

ARTICLE 59

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ARTICLE 59

TEXT OF ARTICLE 59

The Organization shall, where appropriate, initiate negotiations among the States concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

INTRODUCTORY NOTE

1. The structure of this study is similar to that of Article 59 in the Repertory, except that the sub-headings have been modified to conform to the nature of the supplementary material. During the period under review, the establishment of the following organizations was considered: the International Fund for Agricultural Development and the United Nations Industrial Development Organization.

I. GENERAL SURVEY

****A. Inter-Governmental Maritime Consultative Organization**

****B. International Trade Organization**

****C. Organization for Trade Cooperation**

****D. International Atomic Energy Agency**

****E. International Development Association**

F. International Fund for Agricultural Development

2. The World Food Conference, held at Rome from 5 to 16 November 1974,¹ proposed by its resolution XIII that an International Fund for Agricultural Development be established immediately to finance agricultural development projects primarily for food production in the developing countries. The Conference further proposed that the Secretary-General of the United Nations be requested to convene urgently a meeting of all interested contributing developed countries, contributing developing countries, potential recipient countries and institutions to work out the details, including the size of and commitments to the Fund.² The Conference also decided that disbursements from the Fund should be carried out through existing international and/or regional institutions, and that the Fund should become operative as soon as the Secretary-General of the United Nations determined, in consultation with countries having pledged contributions, that it held promise of generating substantial additional resources for assistance to developing countries.³

3. At its resumed fifty-seventh session, in 1974, the Economic and Social Council took note of and transmitted the report of the World Food Conference to the General Assembly, requesting that careful and priority consideration should be given to the recommendations of the Conference, in particular the recommendation regarding the establishment of IFAD.⁴ By its resolution 3348 (XXIX) of 17 December 1974, the General Assembly requested the Secretary-General to call a meeting of interested countries, including all interested representatives of the contributing developed countries, the contributing developing countries, the potential recipient countries and all interested institutions, to work out the details for such a Fund. By the same resolution, the Assembly, in response to Conference resolution XXII, established the World Food Council, with a representation at the ministerial or plenipotentiary level, whose functions included the supervision of progress made in the establishment of IFAD.⁵

4. The Secretary-General convened the Meeting of Interested Countries on the International Fund for Agricultural Development, which held three sessions at Geneva from 5 to 6 May 1975, and at Rome from 27 October to 1 November 1975 and from 28 January to 6 February 1976.⁶ The first meeting of the Meeting of Interested Countries, chaired by the Executive Director of the World Food Council, was convened following a series of informal consultations. The Meeting established an *ad hoc* working group to make recommendations, within the framework of resolution XIII of the World Food Conference, with regard to the operational, procedural, technical and other related questions involved in establishing the Fund.⁷

⁴See E S C decision 59 (LVII).

⁵The World Food Council would constitute an organ of the United Nations, which would report to the General Assembly through the Economic and Social Council, and have as one of its functions the receipt of information to be submitted by the Governing Board of the proposed IFAD. E/CONF.65/20, chap. II, v, resolution XXII.

⁶A/10333, paras. 1 and 2.

⁷Ibid., para. 6.

¹Convened pursuant to G A resolution 3180 (XXVIII). See E/5587, transmitting E/CONF.65/20, containing the report of the World Food Conference. See also E S C resolutions 1831 (LV) and 1840 (LVI), and E S C decisions 23 (LVII) and 24 (LVII).

²E/CONF.65/20, chap. II, v, resolution XIII.

³Ibid.

5. The Working Group, over the course of its first two sessions, considered a text submitted by the secretariat of the World Food Council containing proposed draft articles of agreement for the Fund.⁸ On the recommendation of the Working Group,⁹ the Meeting authorized the Legal Drafting Committee to review further the revised draft articles circulated by the World Food Council secretariat.¹⁰ The Meeting also recommended, inter alia, that the Fund should be established as a specialized agency within the United Nations system, with autonomy in policy formulation and operations, and that the General Assembly should authorize the Secretary-General of the United Nations to convene a meeting of plenipotentiaries to formally adopt the draft articles of agreement.¹¹

6. At its fifty-ninth session, in 1975, the Economic and Social Council, taking note of the report of the World Food Council on its first session, set out recommendations for the ad hoc working group and urged the early establishment of the Fund. In addition, the Council transmitted the report to the General Assembly at its thirtieth session, in accordance with paragraph 7 of Assembly resolution 3348 (XXIX) of 17 December 1974.¹²

7. By the terms of its resolution 3503 (XXX) of 15 December 1975, the General Assembly requested the Secretary-General to convene a conference of plenipotentiaries on the establishment of an International Fund for Agricultural Development. The Assembly invited the Conference to adopt and open for signature an agreement for the establishment of IFAD and to establish a preparatory commission to make all arrangements necessary to enable the Fund to commence its operations at the earliest possible date. In addition, the Assembly requested the Economic and Social Council to arrange for the negotiation with the Preparatory Commission of an agreement between the United Nations and the Fund "to constitute [IFAD] as a specialized agency in accordance with Articles 57 and 63 of the Charter of the United Nations."¹³

8. Pursuant to the above resolution, the United Nations Conference on the Establishment of an International Fund for Agricultural Development was held at Rome in June 1976. The Agreement Establishing the International Fund for Agricultural Development (the Fund Agreement) was adopted on 13 June 1976.¹⁴ The Conference also provided that the Fund Agreement should be opened for signature at United Nations Headquarters in New York. The Fund Agreement entered into force on 30 November 1977.¹⁵

9. On the occasion of the establishment of the International Fund for Agricultural Development, the Secretary-General noted that, "a distinctive feature of IFAD, as compared with other organizations that have entered into relationship with the United Nations—many of which had come into being prior to the establishment of the United Nations—is the role played, pursuant to Article 59 of the

⁸Ibid., para. 13.

⁹Ibid., para. 14.

¹⁰Ibid., para. 22.

¹¹Ibid., paras. 14 and 22.

¹²See E S C resolution 1969 (LIX). By section V, paragraph 6, of its resolution 3363 (S-VII) of 16 September 1975, the General Assembly called upon countries to pledge substantial contributions to the proposed IFAD so as to enable it to come into being by the end of 1975.

¹³G A resolution 3503 (XXX). See also this *Supplement*, under Articles 57 and 63.

¹⁴A/CONF.73/15.

¹⁵ST/LEG/SER.E/17, chap 10, sect. 8.

Charter, by the United Nations and the Secretary General in its establishment."¹⁶ No other direct reference was made to Article 59 by the principal organs of the United Nations or in the instruments establishing the Fund.

G. United Nations Industrial Development Organization

10. The Second General Conference of UNIDO,¹⁷ held at Lima in March 1975, adopted the Lima Declaration and Plan of Action on Industrial Development and Cooperation,¹⁸ recommending, inter alia, that the General Assembly convert UNIDO into a specialized agency of the United Nations.¹⁹ The Conference also requested the Secretary-General of the United Nations, in consultation with the Executive Director of UNIDO, to submit to the seventh special session of the General Assembly, through the Economic and Social Council, the draft statute of a specialized agency for industrial development.²⁰

11. Following the Conference, two task forces were established, one within the UNIDO secretariat and the other at United Nations Headquarters, to work out the formulation of the draft statute. After preparing its draft, the task force in Vienna had the opportunity to meet the Legal Counsel and the Controller of the United Nations. An unedited draft of the constitution, reflecting the viewpoints of both task forces and the initial reaction of the Secretary-General and the Executive Director, was distributed for information purposes only to the members of the Industrial Development Board on 2 May 1975. In subsequent meetings certain items, still open to discussion, were re-

¹⁶E/C.1/L.6, para. 8.

¹⁷By its resolution 1712 (XVI) of 19 December 1961, the General Assembly had requested the Economic and Social Council to direct the Committee for Industrial Development to give consideration to the expansion of United Nations activities in the field of industrial development, "in particular to the advisability of establishing a specialized agency or any other appropriate body for industrial development." By its resolution 2089 (XX) of 20 December 1965, the Assembly decided to establish an autonomous organization within the United Nations for the promotion of industrial development, to be known as the United Nations Organization for Industrial Development (UNIDO). The organization of UNIDO functioned in accordance with the provisions set forth in section II of General Assembly resolution 2152 (XXI) of 17 November 1966. At the 1975 Second General Conference of UNIDO, the Group of 77 stated that Assembly resolution 2152 (XXI) constituted a compromise with those who had disagreed that UNIDO should be established as a specialized agency. A/10112, circulating the report of the Second General Conference of UNIDO, ID/CONF.3/31, para. 211. Paragraph 37 of resolution 2152 (XXI) provided for a review "in the light of experience, [of] the effectiveness and further evolution of these institutional arrangements, with a view to deciding upon such changes and improvements as might be necessary in order to meet fully the growing needs in the field of industrial development." Ibid. See also *Repertory, Supplement No. 3*, under Article 59, paras. 2-5.

¹⁸A/10112, circulating the report of the Second General Conference of UNIDO, ID/CONF.3/31.

¹⁹Ibid., chap. V, paras. 68 and 69. In this regard, it should be noted that at the 1971 Special International Conference of UNIDO, the Group of 77 proposed a recommendation to the General Assembly at its twenty-sixth session to transform UNIDO into a specialized agency with sufficient resources and full financial and administrative autonomy. A/8341/Rev.1, transmitting the report of the Special International Conference of UNIDO, ID/SCU/4/Rev.1, chap. II, pp. 27-29. Two groups at the Conference could not support the proposal, and various amendments were introduced which envisioned greater autonomy for UNIDO in various areas, such as recruitment and administration of personnel. No consensus was reached. Ibid., para. 47.

²⁰A/10112, para. 69.

solved and the draft constitution was transmitted to United Nations Headquarters on 12 May 1975.²¹

12. At its fifty-ninth session, the Economic and Social Council took note²² of the Lima Declaration and Plan of Action, as well as the draft constitution for the proposed UNIDO, submitted by the Secretary-General.²³ Transmitting both documents to the General Assembly, the Council drew the attention of the Assembly to the recommendations concerning the conversion of UNIDO into a specialized agency of the United Nations.

13. At its seventh special session, the General Assembly endorsed the Lima Declaration and Plan of Action and the recommendation of the Second General Conference regarding the conversion of UNIDO into a specialized agency.²⁴ The Assembly also decided to establish the inter-governmental Committee on the Drafting of a Constitution for UNIDO.²⁵ The Committee would meet at Vienna to draw up a constitution for submission to a conference of plenipotentiaries to be convened by the Secretary-General at the end of 1976.²⁶

14. The Committee on the Drafting of a Constitution for UNIDO held five sessions in all.²⁷ At the end of its fourth session, the Committee had failed to achieve an agreement on the draft constitution.²⁸ At its thirty-first session, the General Assembly took note²⁹ of the report of the Committee and decided to extend its mandate, calling upon Governments to accelerate its work so that the conference of plenipotentiaries might take place in the second half of 1977. Pursuant to that mandate, the Committee to Draw up a Constitution for UNIDO held its fifth session,³⁰ at which it formulated, subject to reservations and disagreements relating to certain passages, the text of a draft constitution

²¹See E/5712, para. 10. Pursuant to the request by the Industrial Development Board, the Secretary-General circulated to the Governments concerned the text of a draft constitution contained in A/10202, and requested their views in time for submission to the Assembly at its seventh special session. A/10202/Add.1, paras. 1-2. For the replies received from Governments, see A/10202/Add.1 - 3.

²²E S C resolution 1953 (LIX).

²³See E/5711 and A/10202.

²⁴G A resolution 3362 (S-VII), sect. IV, paras. 1 and 9, respectively.

²⁵Ibid., sect. IV, para. 9.

²⁶Ibid. See also A/10395, para. 2.

²⁷See A/31/405, annex. The Committee's sessions were held at Vienna from 7 to 19 January, 22 March to 2 April, 28 June to 9 July, and 2 to 15 November 1976. The fifth session of the Committee was held from 7 March to 2 April 1977.

²⁸Ibid., para. 20.

²⁹G A resolution 31/161.

³⁰See A/32/182, annex I.

for UNIDO,³¹ texts of several resolutions to be adopted together with that constitution³² and the text of the draft resolution on transitional arrangements to be proposed for adoption by the General Assembly.³³

15. Taking into account Economic and Social Council resolution 2113 (LXIII) of 4 August 1977, the General Assembly decided³⁴ to convene a conference of plenipotentiaries on the establishment of UNIDO as a specialized agency to meet at United Nations Headquarters beginning on 20 February 1978. At its final plenary meeting, held on 11 March 1978, the Conference adopted³⁵ the following recommendation addressed to the General Assembly:

"The United Nations Conference on the Establishment of the United Nations Industrial Development Organization as a Specialized Agency,

"*Having given* careful and detailed consideration to the draft instruments prepared by the Intergovernmental Committee of the Whole to Draw up a Constitution for UNIDO as a Specialized Agency,

"*Being unable* to reach agreement and thus to complete its work within the allotted time,

"1. *Requests* the Secretary-General to bring its report to the attention of the General Assembly of the United Nations at its thirty-third session;

"2. *Recommends* to the General Assembly that it consider the report and take such action as it deems appropriate."

16. Taking note of the report of the Conference on the Establishment of the UNIDO as a Specialized Agency as well as the report of the Secretary-General on the Conference,³⁶ the General Assembly reaffirmed the urgent need to convert UNIDO into a specialized agency and decided to convene a conference of plenipotentiaries at Vienna for a duration of up to three weeks within the period from 19 March to 12 April 1979 in order to finalize and adopt the constitution of UNIDO as a specialized agency. It also requested the Secretary-General to make the necessary arrangements for the conference in accordance with paragraphs 2 to 5 of the General Assembly resolution 32/167 of 19 December 1977.³⁷

³¹A/CONF.90/3 and Corr.1 and Add.1, appendix I.

³²Ibid., appendix 2.

³³Ibid., appendix 3.

³⁴G A resolution 32/167.

³⁵A/CONF.90/3 and Corr.1 and Add.1, para. 16.

³⁶A/33/239.

³⁷See G A resolution 33/161.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Question of appropriateness

17. In the case of UNIDO, during the period under review, discussion focused on the question of the appropriateness of converting UNIDO into a specialized agency, as well as on the question of the appropriate constitutional character the converted agency might take. With regard to the first issue, while it was recognized generally³⁸ that, in

³⁸See, e.g., A/C.2/31/SR.28, para. 32. At the Second General Conference of UNIDO, the Group of 77 noted that the question of the establishment of a specialized agency for industrial development had been

the light of the increased activities envisioned for UNIDO within the Lima Declaration and the new international economic order, the conversion was appropriate and necessary, some delegations³⁹ were unconvinced that the con-

discussed for a decade: the compromise agreement reached at the time of the establishment of UNIDO as an autonomous organization under General Assembly resolution 2152 (XXI) "had not worked satisfactorily in the interests of the industrialization of the developing countries. . . Consequently, it was now necessary for UNIDO to be converted into a specialized agency." ID/CONF.3/31, para. 212.

³⁹See, e.g., ID/CONF.3/31, paras. 214 and 215; A/10202/Add.1, para. 1; A/CONF.90/12, annex IV, para. C.

version would be the best means of increasing UNIDO's effectiveness.⁴⁰ One delegation expressed the fear that such a conversion might in fact weaken UNIDO's position as the central coordinating body for industrialization within the United Nations system, and the process of conversion itself was likely to monopolize the resources of UNIDO for some time and divert it from its main purposes.⁴¹ It was argued that, barring a change in the principles and approaches of the Western Powers to the industrialization of developing and socialist countries, the conversion of UNIDO into a specialized agency would lead not to any improvement in the United Nations activities in the industrial field but, rather, to a substantial increase in the administrative expenses of UNIDO.⁴²

18. With regard to the issue of the appropriate constitutional character of a converted UNIDO, some delegations stressed that it was important that the converted UNIDO should be constituted to reflect and implement General Assembly resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974 on the new international economic order, as well as the principles laid down in the Lima Declaration during the Second Conference of UNIDO.⁴³ One delegate stated that, insofar as UNIDO was to become the first specialized agency established since the sixth special session of the General Assembly, its constitution should embody the basic principles of the new order.⁴⁴

19. Other delegations objected to reference made, in a draft constitution intended for ratification as a treaty, to documents which they considered did not enjoy universal acceptance. In their view, the Constitution of UNIDO should be so formulated as to attract the widest possible adherence and should bridge differences rather than highlight them, particularly when those differences related not to the objectives to be attained but rather to the choice of methods for attaining them.⁴⁵

B. Method of initiating negotiations

20. In the case of IFAD, the General Assembly, in endorsing the recommendations of the World Food Conference, requested the Secretary-General to call a meeting of

interested countries, including all interested representatives of the contributing developed countries, the contributing developing countries, the potential recipient countries and all interested institutions, to work out the details for such a Fund.⁴⁶ At its thirtieth session, the General Assembly, on recommendation of the Meeting of Interested Countries on the International Fund for Agricultural Development, requested⁴⁷ the Secretary-General to convene a conference of plenipotentiaries on the establishment of an International Fund for Agricultural Development.

21. In the case of UNIDO, during the period under review,⁴⁸ the Second General Conference of UNIDO⁴⁹ recommended that UNIDO should be converted into a specialized agency. The General Assembly, at its seventh session,⁵⁰ endorsed the recommendation of the Conference and decided to establish an intergovernmental committee of the whole to meet in Vienna to draw up a constitution for UNIDO as a specialized agency. At its thirty-second session, the General Assembly decided⁵¹ to convene a Conference of Plenipotentiaries on the Establishment of UNIDO as a Specialized Agency.

C. Initiation of negotiations among the "States concerned"

22. In the case of IFAD, the General Assembly requested the Secretary-General to call "a meeting of interested countries", including all interested representatives of the contributing developed countries, the contributing developing countries, the potential recipient countries and all interested institutions, to work out the details for such a Fund.⁵² By the terms of its resolution 3503 (XXX) of 15 December 1975, the General Assembly requested the Secretary-General to convene a conference of plenipotentiaries on the establishment of an International Fund for Agricultural Development, open to all States.

23. In the case of UNIDO, participation in the Committee to draw up a Constitution for UNIDO was open to all States. The Conference on the Establishment of the United Nations Industrial Development Organization as a Specialized Agency, convened pursuant to General Assembly resolution 32/167, also was open to all States.

⁴⁰See, e.g., A/10202/Add.1, para. 1; A/CONF.90/12, annex IV, para. C.

⁴¹A/C.2/SR/1687, para. 21.

⁴²Ibid.

⁴³See ID/CONF.3/31, para. 210; A/10202/Add.2, paras. 1 and 2; A/C.2/31/SR.28, para. 32; A/C.2/33/SR.21, para. 59; A/C.2/33/SR.23, para. 110; and A/CONF.90/12, annex IV, A, p. 3; E, p. 27.

⁴⁴A/C.2/33/SR.21, para. 62.

⁴⁵See A/10202/Add.2, p. 6, paras 1 and 2; A/C.2/31/SR.67, para. 67; A/CONF.90/12, annex IV, B, p. 21.

⁴⁶G A resolution 3348 (XXIX).

⁴⁷G A resolution 3503 (XXX).

⁴⁸See footnote 20 above.

⁴⁹See footnote 10 above.

⁵⁰G A resolution 3362 (S-VII), sect. IV, para. 9.

⁵¹G A resolution 32/167.

⁵²G A resolution 3348 (XXIX).