-four Governments and seven international organizations were represented. There was no general debate in plenary and all substantive work was carried out in the eight Committees. Upon receipt of reports of these Committees, the plenary did not adopt individual articles or regulations put forward in the reports. Rather, the reports themselves, containing the draft provisions, were regularly put to the Conference as a whole. Only rarely did the plenary conduct a vote. In a few cases there was a request for a roll-call vote.<sup>17</sup> Summary records were prepared of the discussions in each of the substantive Committees as well as of the meetings of the Heads of Delegations Committee. The convention<sup>18</sup> was adopted unanimously by the plenary.<sup>19</sup>

### 3. *1962 Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954*

10. As indicated earlier, the 1954 Oil Pollution Convention was adopted five years before IMCO's establishment. Early in 1959, Bureau and secretariat functions were transferred to the Organization on the basis of an Assembly resolution and in accordance with Article XXI of the convention.<sup>20</sup> An "unofficial" International Conference on Oil Pollution of the Sea, held in Copenhagen in July 1959, invited IMCO to prepare for a new international conference on the subject matter.<sup>21</sup> This resolution reinforced the view underlying the Assembly resolution that the Organization would be convening a further conference. On the basis of these two resolutions and proposals by the Secretariat, the Maritime Safety Committee agreed that a conference on oil pollution should be held as early as possible.<sup>22</sup> At its subsequent session, held in November 1960, the Maritime Safety Committee had before it a suggestion by the Secretariat that the Conference be held in Spring 1962. The Secretariat also expressed the view that it would not "appear to be appropriate for the Organization to take the initiative in the formulation of definitive proposals for consideration at the Conference whether for amendment of the existing Convention or as a basis for the drafting of a revised convention".<sup>23</sup> In accordance with a suggestion by the Secretary-General, the Maritime Safety Committee therefore agreed to the setting-up of a small working group of experts to assist the Secretariat in the conference preparations.<sup>24</sup> The Working Group held two sessions and provided the Secretary-General with guidance and advice on

preparations for the Conference. On the basis of replies to two questionnaires received from Member States and Contracting Governments, the Secretariat prepared a number of background documents designed to facilitate a review of the operation of the 1954 Convention by the Conference and to provide reference material for the various Committees of the Conference.<sup>25</sup>

11. Early in 1962 the United Kingdom delegation informed the Maritime Safety Committee of a proposal that a conference of Contracting Governments to the 1954 Convention be convened immediately after the diplomatic conference. This was considered necessary because it was going to be left to the diplomatic conference itself to decide whether a new convention should be adopted or whether the 1954 Convention should be amended. If the diplomatic Conference were to decide on the latter solution, the amendments could be adopted only in accordance with Article XVI of the 1954 Convention, which provided for a conference of Contracting Governments called at the request of one third of them.<sup>26</sup> In accordance with this proposal, two separate conferences were held.

12. The diplomatic Conference met from 26 March to 13 April 1962. Fifty-five Governments and eight international organizations were represented. The Conference approved the Secretariat's proposals that there be a General Committee and three substantive committees reporting to the General Committee.<sup>27</sup> The plenary held no general debate, and the question of the type of instrument to be elaborated was discussed by the General Committee, which proposed to the plenary that the Conference proceed to the amendment of the 1954 Convention.<sup>28</sup> This proposal was adopted by the plenary.<sup>29</sup>

13. The basic proposals before the Conference were the proposals put forward by Governments which had been incorporated in a "consolidated proposal", setting out side by side the text of the 1954 Convention and the changes proposed thereto.<sup>30</sup> The plenary considered the draft amendments on the basis of the texts prepared by the General Committee after examination by the Drafting Committee and succeeded in adopting them in the course of two meetings.<sup>31</sup> While holding a number of votes, neither the plenary nor any of the Committees resorted to a roll-call vote. The plenary authorized the President to transmit the results of the diplomatic Conference to the Conference of Contracting Governments.

14. That Conference was held in parallel with the diplomatic Conference. Only two brief meetings were held,<sup>32</sup> and the Conference adopted the amendments<sup>33</sup> elaborated by the diplomatic Conference as a whole.

#### 4. *Convention on Facilitation of International Maritime Traffic, 1965*

15. At the origin of the 1965 Facilitation Convention stands a resolution adopted by the Union of Official Travel Organizations in 1958 requesting the United Nations Economic and Social Council to convene a conference on international travel and the removal or reduction of travel barriers. Based on this, the Economic and Social Council adopted a resolution requesting the Secretary-General of the United Nations to pursue technical studies in this field, and to invite interested organizations to make recommendations on the subject, including the desirability of convening an international conference on the subject.<sup>34</sup> On the basis of submissions put by the Secretary-General to the

Council at its second, third and fourth sessions,<sup>35</sup> the Assembly, at its second session, held in 1961, authorized the Secretary-General to establish a group of experts to advise the Council on further work to be undertaken on the subject matter.<sup>36</sup> A draft Convention on Facilitation of International Waterborne Transportation in the Western Hemisphere, prepared by the Permanent Technical Committee on Ports, attached to the Inter-American Economic and Social Council of the Organization of American States, was submitted by the United States to the Council at its sixth session in 1962.<sup>37</sup> This draft convention, together with Governments' replies to a Secretariat questionnaire, served as a basis of work for the Expert Group set up by the Council. In 1963 the Group presented a report to the Council on its progress of work.<sup>38</sup> The Group suggested that the draft convention elaborated by it be circulated to Governments for their proposals and comments and that the draft together with such proposals thereon constitute the basic conference documents. The Council approved these proposals and the convening of a conference in 1965.<sup>39</sup> These decisions were confirmed by the Assembly by means of a resolution at its third session held in 1963.<sup>40</sup>

16. The Conference met from 24 March to 9 April 1965. Sixty-eight States and 16 international organizations were represented. The Secretariat proposed to the Conference a committee structure according to which there would be a General Committee and three technical committees which would be reporting to the General Committee.<sup>41</sup> Texts prepared by the Drafting Committee were not to go back to the General Committee, but were to be submitted directly to the plenary.<sup>42</sup> These proposals were approved by the Conference.<sup>43</sup>

17. In plenary, voting was resorted to a number of times, but the only roll-call vote conducted related to a draft resolution.<sup>44</sup> In the committees no request was made for a roll-call vote, and in the three technical committees the voting procedure was made use of very sparingly. In a final vote in the plenary, the convention<sup>45</sup> was adopted by the Conference unanimously.

##### 5. *International Convention on Load Lines, 1966*

18. The Organization's involvement in the preparation of the 1966 Load Lines Convention dates from early 1961, at which time the United States tabled in the Council a draft resolution proposing that IMCO make preparations for the convening of a conference to adopt a convention on load lines.<sup>46</sup> It was suggested that the instrument should be, in form at least, an entirely new convention, rather than a revision of the International Convention respecting Load Lines, of 1930,<sup>47</sup> since the latter approach could create difficulties of a legal and political nature.<sup>48</sup> In October of the following year the Council adopted a resolution inviting the Maritime Safety Committee "to undertake a study of the problems raised by the existing load lines convention", and recommending the Assembly to authorize the convening of an international conference to adopt a new convention.<sup>49</sup> This decision was, however, not unanimous. In particular, it was noted by the representative of the depositary Government of the 1930 Convention, whose view was shared by another delegation, that it was for his Government as Bureau Power to convene a revision conference of that Convention rather than for IMCO to convene a new conference.<sup>50</sup> The following year the Maritime Safety Committee agreed, in the light of the Council's decision and on the basis of a brief paper prepared by

the Secretariat setting out the changes needed to the existing international load-line régime,<sup>51</sup> to the establishment of a group of experts "to assist the Secretary-General in the preparatory work for a conference".<sup>52</sup> In 1963, at its third session, the Assembly concluded that it was appropriate for IMCO to convene a conference and decided, by means of a roll-call vote,<sup>53</sup> to hold such a conference in 1966.<sup>54</sup>

19. Thereupon, the Secretary-General invited Governments to submit any proposals they might have on the text of the Convention to be adopted.<sup>55</sup> In March 1964, the United States Government submitted its proposal for a text of a convention and expressed the view that it might be used as a basic document for the Conference. Within a year, over a dozen Governments submitted proposals and comments, mostly relating to the text submitted by the United States. The Secretariat submitted an outline to the Maritime Safety Committee at its tenth session.<sup>56</sup> This proposal was duly approved, but no clear decision was reached on whether the text proposed by the United States would serve as a basic text, because the USSR notified the Committee that it was preparing an alternative text.<sup>57</sup> Ultimately, all proposals relating to the United States draft were collated and issued in printed form, together with the United States draft itself, whereas the draft prepared by the USSR was printed separately. The Assembly approved the Maritime Safety Committee's decision and the steps undertaken by the Secretariat.<sup>58</sup> A final report by the Secretariat on the state of preparations for the Conference was noted by the Maritime Safety Committee at its twelfth session.<sup>59</sup>

20. The Conference met from 3 March to 5 April 1966. Sixty States and three international organizations were represented. The Conference established, in accordance with the proposals put forward by the Secretariat, three substantive committees: a General Committee, a Technical Committee and a Committee on Zones. Apart from preparing the general provisions of the convention, the General Committee also considered all texts elaborated by the other two substantive committees before passing them on to the Drafting Committee; all texts once revised by that committee went back to the General Committee for further elaboration before being submitted to the plenary.<sup>60</sup>

21. The Conference had before it the two draft conventions proposed, respectively, by the USSR and the United States, as well as a number of observations relating to the latter.<sup>61</sup> The Rules of Procedure of the Conference did not specify whether one of these two drafts was to be considered as the "basic proposal" before the Conference, and the records of the various committees indicate that both proposals were considered side by side, together with any proposed amendments thereto. In the plenary, the final adoption of most texts took place without a vote. A roll-call vote was requested only on one occasion.<sup>62</sup> In the committees, roll-call votes were rare,<sup>63</sup> but recourse to a simple voting procedure was taken much more often. The final adoption of the text of the convention<sup>64</sup> was not put to the vote.

#### 6. *International Convention on Tonnage Measurement, 1969*

22. Work on the unification of the rules on tonnage measurement began right at the inception of the Organization's activities; thus, the initial work programme for the Organization submitted to the Assembly already envisaged

the "furthering of a conference on the tonnage measurement of ships".<sup>65</sup> To this effect, the Assembly decided to take over from the United Nations functions concerning the unification of maritime tonnage measurement,<sup>66</sup> in accordance with a resolution of the Economic and Social Council,<sup>67</sup> and to establish a Sub-Committee on Tonnage as the first subsidiary body of the Maritime Safety Committee.<sup>68</sup> In 1965, after its fifth session, the Sub-Committee reported to its parent body on the various systems it was considering and proposed that a universal tonnage measurement be adopted; it noted that this would have to be achieved by means of a convention.<sup>69</sup> The Maritime Safety Committee concurred in this view<sup>70</sup> and the Assembly, thereupon, adopted a resolution on the convening of an international conference on tonnage measurement in order to adopt a convention establishing a universal system.<sup>71</sup> Two years later, in 1967, the Assembly decided to convene a four-week conference in 1969.<sup>72</sup> The Sub-Committee prepared three alternative draft conventions. After considering them, the Maritime Safety Committee decided that three alternatives should be circulated to Governments for comments.<sup>73</sup>

23. The Conference met from 27 May to 23 June 1969. Fifty-five States and four international organizations were represented, as well as the Suez Canal Authority and the Panama Canal Company. At the suggestion of the Secretariat, two substantive committees (a General Committee and a Technical Committee) were established.<sup>74</sup> In addition to preparing the general provisions of the convention, the General Committee was also to review the drafts prepared by the Technical Committee. The Drafting Committee was requested to submit all its drafts to the General Committee, which in turn forwarded them to the plenary for final adoption.

24. The Secretariat proposed that the Conference decide at an early stage which of the proposals before it should serve as a basic text. However, the plenary faced considerable difficulties on the question of choosing a measurement system among the three alternatives presented, and after a lengthy discussion<sup>75</sup> it reduced the number of alternatives to two and instructed the Technical Committee to examine these with a view to selecting the appropriate parameter(s) to be embodied in the convention.<sup>76</sup> In the course of five meetings, the Technical Committee took tentative decisions on a number of fundamental issues and reported to the plenary the results of the votes conducted.<sup>77</sup> The plenary in turn took votes on these issues and, on the basis of their outcome, the Technical Committee was then in a position to continue with its work.<sup>78</sup>

25. Voting was often taken recourse to in the General and Technical Committees, in the latter several times in the form of a roll-call.<sup>79</sup> In the plenary, on the other hand, only two roll-call votes were conducted.<sup>80</sup> In the plenary the final adoption of the text of the convention<sup>81</sup> as a whole was put to the vote.<sup>82</sup>

7. *International Convention relating to Intervention on the High Sea in Cases of Oil Pollution Casualties, 1969, and International Convention on Civil Liability for Oil Pollution Damage, 1969*

26. Following the *Torrey Canyon* disaster of 1967, the Council convened in May 1967 an extraordinary session and adopted an eighteen-point pro-

gramme for measures and studies in relation to marine pollution arising from maritime casualties.<sup>83</sup>

27. The newly established Legal Committee, at its first session, gave initial consideration to those points in the Council's programme which were primarily of a legal nature and decided to establish two working groups: one to deal with questions relating to the right of intervention on the sea in case of oil pollution, the other one with liability aspects for such pollution.<sup>84</sup> At its next session the Committee concluded on the basis of the report of the first working group that there was a need for a multilateral convention on intervention. No decision was taken at that stage on the solution to be adopted in respect of liability issues.<sup>85</sup> In the course of two subsequent sessions the working group dealing with the question of intervention elaborated a number of draft articles for inclusion in a convention,<sup>86</sup> which were further developed at the Legal Committee's third session and finalized for submission to a conference at the Committee's fourth session.<sup>87</sup> On a number of issues the Committee did not come to definite decisions, noting that these could be resolved conclusively only at a diplomatic conference.

28. The working group on liability matters took as a basis of its work at its second and third sessions a set of draft articles prepared by an international sub-committee of the *Comité maritime international*<sup>88</sup> and elaborated a set of draft articles which it submitted to the Legal Committee's fifth session in March 1969. At its sixth session, held two months later, the Committee finalized the text of the draft convention. On a number of issues the Committee could not come to a definite decision; in some of these cases it was agreed to submit two alternative texts to the conference; in other cases appropriate footnotes reflecting different views were added.<sup>89</sup>

29. In the meantime the Council had been informed on progress of work in the Legal Committee<sup>90</sup> and agreed that a single conference of three weeks' duration be convened to deal with both draft instruments.<sup>91</sup> The decisions of the Council were confirmed and amplified by the Assembly at an extraordinary session in November 1968.<sup>92</sup> At the Council's twenty-second session the Secretary-General's preparations for the holding of the conference were approved,<sup>93</sup> and at the Assembly's sixth session, held just before the conference, the Secretariat proposals in respect of the organization of work of the conference and the structure of the committees were approved. These envisaged that there be, in addition to the plenary, two Committees of the Whole, one for each draft convention. On the other hand, one single committee was to consider the final clauses of both conventions.<sup>94</sup>

30. The International Legal Conference on Marine Pollution Damage was held in Brussels from 10 to 29 November 1969, following an invitation to the Organization from the Government of Belgium. Fifty-four States and ten international organizations were represented. The Conference had before it as basic proposals the two sets of draft articles and a set of draft final clauses, together with comments and observations thereon by Governments.<sup>95</sup> It agreed to the proposals of the Secretariat in respect of the establishment of committees and organization of work, proposals which were based on the decisions taken by Council and Assembly.<sup>96</sup> In addition to the Drafting Committee established by the plenary,<sup>97</sup> each Committee of the Whole also established its own drafting group.<sup>98</sup> The draft articles were therefore twice subject to

verification on matters of drafting. The bulk of the work in this respect was carried out by the two Committees' drafting groups, and the Drafting Committee established by the plenary was, with very few exceptions, able to accept without alteration the texts prepared by the two drafting groups.<sup>99</sup>

31. After the opening of the Conference, only one general statement was made before the plenary adjourned.<sup>100</sup> Both Committees of the Whole, however, first held a general debate or settled a number of fundamental questions before turning to a detailed examination of the proposals before them.<sup>101</sup>

32. A number of roll-call votes were held in plenary as well as in the two Committees of the Whole. Moreover, the Committee of the Whole dealing with the draft instrument on civil liability resorted several times to a voting technique combining an indicative vote—allowing for the expression of preferences among a number of possible options—together with a roll-call procedure.<sup>102</sup> The plenary, when considering the final drafts before it, adopted them by means of a vote article by article. It thereafter voted on the text of each of the two conventions<sup>103</sup> as a whole.<sup>104</sup>

#### 8. *Special Trade Passenger Ships Agreement, 1971*

33. The substantive basis of the 1971 Special Trade Passenger Ships Agreement is to be found in the 1960 Safety of Life at Sea Convention, which provided that steps should be taken to formulate general rules relating to the carriage of large numbers of unberthed passengers in special trades such as a pilgrim trade.<sup>105</sup> In light of this, a conference to revise the 1931 Simla Rules<sup>106</sup> which dealt with this matter was suggested by a Member Government in 1964.<sup>107</sup> However, for a number of reasons those initial plans were abortive.

34. The direct origins of the 1971 Agreement go back therefore to a resolution of the Assembly adopted in 1967 requesting the Maritime Safety Committee to examine the existing provisions related to the special trades.<sup>108</sup>

35. After considering the steps to be taken in response to the Assembly's request, the Maritime Safety Committee decided to appoint an *ad hoc* sub-committee to deal with all aspects of the revision of the 1931 Simla Rules.<sup>109</sup>

36. The sub-committee adopted as its basic working paper a draft agreement prepared by India.<sup>110</sup> In the course of two sessions held in 1968 and 1969 the sub-committee elaborated a draft agreement for submission to the Maritime Safety Committee<sup>111</sup> and recommended that the draft be presented to a Conference of Contracting Governments to the 1960 Safety of Life at Sea Convention. It also suggested that the Conference should be requested not to depart from the substantive principles embodied in the draft texts. In the same year the Assembly agreed, on the basis of information received from the Secretariat on the results of the work of the sub-committee, to the convening of a conference.<sup>112</sup>

37. Following the sixth session of the Assembly, the Maritime Safety Committee approved the draft agreement prepared by the sub-committee and reaffirmed the desirability of holding a conference. While recognizing the sovereign nature of a conference of States, it did concur with the view of the sub-committee that the Conference should not depart from the principles elaborated in the draft text.<sup>113</sup>

38. The Conference was held from 27 September to 6 October 1971, immediately prior to the seventh session of the Assembly.<sup>114</sup> Twenty-two States and four international organizations were represented. The Conference had before it the draft text prepared by the sub-committee, a number of comments thereon submitted by Member Governments and an explanatory note on the draft agreement prepared by the Secretariat.<sup>115</sup> No written proposals were put by the Secretariat to the Conference on the organization of the work, and the Conference agreed to the President's suggestion that the agreement be considered by the plenary.<sup>116</sup> There was therefore no need for establishing any substantive committees.<sup>117</sup> The only vote conducted during the whole Conference was a roll-call vote,<sup>118</sup> and the final text of the agreement was adopted without a vote.<sup>119</sup>

#### 9. *Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971*

39. At its fourth session in November 1968, the Legal Committee was informed of the outcome of a symposium on third-party liability and insurance in the field of maritime carriage of nuclear material convened by the European Nuclear Energy Agency and the International Atomic Energy Agency.<sup>120</sup> The symposium had recognized the possibility of conflicts between existing nuclear and maritime conventions and had made a number of suggestions. As a consequence, the Legal Committee included among the questions calling for possible consideration in the 1970-1971 biennium an item on the legal questions arising from the maritime transport of nuclear substances.<sup>121</sup>

40. A draft convention on the subject matter elaborated by a Sub-Committee of the *Comité maritime international*,<sup>122</sup> together with an alternative proposal,<sup>123</sup> were considered by a working group of the Legal Committee at its eighth session.<sup>124</sup> A new draft was submitted by France and the United Kingdom at the Committee's ninth session; this was discussed at length at the tenth session and, after some amendment, approved by the majority of the Committee as suitable for submission to a diplomatic conference. The Committee also invited the Council to consider the possibility of holding the Conference simultaneously with the Fund Conference and to invite the International Atomic Energy Agency and the European Nuclear Energy Agency to contribute to the costs of the Conference.<sup>125</sup> These proposals were approved by the Council<sup>126</sup> and endorsed by the Assembly at its seventh session.<sup>127</sup>

41. The Conference was convened in co-operation with the International Atomic Energy Agency and the European Nuclear Energy Agency, and was held in Brussels from 29 November to 2 December 1971 concurrently with the Fund Conference. Forty-three States and eight international organizations were represented. The Conference adopted as basic document the draft convention, which consisted of a single substantive article and a set of final clauses.<sup>128</sup> After consideration by the Committee of the Whole, the draft convention was passed on to the Drafting Committee, which prepared, in the light of comments made in the Committee of the Whole, a new text comprising three substantive articles. These drafts, as well as the draft final clauses, were then referred back for adoption to the Committee of the Whole, which in turn submitted them to the plenary for final approval. After adopting each article of

the convention by means of a vote, the convention<sup>129</sup> was put to the vote as a whole.<sup>130</sup>

10. *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971*

42. The origins of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage are to be found in a Resolution adopted by the 1969 International Legal Conference on Marine Pollution Damage<sup>131</sup> and the Report of a Working Group which had met during that Conference.<sup>132</sup> In its operative paragraphs, the Resolution requested IMCO "to elaborate as soon as possible, through its Legal Committee and other appropriate legal bodies, a draft for a Compensation Scheme based upon the existence of an international fund" and "to convene, not later than the year 1971, an International Legal Conference for the consideration and adoption of . . . a compensation scheme."

43. In the Report on the 1969 Conference which it submitted to the session of the Legal Committee immediately following the Conference, the IMCO Secretariat drew the Committee's attention to this Resolution.<sup>133</sup> The Secretariat discussed two possible methods of work which the Committee might adopt on the subject-matter. One possibility was to have the Secretariat or, alternatively, an expert prepare a study and a set of draft articles for consideration by the Legal Committee. The Secretariat did not appear to favour this method of approach. It expressed some preference for a slightly different method of work. This was that the Legal Committee might invite the *Comité maritime international* (CMI) to undertake a preliminary study and prepare draft provisions for the Legal Committee.

44. The Legal Committee did not adopt any of the methods suggested by the Secretariat but decided instead to appoint a Working Group, open to all Member States of IMO, to undertake the task of preparing draft provisions for the Legal Committee's consideration. The Working Group was requested to "examine the question of the establishment of such a fund taking into account in particular the Report of the Working Group on the Fund appointed during the International Legal Conference on Marine Pollution Damage . . . and such comments and other proposals as may be made available to it by Governments and interested organizations".<sup>134</sup> The Working Group was to prepare a report, including, where necessary, draft preliminary convention articles for consideration by the Legal Committee. The Committee, furthermore, requested the Secretariat to invite States to submit their comments and suggestions relating to all aspects of the proposed compensation scheme as well as to seek the advice and views of all relevant organizations. The Council approved the recommendations and tentative decisions of the Legal Committee.<sup>135</sup>

45. Less than three weeks later, the Working Group met for its first session and began with its substantive work on the issue.

46. More than 15 Governments and seven international organizations submitted written comments on the issue; the Government of Norway presented a preliminary draft for a convention on the establishment of a fund.<sup>136</sup> The Oil Companies International Marine Forum (OCIMF), a non-governmental inter-

national organization, submitted its proposals relating to the establishment of a fund.<sup>137</sup> During its session, the Working Group asked shipping and cargo interests to submit a paper on specific issues in connection with the compensation fund. In reply to this request, OCIMF submitted a document embodying a suggested scheme for establishing a fund. This document was circulated to the Working Group for its second session, held in September 1970.<sup>138</sup> At the same time, the Secretariat assembled, at the request of the Group, data relating to possible technical assistance activities which the projected Fund could engage in.<sup>139</sup>

47. At its second session, the Group considered a suggestion to set up a small group to draw up a preliminary draft of a convention. The general view was that the appointment of such a group was premature. However, the Working Group expressed the wish that such a document might be prepared on an unofficial basis by one or more delegations.

48. The Legal Committee, at its ninth session (October 1970), considered and approved the reports on the first two sessions submitted by the Working Group. It put forward a number of decisions, recommendations and requests for further consideration by the Working Group.<sup>140</sup>

49. In compliance with the desire expressed at the second session of the Working Group, a draft convention was submitted to the Working Group by the Swedish delegation.<sup>141</sup> At the same time, OCIMF submitted, in accordance with a request made by the Working Group at its second session, further suggestions supplementing its earlier proposals.<sup>142</sup> At its third session, held in December 1970, the Working Group, after a general discussion based primarily on these two documents, began an article-by-article examination of the draft convention submitted by Sweden.<sup>143</sup>

50. At its fifth and final session, held in March 1971, the Working Group concluded its work on the draft instrument. It presented to the Legal Committee a report containing draft articles for the Fund Convention, together with a number of reservations, clarifications or suggestions for modifications to the draft articles.<sup>144</sup> A number of issues remained unsolved, either because the Working Group had not had time to complete discussion of them or because a significant minority had been unable to agree with the majority view. These were summarized by the Secretariat and presented to the Legal Committee for its tenth session, held in April 1971.<sup>145</sup>

51. At this session, the Legal Committee reviewed the proposed drafts put forward by the Working Group, finalized the text of the draft convention and approved it. The Committee expressed the view that the draft articles it had approved, together with the notes and proposals on the various issues related to the draft articles, were sufficiently developed to be presented to a diplomatic conference in the same year. It requested, therefore, the Secretary-General to issue invitations for the diplomatic Conference, to circulate to all States and organizations invited the Report of the Committee's tenth session, including the draft convention, and to invite them to submit comments and observations thereon. The Secretary-General was further requested to collate all comments received and to circulate them to the diplomatic Conference as part of the Conference's basic documents. The Committee entrusted the Secretariat with the preparation of draft final clauses after having given it some guidelines. Finally, the Committee tentatively agreed on a structure for the Committees of the Conference.<sup>146</sup>

52. These decisions of the Committee were taken on the strength of prior authorization given to it by the twenty-fifth session of the IMCO Council held in November 1970.<sup>147</sup> The Council had found it necessary to give this prior authorization in order to ensure that all measures required to be taken could be taken to make the holding of a conference possible before the end of 1971, as had been requested by the 1969 Conference.

53. The Council, at its twenty-sixth session, approved the decisions taken by the Legal Committee.<sup>148</sup> By approving the Report of the Council,<sup>149</sup> the Assembly in turn approved the convening of the diplomatic Conference.<sup>150</sup>

54. The Conference on the Establishment of an International Fund for Compensation for Oil Pollution Damage met in Brussels from 29 November to 18 December 1971, following an invitation to the Organization from the Government of Belgium.<sup>151</sup> Fifty-four States and ten international organizations were represented. The Conference established one substantive Committee, the Committee of the Whole, and left it to that Committee to judge the desirability of establishing a Committee on Final Clauses.<sup>152</sup> The Committee of the Whole in due course established a Sub-Committee on Organization and Administration, which was to deal with all institutional and organizational aspects of the envisaged Fund.<sup>153</sup> It also established a Working Group on Final Clauses and Transitional Arrangements. No general debate was held in the Plenary in the opening stages of the Conference. Instead a general exchange of views was held in the Committee of the Whole.<sup>154</sup> In the Plenary as well as in the Committee of the Whole most decisions were taken by votes, some of which were in the form of an indication vote; on the other hand, there were only two requests for a roll-call during the entire conference proceedings.<sup>155</sup> In the closing stages of the Conference, the draft convention was first subjected to a vote article by article.<sup>156</sup> Thereafter a further vote was held on the draft convention<sup>157</sup> as a whole.<sup>158</sup>

#### 11. *Convention on International Regulations for Preventing Collisions at Sea, 1972*

55. As in the case of the 1969 Conference,<sup>159</sup> the revision of the 1960 International Regulations for Preventing Collisions at Sea<sup>160</sup> had its origins in the *Torrey Canyon* disaster. In the wake of that incident, the Sub-Committee on Safety of Navigation agreed at its third session in July 1967 to consider the possible need for amending the 1960 Regulations.<sup>161</sup> In March of the following year, the Maritime Safety Committee therefore requested the Sub-Committee "to initiate a substantive study of the Rules with a view to preparing the ground for an eventual revision". It furthermore agreed to deal itself with the question of the ways and means of establishing machinery for amending the existing Rules and updating them as necessary.

56. At the Committee's following session, the idea of a conference to be held in 1972 was first mentioned. The Committee decided to instruct the Sub-Committee to develop an amendment procedure for the Regulations, as part of the overall study it had been asked to undertake and in the light of whatever changes to the substance of the 1960 Rules might be found desirable. As a corollary to this, the Secretariat was requested to collate all previous decisions by the Maritime Safety Committee on questions relating to those Rules.<sup>162</sup> At its subsequent session in February 1969, when discussing its work programme, the

Committee gave the revision of the 1960 Collision Regulations top priority and proposed that a conference on the subject be held in 1972.<sup>163</sup> The Committee also decided that the Conference should be convened independently from any revision of the 1960 Safety of Life at Sea Convention.<sup>164</sup> The sixth session of the Assembly, held later in the same year, endorsed the Maritime Safety Committee's views, requested it to pursue study of the matter and to advance preparatory work as far as possible and furthermore requested the Secretary-General to make the appropriate financial and administrative proposals.<sup>165</sup>

57. In the meantime, the Sub-Committee on Navigation had drawn up, in preparation of the planned revision, "a list of suggestions and basic ideas which appear(ed) to merit tentative examination" and had subsequently "formulated tentative views on the substance of the revision".<sup>166</sup> On the basis of this the Secretariat, in a note to the Maritime Safety Committee, set out two possible alternatives for the form of the revised rules: they could either be embodied in a proper convention which might have a dilatory effect on their implementation, or they could follow the precedent set by the 1960 Conference on Safety of Life at Sea.<sup>167</sup> The Secretariat, moreover, drew attention to the question of amendment procedures.<sup>168</sup> At that stage, the Maritime Safety Committee decided to follow the 1960 precedent rather than to propose the adoption of a proper convention, and instructed the Sub-Committee to give high priority to the preparations for the proposed conference, authorizing it, in particular, to set up any necessary *ad hoc* groups.<sup>169</sup> At its ninth session, the Sub-Committee availed itself of this opportunity and established an *Ad Hoc* Group on Revision of the Collision Regulations.<sup>170</sup>

58. A proposal by the United Kingdom that preparatory work for the Conference be divided between the Sub-Committee and the *Ad Hoc* Group was adopted by the Maritime Safety Committee at its twenty-second session. The former was made responsible for deciding the form of the new regulations and for drafting a procedure for bringing them into force and amending them thereafter, whereas the latter was asked to prepare the text of the draft rules.<sup>171</sup> The Committee also decided to hold the Conference in 1972.<sup>172</sup>

59. The *Ad Hoc* Group held five sessions in the course of which it elaborated a set of draft articles.<sup>173</sup> Governments' comments on the *Ad Hoc* Group's reports were passed through the Sub-Committee back to the Group for further consideration.

60. At its tenth session the Sub-Committee agreed on a time-table for the revision work and assessed the time needed for the Conference itself: the majority felt that a period of three weeks was necessary, rather than the two and a half weeks envisaged by the Maritime Safety Committee. It also decided that the procedures for bringing into force and for amending the regulations and annexes thereto should not be included in the regulations "but should constitute an appropriate part of the Final Act of the Conference".<sup>174</sup> In March 1971, the Maritime Safety Committee agreed with those views.<sup>175</sup> As far as the duration of the Conference was concerned, the Council decided, however, to limit it to two and a half weeks.<sup>176</sup>

61. On the basis of various alternatives put forward by the Sub-Committee for reducing the period between adoption of the regulations and their entry into force,<sup>177</sup> the Maritime Safety Committee decided to propose to the Conference to follow the pattern set by the 1960 Regulations.<sup>178</sup>

62. This decision not to adopt a full-fledged convention but to follow the precedent of the 1960 Conference was put in question at the twelfth session of the Sub-Committee in November 1971; at that stage the Secretariat submitted a document containing a draft preamble and three draft provisions on acceptance, on entry into force and on amendment, each entitled "Article".<sup>179</sup> These were approved by the Sub-Committee and submitted, with the other draft texts prepared either by the Sub-Committee or by the *Ad Hoc* Group, to the Maritime Safety Committee.<sup>180</sup>

63. The Maritime Safety Committee, at its twenty-fifth session in March 1972, accepted this draft of the revised regulations "in principle as the basic document for consideration by the conference".<sup>181</sup> It also agreed on the proposal submitted by the Secretariat in respect of the organization of the work of the Conference, which was to divide substantive work between two committees, thereby approximately following the division adopted in the preparatory stages between the Sub-Committee and the *Ad Hoc* Group.<sup>182</sup>

64. The International Conference on Revision of the International Regulations for Preventing Collisions at Sea met from 4 to 20 October 1972. Fifty-one States and nine international organizations were represented. In addition to the basic text and written observations thereon by Governments and international organizations, the Conference had before it a note by the Secretariat containing draft provisions on amendment procedures. These were based on models prepared by the Legal Committee in the context of a general discussion of means of accelerating the entry into force of technical conventions deposited with IMCO.<sup>183</sup> In a further note the Secretariat made proposals as to the committee structure of the Conference in accordance with the decisions of the Maritime Safety Committee. In addition to the two substantive committees, a Drafting Committee was to review all texts prepared by the Committee and thereafter submit them directly to the Plenary.<sup>184</sup>

65. The question of the form of the instrument to be adopted was taken up in the First Committee. After a discussion which reflected some divergence of views on this issue, a working group was established and requested to prepare a set of draft articles for a convention.<sup>185</sup> The trend of the discussions following submission of that Group's draft articles<sup>186</sup> indicates that there was at that stage a general understanding that the Conference was elaborating a legally binding convention.

66. Voting in the First Committee was often resorted to, occasionally in the form of a mere "show of hands". In neither of the Committees was there a request for a roll-call vote, in contrast to the Plenary, where a number of them were conducted.<sup>187</sup> No final vote on the Convention<sup>188</sup> as a whole was held.

## 12. *International Convention for Safe Containers, 1972*

67. The safety aspects of containers were considered within the Organization mainly from 1967 onwards, when the Maritime Safety Committee agreed that the use of cargo containers was a matter related to safety of life and property at sea and decided that studies thereon should be initiated within the Organization.<sup>189</sup>

68. In the following year, the Secretariat, in a paper submitted to the Maritime Safety Committee, gave consideration to the form in which the

results of the Organization's work should be introduced and suggested that "*prima facie* . . . an international convention would be the suitable multilateral instrument through which governments could agree to implement their decisions".<sup>190</sup> At its sixth session the Assembly was informed by the Secretariat of the progress of work within IMCO and of developments outside, particularly in the United Nations Economic Commission for Europe, in respect of a revision of the 1956 Customs Convention on Containers.<sup>191</sup> The Assembly thereupon adopted a resolution authorizing the Secretary-General to co-operate with other international organizations with a view to convening, possibly jointly, a container traffic conference.<sup>192</sup>

69. On the basis of a request by the Maritime Safety Committee at its nineteenth session,<sup>193</sup> the Secretariat prepared a consolidated outline of a framework for a convention, including in particular draft resolutions for the construction, testing and certification of containers.<sup>194</sup> In its submission the Secretariat emphasized that it "had no intention of prejudging any of the issues which may be involved nor to influence in any way the decision of the Sub-Committee (on Containers and Cargoes) relative to the provisions which may or may not be included in the final drafts of the consolidated document".<sup>195</sup> The draft provisions were therefore to be regarded purely as a basic framework to facilitate the work of the Sub-Committee. The Secretariat also suggested a number of topics which could be dealt with in the articles of the convention. It did not, however, submit concrete draft texts, because of the possible participation of other international organizations in any conference on the subject matter. A first complete draft convention was elaborated by the Sub-Committee on Containers and Cargoes and approved by the Maritime Safety Committee in March 1971.<sup>196</sup>

70. In the meantime, the United Nations Economic and Social Council had decided that a conference on international container traffic should be convened jointly by IMCO and the United Nations,<sup>197</sup> which would deal not only with the safety of containers but also with the combined transport of goods and with a revision of the 1956 Customs Convention on Containers. On the basis of this decision and decisions of the Council, co-operation at the Secretariat level was intensified in preparation of a joint conference.<sup>198</sup> The Assembly, in turn, endorsed the convening of a joint UN/IMCO Conference on container traffic in 1972.<sup>199</sup>

71. Three joint IMCO/ECE meetings were held to study the draft convention in 1971 and 1972. At its third meeting, the group elaborated a final draft convention,<sup>200</sup> which was discussed and endorsed in general for circulation to and consideration by the container Conference by the Maritime Safety Committee in spring 1972.<sup>201</sup> In addition, an intergovernmental preparatory group also met in early 1972 to prepare a provisional agenda for the Conference for submission to the Economic and Social Council, in the light of Governments' views with regard to conference priorities.<sup>202</sup> The Group also made a number of suggestions in respect of the Committee structure of the Conference.<sup>203</sup> The Economic and Social Council considered the Group's report in summer 1972 and agreed on a provisional agenda for the Conference, decided not to include the draft convention on the International Combined Transport of Goods (TCM) in this agenda<sup>204</sup> and agreed that the Conference should be of three weeks' duration.<sup>205</sup> The Council, at its twenty-ninth session, agreed

with the Secretariat's proposal that the Conference be invited to assign to IMCO the depository and administrative functions under the convention dealing with the safety of containers.<sup>206</sup>

72. The Conference, convened jointly by the United Nations and IMCO, was held in Geneva from 13 November to 2 December 1972.<sup>207</sup>

### 13. *International Convention for the Prevention of Pollution of the Sea from Ships, 1973*

73. On the basis of an Icelandic draft amended by Sweden,<sup>208</sup> the Assembly adopted in 1969 a resolution deciding, *inter alia*, to convene in 1973 an international conference on marine pollution "for the purpose of preparing a suitable international agreement".<sup>209</sup> In spring 1971, the Secretariat submitted to the Council and the Sub-Committee on Marine Pollution a tentative list of possible instruments which could conceivably be concluded by the Conference.<sup>210</sup> The Council, meeting a few months later, agreed on a detailed list of items to be included in the conference agenda, with a view to preparing a new or revised pollution convention.<sup>211</sup>

74. On the basis of the Council's decision, the Secretariat prepared a complete preliminary draft of a convention for the prevention of pollution of the sea from ships and submitted it to the Maritime Safety Committee and to four of its Sub-Committees.<sup>212</sup> The Maritime Safety Committee was also presented with nine outlines of studies for the preparation of the 1973 Conference. Each study was to deal with one particular aspect and was to be handled by one lead country, assisted by one or more countries or organizations.<sup>213</sup>

75. At its seventh session, the Assembly requested the Council and the Maritime Safety Committee to proceed as a matter of urgency with all necessary preparations for the Conference.<sup>214</sup>

76. The Maritime Safety Committee, at its twenty-fifth session, was informed on progress of work on the draft convention and authorized the Sub-Committee on Marine Pollution to set up an *ad hoc* group for intersessional preparatory work for the Conference.<sup>215</sup> The *Ad Hoc* Group, established by the Sub-Committee at its thirtieth session,<sup>216</sup> had before it at its first meeting a revised second draft of the convention, compiled by the Secretariat on the basis of material prepared by the relevant sub-committees.<sup>217</sup> On the basis of decisions taken by the *Ad Hoc* Group and other bodies, including the Sub-Committee on the Carriage of Dangerous Goods, the Legal Committee and the Joint Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP), the Secretariat prepared a third draft and submitted it to the Maritime Safety Committee for information.<sup>218</sup> A fourth draft was elaborated by a Joint Meeting of the Sub-Committees on Marine Pollution and on Ship Design and Equipment in late 1972.<sup>219</sup> At that stage, the Meeting endeavoured to reach firm and, as far as possible, unanimous decisions on the format of the convention and on other substantial questions. This draft was submitted to the Maritime Safety Committee at its twenty-seventh session together with a report of the Preparatory Meeting for the International Conference on Marine Pollution.<sup>220</sup>

77. That Preparatory Meeting, held in early 1973, had prepared updated versions of the summaries of the nine studies originally submitted to the Sub-

Committee on Marine Pollution at its thirteenth session and a final draft text for the convention. In preparing this final draft, the Meeting had agreed that the document to be submitted to the Conference should, as far as possible, be complete in itself and reflect in the text the view of the majority and indicate in footnotes the principal points of difference.<sup>221</sup> In the course of discussions at that Meeting, an alternative approach was suggested which would have consisted in amending the 1954 Oil Pollution Convention in respect of oil and adopting a new convention in respect of other noxious substances. It was recognized that this approach would necessitate the convening of an additional conference of Contracting Governments to the 1954 Convention, in accordance with Article XVI of that Convention.<sup>222</sup> The Meeting decided against submitting this alternative to the Conference, but recognized that a proposal to this effect might be made at the Conference.<sup>223</sup> Finally, the Meeting had also set out a proposed committee structure for the Conference.

78. The Maritime Safety Committee took note of the contents of these reports, approved a conference agenda, adopted a committee structure and, after making some amendments, approved the draft convention for circulation to the Conference.<sup>224</sup>

79. At its final session before the Conference, the Council was informed of the preparations for the Conference. The Secretary-General proposed that a new cost-saving practice envisaged for the Organization's biennium 1974/75 in respect of summary records be already applied to the 1973 Conference: this practice would consist of making summary records available only in respect of plenary meetings; records of committee meetings would be made in the form of reports and tape recordings.<sup>225</sup> After some discussion, the Council agreed with the Secretary-General's proposal, but decided that after the Conference the committee proceedings should be transcribed *in extenso* from tape recordings.

80. The Conference was held from 8 October to 2 November 1973. Seventy-eight States and 20 international organizations were represented. The Conference had before it not only the draft convention, but also a draft protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil. On the basis of proposals put forward by the Secretariat the Conference agreed to establish four substantive committees: three of these were to deal with the convention, the fourth with the draft protocol. The Drafting Committee was to receive texts from all four committees and after consideration submit its proposals directly to the Plenary.<sup>226</sup> One meeting of the Plenary was devoted to general statements; thereafter, the Committees started their work.<sup>227</sup> In the Plenary, formal votes were taken very frequently and roll-call votes were requested on a number of occasions.

#### 14. *International Convention for the Safety of Life at Sea, 1974*

81. A comprehensive revision of the 1960 Safety of Life at Sea Convention,<sup>228</sup> possibly including an amalgamation with the 1966 Load Lines Convention at a conference to be held in 1976, was considered for some time by the relevant bodies of the Organization.<sup>229</sup> In October 1972, however, the United Kingdom proposed to the Maritime Safety Committee that a conference of a "purely formal type" might be held to incorporate all amendments to the 1960

Convention adopted since 1960, none of which had entered into force, and with the addition of only one new amendment on accelerated amendment procedures.<sup>230</sup> An *ad hoc* group established by the Maritime Safety Committee to consider the matter submitted an outline of various possible options, but the Committee did not take a decision at that session.<sup>231</sup> The United Kingdom proposal was further amplified in a paper submitted to the Committee's following session,<sup>232</sup> at which the Committee agreed on a limited revision of the 1960 Convention and requested the Secretariat to provide it with a draft programme of preparatory work.<sup>233</sup>

82. The Secretariat suggested the creation of an *ad hoc* working group to prepare a draft text for the Conference.<sup>234</sup> The Committee agreed to this but requested the Secretariat to prepare a first draft for the convention as a basis for the Group's work.<sup>235</sup> On the basis of draft articles and an outline for the draft regulations prepared by the Secretariat,<sup>236</sup> the *Ad Hoc* Working Group elaborated in the course of two sessions held in autumn 1973 and in spring 1974 a document outlining all proposed changes to the 1960 text.<sup>237</sup> It also approved the Secretariat's proposals for the committee structure of the Conference.<sup>238</sup> These in turn were approved by the Maritime Safety Committee and the Council.<sup>239</sup>

83. In the meantime, the Assembly had adopted a resolution on the convening in 1974 of a conference with the principal objective of replacing the existing convention by a new one, substantially in conformity with the technical provisions of the 1960 Convention, but incorporating accelerated amendment procedures and all amendments to the 1960 Convention already adopted.<sup>240</sup>

84. The Conference was held from 21 October to 1 November 1974. Sixty-eight States and 12 international organizations were represented. It adopted the proposed organization of work and committee structure (two substantive committees and a Drafting Committee). The Drafting Committee was to receive texts prepared by the two substantive committees and submit its proposals directly to the Plenary. No summary records were made of the committee meetings. No roll-call vote was held in the Plenary.

15. *Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974*

85. The Organization's involvement in the elaboration of a convention relating to the carriage of passengers and their luggage goes back to a decision taken by the Council in 1969 asking the Secretary-General to explore with the *Comité maritime international* the possibility of establishing a programme of legal work to be undertaken by the two Organizations.<sup>241</sup> As a result of these consultations the Secretary-General presented a number of subjects suitable for development in co-operation with the *Comité maritime international*, including the liability for passengers and their luggage.<sup>242</sup> The Council agreed that that subject was appropriate for study and, at the suggestion of the Secretariat, the Legal Committee included the subject in its work programme for the biennium 1972/73.<sup>243</sup> In doing so, the Committee noted that a draft convention on the subject had already been prepared by the *Comité maritime international*, but concluded that it would have to review this draft before it was submitted to a

diplomatic conference. The Assembly, at its seventh session, confirmed the need to deal with this subject matter and included in the long-term work programme of the Organization a conference to adopt a convention on liability for passengers and baggage carried on board ships, to be held in 1974.<sup>244</sup>

86. The Legal Committee therefore considered the matter at its thirteenth session in June 1972 and agreed to base its work on the draft convention prepared by the *Comité maritime international*. This draft convention had been designed to replace and harmonize the two existing Brussels Conventions of 1961 and 1967 dealing respectively with passengers and with their luggage.<sup>245</sup> The Committee drew up a short inventory of questions and observations for circulation to Governments, with a request for their comments, so as to assist the Committee's further deliberations on the subject.<sup>246</sup>

87. The replies were made available to the Committee's eighteenth session in May 1973. At that session the Committee, examining the *Comité maritime international* draft article by article, and taking into account the comments made by Governments, prepared a number of draft articles.<sup>247</sup> The subsequent session of the Committee, held in September of the same year, was again devoted to this subject,<sup>248</sup> and at its twenty-second session, held in May 1974, the Committee concluded its work and approved the text of a draft convention to be submitted to a conference.<sup>249</sup>

88. The convening of the Conference was authorized by the Council at its thirty-second session.<sup>250</sup> It requested the Secretary-General and the Legal Committee to make proposals to the Conference concerning the organization of its work. The Secretary-General therefore proposed that there be, in addition to the plenary, a substantive committee on final clauses.<sup>251</sup> This proposal was duly approved by the Legal Committee and later by the Conference.<sup>252</sup> This meant in effect that the draft convention was to be examined exclusively in plenary with the exception of the final clauses, which, in a first reading, were to be examined in a committee.

89. The Conference was convened at Athens at the invitation of the Greek Government and held from 2 to 13 December 1974. Thirty-five States and six international organizations were represented. The Conference took as its basic document the draft convention elaborated by the Legal Committee.<sup>253</sup> After a short general debate the Conference immediately started in plenary with a detailed consideration of the draft before it. After a first reading the Drafting Committee was asked to prepare a revised draft for adoption by the plenary in a second reading. While during the first reading each draft article was adopted by a formal vote, voting in the second reading was limited to contentious issues. The draft convention was put to the vote as a whole.<sup>254</sup>

#### 16. *Convention on the International Maritime Satellite Organization (INMARSAT) and Operating Agreement, 1976*

90. A Special Joint Meeting of CCIR<sup>255</sup> Study Groups held in March 1971 ahead of the 1971 International Telecommunication Union World Administration Conference for Space Telecommunications concluded that there existed a need to use satellite communication techniques for the improvement of safety of life and property at sea.<sup>256</sup> As a consequence, the Maritime Safety Committee decided that the Organization should play an

active role in full co-operation with the ITU in the early organization and introduction of such a system.<sup>257</sup> At the suggestion of the Secretariat the Committee decided at its subsequent session in September 1971 that the Organization should prepare an organizational plan for an international maritime system, with the ultimate aim of developing a formal agreement for the establishment of such a system.<sup>258</sup> Accordingly, the Maritime Safety Committee instructed its Sub-Committee on Radiocommunications to examine the subject and the Secretariat to prepare a preliminary document.<sup>259</sup> In the course of the Committee's discussions it was suggested that a panel of experts be established, and at its following session the Committee established, on the basis of a recommendation by the Sub-Committee, a panel of 18 experts, 13 of whom were nominated by Governments and five by international organizations. The Panel was given initial terms of reference and asked to prepare a report for a conference to be held in 1974.

91. The Panel held five regular sessions in the period 1972 to 1974. At an extraordinary session of the Panel, held after the Panel's first regular session, the United Kingdom submitted a paper on possible institutional arrangements for an international maritime satellite service, and the USSR a document containing "provisional principles" for establishing an international organization.<sup>260</sup> The Panel took the latter paper as a basis for its discussions and invited Governments to submit written comments thereon as well as to reply to a questionnaire prepared by the Panel.<sup>261</sup> A revised version of the USSR document and the Governments' replies to the questionnaire formed the basis for the Panel's deliberations at its second session, which resulted in the preparation of a first set of articles.<sup>262</sup>

92. In the meantime the Maritime Safety Committee had decided to recommend that a conference be convened in early 1975 for a period of two and a half weeks. Also, the possible need for two conferences, first envisaged at the first session of the Panel, was again referred to at that session as well as at the subsequent session.<sup>263</sup> On the basis of drafts prepared by the Maritime Safety Committee, the Assembly adopted in 1973 a resolution convening the Conference in early 1975, and requesting the Maritime Safety Committee to prepare a draft agenda for the Conference.<sup>264</sup>

93. In 1974, at its thirtieth and thirty-first sessions, the Maritime Safety Committee approved a draft provisional agenda and the final report to the Conference prepared by the Panel of Experts containing a draft convention. Notwithstanding this approval by the Maritime Safety Committee, the report did not in fact command unanimous support: the United States, noting, *inter alia*, that there were inadequacies and inconsistencies in the proposed draft convention, reserved its position with regard to the entire report.<sup>265</sup> The organizational aspects of the Conference were finalized by the Council at its thirty-second session in May 1974 with a decision to hold the Conference from 23 April to 9 May 1975.<sup>266</sup>

94. As a follow-up to the reservation to the Report of the Panel of Experts, the United States submitted shortly before the opening of the Conference two documents in which it proposed that the Conference adopt, in place of the draft convention elaborated by the Panel of Experts, two conventions: an "Intergovernmental Agreement" and an "Operating Agreement". This proposal was supported by concrete texts for a number of articles to be inserted in

these agreements.<sup>267</sup> These proposals reflected a fundamental divergence of views as to the approach to be taken and the method for dealing with the subject matter.

95. In light of the circumstances the Secretary-General proposed a committee structure which deviated considerably from the practice followed by other conferences dealing with "technical" matters. In essence, the proposal was to keep the plenary in session throughout the Conference to consider all institutional, legal and administrative matters.<sup>268</sup> The Conference adopted this proposal and decided to postpone the establishment of any substantive committees until such time as they became necessary.<sup>269</sup> The Conference was not able to conclude its work in the time allotted to it. It did, however, agree on a number of fundamental principles to be incorporated in the convention and decided to hold a second session of the Conference. In the meantime, an intersessional working group was to advance work and prepare that second session.<sup>270</sup>

96. In the course of three sessions the Intersessional Working Group elaborated a draft convention and draft operating agreement for the new Organization. These were submitted to the second session of the Conference, which was convened from 9 to 27 February 1976, with the approval of the Council.<sup>271</sup>

97. The Conference decided to adopt for its second session the drafts prepared by the Intersessional Working Group as its basic working documents.<sup>272</sup> Two committees, established in the course of the first session, were reconvened and each of them was instructed to consider one draft instrument. The concept of an "Editorial Committee", envisaged at the first session,<sup>273</sup> was abandoned. At the suggestion of the President and the Secretariat, the Conference instead established a Drafting Committee to consider the drafts prepared by the two substantive committees and to submit them thereafter directly to the plenary for final approval.<sup>274</sup>

98. At that session, the Conference was again not able to conclude its work. However, both committees succeeded in agreeing on most draft provisions to be included in the convention and the operating agreement and these were duly adopted in final form by the plenary at the close of the second session.<sup>275</sup> Since agreement remained outstanding on only three articles, the Conference resolved to convene for a very short session of three days from 1 to 3 September 1976.<sup>276</sup> It was felt that agreement on the three issues could best be reached by informal negotiations among the Governments concerned in the intervening period; no formal intersessional arrangements were therefore made.

99. The Council approved the convening of a third session of the Conference<sup>277</sup> and, within the time allotted to it, the Conference succeeded in solving the three issues before it, thus concluding its work.<sup>278</sup>

#### 17. *Convention on Limitation of Liability for Maritime Claims, 1976*

100. In April 1971, the Legal Committee recommended that the Committee's work programme should include consideration of a revision of the 1957 Brussels Convention on the Limitation of Liability of Owners of Sea-Going Vessels.<sup>279</sup> In accordance with this recommendation, the Assembly adopted a resolution envisaging the holding of a conference on the subject in

1976.<sup>280</sup> Thereupon the Legal Committee decided to evolve "a general plan of approach to this matter before beginning substantive work in the Committee or in a Working Group".<sup>281</sup> After further reflection, it concluded that the best plan of approach would be to acquire and consolidate opinions of Governments on the possible revision of the 1957 Brussels Convention by means of a questionnaire which it had prepared during its thirteenth session.<sup>282</sup> The replies to this questionnaire were made available to the Legal Committee at its nineteenth session held in June 1973. It was also informed that the *Comité maritime international* was examining the general principles underlying the subject matter and that it had set up a group to prepare a first draft. The Committee agreed to consultations with the *Comité maritime international* and held a first exchange of views on the subject, thus providing that Organization with some guidance for its preparatory work.<sup>283</sup>

101. One year later, the *Comité maritime international* presented two alternative drafts, one a set of draft articles for a new convention to replace the 1957 Brussels Convention, the other a draft protocol containing drafts of amended or new provisions to be incorporated into the existing convention.<sup>284</sup> The two alternatives were accompanied by a detailed introductory report explaining the draft provisions.<sup>285</sup> The Committee agreed to base its discussions on the *Comité maritime international* drafts, in particular on the first of them, and in the course of four sessions adopted a set of recommended draft articles for a convention on the limitation of liability for maritime claims, together with comments and alternative drafts.<sup>286</sup>

102. At the last of these sessions, held at the end of 1975, the Committee also recommended that a conference of three weeks' duration be held. The Committee was informed of the preparations for the Conference undertaken by the Secretariat, in particular on the proposed committee structure. This question was affected by the availability of summary records. A number of delegations considered it important that the Conference be given the opportunity "to hold a first reading of the draft articles of the convention in a Committee of the Whole rather than in plenary". However, the Committee, under the impression that summary records would be made only of discussions held in plenary, agreed that substantive consideration of the draft articles be undertaken in the plenary. It also suggested that "a first reading of the draft articles be held under the simpler procedural provisions normally applicable to committee proceedings", if necessary by the amendment of the Rules of Procedure in order to allow for such a procedure. This would have meant replacing the usual requirement of a two-thirds majority for adoption of any proposal by the requirement of an absolute majority.<sup>287</sup> In light of this, the Council, a few weeks before the opening of the Conference, agreed to make provision for summary records not just for plenary meetings, but for the entire duration of the Conference, on the understanding that the summary records would be provided for only one meeting at any particular time.<sup>288</sup>

103. The Conference met from 1 to 19 November 1976. Fifty States and 16 international organizations were represented. The basic proposals before the Conference were the set of draft articles and a set of draft final clauses.<sup>289</sup> In light of the Council's decision, the Secretariat put two alternative proposals to the Conference on the organization of its work: it could either consider the draft articles in plenary sessions and for the first session either suspend the

Rules of Procedure or specifically provide for this in the Rules; alternatively, the Conference could set up a Committee of the Whole in which substantive discussions of the draft articles would be held and which would then report the results of its discussion to the plenary for final adoption. On the recommendation of the meeting of the Heads of Delegations, the Conference adopted the second alternative.<sup>290</sup>

104. The plenary also decided that even the general debate should take place in the Committee of the Whole rather than in plenary.<sup>291</sup> The plenary was therefore able to consider and adopt in the course of two meetings the whole of the convention.<sup>292</sup> Texts prepared by the Committee of the Whole and by the Committee on Final Clauses were sent to the Drafting Committee, from where the draft articles went back to the Committee of the Whole for verification,<sup>293</sup> whereas the draft final clauses were submitted directly to the plenary.

105. Where a vote was necessary in the Committee of the Whole it was usually carried out by "indicative votes", and occasionally by a "show of hands".<sup>294</sup> No roll-call vote was conducted. The plenary, when voting, resorted twice to a roll-call vote. In a final vote, the convention as a whole was adopted by 34 votes in favour, none against and 6 abstentions.<sup>295</sup>

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#### NOTES

<sup>1</sup> The Inter-Governmental Maritime Consultative Organization (IMCO) became the International Maritime Organization (IMO) on 22 May 1982.

<sup>2</sup> United Nations, *Treaty Series*, vol. 289, p. 48.

<sup>3</sup> *Ibid.*, Article 3 (b).

<sup>4</sup> A different situation occurs in those cases where the Secretary-General, as depositary of a convention, is invited to convene, in accordance with the terms of that convention, a conference to amend the convention. In those cases the conference will usually be composed of Parties to the convention, which, again, may or may not be members of the Organization (for example, see para. 11).

<sup>5</sup> *Ibid.*, vol. 164, p. 113. This convention was adopted by a conference held upon the invitation of the United Kingdom. The IMCO Convention having been adopted a few weeks earlier, the Safety of Life at Sea Conference decided to entrust the Organization with a number of depositary functions. For the period until IMCO was established it was the Government which had hosted the Conference that was asked to carry out on an interim basis the duties assigned to IMCO (article XV).

<sup>6</sup> *Ibid.*, vol. 327, p. 3. This convention was also adopted by a conference convened by the United Kingdom. Here, however, the depositary functions were assigned to a "Bureau", whose duties were to be carried out by the host Government until the Organization came into being (article XXI).

<sup>7</sup> Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (IMCO Publication No. 76.14.E).

<sup>8</sup> And to review the 1948 Regulations for Preventing Collisions at Sea.

<sup>9</sup> Article XV of the 1948 Convention; IMCO/MSC II/7.

<sup>10</sup> Resolution A.2(I).

<sup>11</sup> IMCO/SAFCON/Circular No. 1.

<sup>12</sup> IMCO/MSC II/7.

<sup>13</sup> IMCO/SAFCON/1 to 7.

<sup>14</sup> IMCO/SAFCON/15.

<sup>15</sup> IMCO/SAFCON/17.

<sup>16</sup> IMCO/SAFCON/11 and 12.

- <sup>17</sup> See e.g. IMCO/SAFCON/Plenary/SR.3.  
<sup>18</sup> United Nations, *Treaty Series*, vol. 536, p. 27.  
<sup>19</sup> IMCO/SAFCON/Plenary/SR.7.  
<sup>20</sup> Resolution A.8(I).  
<sup>21</sup> First resolution of the Conference, reproduced in IMCO/MSC II/11, Annex A.  
<sup>22</sup> IMCO/MSC II/SR.4.  
<sup>23</sup> IMCO/MSC III/3, para. 19.  
<sup>24</sup> IMCO/MSC III/SR.1.  
<sup>25</sup> OP/CONF/I and 2.  
<sup>26</sup> MISC V/SR.1.  
<sup>27</sup> OP/CONF/4 and 9; OP/CONF/SR.1.  
<sup>28</sup> OP/CONF/C.1/SR.3.  
<sup>29</sup> OP/CONF/SR.3.  
<sup>30</sup> OP/CONF/3 and Addenda.  
<sup>31</sup> OP/CONF/SR.4 and 5.  
<sup>32</sup> 4 and 11 April 1962.  
<sup>33</sup> United Nations, *Treaty Series*, vol. 600, p. 332.  
<sup>34</sup> ECOSOC resolution 724(XXVII).  
<sup>35</sup> IMCO/COUNCIL II/SR.4; IMCO/COUNCIL III/8; IMCO/COUNCIL IV/15.  
<sup>36</sup> Resolution A.29(II).  
<sup>37</sup> COUNCIL VI/18 and 25.  
<sup>38</sup> COUNCIL VIII/11.  
<sup>39</sup> COUNCIL VII/SR.5.  
<sup>40</sup> Resolution A.63(III); see also Council resolution C.4(XI).  
<sup>41</sup> FAL/CONF/4/Rev.1.  
<sup>42</sup> FAL/CONF/18 and 22.  
<sup>43</sup> FAL/CONF/SR.1, 3 and 4.  
<sup>44</sup> FAL/CONF/SR.5.  
<sup>45</sup> United Nations, *Treaty Series*, vol. 591, p. 265.  
<sup>46</sup> IMCO/COUNCIL IV/34.  
<sup>47</sup> United Nations, *Treaty Series*, vol. 135, p. 301.  
<sup>48</sup> IMCO/COUNCIL IV/SR.8.  
<sup>49</sup> C.2(VI) and COUNCIL VI/SR.4/Rev.1.  
<sup>50</sup> See also MSC VI/SR.4; A III/C.2/SR.3 and A III/SR.7.  
<sup>51</sup> MSC VI/15/Rev.1.  
<sup>52</sup> MSC VI/SR.4; see also COUNCIL VIII/8, paras. 37 to 43.  
<sup>53</sup> A III/SR.7.  
<sup>54</sup> Resolution A.53(III); A III/C.2/SR.3; A III/SR.7.  
<sup>55</sup> See MSC VIII/5 and MSC VIII/SR.1.  
<sup>56</sup> MSC X/5.  
<sup>57</sup> MSC X/SR.5.  
<sup>58</sup> A IV/6; A IV/11/Rev.1; A IV/SR.2.  
<sup>59</sup> MSC XII/SR.1.  
<sup>60</sup> LL/CONF/4; LL/CONF/SR.1.  
<sup>61</sup> LL/CONF/1 and 2 and Addenda.  
<sup>62</sup> LL/CONF/SR.4.  
<sup>63</sup> LL/CONF/C.1/SR.11.  
<sup>64</sup> United Nations, *Treaty Series*, vol. 640, p. 133.  
<sup>65</sup> IMCO/AI/11/Corr.1.  
<sup>66</sup> Resolution A.4(I).  
<sup>67</sup> ECOSOC resolution 687(XXVI).  
<sup>68</sup> Studies on the unification of tonnage measurement systems had been initiated by the League of Nations back in 1925, and by 1939 a draft convention had been finalized.  
<sup>69</sup> IMCO/A.I/12/Rev.1, Annex A; resolution A.18(I).  
<sup>70</sup> TM V/5; MSC X/6.

- 71 MSC X/36; MSC VII/SR.1 and 2.  
72 Resolution A.87(IV); resolution A.134(V).  
73 MSC XVII/SR.1; see also MSC XIX/19.  
74 TM/CONF/11.  
75 TM/CONF/SR.1 to 5.  
76 TM/CONF/SR.5; TM/CONF/WP.3.  
77 TM/CONF/C.2/SR/1 to 5; TM/CONF/C.2/4.  
78 TM/CONF/SR.6 and 7.  
79 E.g. TM/CONF/C.2/SR.8, 12, 15 and 19.  
80 TM/CONF/SR.7 and 11.  
81 IMCO Publication No. 70.01 B.  
82 The result of the vote was 37 in favour, none against and 3 abstentions.  
83 C/ES.III/5.  
84 LEG I/5.  
85 LEG II/4.  
86 LEG/WG(I)III/3.  
87 LEG IV/6.  
88 LEG/WG(II)II/2 and LEG/WG(II)III/3.  
89 LEG VI/6.  
90 C XX/5; C XXI/6.  
91 C XXI/SR.1.  
92 Resolution ES.IV(171).  
93 C XXII/5 and C XXII/SR.3.  
94 A VI/16; A VI/WP.6; A VI/SR.8.  
95 Rules of Procedure, Rule 26, LEG/CONF/2.  
96 LEG/CONF/7 and LEG/CONF/SR.2.  
97 LEG/CONF/SR.4.  
98 Cf. LEG/CONF/C.1/WP.18 and 20, and LEG/CONF/C.2/2.  
99 Cf. LEG/CONF/C.4/1 and Addenda.  
100 LEG/CONF/SR.2.  
101 LEG/CONF/C.1/SR.1 to 3; LEG/CONF/C.2/SR.1 to 14.  
102 LEG/CONF/C.2/SR.6 and 8.  
103 IMCO Publications No. 77.15.E and 77.16.E.  
104 The Intervention Convention was adopted by 38 votes to none, with 7 abstentions, the Civil Liability Convention by 34 votes to 1, with 10 abstentions (LEG/CONF/SR.5).  
105 Chapter II, Regulation 1 (e) and Chapter III, Regulation 3.  
106 N. Singh, *International Conventions on Merchant Shipping*, London, 1973, p. 113f.  
107 COUNCIL XIII/17 and Add.1; resolution C.27(XIV).  
108 Resolution A.144(V).  
109 MSC XVIII/22.  
110 SMR I/3.  
111 SMR II/4.  
112 A VI/8/Add.1; A VI/C.2/2; A VI/SR.8.  
113 MSC XXI/23; MSC XXI/SR.5.  
114 C XXV/8; C XXV/D.  
115 SMR/CONF/4.  
116 SMR/CONF/SR.1.  
117 SMR/CONF/SR.7.  
118 IMCO Publication No. 72.04 B.  
119 SMR/CONF/SR.8.  
120 LEG IV/5.  
121 LEG VI/6.  
122 LEG VIII/5.

<sup>123</sup> LEG VIII/WP.4.

<sup>124</sup> LEG VIII/WP.5/Rev.I.

<sup>125</sup> LEG X/7.

<sup>126</sup> C XXVI/D.

<sup>127</sup> A VII/15, A VII/C.I/2 and A VII/SR.6.

<sup>128</sup> Rule 26 of the Rules of Procedure, LEG/CONF.3/2.

<sup>129</sup> IMCO Publication No. 72.11.B.

<sup>130</sup> LEG/CONF.3/SR.3. There were 22 votes in favour, none against and 7 abstentions.

<sup>131</sup> IMCO Publication 1970.3, p. 47. See also the *Official Records of the Conference*, IMCO Publication 1973.7, p. 185 (English only).

<sup>132</sup> See Resolution on Report of the Working Group on the "Fund", IMCO Publication 1970.3, p. 48, and documents LEG/CONF/C.2/WP.45 of 25 November 1969, and LEG XII/3 of 3 December 1969, paras. 4 and 5.

<sup>133</sup> LEG XII/3.

<sup>134</sup> LEG XII/11, para. 6.

<sup>135</sup> C XXIX/5 and C XXIV/SR.2.

<sup>136</sup> LEG/WG(FUND)I/3 and Addenda.

<sup>137</sup> LEG/WG(FUND)I/3/1.

<sup>138</sup> LEG/WG(FUND)II/2/Rev.I, Annex and LEG/WG(FUND)II/4, Annex I.

<sup>139</sup> LEG/WG(FUND)II/2/1(a).

<sup>140</sup> LEG IX/7.

<sup>141</sup> LEG/WG(FUND)III/2/Add.1.

<sup>142</sup> LEG/WG(FUND)III/2/Add.3.

<sup>143</sup> LEG/WG(FUND)III/4.

<sup>144</sup> LEG/WG(FUND)V/3.

<sup>145</sup> LEG X/2(a).

<sup>146</sup> LEG X/7.

<sup>147</sup> C XXV/SR.3.

<sup>148</sup> C XXVI/SR.2.

<sup>149</sup> A VII/30.

<sup>150</sup> See Assembly, 7th session, *Resolutions and Other Decisions*, IMCO Publication, 1972.5, p. 187.

<sup>151</sup> For a discussion of the Conference proceedings, see Reinhard Ganten, *Das internationale Uebereinkommen zur Errichtung eines Fonds zur Entschädigung für Oelverschmutzungsschäden*, Schriften des Deutschen Vereins für Internationales Seerecht, Reihe B, Heft 11, Hamburg, 1973.

<sup>152</sup> LEG/CONF.2/SR.2.

<sup>153</sup> Cf. LEG/CONF.2/C.1/SR.10.

<sup>154</sup> LEG/CONF.2/C.1/SR.1 and 2.

<sup>155</sup> LEG/CONF.2/C.2/SR.17 and 24.

<sup>156</sup> LEG/CONF.2/SR.4 and 5.

<sup>157</sup> IMCO Publication No. 72.10.B.

<sup>158</sup> There were 36 votes in favour, none against and 5 abstentions (LEG/CONF.2/SR.5).

<sup>159</sup> See Section 7 above.

<sup>160</sup> IMCO Publication No. 70.06(E), p. 404ff.

<sup>161</sup> NAV III/4, para. 22; see also NAV IV/14, para. 15f.

<sup>162</sup> MSC XVII/22, para. 72; MSC VII/SR.6, p. 18f.

<sup>163</sup> MSC XVIII/24, para. 41; MSC XVIII/SR.3.

<sup>164</sup> MSC XIX/30, paras. 97 and 99; MSC XIX/SR.8, p. 16ff.

<sup>165</sup> Resolution A.192(VI).

<sup>166</sup> NAV VII/10.

<sup>167</sup> NAV VIII/8.

<sup>168</sup> That Conference had prepared and approved a set of Regulations but had decided not to annex them to the 1960 Safety of Life at Sea Convention. It had instead invited the Organization, once “substantial unanimity” had been reached as to acceptance of the 1960 Regulations, to fix a date on and after which they were to be applied by the Government which had agreed to accept them (Final Act of the International Conference on Safety of Life at Sea, 1960, IMCO Publication No. 70.06.B). See also MSC XI/6/1.

<sup>169</sup> MSC XXI/SR.3 and 4.

<sup>170</sup> NAV IX/9.

<sup>171</sup> MSC XXII/19 (b)/1; MSC XXII/SR.8.

<sup>172</sup> MSC XXII/SR.8.

<sup>173</sup> See COLREG I/6, II/5 and IV/8.

<sup>174</sup> NAV X/8.

<sup>175</sup> MSC XXXIII/19.

<sup>176</sup> C XXVI/SR.6.

<sup>177</sup> NAV XI/9.

<sup>178</sup> MSC XXIV/19.

<sup>179</sup> NAV XII/4.

<sup>180</sup> NAV XII/11; MSC XXV/3(b)1.

<sup>181</sup> MSC XXV/17.

<sup>182</sup> MSC XXV/3(b); MSC XXV/17.

<sup>183</sup> CR/CONF.3/Add.3.

<sup>184</sup> CR/CONF.4.

<sup>185</sup> CR/CONF/C.1/SR.1.

<sup>186</sup> CR/CONF/C.1/WP.5; cf. also CR/CONF/C.1/WP.7/Rev.1.

<sup>187</sup> CR/CONF/SR.5 and 8.

<sup>188</sup> IMCO Publication No. 73.01.B.

<sup>189</sup> MSC XV/SR.7; MSC XVII/22, para. 112.

<sup>190</sup> MSC XVIII/12, para. 17.

<sup>191</sup> United Nations, *Treaty Series*, vol. 338, p. 103.

<sup>192</sup> Resolution A.193(VI).

<sup>193</sup> MSC XIX/30, para. 50.

<sup>194</sup> BC IX/8.

<sup>195</sup> BC IX/8, para. 6.

<sup>196</sup> MSC XXII/5; MSC XXIII/19, para. 19.

<sup>197</sup> Later formalized in E/RES/1568(L).

<sup>198</sup> See MSC XXII/7(b).

<sup>199</sup> Resolution A.245(VII).

<sup>200</sup> MSC XXV/4(b) = CSC/22 = W/TRANS/WP.24/225.

<sup>201</sup> MSC XXV/SR.2; E/CONF.59/23.

<sup>202</sup> C XXVIII/12(c).

<sup>203</sup> MSC XXV/4(b)/Add.1 = E/5096; see also C XXVIII/12(c) and Add.1.

<sup>204</sup> This had already been envisaged by the Assembly; see resolution A.245(VII).

<sup>205</sup> E/1725(LIII).

<sup>206</sup> C XXIX/SR.3.

<sup>207</sup> For details of the Conference proceedings, see the contribution by the United Nations Secretariat.

<sup>208</sup> A.VI/8/1; A.VI/WP.1.

<sup>209</sup> Resolution A.176(VI).

<sup>210</sup> C XXVI/4/Add.1. The Sub-Committee, in drawing up the list, felt it was premature for it to make any recommendations as to the priorities to be given to the subjects because of ongoing preparatory work for the 1972 Stockholm Conference and the 1973 Law of the Sea Conference, OP IX/12, para. 32.

<sup>211</sup> C XXVI/D.

<sup>212</sup> MSC XXIV/3/1/Add.1.

- 213 MSC XXIV/3/Add.I; MSC XXV/5(a).  
 214 Resolution A.241(VII).  
 215 MSC XXV/SR.3.  
 216 MP XIII/8.  
 217 MP(WG)/5.  
 218 MSC XXVI/7(c)/Add.1.  
 219 MP XIV/8.  
 220 MSC XXVII/5 and XXVII/5/1.  
 221 PCMP/8 and PCMP/8/3.  
 222 PCMP/8; cf. above, p. 7, for the situation at the 1962 Oil Pollution Conference.  
 223 In the event, this possibility did not materialize.  
 224 MSC XXVII/17, paras. 20ff.  
 225 C XXX/11.  
 226 MP/CONF/3; MP/CONF/SR.3.  
 227 MP/CONF/SR.2.  
 228 See Section 2 above.  
 229 See e.g. MSC XXVI/5.  
 230 MSC XXVI/SR.1.  
 231 MSC XXVI/WP.2; MSC XXVI/19, para. 83.  
 232 MSC XXVI/2/2.  
 233 MSC XXVII/SR.1 and 2.  
 234 MSC XXVII/WP.3.  
 235 MSC XXVII/17, para. 111.  
 236 SOLAS I/3(a) and (b) and Addenda.  
 237 SOLAS II/6.  
 238 SOLAS II/4.  
 239 MSC XXX/17, para. 103; C XXXII/8(a) and XXXII/D.  
 240 Resolution A.304(VIII).  
 241 C XXIII/SR.1.  
 242 C XXIV/5/Add.1.  
 243 LEG X/5(b); LEG X/7.  
 244 Resolution A.248(VII).  
 245 International Conventions on Maritime Law, CMI Publication, pp. 79ff and 97ff.  
 246 LEG XIII/7.  
 247 LEG XVIII/5.  
 248 LEG XX/6.  
 249 LEG XXII/5.  
 250 C XXXII/D.  
 251 LEG XXIII/3; LEG/CONF.4/3.  
 252 LEG XXIII/4; LEG/CONF.4/SR.2.  
 253 Rules of Procedure, Rule 26, LEG/CONF.4/2.  
 254 Twenty-two in favour, none against, with 6 abstentions; LEG/CONF.4/SR.17.  
 255 Comité consultatif international des radiocommunications.  
 256 MSC XXIII/15/2.  
 257 MSC XXIII/19.  
 258 MSC XXIV/9.  
 259 MSC XXIV/SR.5; COM IX/12; MSC XXV/17, para. 66ff.  
 260 MARSAT ES.I/33; MARSAT ES.I/36.  
 261 MARSAT ES.I/39.  
 262 MARSAT II/3/2; MARSAT II/8.  
 263 MSC XXVII/17, para. 74f; MSC XVIII/SR.5.  
 264 Resolution A.305(VIII).  
 265 MARSAT V/6; MSC XXX/17 and MSC XXXI/11.  
 266 C XXXII/D.  
 267 MARSAT/CONF.5/3 and 5/4.

- 268 MARSAT/CONF/6.  
 269 MARSAT/CONF/SR.2.  
 270 MARSAT/CONF.10.  
 271 MARSAT/CONF.12 and 13; C XXXIV/D.  
 272 MARSAT/CONF/SR.17.  
 273 MARSAT/CONF/SR.2  
 274 MARSAT/CONF.14; MARSAT/CONF/WP.11; MARSAT/CONF/SR.17 and 18.  
 275 MARSAT/CONF.28 and 29.  
 276 MARSAT/CONF.27.  
 277 C XXXVI/D.  
 278 MARSAT/CONF.36, 38 and 39.  
 279 LEG X/7, para. 80.  
 280 Resolution A.248(VII). This decision was reaffirmed at the two following sessions of the Assembly, Resolutions A.303(VIII) and A/369(IX).  
 281 LEG XI/12, para. 23.  
 282 LEG XIII/7.  
 283 LEG XIX/5.  
 284 LEG XXIII/2.  
 285 LEG XXIII/2/1.  
 286 LEG XXIII/4; LEG XXV/4; LEG XXVII/4; and LEG XXVIII/7.  
 287 LEG XXIX/4.  
 288 C XXXVIII/D.  
 289 Rules of Procedure, Rule 26, LEG/CONF.5/2.  
 290 LEG/CONF.5/SR.1.  
 291 LEG/CONF.5/SR.2  
 292 LEG/CONF.5/SR.4 and 5.  
 293 LEG/CONF.5/C.1/SR.26.  
 294 LEG/CONF.5/C.1/SR.4 and 11.  
 295 LEG/CONF.5/SR.5.

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## G. UNION INTERNATIONALE DES TÉLÉCOMMUNICATIONS (UIT)

### 1. *Considérations générales*

1. Les techniques et procédures utilisées à l'Union internationale des télécommunications pour élaborer des traités multilatéraux reposent sur une longue tradition, puisque le premier traité multilatéral élaboré sous les auspices de l'UIT (dénommée à l'époque Union télégraphique internationale) est la Convention télégraphique de Paris conclue en 1865. Toutefois, si l'on veut procéder à une analyse ou à une comparaison de ces procédures avec celles utilisées par d'autres organisations, il y a lieu de tenir compte, d'une part, de la grande technicité et spécificité des textes et, d'autre part, du fait que, dans le domaine législatif, le rôle de l'UIT – plutôt que d'élaborer de nouveaux traités – consiste principalement à réviser la réglementation en vigueur, en raison des progrès techniques constamment réalisés dans le domaine des télécommunications.

### 2. *Procédures utilisées*

2. La révision de la Convention internationale des télécommunications, des Règlements administratifs y annexés, ainsi que des autres accords

multilatéraux, est effectuée par des conférences auxquelles sont invités à participer tous les membres de l'Union.

3. Immédiatement après l'envoi des invitations qui, en règle générale, a lieu un an avant la date d'ouverture de la conférence, le Secrétaire général prie les membres de l'Union de lui faire parvenir dans un délai de quatre mois leurs propositions pour les travaux de la conférence.

4. Toute proposition dont l'adoption entraîne la révision du texte de la Convention ou des Règlements administratifs doit contenir des références aux numéros des parties du texte qui requièrent cette révision. Dans chaque cas, les motifs de la proposition doivent être indiqués aussi brièvement que possible. Le Secrétaire général communique les propositions à tous les membres de l'Union au fur et à mesure de leur réception.

5. Au début de la conférence, les propositions sont réparties entre les commissions compétentes instituées par la séance plénière. Toutefois, cette dernière peut traiter directement n'importe quelle proposition. En cas de nécessité, des sous-commissions et des groupes de travail peuvent également être constitués.

6. Les débats de commissions et sous-commissions, auxquels peut participer tout délégué qui en a fait la demande, sont résumés séance par séance dans des discussions, les diverses opinions qu'il convient de noter, ainsi que les propositions et conclusions qui se dégagent de l'ensemble.

7. Par ailleurs, les commissions et sous-commissions peuvent établir des rapports dans lesquels elles récapitulent sous une forme concise les propositions et les conclusions qui résultent des études qui leur ont été confiées.

8. Les textes des Actes finals, établis autant que possible dans leur forme définitive par les diverses commissions en tenant compte des avis exprimés, sont soumis à une commission de rédaction, laquelle est chargée d'en perfectionner la forme sans en altérer le sens. La commission de rédaction est formée de délégués des pays membres assistés par des fonctionnaires du Secrétariat. Les textes sont ensuite soumis par la commission de rédaction à la séance plénière, laquelle les approuve ou les renvoie, aux fins de nouvel examen, à la commission compétente.

9. Les textes des Actes finals sont considérés comme définitifs lorsqu'ils ont été approuvés en seconde lecture par la séance plénière.

10. Les textes définitifs sont soumis à la signature des délégués pour approbation, sous réserve de ratification ou d'approbation ultérieure, par les gouvernements ou administrations des pays membres.

### 3. *Réunions préparatoires*

11. Si cela a été jugé utile, la session principale d'une conférence administrative peut être précédée par une réunion préparatoire chargée d'établir des propositions concernant les bases techniques des travaux de la conférence. Tout membre de l'Union peut participer aux réunions préparatoires. En règle générale, les textes finalement approuvés par une réunion préparatoire sont rassemblés sous la forme d'un rapport qui est approuvé par ladite réunion et signé par son président.

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## H. UNION POSTALE UNIVERSELLE (UPU)

### 1. Généralités

1. Le Congrès, organe suprême de l'Union qui se réunit en principe tous les cinq ans, a pour tâche essentielle de réviser les Actes de l'Union et au besoin d'en adopter de nouveaux. Son activité est donc essentiellement législative. Généralement, il s'agit d'adapter la réglementation en vigueur à l'évolution des techniques postale, financière et administrative. Les modifications apportées aux Actes sont si nombreuses (un Congrès est généralement saisi de plus de 1000 propositions) que l'on procède au renouvellement de tous les Actes à l'exception de la Constitution, seul Acte véritablement permanent, dont les modifications sont apportées par voie de protocoles additionnels.

2. Auparavant, il convient de préciser qu'outre la Constitution et le Règlement général qui règlent la structure et le fonctionnement de l'Union il y a actuellement 19 traités et accords internationaux qui règlent le service postal international, à savoir :

- Convention postale universelle, son protocole final et son règlement d'exécution;
- Arrangement concernant les lettres avec valeur déclarée, son protocole final et son règlement d'exécution;
- Arrangement concernant les colis postaux, son protocole final et son règlement d'exécution;
- Arrangement concernant les mandats de poste et les bons postaux de voyage et son règlement d'exécution;
- Arrangement concernant le Service des chèques postaux et son règlement d'exécution;
- Arrangement concernant les recouvrements et son règlement d'exécution;
- Arrangement concernant le Service international de l'épargne et son règlement d'exécution;
- Arrangement concernant les abonnements aux journaux et écrits périodiques et son règlement d'exécution.

### 2. Procédure d'adoption de nouveaux actes

3. Il est plutôt rare que l'Union élabore de nouveaux traités ou accords. Avant la création de ce qui est actuellement le Conseil exécutif, le Congrès, après avoir discuté de l'opportunité d'adopter un nouvel accord pour une branche du service postal, sur proposition d'une ou de plusieurs administrations, chargeait une commission *ad hoc* de mettre au point pour le Congrès un projet d'arrangement qui était discuté et approuvé par ledit congrès, après avoir subi un certain nombre de modifications. Depuis la création du Conseil exécutif, on a procédé à l'élaboration de deux nouveaux Actes dans les circonstances différentes que voici : le Congrès de Bruxelles, en 1952, avait chargé la Commission exécutive et de liaison (actuellement Conseil exécutif) d'étudier l'adoption d'un arrangement concernant le Service international de l'épargne. Au sein de cette commission exécutive et de liaison, on créa une

sous-commission, composée de quatre pays membres, qui s'attacha uniquement à l'élaboration dudit arrangement. Le projet fut soumis au Congrès d'Ottawa en 1957, qui l'adopta après lui avoir apporté différentes modifications.

4. Lors de ce même congrès, l'UPU décida de confier à la Commission exécutive et de liaison l'examen de la structure générale de la Convention postale universelle dans le but de séparer distinctement les dispositions régissant la structure, l'organisation et le fonctionnement de l'UPU de celles réglant le Service de la poste aux lettres. Cette révision, qui aboutit notamment à la création de la Constitution de l'Union postale universelle, fut confiée à la Commission exécutive et de liaison, élargie pour l'occasion à tous les pays membres de l'Union qui voulaient participer à la révision de cet acte fondamental. En fait, beaucoup de pays non membres de la Commission exécutive et de liaison participèrent aux travaux de cette CEL élargie, dont le résultat fit l'objet d'une consultation préalable de l'ensemble des pays membres de l'Union avant d'être soumis à l'approbation du Congrès de Vienne, qui adopta les projets de constitution, de règlement général et de convention après y avoir apporté encore de nombreuses modifications. Ainsi donc, selon l'ampleur ou la complexité de l'acte à élaborer, l'UPU recourt à des procédures qui peuvent différer.

### 3. Procédure de "renouvellement" des actes de l'UPU

5. En principe, un an avant l'ouverture d'un Congrès, les administrations des pays membres, à l'exclusion de toute autre autorité nationale, sont invitées à présenter les propositions de modification des Actes qu'elles jugent nécessaire, cela conformément à l'article 117 du Règlement général de l'UPU qui se lit comme suit :

"Procédure de présentation des propositions au Congrès

"1. Sous réserve des exceptions prévues au paragraphe 3, la procédure suivante règle l'introduction des propositions de toute nature à soumettre au Congrès par les administrations postales des pays membres :

"a) Sont admises les propositions qui parviennent au Bureau international au moins six mois avant la date fixée pour le Congrès;

"b) Aucune proposition d'ordre rédactionnel n'est admise pendant la période de six mois qui précède la date fixée pour le Congrès;

"c) Les propositions de fond qui parviennent au Bureau international dans l'intervalle compris entre six et quatre mois avant la date fixée pour le Congrès ne sont admises que si elles sont appuyées par au moins deux administrations;

"d) Les propositions de fond qui parviennent au Bureau international pendant la période de quatre mois qui précède la date fixée pour le Congrès ne sont admises que si elles sont appuyées par au moins huit administrations;

"e) Les déclarations d'appui doivent parvenir au Bureau international dans le même délai que les propositions qu'elles concernent.

"2. Les propositions d'ordre rédactionnel sont munies, en tête, de la mention "Proposition d'ordre rédactionnel" par les administrations qui les présentent et publiées par le Bureau international sous un numéro suivi de

la lettre R. Les propositions non munies de cette mention, mais qui, de l'avis du Bureau international, ne touchent que la rédaction, sont publiées avec une annotation appropriée; le Bureau international établit une liste de ces propositions à l'intention du Congrès.

“3. La procédure prescrite aux paragraphes 1 et 2 ne s'applique ni aux propositions concernant le Règlement intérieur des Congrès ni aux amendements à des propositions déjà faites.”

6. Sont également habilités à présenter des propositions de modifications des Actes le Conseil exécutif et le Conseil consultatif des études postales. Ces deux organes, notamment le CE, font un très large usage de cette possibilité qui est souvent l'aboutissement des études entreprises par ces organes à la demande du dernier Congrès.

7. A toutes fins utiles, nous vous signalons également que les Actes de l'Union peuvent être modifiés dans l'intervalle des Congrès, mais que le recours à cette procédure est très rare, eu égard notamment aux majorités requises pour l'adoption des modifications dans l'intervalle des Congrès, à savoir l'unanimité des suffrages pour la plupart des dispositions concernant la Convention et le Règlement général.

#### 4. *Approbation des Actes de l'UPU*

8. Tous les Actes issus d'un Congrès sont, au terme de celui-ci, soumis à la signature des plénipotentiaires.

9. Conformément à l'article 22 de la Constitution, cet acte ainsi que le Règlement général et la Convention postale universelle sont obligatoires pour tous les pays membres. Les autres Actes, à savoir les arrangements et bien entendu leur règlement d'exécution ont un caractère facultatif. Ces derniers ne sont obligatoires que pour les pays membres qui les ratifient/approuvent ou y adhèrent.

10. Les signatures des plénipotentiaires peuvent avoir des parties différentes. Selon les règles constitutionnelles de chaque Etat, elles sont soumises à ratification ou à une autre procédure plus simple que l'on désigne du nom générique d'approbation; elles peuvent même être des signatures *ad referendum* ou des signatures définitives qui engagent, comme leur nom l'indique, définitivement l'Etat au nom duquel elles ont été données.

11. Malgré la souplesse introduite par le Congrès de Vienne dans la procédure d'approbation des Actes de l'Union, force est de reconnaître que peu d'administrations ratifient ou approuvent les Actes avant leur mise en vigueur et que, même au terme de leur période de validité, ces actes ne sont pas ratifiés ou approuvés par un nombre très important de pays membres. Cette situation a amené l'UPU à admettre le principe très contestable et contesté en doctrine de la “ratification tacite”. Selon ce principe, les pays membres qui n'ont pas ratifié ou approuvé les Actes d'un Congrès sont censés les avoir approuvés tacitement du moment qu'ils en appliquent les dispositions. L'évocation de ce principe a permis de résoudre plusieurs litiges dans lesquels un pays membre refusait de se sentir lié par une disposition en arguant du fait que les autorités nationales compétentes ne les avaient pas ratifiés ou approuvés selon la procédure en vigueur.

### 5. *Mise en vigueur des actes*

12. Indépendamment de la ratification ou de l'approbation des autorités gouvernementales compétentes, les Actes de l'Union entrent en vigueur à une date déterminée qui est la même pour l'ensemble des pays membres de l'Union, en général une année ou une année et demie après la clôture d'un Congrès.

### 6. *Réserves*

13. Pour être complets, nous croyons utile de préciser que les pays membres sont autorisés à faire des réserves quant à l'application de telle ou telle disposition à la condition que celle-ci soit entérinée par le Congrès et qu'elle figure dans le Protocole final de l'Acte qu'elle concerne. Ainsi donc, il n'est pas possible à l'UPU de faire des réserves après la signature des Actes, c'est-à-dire, par exemple, au moment de la ratification, de l'adhésion ou ultérieurement.

14. Les pays qui voudraient présenter une réserve après la signature des Actes devraient recourir à la procédure de modification de ceux-ci dans l'intervalle des Congrès pour obtenir l'inscription d'une nouvelle réserve dans le protocole final de l'Acte concerné.

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## I. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)

1. UNESCO multilateral treaties can be divided into two categories—those which are adopted by the General Conference of UNESCO, and those which are adopted by international conferences of States convened by UNESCO (either solely or in co-operation with other international organizations).

### 1. *Multilateral treaties adopted by the General Conference of UNESCO*

2. Multilateral treaties which are adopted by the General Conference of UNESCO are generally designated "international conventions" and are governed by the provisions of the UNESCO Constitution and of special rules of procedure.

3. Under the terms of Article IV, paragraph 4, of UNESCO's Constitution, "The General Conference shall, in adopting proposals for submission to the Member States, distinguish between recommendations and international conventions submitted for their approval. In the former case a majority vote shall suffice; in the latter case a two-thirds majority shall be required. Each of the Member States shall submit recommendations or conventions to its competent authorities within a period of one year from the close of the session of the General Conference at which they were adopted."

4. At its fifth session, in 1950, the General Conference adopted "Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution" (hereinafter referred to as the "Rules of Procedure"), which set forth the procedures to be followed in the preparation, examination and adoption of both conventions and recommendations by the General Conference.

5. These Rules of Procedure, which are reproduced in the Annex to this document, comprise the following sections dealing with the various stages in the elaboration of international conventions: (i) Inclusion in the agenda of the General Conference of proposals for the regulation of any question on an international basis (Section II); (ii) Procedure for the first discussion by the General Conference (Section III); (iii) Preparation of drafts to be submitted to the General Conference for consideration and adoption (Section IV); (iv) Consideration and adoption of drafts by the General Conference (Section V).

(a) *Inclusion in the agenda of the General Conference*

6. Before 1979 it was usually the Approved Programme and Budget of the Organization which foresaw the preparation of a preliminary study relating to the legal and technical aspects of the possible regulation on an international basis of a specified question. Up to 1979, the request for such a study, which so far had always been prepared by the Secretariat, was made by the General Conference usually on the initiative of the Director-General; but on certain occasions such requests had been based on the proposals of certain Member States. However, at its 20th session (1978), the General Conference decided that any future proposals calling for the preparation of a preliminary study or the drafting of a normative instrument would have to take the specific form of a draft resolution submitted to the General Conference (Res. 20 C/32.1). Such a draft resolution must necessarily specify the appropriate time-limits, with respect to the session of the Executive Board during which the preliminary study is to be examined, or the session of the General Conference during which the question of the advisability of such regulation will, if appropriate, be discussed; it might also provide for consultation of Member States for the purpose of preparing the preliminary study.

7. When the study is ready it is submitted to the Executive Board for the purpose of enabling the Board to examine the possibility of including on the provisional agenda of the General Conference a suitable item.

8. It is the usual practice for the Executive Board to examine preliminary studies at the spring session of the year in which the General Conference is held, for it is at this session that it has to "prepare" the provisional agenda of the Conference session to be held later in the year. The General Conference as a rule meets in the fall of the second year of UNESCO's biennium.

9. Under the terms of Article 4 of the Rules of Procedure, the Board, after examining a proposal together with the preliminary study, communicates to the General Conference any comments it may deem necessary in this connection and may decide to instruct the secretariat, one or more experts, or a committee of experts to carry out a thorough study of the matters dealt with in the proposal and to prepare a report on the subject for communication to the General Conference.

10. When a proposal for the regulation of a question on an international basis has been included in the provisional agenda of the General Conference, the Director-General, in accordance with Article 5 of the Rules of Procedure, communicates to Member States, at least 70 days before the opening of the session of the Conference, a copy of the preliminary study, together with any comments which the Executive Board may have made, or any decisions it may

have taken, thereon. In practice, this communication is effected by means of a document for the General Conference.

(b) *Initial discussion by the General Conference*

11. By virtue of Article 6 of the Rules of Procedure, the General Conference has then to decide "whether the question dealt with in the proposal should be regulated at the international level and, if so, to determine to what extent the question can be regulated and whether the method adopted should be an international convention or, alternatively, a recommendation to Member States".

12. Under the terms of Article 7, however, the Conference may decide to defer its decisions on these two points to a future session, in which case it may instruct the Director-General to submit a report on the desirability of regulating the question dealt with in the proposal on an international basis, on the method which should be adopted for that purpose, and on the extent to which the question can be regulated.

13. The decisions provided for under Articles 6 and 7 of the Rules of Procedure must therefore of necessity bear on the General Conference's replies to the following questions: (i) Should the question be regulated on an international basis? If the answer is no, this decision puts an end to the procedure. (ii) If the answer is yes, what form should be taken by regulation on an international basis? (iii) Should the answer be deferred to a future session, thus postponing decisions on (i) and (ii)?

14. Finally, if the answers to (i) and (ii) above are in the affirmative, the General Conference must also decide at the same session, under the terms of Article 10, paragraph 4, of the Rules of Procedure, whether the Director-General's final report, comprising a draft text, shall be submitted directly to the General Conference or to a special committee consisting of technical and legal experts appointed by Member States. The special committee is convened at least four months before the opening of the following session of the General Conference.

(c) *Preparation of drafts to be submitted to the General Conference for consideration and adoption*

15. Under the terms of Article 10 of the Rules of Procedure, the preparation of such drafts devolves (i) on the Director-General, who may prepare a first draft of a convention or recommendation, according to the decision taken by the General Conference (paragraph 1), and subsequently has to prepare a draft, taking into consideration Member States' comments and observations (paragraph 2); (ii) on Member States taken individually, who comment and make observations on the preliminary study (paragraphs 1 and 2); and (iii) possibly, as indicated, on Member States taken collectively, through a special committee (paragraph 4).

(d) *Consideration and adoption of drafts by the General Conference*

16. At the final stage of the adoption procedure the General Conference considers and discusses draft texts submitted to it and any amendments to them which may be proposed.

17. Under the terms of Article 12 of the Rules of Procedure, a two-thirds majority is required for the adoption of a convention.

18. Once a convention has been adopted, two copies of that convention must be authenticated by the signatures of the President of the General Conference and of the Director-General (article 14). It is worth noting that, generally, conventions adopted by the General Conference are not open to signature by Member States or non-Member States. As a general rule, Member States of UNESCO become parties to the conventions through the process of ratification or acceptance, and non-Member States through the process of accession, with or without the prior authorization of the Executive Board or the General Conference, as the case may be.

(i) *Role of the Executive Board*

19. From the above analysis it will be noted that in the process leading to the adoption of a convention by the General Conference, a decision on the part of the Executive Board is provided for in the Rules of Procedure at one stage only: when the preliminary study is examined and the proposal for regulation of the question on an international basis is included in the provisional agenda of the General Conference. In some cases the Board may intervene at an earlier stage through the recommendations it makes.

(ii) *Role of the General Conference*

20. The General Conference, on the other hand, enters into this process at three different stages:

—at a *first* session it approves the programme and budget providing for the preparation of the preliminary study;

—at a *second* session, if the question has been included in its provisional agenda by the Executive Board, it decides as to the advisability of regulating the question on an international basis, as to the form such regulation should take and as to the convening of a special committee of experts appointed by Member States;

—at a *third* session it decides as to the adoption of the instrument.

21. As to the duration of the process elaborating an international convention, the period foreseen by the above-mentioned Rules of Procedure is a minimum of two biennia, or four years. This is the time period between the first action on a proposal by the General Conference and the adoption of an instrument (based on that proposal) by the General Conference two sessions later.

2. *Multilateral treaties adopted by international conferences of States convened by UNESCO*

22. From time to time the General Conference of UNESCO may decide that it is more appropriate that the competent organ for the adoption of a multilateral treaty be an international conference of States rather than the General Conference itself.

23. The Constitutional basis for such a procedure is to be found in Article IV, paragraph 3, of UNESCO's constitution: "The General Conference shall, when it deems desirable and in accordance with the regulations to be made by it, summon international conferences of States on education, the sciences or humanities or the dissemination of knowledge . . .".

24. A definition of the nature of such conferences is provided by Article 8 of the "Regulations for the general classification of the various categories of meetings convened by UNESCO": "International conferences of States, in the sense of Article IV, paragraph 3, of the Constitution, are conferences bringing together representatives of States, and reporting the results of their work to these same States, whether these results lead to the conclusion of international agreements or whether they provide a basis for action to be undertaken by the States."

25. Since each such conference of States adopts its own final rules of procedure, it is not possible to discuss in general terms one process which is used to finalize the texts of the multilateral treaties at all such conferences.

26. As far as the drafting stages preliminary to such conferences are concerned, these also vary. Usually, however, there is a pattern of General Conference resolutions calling for meetings of governmental experts to study, in the early stages, the desirability of regulating a question and then, at later stages, to prepare draft instruments. In most cases a final draft of an agreement is presented after a number of years to the international conference of States which has been convened by UNESCO to adopt such an instrument, and after discussion and modification the instrument is adopted and signed by the participating States.

27. The Rules of Procedure covering conventions to be adopted by the General Conference do not apply to agreements to be adopted by international conferences of States, hence there are no imposed requirements concerning time periods, deadlines, or reports to Member States.

### 3. *Recent development*

28. UNESCO's General Conference at its twentieth session decided to change the initial stage of the elaboration process for the normative instruments which it adopts, or for those which are adopted at diplomatic conferences convened under its auspices.

29. By its resolution 20 C/32.1, the General Conference decided that any future proposals calling for the preparation of a preliminary study for, or the drafting of, a normative instrument must take the specific form of a draft resolution. Furthermore, the draft resolution will have to specify at which of their sessions the Executive Board and the General Conference must take decisions on the proposed instrument.

30. Under the previous procedure, proposals for the elaboration of normative instruments were often merely paragraphs in the Organization's voluminous biennial programme and budget, and were most often adopted without specific debate or voting on that proposal. The new procedure provides the General Conference with a tighter screening of and control over the initial stage of normative instrument elaboration. (See paragraph 6 above.)

31. Two other recent developments concerning UNESCO conventions and other normative instruments, though they do not directly concern the elaboration process of UNESCO's treaties, may also be of interest in this context.

32. UNESCO has recently published, in English and French versions, a compilation entitled "The Standard-Setting Instruments of UNESCO". The publication contains the texts of all UNESCO's conventions, recommendations,

declarations, etc., as well as introductions thereto and ratification tables (for the treaties). It is published in a loose leaf binder to facilitate addition of future texts and is available through UNESCO's publication division.

33. Furthermore, at its most recent (21st) session, UNESCO's General Conference adopted the following resolution concerning UNESCO's normative instruments:

*The General Conference,*

*Considering* that by the terms of Article VIII of the constitution "Each Member State shall submit to the Organization, at such times and in such inanner as shall be determined by the General Conference, reports on the laws, regulations, and statistics relating to its educational, scientific and cultural institutions and activities, and on the action taken upon the recommendations and conventions referred to in Article IV, paragraph 4",

*Considering* that the procedures to monitor the implementation of these normative instruments by Member States involve organs as varied as the Legal Committee of the General Conference, the Committee on Conventions and Recommendations of the Executive Board, the Joint ILO/UNESCO Experts Committee and the General Conference itself, and that they are characterized by the participation of a very small number of Member States,

*Considering* that it seems useful to undertake a study of these diverse procedures, with the aim of better co-ordination and making the procedures more effective and efficient,

*Invites* the Director-General and the Executive Board to undertake such a study and to submit its results with appropriate proposals to the twenty-second session of the General Conference.

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#### J. WORLD HEALTH ORGANIZATION (WHO)

1. The World Health Organization has never made use of its constitutional power under Article 19 of its Constitution. Therefore, the Organization has no special treaty-making techniques and procedures for the elaboration of multilateral treaties, be they universal or general. However, on one occasion, the World Health Organization has concluded a multilateral treaty for a restricted purpose, namely, the Onchocerciasis Control Programme with limited participation.<sup>1</sup> The following describes the procedure adopted in the conclusion of the treaty in question.

2. Following a number of preliminary steps, the World Health Organization decided in 1970, at the request of the Governments of Dahomey, Ghana, Ivory Coast, Mali, Niger, Togo and Upper Volta, to prepare a strategy for a programme destined to control onchocerciasis in the Volta River Basin area.

3. The World Health Organization set up, in association with the Food and Agriculture Organization, a Preparatory Assistance Mission during 1971-1973. The United Nations Development Programme financed the Preparatory Assistance Mission.

4. The seven Governments approved the strategy proposed in the report of the Preparatory Assistance Mission for a Programme of Onchocerciasis Control in the Volta River Basin area to combat the disease and thus remove a

major obstacle to economic development. These seven Governments concluded on 1 November 1973 an Agreement with the World Health Organization for the implementation of a twenty-year Programme, and the World Health Organization was appointed as the Executing Agency.

5. The Agreement is entitled "Agreement Governing the Operations of the Onchocerciasis Control Programme in the Volta River Basin Area". The following procedural stages were involved in the preparation of the Agreement:

(a) When the seven Governments concerned approved the strategy proposed in the Report of the Preparatory Assistance Mission, a draft agreement was prepared by the World Health Organization. The text was sent to the Governments concerned for comments.

(b) A meeting was held in Accra, Ghana, from 30 October to 1 November 1973 to consider the text of the draft agreement and the comments thereon from the Governments concerned.

(c) The text proposed by the World Health Organization was adopted at the said meeting in Accra, with some minor amendments.

(d) The Agreement provided that it would come into operation upon signature by the Parties.

(e) The Agreement was signed on 1 November 1973 by the Governments of Dahomey, Ghana, Ivory Coast, Mali, Niger, Togo, Upper Volta and the World Health Organization.

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NOTE

<sup>1</sup> Attention should be drawn to two other international agreements, which are related to the same Programme, namely the Memorandum of Understanding and the Onchocerciasis Fund Agreement. WHO became a party to these agreements, but it had no role to play in their procedural elaboration and technique.

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K. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

The preparation, formulation and conclusion of a multilateral treaty within the framework of WIPO is not the subject of any formalized procedure. No constitutional provisions, regulations or rules governing the multilateral treaty-making process have been adopted by the Governing Bodies of WIPO or of the Unions administered by WIPO. Each of the twenty treaties which WIPO currently administers, or in respect of which it co-operates in the administration of with other specialized agencies of the United Nations, was developed on an *ad hoc* basis.

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L. WORLD METEOROLOGICAL ORGANIZATION (WMO)

1. There is only one multilateral treaty concluded under the auspices of the World Meteorological Organization, namely, the Agreement for Joint Financing of North Atlantic Ocean Stations (NAOS). The purpose of the Agreement is to provide for the operation and financing of a network of four

ocean stations in the North Atlantic primarily for meteorological observations. Each of these four stations is permanently occupied by a ship specially equipped and staffed for carrying out the meteorological observations and other secondary functions.

2. The Agreement was adopted on 15 November 1974 at a Conference of Plenipotentiary Delegations convened by WMO and held in Geneva. The Agreement was open for signature until 31 May 1975 and thereafter it was open for accession. It came into force on 1 December 1976. A statement showing the names of the States which are Contracting Parties to the Agreement and the dates of their signature, ratification or of accession is appended.

3. The Agreement for the Joint Financing of North Atlantic Ocean Stations (NAOS) had been in force since 1954 under the auspices of the International Civil Aviation Organization (ICAO) to provide certain aeronautical services to civil aviation over the North Atlantic as well as to make meteorological observations. The seventh ICAO Conference on Joint Financing of the NAOS (Paris, March 1972) considered that the importance of these stations for aeronautical services had diminished and their principal function had been reduced to the provision of basic meteorological services which was the sole responsibility of WMO. The Conference accordingly decided that the Agreement should be terminated on 30 June 1975 and also recommended its replacement by a new Joint Financing Agreement, to be administered by WMO and effective from 1 July 1975.

4. The WMO Executive Committee at its twenty-fourth session (Geneva, May 1972) considered the matter and took a favourable attitude. The need for a continuation of the observations from stations in the North Atlantic was already foreseen in the Plan for World Weather Watch (WWW), the basic programme of WMO. In anticipation of the approval of the above recommendation by the ICAO Council, the Executive Committee accordingly gave directives to the Secretary-General to commence the preparatory work which included a study of the status of alternative observing techniques, their prospects for the future as well as the preparation of a draft Agreement.

5. At its next session, the twenty-fifth session (1973), the Executive Committee considered the matter again upon receipt of a formal communication from ICAO in which WMO was asked whether it would assume the coordinating and administering role with respect to a new NAOS Agreement effective from 1 July 1975, in replacement of the Agreement of 1954 concluded under the auspices of ICAO. At this session the Executive Committee had also a report, prepared in response to the directives given at its previous session, on the study carried out by WMO on the status of alternative observing techniques and their prospects for the future. This study showed that such alternative techniques could not be a substitute for the observational data provided by the NAOS network. In addition, the Committee was also presented with a first draft of an Agreement showing its main features, together with the draft procedures for the administration of the Agreement and the role of WMO in these procedures.

6. The Executive Committee thereupon decided (a) that upon the termination of the 1954 NAOS Agreement concluded under the auspices of ICAO, WMO would seek to continue the NAOS system in accordance with the objectives of the WWW Plan, and (b) to convene in Geneva early in 1974 a Confer-

ence of Plenipotentiary Delegations to which all Member States of WMO would be invited, for the purpose of concluding a new NAOS Agreement to take effect on 1 July 1975.

7. The preparatory work leading to the Agreement involved studies of complex technical as well as administrative, financial and legal questions. Moreover, certain developments had taken place at that time which showed that any network of ocean stations which it might be possible to establish under a new Agreement would comprise a much smaller number of stations than that which existed under the previous Agreement. It became therefore necessary, from the outset, to study a number of possible alternative networks with a different number of stations and ship positions in each case as well as their financial implications. The preparatory studies including the drafting of a new Agreement were carried out by a series of Informal Planning Meetings (IPM)<sup>1</sup> within the framework of the World Weather Watch Programme of WMO, referred to in paragraph 4 above, with the technical and administrative support provided by the WMO secretariat. Three such Meetings were held in 1973 prior to the Conference of Plenipotentiary Delegations: Geneva, 30 May-1 June 1973; De Bilt (Netherlands) 16-20 July 1973; Geneva, 10-24 December 1973.

8. In accordance with the decision of the WMO Executive Committee referred to in paragraph 6 above, the Secretary-General convened a Conference of Plenipotentiary Delegations to conclude a new joint financing agreement on North Atlantic Ocean Stations. All Members of WMO were invited to this Conference which took place in the WMO Headquarters in Geneva from 18 February to 1 March 1974. Altogether 26 countries and a number of international organizations were represented at the Conference. The documentation for the Conference included a draft of a new Agreement.

9. There was a unanimous view at the Plenipotentiary Conference that the continuation of a NAOS network was essential and many areas of general consensus were defined for inclusion in the proposed new Agreement. In the time available it was however not possible to reach decisions on such important items as the number of stations to be maintained and their locations, the scale of contributions of participating countries and certain other financial questions and denunciation of the Agreement. The Conference accordingly decided to adjourn and to reconvene later in 1974 in order that additional information could be gathered and national positions could be reviewed. A further WWW Informal Planning Meeting was subsequently held at the WMO Headquarters in Geneva from 5 to 10 August 1974 in order to provide a forum for discussion of the various possibilities for resolving the difficulties which led to the adjournment of the Plenipotentiary Conference. The discussions at this meeting resulted in greatly improved prospects of reaching an agreement on all the problems which had proved difficult during the first part of the Conference of Plenipotentiary Delegations. Indeed, this Meeting served a most useful purpose in helping to prepare the way for a resumption of the Conference of Plenipotentiary Delegations.

10. With the approval of the Executive Committee the Secretary-General reconvened the Plenipotentiary Conference which resumed its work in Geneva on 4 November 1974. The report of the Informal Planning Meeting referred to in paragraph 9, which included a revised draft of a joint Financing Agreement,

was submitted as a document to this second part of the Conference which was attended by delegations from 24 member countries as well as observers from various international organizations. At its final plenary meeting on 14 November 1974, the Conference approved a report, a Final Act and adopted the text of an Agreement for Joint Financing of North Atlantic Ocean Stations. The Agreement entered into force on 1 December 1976 (see paragraph 2) upon the ratification of or accession to the Agreement by a sufficient number of member countries as required under the provisions of the Agreement.

11. The major decisions taken by the Conference which have a corresponding effect on the draft of the Agreement as submitted to the Conference, related to: (a) the number and location of the ocean stations forming the NAOS network which were considered as the minimum for meteorological purposes and at the same time the maximum that could be financed and operated by those Member countries of WMO likely to participate in a new NAOS Agreement initially; (b) the cost-sharing arrangements among the countries participating in the joint financing Agreement; (c) duration of the Agreement including the circumstances and conditions under which a Contracting Party may denounce the Agreement; (d) reimbursement of costs to Contracting Parties operating the vessels; (e) responsibilities of WMO; (f) conditions for entry into force of the Agreement and (g) interim arrangements to ensure the continuity in the operation of a NAOS network in the period between the termination of the previous Agreement on 30 June 1975 and the entry into force of the new Agreement.

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NOTE

<sup>1</sup>An Informal Planning Meeting (IPM) is a meeting convened by the Secretary-General to assist him in planning some aspect of a WMO programme. Participants are usually nominated by members. The conclusions or proposals made by an IPM have no status within the organization. Any follow-up action rests with the Secretary-General.

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### III. OTHER INTERNATIONAL ORGANIZATIONS

#### A. COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY

1. The Commission of the European Economic Community (hereafter named the Community) welcomes the invitation contained in General Assembly resolution 36/112 to forward observations on the reports which the Secretary-General submitted to the 35th and the 36th General Assembly on the question "Review of the multilateral treaty-making process".

2. The reports from the Secretary-General contain observations from a number of international organizations which explain the role they have in the context of the multilateral treaty-making process. The Commission considers it necessary to draw attention to certain aspects of the Community's functions which represent an important development in the field of international law and international institutions, these developments which must be taken into account when considering the process of the elaboration of multilateral treaties